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Settlement of commercial disputes

International commercial conciliation: preparation of an instrument on enforcement of international commercial settlement agreements resulting from conciliation

Note by the Secretariat

Addendum

Contents

V.17-05016 (E)

II. Draft instrument on enforcement of international commercial settlement agreements resulting from conciliation

B. Form of the draft instrument

1. The Working Group considered the form of the instrument at its sixty-fifth and sixty-sixth sessions (A/CN.9/896, paras. 135-143 and 211-213, and A/CN.9/901, paras. 52 and 89-93). At the sixty-sixth session of the Working Group, in a spirit of compromise and to accommodate the different levels of experience with conciliation in different jurisdictions, it was agreed that the Working Group would continue to prepare both a model legislative text complementing the Model Law on Conciliation, and a convention, on enforcement of international commercial settlement agreements resulting from conciliation (A/CN.9/901, para. 93). This suggestion was reflected in the compromise proposal, under issue 5 (A/CN.9/901, para. 52). It was further agreed that a possible approach to address the specific circumstance of preparing both a model legislative text and a convention could be to suggest that the General Assembly resolution accompanying those instruments would express no preference on the type of instrument to be adopted by States (A/CN.9/901, para. 93).

2. In that context, the Working Group may wish to consider suggesting the following wording for the resolutions:

3. *"Recalling that the decision of the Commission to prepare a draft [full title of the Convention] and an amendment to the UNCITRAL Model Law on International Commercial Conciliation was intended to accommodate the different levels of experience with conciliation in different jurisdictions, and to provide States with consistent standards to address the cross-border enforcement of international settlement agreements resulting from conciliation, without creating any preference for the instrument to be adopted."*

4. As requested by the Working Group at its sixty-sixth session, this section contains the draft uniform provisions presented in document A/CN.9/WG.II/WP.202 indicating how they are adjusted where the instrument takes the form of a convention and of a complement to the Model Law on Conciliation (A/CN.9/901, paras. 13 and 93). An annex to this note contains a table of concordance between the provisions of the two instruments.

1. Draft convention

5. The draft text of a convention on enforcement of international settlement agreements resulting from conciliation might read as follows:

"**Preamble**

"*The Parties to this Convention*,

"*Recognizing* the value for international trade of methods for settling commercial disputes in which the parties in dispute request a third person or persons to assist them in their attempt to settle the dispute amicably,

"*Noting* that such dispute settlement methods, referred to by expressions such as conciliation and mediation and expressions of similar import, are increasingly used in international and domestic commercial practice as an alternative to litigation,

"*Considering* that the use of such dispute settlement methods results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States,

"*Convinced* that the establishment of a framework for international settlement agreements resulting from such dispute settlement methods that is acceptable to States with different legal, social and economic systems would contribute to the development of harmonious international economic relations,

"*Have agreed* as follows:

"**Article 1 — Scope of application**

"1. This Convention applies to international agreements resulting from conciliation and concluded in writing by parties to resolve a commercial dispute ('settlement agreements').

"2. This Convention does not apply to settlement agreements:

"(a) Concluded for personal, family or household purposes by one of the parties (a consumer); or

"(b) Relating to family, inheritance or employment law.

[*Paragraph (3) below as alternative to article 4(1)(f) to (h)*]

"3. This Convention does not apply to settlement agreements that[, prior to any application under article 3]:

"(a) Have been approved by a court, or have been concluded before a court in the course of proceedings, either of which are enforceable [in the same manner] as a judgment [according to the law of the State of that court]; or

"(b) Have been recorded and are enforceable as an arbitral award [according to the law of the Contracting State where enforcement is sought].

"**Article 2 — Definitions**

"1. A settlement agreement is 'international' if:

"(a) At least two parties to the settlement agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

"(b) The State in which the parties to the settlement agreement have their places of business is different from either:

"(i) The State in which a substantial part of the obligations under the settlement agreement is to be performed; or

"(ii) The State with which the subject matter of the settlement agreement is most closely connected.

"2. For the purposes of this article:

"(a) If a party has more than one place of business, the relevant place of business is that which has the closest relationship to the dispute resolved by the settlement agreement, having regard to the circumstances known to, or contemplated by, the parties at the time of the conclusion of the settlement agreement;

"(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

"3. A settlement agreement is 'in writing' if its content is recorded in any form. The requirement that a settlement agreement be 'in writing' is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; 'electronic communication' means any communication that the parties make by means of data messages; 'data message' means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

"4. 'Conciliation' means a process, regardless of the expression used and irrespective of the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons ('the conciliator') lacking the authority to impose a solution upon the parties to the dispute.

