

Annex II

UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002)

Section 1 — General provisions

Article 1. Scope of application of the Law and definitions

1. This Law applies to international commercial¹ mediation² and to international settlement agreements.
2. For the purposes of this Law, “mediator” means a sole mediator or two or more mediators, as the case may be.
3. For the purposes of this Law, “mediation” means a process, whether referred to by the expression mediation, conciliation or an expression of similar import, whereby parties request a third person or persons (“the mediator”) 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 mediator does not have the authority to impose upon the parties a solution to the dispute.

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.

Section 2 — International commercial mediation

Article 3. Scope of application of the section and definitions

1. This section applies to international³ commercial mediation.

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; and carriage of goods or passengers by air, sea, rail or road.

² In its previously adopted texts and relevant documents, UNCITRAL used the term “conciliation” with the understanding that the terms “conciliation” and “mediation” were interchangeable. In preparing this Model Law, the Commission decided to use the term “mediation” instead in an effort to adapt to the actual and practical use of the terms and with the expectation that this change will facilitate the promotion and heighten the visibility of the Model Law. This change in terminology does not have any substantive or conceptual implications.

³ States wishing to enact this section to apply to domestic as well as international mediation may wish to consider the following changes to the text:

- Delete the word “international” in paragraph 1 of articles 1 and 3; and
- Delete paragraphs 2, 3 and 4 of article 3, and modify references to paragraphs accordingly.

2. A mediation is “international” if:
 - (a) The parties to an agreement to mediate 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 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.
3. For the purposes of paragraph 2:
 - (a) If a party has more than one place of business, the place of business is that which has the closest relationship to the agreement to mediate;
 - (b) If a party does not have a place of business, reference is to be made to the party’s habitual residence.
4. This section also applies to commercial mediation when the parties agree that the mediation is international or agree to the applicability of this section.
5. The parties are free to agree to exclude the applicability of this section.
6. Subject to the provisions of paragraph 7 of this article, this section applies irrespective of the basis upon which the mediation 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.
7. This section 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; and
 - (b) [...].

Article 4. Variation by agreement

Except for the provisions of article 7, paragraph 3, the parties may agree to exclude or vary any of the provisions of this section.

Article 5. Commencement of mediation proceedings⁴

1. Mediation proceedings in respect of a dispute that has arisen commence on the day on which the parties to that dispute agree to engage in mediation proceedings.
2. If a party that invited another party to mediate does not receive an acceptance of the invitation within 30 days from the day on which the invitation was sent, or within such other period of time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to mediate.

Article 6. Number and appointment of mediators

1. There shall be one mediator, unless the parties agree that there shall be two or more mediators.

⁴ The following text is suggested for States that might wish to adopt a provision on the suspension of the limitation period:

Article X. Suspension of limitation period

1. When the mediation proceedings commence, the running of the limitation period regarding the claim that is the subject matter of the mediation is suspended.
2. Where the mediation proceedings have terminated without a settlement agreement, the limitation period resumes running from the time the mediation ended without a settlement agreement.

2. The parties shall endeavour to reach agreement on a mediator or mediators, unless a different procedure for their appointment has been agreed upon.
3. Parties may seek the assistance of an institution or person in connection with the appointment of mediators. In particular:
 - (a) A party may request such an institution or person to recommend suitable persons to act as mediator; or
 - (b) The parties may agree that the appointment of one or more mediators be made directly by such an institution or person.
4. In recommending or appointing individuals to act as mediator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial mediator and, where appropriate, shall take into account the advisability of appointing a mediator of a nationality other than the nationalities of the parties.
5. When a person is approached in connection with his or her possible appointment as mediator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A mediator, from the time of his or her appointment and throughout the mediation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.

Article 7. Conduct of mediation

1. The parties are free to agree, by reference to a set of rules or otherwise, on the manner in which the mediation is to be conducted.
2. Failing agreement on the manner in which the mediation is to be conducted, the mediator may conduct the mediation proceedings in such a manner as the mediator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.
3. In any case, in conducting the proceedings, the mediator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.
4. The mediator may, at any stage of the mediation proceedings, make proposals for a settlement of the dispute.

Article 8. Communication between mediator and parties

The mediator may meet or communicate with the parties together or with each of them separately.

Article 9. Disclosure of information

When the mediator receives information concerning the dispute from a party, the mediator may disclose the substance of that information to any other party to the mediation. However, when a party gives any information to the mediator, subject to a specific condition that it be kept confidential, that information shall not be disclosed to any other party to the mediation.

Article 10. Confidentiality

Unless otherwise agreed by the parties, all information relating to the mediation proceedings shall be kept confidential, except where disclosure is required under the law or for the purposes of implementation or enforcement of a settlement agreement.

