United Nations A/CN.9/WG.II/WP.205

General Assembly

Distr.: Limited
23 November 2017

Original: English

United Nations Commission on International Trade Law
Working Group II (Dispute Settlement)
Sixty-eighth session
New York, 5–9 February 2018

Settlement of commercial disputes

International commercial mediation: preparation of instruments on enforcement of international commercial settlement agreements resulting from mediation

Note by the Secretariat

Contents

V.17-08316 (E)

I. Introduction

1. At its forty-seventh session, in 2014, the Commission considered a proposal to undertake work on the preparation of a convention on the enforceability of settlement agreements reached through international commercial conciliation (A/CN.9/822).[1] It requested the Working Group to consider the feasibility and possible form of work in that area.[2] At its forty-eighth session, in 2015, the Commission took note of the consideration of the topic by the Working Group[3] and agreed that the Working Group should commence work at its sixty-third session to identify relevant issues and develop possible solutions. The Commission also agreed that the mandate of the Working Group with respect to that topic should be broad to take into account the various approaches and concerns.[4] At its forty-ninth session, in 2016, the Commission confirmed that the Working Group should continue its work on the topic.[5] At its fiftieth session, in 2017, the Commission took note of the compromise reached by the Working Group at its sixty-sixth session, which addressed five key issues as a package (referred to as the "compromise proposal", see A/CN.9/901, para. 52) and expressed support for the Working Group to continue its work based on that compromise.[6]

2. At its sixty-third to sixty-seventh sessions, the Working Group undertook work on the preparation of instruments on enforcement of international settlement agreements resulting from conciliation, consisting of a draft convention and draft amendments to the UNCITRAL Model Law on International Commercial Conciliation (the "Model Law").[7] For ease of reference, this note refers to the "draft convention" and "draft amended Model Law"; jointly, they are referred to as the "instruments".

3. This note outlines the main matters for consideration by the Working Group, and its addendum contains the text of the instruments.

II. Annotations

A. Terminology

4. At its sixty-fourth session, the Working Group considered whether the term "mediation" should replace the term "conciliation" throughout the instruments and, if so, the possible implications on existing UNCITRAL texts, which were prepared using the term "conciliation". At that session, a view was expressed that the instruments should refer to "mediation" instead of "conciliation", as it was a more widely used term (A/CN.9/867, para. 120). At its sixty-seventh session, the Working Group reached a shared understanding that the terms "conciliation", "conciliator" and other similar terms should be replaced with the terms "mediation", "mediator" and corresponding terms in the instruments as well as in the UNCITRAL Conciliation Rules (1980) (A/CN.9/929, paras. 102–104). These changes have been implemented in this note for further consideration by the Working Group.

5. It is suggested that explanation about the change of terminology be provided in material accompanying the draft convention, if any, as well as in a footnote to the draft

[1] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 123–125.
[2] Ibid., para. 129.
[3] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), paras. 135–141; see also A/CN.9/832, paras. 13–59.
[4] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 142.
[5] Ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), paras. 162–165.
[6] Ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), paras. 236–239.
[7] The reports of the Working Group on the work of its sixty-third, sixty-fourth, sixty-fifth, sixty-sixth, and sessions sixty-seventh are contained in documents A/CN.9/861, A/CN.9/867, A/CN.9/896, A/CN.9/901, and A/CN.9/929, respectively.

amended Model Law (see footnote 3 in document A/CN.9/WG.II/WP.205/Add.1), as follows:

> "'*Mediation' is a widely used term for a process where parties request a third person or persons 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. 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 the [Convention/amendment to the 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 [Convention/ Model Law]. This change in terminology does not have any substantive or conceptual implications.*"

6. As mentioned above (see para. 4), corresponding adjustments of terminology will need to be implemented in the UNCITRAL Conciliation Rules (1980), which could also include a similar explanatory note. In that context, the Working Group may wish to consider whether the Rules would need to be amended further to take account of developments in the field since their adoption. If so, this matter would need to be referred to the Commission for further consideration.