"**Article 3 — Application**

"1. Each Contracting State shall enforce a settlement agreement in accordance with its rules of procedure, and under the conditions laid down in this Convention.

"2. If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, a Contracting State shall allow the party to invoke the settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention[, in order to conclusively prove that the matter has been already resolved].

"3. A party relying on a settlement agreement under this Convention shall supply to the competent authority of the Contracting State where relief is sought:

"(a) The settlement agreement signed by the parties;

"(b) [Evidence][Indication] that the settlement agreement resulted from conciliation, such as by including the conciliator's signature on the settlement agreement, by providing a separate statement by the conciliator attesting to the involvement of the conciliator in the conciliation process or by providing an attestation by an institution that administered the conciliation process; and

"(c) Such other necessary document as the competent authority may require.

"4. The requirement that a settlement agreement shall be signed by the parties or, where applicable, the conciliator, is met in relation to an electronic communication if:

"(a) A method is used to identify the parties or the conciliator and to indicate the parties' or conciliator's intention in respect of the information contained in the electronic communication; and

"(b) The method used is either:

"(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

"(ii) Proven in fact to have fulfilled the functions described in article 2(3) above, by itself or together with further evidence.

"5. If the settlement agreement is not in the official language(s) of the Contracting State where the application is made, the competent authority may request the party making the application to supply a translation thereof into such language.

"6. When considering the application, the competent authority shall act expeditiously.

"**Article 4 — Grounds for refusing to grant relief**

"1. The competent authority of the Contracting State where the application [under article 3] is made may refuse to grant relief [under article 3] at the request of the party against whom the application is made, only if that party furnishes to the competent authority proof that:

"(a) A party to the settlement agreement was under some incapacity; or

"(b) The settlement agreement is not binding or is not a final resolution of the dispute covered by the settlement agreement; or the obligations in the settlement agreement have been subsequently modified by the parties or have been performed; or the conditions set forth in the settlement agreement have not been met for a reason other than a failure by the party against whom the settlement agreement is invoked and, therefore, have not yet given rise to the obligations of that party; or

"(c) The settlement agreement is null and void, inoperative or incapable of being performed under the law to which the parties have subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority of the Contracting State where the application under article 3 is made; or

"(d) There was a serious breach by the conciliator of standards applicable to the conciliator or the conciliation, without which breach that party would not have entered into the settlement agreement; or

"(e) There was a failure by the conciliator to disclose circumstances to the parties that raise justifiable doubts as to the conciliator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party, without which failure that party would not have entered into the settlement agreement[.][; or]

[*Subparagraphs (f) to (h) below as alternative to article 1 (3)*]

"(f) The settlement agreement has been approved by a court [prior to any application under article 3] and is enforceable [in the same manner] as a judgment under the law of the State of that court;

"(g) The settlement agreement has been concluded before a court in the course of proceedings [prior to any application under article 3] and is enforceable [in the same manner] as a judgment under the law of the State of that court; or

"(h) The settlement agreement has been recorded as an arbitral award [prior to any application under article 3] and that award is enforceable under the law of the Contracting State where enforcement is sought."

"2. The competent authority of the Contracting State where the application [under article 3] is made may also refuse to grant relief [under article 3] if it finds that:

"(a) Granting relief would be contrary to the public policy of that State; or

"(b) The subject matter of the dispute is not capable of settlement by conciliation under the law of that State.

"**Article 5 — Parallel applications or claims**

"If an application or a claim relating to a settlement agreement has been made to a court, an arbitral tribunal or any other competent authority which may affect enforcement of that settlement agreement, the competent authority of the Contracting State where the enforcement of the settlement agreement is sought may, if it considers it proper, adjourn the decision on the enforcement of the settlement agreement and may also, on the request of a party, order the other party to give suitable security.

"**Article 6 — Other laws or treaties**

"This Convention shall not deprive any interested party of any right it may have to avail itself of a settlement agreement in the manner and to the extent allowed by the law or the treaties of the Contracting State where such settlement agreement is sought to be relied upon.

"**Article 7 — Reservations**

"1. A Contracting State may declare that:

"(a) [Option 1: It shall apply][Option 2: It shall not apply] this Convention to settlement agreements to which it is a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party, only to the extent specified in the declaration;

"(b) It shall apply this Convention to international agreements concluded in writing by parties to resolve a commercial dispute regardless of whether [a conciliator assisted the parties in resolving their dispute][the agreements resulted from conciliation]; as a result, articles 2(4), 3(3)(b), 4(1)(d) and (e) do not apply;

"(c) It shall apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.