Article 11. Admissibility of evidence in other proceedings

1. A party to the mediation proceedings, the mediator and any third person, including those involved in the administration of the mediation proceedings, shall not

in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding any of the following:

- (a) An invitation by a party to engage in mediation proceedings or the fact that a party was willing to participate in mediation proceedings;
- (b) Views expressed or suggestions made by a party in the mediation in respect of a possible settlement of the dispute;
- (c) Statements or admissions made by a party in the course of the mediation proceedings;
- (d) Proposals made by the mediator;
- (e) The fact that a party had indicated its willingness to accept a proposal for settlement made by the mediator;
- (f) A document prepared solely for purposes of the mediation proceedings.

2. Paragraph 1 of this article applies irrespective of the form of the information or evidence referred to therein.

3. The disclosure of the information referred to in paragraph 1 of this article shall not be ordered by an arbitral tribunal, court or other competent governmental authority and, if such information is offered as evidence in contravention of paragraph 1 of this article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence to the extent required under the law or for the purposes of implementation or enforcement of a settlement agreement.

4. The provisions of paragraphs 1, 2 and 3 of this article apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the mediation proceedings.

5. Subject to the limitations of paragraph 1 of this article, evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in a mediation.

Article 12. Termination of mediation proceedings

The mediation proceedings are terminated:

- (a) By the conclusion of a settlement agreement by the parties, on the date of the agreement;
- (b) By a declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration;
- (c) By a declaration of the parties addressed to the mediator to the effect that the mediation proceedings are terminated, on the date of the declaration; or
- (d) By a declaration of a party to the other party or parties and the mediator, if appointed, to the effect that the mediation proceedings are terminated, on the date of the declaration.

Article 13. Mediator acting as arbitrator

Unless otherwise agreed by the parties, the mediator shall not act as an arbitrator in respect of a dispute that was or is the subject of the mediation proceedings or in respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship.

Article 14. Resort to arbitral or judicial proceedings

Where the parties have agreed to mediate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred

arbitral or judicial proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to mediate or as a termination of the mediation proceedings.

Article 15. Binding and enforceable nature of settlement agreements

If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable.

Section 3 — International settlement agreements⁵

Article 16. Scope of application of the section and definitions

1. This section applies to international agreements resulting from mediation and concluded in writing by parties to resolve a commercial dispute (“settlement agreements”).⁶
2. This section does not apply to settlement agreements:
 - (a) Concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes;
 - (b) Relating to family, inheritance or employment law.
3. This section does not apply to:
 - (a) Settlement agreements:
 - (i) That have been approved by a court or concluded in the course of proceedings before a court; and
 - (ii) That are enforceable as a judgment in the State of that court;
 - (b) Settlement agreements that have been recorded and are enforceable as an arbitral award.
4. A settlement agreement is “international” if, at the time of the conclusion of the settlement agreement:⁷
 - (a) At least two parties to the settlement agreement have 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.
5. For the purposes of paragraph 4:
 - (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

⁵ A State may consider enacting this section to apply to agreements settling a dispute, irrespective of whether they resulted from mediation. Adjustments would then have to be made to relevant articles.

⁶ A State may consider enacting this section to apply only where the parties to the settlement agreement agreed to its application.

⁷ A State may consider broadening the definition of “international” settlement agreement by adding the following subparagraph to paragraph 4: “A settlement agreement is also ‘international’ if it results from international mediation as defined in article 3, paragraphs 2, 3 and 4.”

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.

6. 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.

Article 17. 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 section.

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 section, in order to prove that the matter has already been resolved.

Article 18. Requirements for reliance on settlement agreements

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 that the settlement agreement resulted from mediation, such as:
 - (i) The mediator's signature on the settlement agreement;
 - (ii) A document signed by the mediator indicating that the mediation was carried out;
 - (iii) An attestation by the institution that administered the mediation; or
 - (iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.

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

(a) A method is used to identify the parties or the mediator and to indicate the parties' or mediator'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 subparagraph (a) above, by itself or together with further evidence.

3. If the settlement agreement is not in an official language of this State, the competent authority may request a translation thereof into such language.

4. The competent authority may require any necessary document in order to verify that the requirements of this section have been complied with.

5. When considering the request for relief, the competent authority shall act expeditiously.

Article 19. Grounds for refusing to grant relief

1. The competent authority of this State may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that:

- (a) A party to the settlement agreement was under some incapacity;
- (b) The settlement agreement sought to be relied upon:
 - (i) Is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority;
 - (ii) Is not binding, or is not final, according to its terms; or
 - (iii) Has been subsequently modified;
- (c) The obligations in the settlement agreement:
 - (i) Have been performed; or
 - (ii) Are not clear or comprehensible;
- (d) Granting relief would be contrary to the terms of the settlement agreement;
- (e) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or
- (f) There was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator'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.

2. The competent authority of this State may also refuse to grant relief 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 mediation under the law of this State.

Article 20. 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 the relief being sought under article 18, the competent authority of this State where such relief is sought may, if it considers it proper, adjourn the decision and may also, on the request of a party, order the other party to give suitable security.