B. Scope and exclusions

1. Scope

7. With regard to the scope of the instruments, the Working Group approved article 1(1) of the draft convention and article 15(1) of the draft amended Model Law (A/CN.9/929, paras. 14 and 30; for consideration of the matter at previous sessions, see A/CN.9/901, paras. 52 and 56; A/CN.9/896, paras. 14–16, 113–117, 145 and 146; and A/CN.9/867, para. 94; for questions on the scope of the different sections of the draft amended Model Law, see para. 39 below).

2. Exclusions

- *Personal, family, inheritance, employment matters*

8. The Working Group approved article 1(2) of the draft convention and article 15(2) of the draft amended Model Law, excluding from the scope of the instruments settlement agreements (i) concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes; (ii) relating to family, inheritance or employment law matters (A/CN.9/929, paras. 15 and 30; for consideration of the matter at previous sessions, see A/CN.9/896, paras. 55–60; A/CN.9/867, paras. 106–108; and A/CN.9/861, paras. 41–43; for questions on the articulation between article 15(2) of the draft amended Model Law and article 1(9) of the Model Law, see para. 43 below).

- *Settlement agreement enforceable as a judgment or as an arbitral award*

9. The Working Group approved article 1(3) of the draft convention and article 15(3) of the draft amended Model Law, excluding from the scope of the instruments (i) settlement agreements that have been approved by a court or have been concluded before a court and that are enforceable as a judgment as well as (ii) those that have been recorded and are enforceable as an arbitral award (A/CN.9/929, paras. 17–29 and 30; for consideration of the matter at previous sessions, see A/CN.9/901, paras. 25–34, 52, and 58–71; A/CN.9/896, paras. 48–54, 169–176 and 205–210; A/CN.9/867, paras. 118 and 125; and A/CN.9/861, paras. 24–28; for questions on the articulation between article 15(3) of the draft amended Model Law and article 1(9) of the Model Law, see para. 43 below).

10. The Working Group may wish to consider whether the instruments should indicate how the competent authority would ascertain whether a settlement agreement

falls within or outside the scope of article 1(3) of the draft convention and article 15(3) of the draft amended Model Law. For example, the party against whom the enforcement of a settlement agreement was sought may be required to provide proof that the settlement agreement was concluded before a court and was enforceable as a judgment in the State of that court (and therefore, that it falls outside the scope of the instruments) or the party relying on a settlement agreement may be required to provide proof that the settlement agreement was not concluded before a court or that it was not enforceable as a judgment in the State of that court (and therefore, that it falls within the scope of the instruments).

C. General principles

11. The instruments address both enforcement of settlement agreements (article 2(1) of the draft convention and article 16(1) of the draft amended Model Law) and the possibility for a party to invoke a settlement agreement as a defence against a claim (article 2(2) of the draft convention and article 16(2) of the draft amended Model Law). Relevant provisions, including their placement, were approved by the Working Group at its sixth-seventh session (A/CN.9/929, paras. 44–48 and 73; for consideration of the matter at previous sessions, see A/CN.9/901, paras. 16–24, 52, 54 and 55; A/CN.9/896, paras. 76–81, 152, 153, 155 and 200–204; A/CN.9/867, para. 146; and A/CN.9/861, paras. 71–79).

D. Definitions

1. “International” settlement agreement

12. The Working Group approved article 3(1) of the draft convention on the definition of “international” settlement agreement (A/CN.9/929, paras. 31–35 and 43; for consideration of the matter at previous sessions, see A/CN.9/896, paras. 17–24 and 158–163; A/CN.9/867, paras. 93–98 and 101; and A/CN.9/861, paras. 33–39). With respect to the draft amended Model Law, the Working Group may wish to consider whether and, if so, how to define separately the internationality of mediation (see article aa(2) of the draft amended Model Law) and of settlement agreements (see article 15(4) of the draft amended Model Law) (A/CN.9/929, para. 39; see also para. 40 below).

2. Notion of “place of business”

13. It may be recalled that article 1(6) of the Model Law fulfilled the purpose of allowing parties to expand the notion of internationality, and that the Working Group agreed that a provision mirroring article 1(6) of the Model Law should not be included in the draft convention (A/CN.9/929, para. 36). The Working Group also agreed to further consider whether to retain article 1(6) in the draft amended Model Law (see (A/CN.9/929, para. 37; see also para. 41 below).