"2. No reservations are permitted except those expressly authorized in this article.

"3. Reservations may be made by a Contracting State at any time. Reservations made at the time of signature shall be subject to confirmation upon ratification, acceptance or approval. Such reservations shall take effect simultaneously with the entry into force of this Convention in respect of the Contracting State concerned. Reservations made at the time of ratification, acceptance or approval of this Convention or accession thereto shall take effect simultaneously with the entry into force of this Convention in respect of the Contracting State concerned. Reservations deposited after the entry into force of the Convention for that Party shall take effect [three] months after the date of its deposit.

"4. Reservations and their confirmations shall be deposited with the depositary.

"5. Any Contracting State that makes a reservation under this Convention may withdraw it at any time. Such withdrawals are to be deposited with the depositary, and shall take effect three months after deposit."

"**Article 8 — Depositary**

"The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

"**Article 9 — Signature, ratification, acceptance, approval, accession**

"1. This Convention is open for signature by all States in [...] on [...], and thereafter at United Nations Headquarters in New York.

"2. This Convention is subject to ratification, acceptance, or approval by the signatories.

"3. This Convention is open for accession by all States that are not signatories as from the date it is open for signature.

"4. Instruments of ratification, acceptance, approval, or accession are to be deposited with the depositary.

"**Article 10 — Participation by regional economic integration organizations**

"1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve, or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Contracting State, to the extent that that organization has competence over matters governed by this Convention.

Where the number of Contracting States is relevant in this Convention, the regional economic integration organization shall not count as a Contracting State in addition to its member States that are Contracting States.

"2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval, or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

"3. Any reference to a "Contracting State", "Contracting States", a "State" or "States" in this Convention applies equally to a regional economic integration organization where the context so requires.

"4. This Convention shall not prevail over conflicting rules of a regional economic integration organization if, under article 3, the application is submitted to a competent authority of a State that is a member of such an organization and all the States relevant under article 2(1) are members of any such organization.

"**Article 11 — Effect in domestic territorial units**

"1. If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval, or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

"2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

"3. If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

"4. If a Contracting State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

"**Article 12 — Entry into force**

"1. This Convention enters into force on the first day of the month following the expiration of three months after the date of deposit of the [third] instrument of ratification, acceptance, approval, or accession.

"2. When a State ratifies, accepts, approves, or accedes to this Convention after the deposit of the [third] instrument of ratification, acceptance, approval, or accession, this Convention enters into force in respect of that State on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval, or accession.

"**Article 13 — Amendment**

"1. Any Contracting State may propose an amendment to the present Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the Contracting States to this Convention with a request that they indicate whether they favour a conference of Contracting States for the purpose of

considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the Contracting States favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

"2. The conference of Contracting States shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the Contracting States present and voting at the conference.

"3. An adopted amendment shall be submitted by the Secretary-General of the United Nations to all the Contracting States for ratification, acceptance, or approval.

"4. An adopted amendment enters into force six months after the date of deposit of the third instrument of ratification, acceptance, or approval. When an amendment enters into force, it shall be binding on those Contracting States that have expressed consent to be bound by it.

"5. When a State ratifies, accepts, or approves an amendment that has already entered into force, the amendment enters into force in respect of that state six months after the date of the deposit of its instrument of ratification, acceptance, or approval.

"6. Any State that becomes a Contracting State after the entry into force of the amendment shall be considered as a Contracting State to the Convention as amended.

"**Article 14 — Denunciations**

"1. A Contracting State may denounce this Convention by a formal notification in writing addressed to the depositary.

"2. The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary. The Convention shall continue to apply to applications under article 3 that have already been made before the denunciation takes effect.

"DONE at ---- this [X] day of [X] ------, in a single original, of which the Arabic, Chinese, English, French, Russian, and Spanish texts are equally authentic."

2. Draft Model Law on International Commercial Conciliation, as amended

6. The Working Group may wish to consider whether the provisions of the Model Law on Conciliation could possibly be presented in three sections, as follows: section 1 on General Provisions would contain articles 1 to 3 of the Model Law, as completed by new definitions (modifications to these provisions are underlined in the draft below); section 2 on Conciliation Procedure would contain articles 4 to 13 of the Model Law; and section 3 on Settlement Agreements would contain the new provisions, replacing article 14. The Working Group may wish to note that additional adjustments to the Model Law might be required based on further consideration of issues that remain to be decided and that, at this stage, the presentation below may not be exhaustive regarding the amendments that might need to be made to the Model Law. Following this approach, the Model Law, as amended, would read as follows.