14. In that light, at previous sessions, suggestions were made that the definition of “international” settlement agreements might need to be expanded to also cover situations where parties would have their places of business in the same State, but the settlement agreement would nevertheless contain an international element, for instance, where the parties’ parent company or shareholders were located in different States. It was suggested that such an expansion would reflect current global business practices as well as complex corporate structures (A/CN.9/929, paras. 32–35; for consideration of the matter at previous sessions, see A/CN.9/896, paras. 27–31; and A/CN.9/861, para. 39).

15. The Working Group may wish to consider whether articles 3(1)(b) and 3(2)(a) of the draft convention and articles 15(4)(b) and 15(5)(a) of the draft amended Model Law could address such situations, or whether a provision, complementing article 3(1) of the draft convention and article 15(4) of the draft amended Model Law, should be added, along the lines of:

"(c) *The parties to the settlement agreement have their place of business in the same State, but at least one of the parties is [wholly owned][controlled][8] by an entity having its place of business in a different State and that entity participated in the mediation process that led to the settlement agreement*."

3. "Writing" requirement

16. The Working Group approved the definition of the term "writing" as it appears in article 3(3) of the draft convention and article 15(6) of the draft amended Model Law (A/CN.9/929, para. 43; for consideration of the matter at previous sessions, see A/CN.9/896, paras. 32–38 and 66; and A/CN.9/867, para. 133).

4. "Mediation"

17. The Working Group approved the definition of the term "mediation" as it appears in article 3(4) of the draft convention and article 1(3) of the draft amended Model Law (A/CN.9/929, para. 43). The Working Group may wish to note that the definition of "mediation" in the draft convention and the draft amended Model Law are formulated slightly differently due to the different nature of the instruments. The definition in article 1(3) of the Model Law provided the model for the definition of that term in the draft convention (A/CN.9/929, paras. 43 and 106; for consideration of the matter at previous sessions, see A/CN.9/896, paras. 47 and 116; and A/CN.9/861, para. 21).

E. Application

18. Article 4 of the draft convention and article 17 of the draft amended Model Law, both dealing with the application process, reflect the discussion and decisions by the Working Group at its sixty-seventh session (A/CN.9/929, paras. 49–67 and 73; for consideration of the matter at previous sessions, see A/CN.9/896, paras. 67–75, 82, and 177–190; A/CN.9/867, paras. 133–144; and A/CN.9/861, paras. 51–67).

19. Article 4(1)(b) of the draft convention and article 17(1)(b) of the draft amended Model Law provide an illustrative and non-hierarchical list of means to evidence that the settlement agreement resulted from mediation (A/CN.9/929, paras. 52–59). Article 4(4) of the draft convention and article 17(4) of the draft amended Model Law address the right for the competent authority to require any additional document necessary for considering the application in light of the conditions in the instruments (A/CN.9/929, paras. 60–65). The Working Group may wish to consider whether the word "conditions" or "requirements" should be used in that provision, for the sake of consistency (for instance, article 4(2) refers to "requirement").

20. Further, the Working Group approved article 4(2) of the draft convention and article 17(2) of the draft amended Model Law, which provide a functional equivalence rule for meeting the requirement that a settlement agreement was signed by the parties (article 4(1) of the draft convention and article 17(1)(a) of the draft amended Model Law) or, where applicable, the mediator (article 4(1)(b)(i) of the draft convention and article 17(1)(b)(i) of the draft amended Model Law) in relation to electronic communication (A/CN.9/929, paras. 66 and 73; for consideration of the matter at previous sessions, see A/CN.9/896, paras. 65–66, and 71–75; A/CN.9/867, para. 133; and A/CN.9/861, para. 53).

[8] The Working Group may wish to note the definition of "control" in the UNCITRAL Legislative Guide on Insolvency Law (Part three: Treatment of enterprise groups in insolvency), which reads as follows: "'Control': the capacity to determine, directly or indirectly, the operating and financial policies of an enterprise."

F. Defences

21. Article 5 of the draft convention and article 18 of the draft amended Model Law, both addressing defences, reflect the discussion and decisions of the Working Group at its sixty-seventh session (A/CN.9/929, paras. 74–101; for consideration of the matter at previous sessions, see A/CN.9/901, paras. 41–50, 52 and 72–88; A/CN.9/896, paras. 84–117 and 191–194; A/CN.9/867, paras. 147–167; and A/CN.9/861, paras. 85–102).

22. With regard to subparagraph (1)(b) (A/CN.9/929, paras. 94 and 95),[9] the Working Group may wish to note that the phrase "the obligations in the settlement agreement have been performed" has been moved from subparagraph (c) to subparagraph (b) as subparagraph (b) addresses issues relating to the performance of the settlement agreement, and in order to improve the presentation of subparagraph (c) in all United Nations languages. As agreed at its sixty-seventh session, the Working Group may wish to further consider subparagraph (1)(b) after its consideration and finalization of subparagraph (1)(c) (A/CN.9/929, para. 101).

23. Subparagraph (1)(c)[10] was agreed by the Working Group as forming the basis for further discussion (A/CN.9/929, para. 93), but not disregarding proposals and suggestions made during the sixty-seventh session (A/CN.9/929, paras. 77–92).

24. The Working Group may wish to confirm that the grounds listed in article 5 of the draft convention and article 18 of the draft amended Model Law apply also to situations where a party invoked a settlement agreement as a defence against a claim under article 2(2) of the draft convention and article 16(2) of the draft amended Model Law (A/CN.9/929, para. 74).

G. Relationship of the enforcement process to judicial or arbitral proceedings

25. The Working Group may wish to consider the formulation in article 6 of the draft convention and article 18(3) of the draft amended Model Law regarding parallel applications or claims. The Working Group generally agreed that it would be appropriate for the competent authority to be given the discretion to adjourn the enforcement process if an application (or claim) relating to the settlement agreement had been made to a court, arbitral tribunal or any other authority, which might affect the enforcement process (A/CN.9/896, paras. 122–125; for consideration of the matter at a previous session, see A/CN.9/867, paras. 168 and 169). The Working Group may wish to confirm that article 6 of the draft convention and article 18(3) of the draft amended Model Law do not deal with procedure referred to in article 2(2) of the draft convention and article 16(2) of the draft amended Model Law.

H. Questions regarding the draft convention

1. "More-favourable-right" provision

26. The proposal for a provision mirroring article VII(1) of the New York Convention,[11] which would permit application of more favourable national legislation or treaties to matters covered by the draft convention, was considered by the Working Group and is reflected in article 7 of the draft convention. There was general support for including such a provision in the draft convention even though reservation was

[9] The provision was formerly numbered draft provision 4(1)(c) (see A/CN.9/929, para. 95).

[10] The provision was formerly numbered draft provision 4(1)(b) (see A/CN.9/929, para. 95).

[11] Article VII of the New York Convention provides that: "The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon."

expressed (A/CN.9/901, paras. 65, 66 and 71; for consideration of the matter at a previous session, see A/CN.9/896, paras. 154, 156, and 204).

27. The understanding of the Working Group was that article 7 of the draft convention would not allow States to apply the draft convention to settlement agreements excluded in articles 1(2) and (3), as such settlement agreements would fall outside the scope of the draft convention. However, States would have the flexibility to enact relevant domestic legislation, which could include in its scope such settlement agreements (A/CN.9/929, para. 19).

2. Declarations

- *States and other public entities*

28. Regarding settlement agreements involving States and other public entities, the Working Group reaffirmed its decision that such agreements should not be excluded from the scope (A/CN.9/896, paras. 61 and 62; for consideration of the matter at a previous session, see A/CN.9/861, paras. 44–46). Rather, it was agreed that the treatment of such agreements could be addressed through a declaration in the draft convention. Under the draft amended Model Law, it would be for each State to decide the extent to which such agreements would fall outside the enacting legislation. The Working Group may wish to consider the formulation for a declaration on the application of the draft convention to settlement agreements concluded by States and other public entities, as formulated in article 8(1)(a) of the draft convention.