"Section 1 — General provisions

"Article 1. Scope of application and definitions

"1. This Law applies to international* commercial** conciliation.[1]

"2. For the purposes of this Law, 'conciliator' means a sole conciliator or two or more conciliators, as the case may be.

"3. For the purposes of this Law, "conciliation" means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons ('the conciliator') to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The conciliator does not have the authority to impose upon the parties a solution to the dispute.

"4. A [conciliation or a settlement agreement] is international if:

"(a) At least two parties to the conciliation have, at the time of the conclusion of the settlement agreement, their places of business in different States; or

"(b) The State in which the parties have their places of business is different from either:

"(i) The State in which a substantial part of the obligations of the commercial relationship is to be performed; or

"(ii) The State with which the subject matter of the dispute is most closely connected.

"5. For the purposes of this article:

"(a) If a party has more than one place of business, the place of business is that which has the closest relationship to the dispute resolved by the settlement agreement, having regard to the circumstances known to, or contemplated by, the parties at the time of the conclusion of the settlement agreement; ~~the agreement to conciliate~~;

"(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

"[6. This Law also applies to a commercial conciliation when the parties agree that the conciliation is international or agree to the applicability of this Law.]

"7. The parties are free to agree to exclude the applicability of this Law.

"8. Subject to the provisions of paragraph 9 of this article, this Law applies irrespective of the basis upon which the conciliation is carried out, including agreement between the parties whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent governmental entity.

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[1] Footnotes to article 1(1):

* States wishing to enact this Model Law to apply to domestic as well as international conciliation may wish to consider the following changes to the text:

- Delete the word "international" in paragraph 1 of article 1; and
- Delete paragraphs 4, 5 and 6 of article 1.

** The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

"9. *Option 1*: This Law does not apply to:

(a) Cases where a judge or an arbitrator, in the course of judicial or arbitral proceedings, attempts to facilitate a settlement;[2]

"(b) Settlement agreements concluded for personal, family or household purposes by one of the parties (a consumer);

"(c) Settlement agreement relating to family, inheritance or employment law;

"(d) Settlement agreements concluded by a State or any governmental agencies or any person acting on behalf of a governmental agency; and

"(e) […].

"9. *Option 2*:[3] This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to conciliation or may be submitted to conciliation only according to provisions other than those of this Law.

"10. A 'settlement agreement' is an international agreement resulting from conciliation and concluded in writing by parties to resolve a commercial dispute.

"11. For the purposes of this article, a settlement agreement is 'in writing' if its content is recorded in any form. The requirement that a settlement agreement be 'in writing' is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; 'electronic communication' means any communication that the parties make by means of data messages; 'data message' means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

"**Article 2. Interpretation**

"1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

"2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

"**Article 3. Variation by agreement**

"Except for the provisions of article 2 [and] article 6, paragraph 3, [and section 3][4] the parties may agree to exclude or vary any of the provisions of this Law.

[2] Article 1(9)(a) might need to be adjusted to take account of the decision of the Working Group on the matter of settlement agreements concluded in the course of judicial or arbitral proceedings (see A/CN.9/WG.II/WP.202, paras. 8-23).

[3] A similar provision can be found in article 1(5) of the UNCITRAL Model Law on International Commercial Arbitration.

[4] The Working Group may wish to consider whether to indicate that an enacting State may consider the possibility of section 3 being mandatory. Draft provision 1 (7) would then need to be adjusted accordingly.

"**Section 2 — Conciliation Procedure**

[*Article 4 to Article 13 unchanged*]

"**Section 3 — Settlement Agreements**[***5]

"**Article 14. General principles**

"1. A settlement agreement shall be enforced in accordance with the rules of procedure of this State, and under the conditions laid down in this Law.

"2. If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, the party may invoke the settlement agreement in accordance with the rules of procedure of this State and under the conditions laid down in this Law[, in order to conclusively prove that the matter has been already resolved].

[*Article 14 (3) as alternative to article 16(1)(f) to (h)*]

"3. The procedure in this section does not apply to settlement agreements that[, prior to any application under article 15]:

"(a) have been approved by a court, or have been concluded before a court in the course of proceedings, either of which are enforceable [in the same manner] as a judgment [according to the law of the State of that court]; or

"(b) have been recorded and are enforceable as an arbitral award according to the law of this State.

"4. The functions referred to in this Section shall be performed by […] (referred to as the 'competent authority') [Each State enacting the Model Law specifies the court, courts or other competent authorities to perform the functions].