- *Application of the draft convention based on parties' agreement*

29. During previous sessions of the Working Group, it was suggested that the question whether the application of the draft convention would depend on the consent of the parties to the settlement agreement need not necessarily be addressed in the draft convention, but could be left to States when adopting or implementing the convention (A/CN.9/901, paras. 39 and 40; and A/CN.9/896, paras. 130 and 196). This matter was dealt with under issue 3 of the compromise proposal reached at the sixty-sixth session of the Working Group (A/CN.9/901, para. 52). It was envisaged that States that wish to apply the convention only to the extent that the parties to the settlement agreement have agreed to the application of the convention could make a declaration to that effect, as formulated in article 8(1)(b) of the draft convention (A/CN.9/901, para. 39; and A/CN.9/896, para. 196).

30. The Working Group may wish to clarify how the reservation would operate. For example, it may be clarified whether a State, not making this reservation upon becoming a Party to the convention, could apply the convention automatically even when the parties to the settlement agreement have opted-out of the convention.

31. The Working Group may wish to consider that it would generally be in the interests of a State to make such a reservation to protect its businesses' interests. It is likely that enforcement of settlement agreements involving businesses in State A would be sought in State A. By making the reservation, State A could protect the interests of those businesses, particularly those that had not agreed to the application of the draft convention. This might have a domino effect, resulting in almost all States making the reservation.

- *Conditions applicable to declarations*

32. The Working Group may wish to consider the conditions applicable to the declarations, and in particular confirm that the list of declarations is exhaustive (see article 8(2) of the draft convention), and that reservations deposited after the entry into force of the draft convention for that Contracting State, as well as any withdrawal thereof, shall take effect six months after the date of deposit or withdrawal (see articles 8(3) and (5) of the draft convention).

3. Final provisions

33. Articles 9 to 15 of the draft convention are customary provisions in conventions and are not intended to create rights and obligations for private parties. However, these provisions regulate the extent to which a Contracting State is bound by the convention, including the time the convention or any declaration submitted thereunder enter into force; therefore, they may affect the ability of the parties to the settlement agreement to rely on the provisions of the convention.

34. In addition to "States", the draft convention allows participation by international organizations of a particular type, namely "regional economic integration organizations" (see article 11). Usually, the notion of "regional economic integration organizations" encompasses two key elements: the grouping of States in a certain region for the realization of common purposes, and the transfer of competencies relating to those common purposes from the members of the regional economic integration organization to the organization.

35. Article 12 permits a Contracting State, at the time of signature, ratification, acceptance, approval or accession, to declare that the convention is to extend to all its territorial units or only to one or more of them and to amend its declaration by submitting another declaration at any time. This provision, often called "the federal clause", is of interest to relatively few States — namely, those with federal systems where the central Government lacks treaty power to establish uniform law for the subject matter covered by the convention.

36. The provisions governing the entry into force of the draft convention are laid down in article 13. Three ratifications correspond to the modern trend in commercial law conventions, which promotes their application as early as possible. A six-month period from the date of deposit of the third instrument of ratification, acceptance, approval or accession is provided so as to give Contracting States to the convention sufficient time to notify all the national organizations and individuals concerned that a convention which could affect them would soon enter into force. Paragraph (2) deals with the entry into force of the draft convention as regards those Contracting States that become parties thereto after the time for its entry into force under paragraph (1).

37. Article 14 relates to the amendment process of the draft convention. Article 15 addresses the procedure of denunciation by a Contracting State to the convention.

I. Questions regarding the draft amended Model Law

1. General remark

38. The Working Group may wish to note that the presentation of the provisions of the draft amended Model Law in three sections in document A/CN.9/WG.II/WP.205/Add.1 reflects the presentation in the annex to the report of the sixth-seventh session (A/CN.9/929), which received general support.

2. Scope

39. The Working Group may wish to consider article 1(1) (in section 1) of the draft amended Model Law, which sets forth the expanded scope of the draft amended Model Law, applying to both international commercial mediation and international settlement agreements (A/CN.9/929, para. 106). The Working Group may also wish to consider article aa(1) (in section 2) of the draft amended Model Law, which provides that section 2 applies to international commercial mediation (see also above, para. 7).