"**Article 15. Application**

"1. A party relying on a settlement agreement under this Section shall supply to the competent authority of this State:

"(a) The settlement agreement signed by the parties;

"(b) [Evidence][Indication] that the settlement agreement resulted from conciliation, such as by including the conciliator's signature on the settlement agreement, by providing a separate statement by the conciliator attesting to the involvement of the conciliator in the conciliation process or by providing an attestation by an institution that administered the conciliation process; and

"(c) Such other necessary document as the competent authority may require.

"2. The requirement that a settlement agreement shall be signed by the parties or, where applicable, the conciliator is met in relation to an electronic communication if:

"(a) A method is used to identify the parties or the conciliator and to indicate the parties' or conciliator's intention in respect of the information contained in the electronic communication; and

[5] [Footnote to the title of section 3: "***A State may consider enacting this Section so as to apply it to agreements settling a dispute, irrespective of whether they resulted from conciliation. Adjustments would then have to be made to relevant provisions of section 3 referring to "conciliation" or "conciliator". Articles 15(1)(b) and 16(1)(d) and (e) would need to be deleted.]

"(b) The method used is either:

"(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

"(ii) Proven in fact to have fulfilled the functions described in article 1(11) above, by itself or together with further evidence.

"3. If the settlement agreement is not in the official language(s) of this State, the competent authority may request the party making the application to supply a translation thereof into such language.

"4. When considering the application, the competent authority shall act expeditiously.

"**Article 16. Grounds for refusing to grant relief**

"1. The competent authority of this State may refuse to grant relief [under article 15] at the request of the party against whom the application is made, only if that party furnishes to the competent authority proof that:

"(a) A party to the settlement agreement was under some incapacity; or

"(b) The settlement agreement is not binding or is not a final resolution of the dispute covered by the settlement agreement; or the obligations in the settlement agreement have been subsequently modified by the parties or have been performed; or the conditions set forth in the settlement agreement have not been met for a reason other than a failure by the party against whom the settlement agreement is invoked, and therefore, have not yet given rise to the obligations of that party; or

"(c) The settlement agreement is null and void, inoperative or incapable of being performed under the law to which the parties have subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority of this State; or

"(d) There was a serious breach by the conciliator of standards applicable to the conciliator or the conciliation, without which breach that party would not have entered into the settlement agreement; or

"(e) There was a failure by the conciliator to disclose circumstances to the parties that raise justifiable doubts as to the conciliator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party, without which failure that party would not have entered into the settlement agreement[.][; or]

[*Subparagraphs (f) to (h) below as alternative to article 14 (3)*]

"(f) The settlement agreement has been approved by a court [prior to any application under article 15] and is enforceable [in the same manner] as a judgment under the law of the State of that court;

"(g) The settlement agreement has been concluded before a court in the course of proceedings [prior to any application under article 15] and is enforceable [in the same manner] as a judgment under the law of the State of that court; or

"(h) The settlement agreement has been recorded as an arbitral award [prior to any application under article 15] and that award is enforceable under the law of this State."

"2. The competent authority of this State may also refuse to grant relief [under article 3] if it finds that:

"(a) Granting relief would be contrary to the public policy of this State; or

"(b) The subject matter of the dispute is not capable of settlement by conciliation under the law of this State."

"3. If an application or a claim relating to a settlement agreement has been made to a court, an arbitral tribunal or any other competent authority which may affect enforcement of that settlement agreement, the competent authority of this State may, if it considers it proper, adjourn the decision on the enforcement of the settlement agreement and may also, on the request of a party, order the other party to give suitable security."

Annex

Table of concordance

Draft provisions	*Convention*	*Legislative provisions*
Scope and definition of "settlement agreement"	Article 1(1)	Article 1.10 for the definition of "settlement agreement" (Amendment to article 1 of the Model Law)
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Exclusion of settlement agreements recorded as judicial settlements and arbitral awards	Article 1(3) or 4(1) (f)-(h)	Article 14(3) or 16(1)(f)-(h) (Amendment to article 14 of the Model Law)
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Application	Article 3(3) to (6)	Article 15
Grounds for refusing to grant relief	Article 4	Article 16(1) and (2)
Parallel applications or claims	Article 5	Article 16(3)
Other laws or treaties	Article 6	N/A
Reservations	Article 7	Article 1(9)(d) on settlement agreements concluded by States/other public entities (Amendment to article 1 of the Model Law) Footnote to section 3 on general principles (Amendment to article 14 of the Model Law)