3. "Internationality" of the mediation and of settlement agreements

40. The draft amended Model Law includes two separate provisions on the notion of internationality: (i) article aa(2) (definition of international mediation), which mirrors article 1(4) of the Model Law, and (ii) article 15(4) (definition of international

settlement agreement), which mirrors article 3(1) of the draft convention. The Working Group may wish to consider whether the internationality of a settlement agreement should be assessed at the time of the conclusion of the agreement to mediate (which would provide consistency with the definition of international mediation and would make it possible to determine the applicability of the law when mediation was initiated, yet this would be different from the approach in article 3(1) of the draft convention) or at the time of the conclusion of the settlement agreement (which would be in line with the approach in article 3(1) of the draft convention and would cater for situations where there might not necessarily be an agreement to mediate between the parties) (A/CN.9/929, para. 39; see also, para. 12 above).

4. Article 1(6) of the Model Law

41. The Working Group agreed not to include a provision similar to article 1(6) of the Model Law[12] in the draft convention. In that light, the Working Group may wish to consider whether article 1(6) should be retained in the draft amended Model Law and, if so, whether it should be placed in section 1 or 2 of the draft amended Model Law (A/CN.9/929, paras. 36 and 37; for consideration of the matter at previous sessions, see A/CN.9/896, paras. 25 and 26; and A/CN.9/867, para. 99; see also above, para. 13).

5. Article 1 (7) and (8) of the Model Law

42. The Working Group may wish to consider whether articles 1(7) and (8) of the Model Law should be retained in the draft amended Model Law and, if so, in which section:

- Article 1(7) of the Model Law permits parties to exclude the applicability of the law; in that respect, the Working Group may wish to consider whether the application of article 1(7) should be limited to section 2 of the draft amended Model Law;
- Article 1(8) of the Model Law clarifies that the law applies, irrespective of the basis on which the mediation is carried out; if this article is retained, it might need to be subject to exclusions from the scope of application of settlement agreements concluded before a court, or approved by a court, and subject to the provisions of article 1(9).

6. Article 1(9) of the Model Law and exhaustive list of exclusions in article 15(2) and (3) of the draft amended Model Law

43. Article 1(9) of the Model Law provides for an open list of exclusions from the scope of the law. In contrast to article 1(9) of the Model Law,[13] articles 15(2) and (3) the draft amended Model Law are presented as an exhaustive list of exclusions. The Working Group may wish to consider whether those exclusions should be retained in section 3 as an exhaustive list or be mentioned as examples under article 1(9). If the former approach is taken, the Working Group may wish to consider whether to retain article 1(9) of the Model Law, particularly as subparagraph (a) of that article is dealt with under article 15(3) of the draft amended Model Law. If the latter approach is taken, the Working Group may wish to consider the placement of article 1(9) and whether it should remain an illustrative or become an exhaustive list (A/CN.9/929, para. 106). The Working Group may wish to note that as far as the draft convention is concerned, articles 1(2) and (3) (which mirror articles 15(2) and (3) of the draft amended Model Law) provide for an exhaustive list of exclusions (A/CN.9/929, para. 16).

---

[12] Article 1(6) provides that: "*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.*"

[13] Article 1(9) of the Model Law provides as follows: "*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; and (b) [. . .]*".

7. Placement of article 3 of the Model Law in the draft amended Model Law

44. The Working Group may wish to consider the placement in the draft amended Model Law of article 3 of the Model Law (on variations by agreement of the provisions of the law). It may wish to also consider whether reference to section 3 (or to specific articles therein) of the draft amended Model Law should be added to the list of exceptions contained in article 3.

8. Article 14 of the Model Law

45. The Working Group may wish to consider whether to retain in the draft amended Model Law article 14 of the Model Law, which provides that if the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable. If so, the Working Group may wish to consider whether that provision should continue to be numbered article 14 in light of the definition of the term "settlement agreement", which is contained in article 15.

46. The Working Group may wish to consider the possibility of placing the provision of article 14 in article 15, along the lines of: "A settlement agreement is binding and enforceable." As an alternative, article 14 could be combined with article 16 on general principles.

9. Agreements settling disputes not reached through mediation

47. The Working Group may wish to also consider whether the draft amended Model Law should provide flexibility to States to broaden the scope of application to agreements not reached through mediation (A/CN.9/929, paras. 68–72; for consideration of the matter at previous sessions, see A/CN.9/896, paras. 40 and 41; and A/CN.9/867, para. 115). The Working Group may wish to consider the formulation in footnote 4 to the title of section 3 of the draft amended Model Law, which seeks to address the matter.