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Settlement of commercial disputes

Enforcement of settlement agreements resulting from international commercial conciliation/mediation

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12. Indonesia

[Original: English]
[Date: 29 October 2014]

Question 1: Information regarding the legislative framework

The enforcement of international commercial settlement agreements arising out of mediation/conciliation proceedings is regulated by the Government of the Republic Indonesia in the Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution (Arbitration Law). This Law regulates the resolution of dispute or difference of opinion between the parties in a particular legal relationship that have entered into an arbitration agreement which explicitly states that those disputes or differences of opinion arising or which may arise from a legal relationship will be resolved by arbitration or through alternative dispute resolutions. Arbitration means a method of settling commercial disputes outside the general courts, based on an arbitration agreement made in writing by the parties to the dispute and Alternative Dispute Resolution means a mechanism for the resolution of dispute or difference of opinion through procedures agreed by the parties, such as resolutions outside the courts by consultation, negotiation, mediation, conciliation, or expert assessment.

Indonesia's Arbitration Law takes the territorial view of the nature of arbitration, meaning that all arbitrations conducted in Indonesia are considered domestic. Those conducted outside of the archipelago are considered "international", regardless of the nationality of the parties, governing law, or location of the subject of dispute. This Law also regulates enforcement of international awards which rendered in any other State signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) which deemed as in the questions "International Commercial Settlement Agreement arising out of mediation and conciliation proceedings". Article 5, paragraph 1, of the Arbitration Law stipulates that the only disputes which may be settled by arbitration are disputes in the commercial sector concerning rights which, according to the law and regulations, have the force of law and are fully controlled by the parties in dispute.

(a) Recognition and Enforcement of Awards

In accordance with Article 66 of Arbitration Law, international arbitration awards will only be recognized and may be enforced in the jurisdiction of the Republic of Indonesia if they fulfil the following criteria: (1) The international arbitration award is rendered by an arbitrator or arbitration panel in a country which is bound to the Republic of Indonesia by a bilateral or multilateral treaty on the recognition and enforcement of international arbitration awards; (2) The international arbitration awards stated in paragraph 1 are limited to awards which are included within the scope of commercial law under Indonesian law; (3) The international arbitration awards stated in paragraph 1, which may only be enforced in Indonesia, are limited to those which do not conflict with public order; (4) An international arbitration award may be enforced in Indonesia after obtaining a writ of execution from the Chairman of the Central Jakarta District Court; and (5) The international arbitration awards stated in paragraph 1, which involve the Republic of Indonesia as one of the

parties to the dispute, may only be enforced after obtaining an exequatur from the Supreme Court of the Republic of Indonesia, which will then delegate it to the Central Jakarta District Court. […]

(b) Provisions to the Effect that an International Commercial Settlement Agreement Be Treated as a Final Award Rendered by an Arbitral Tribunal

The Arbitration Law does not allow for appeal of any arbitration award. This is clear from the provision of Article 60 which stipulates that arbitration awards shall be final and binding.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

There are several grounds for refusal enforcement of an award including where both the nature of the dispute and the agreement to arbitrate do not meet the requirements set out in the Arbitration Law as follow: (a) The dispute must be commercial in nature and within the authority of the parties to settle and the arbitration clause must be contained in a signed writing; or (b) Where the award is in conflict with public morality and order (Articles 4, 5 and 6 of the Arbitration Law).

Question 3: Validity of international commercial settlement agreements

There is no provision in the Arbitration Law concerning the criteria of international commercial settlement agreements to be deemed valid.

13. Israel

[Original: English]
[Date: 5 January 2015]

Question 1: Information regarding the legislative framework

(i) Article 79C(h) of the Courts Law, 1984 (the "Law") authorizes a court to give effect to a mediated settlement agreement (a "Settlement") as a court judgement — provided that the Settlement was reached in a mediation process that complies with the Law and the Courts Regulations (Mediation), 1993 (the "Regulations") — whether the Settlement was achieved as a result of a referral by the court or in stand-alone mediation proceedings.

The Law does not preclude the use of this mechanism in respect of a Settlement of an international commercial dispute, so long as the Settlement was reached in the framework of mediation proceedings that meet the requirements of the Law and Regulations.

(ii) According to the Regulations there are two mechanisms for giving effect to a Settlement as a court judgement:

(1) According to article 9, the mediator in a mediation referred by the court must notify the court "as soon as possible" that the parties achieved a Settlement, and if the parties agree to ask the court to give effect to the Settlement as a court judgement, the mediator must attach it to his notice. The court is authorized to request clarifications on the Settlement from the parties

prior to giving effect to the Settlement as a court judgement. The request to the court is contingent upon the agreement of both parties; this allows a party, for example, to prevent publication of the agreement. However, article 4 of the "model mediation agreement", which applies by default unless the parties have agreed otherwise, provides that each party undertakes to sign the settlement agreement and understands that such agreement is a contract which can be granted the status of a court judgement.

(2) According to article 10 of the Regulations, in a stand-alone mediation, the parties together or each party independently may request the Court, by way of an "expedited application", to give effect to a Settlement as a court judgement.

(iii) There is no provision referring specifically to the treatment of international commercial settlement agreements. Article 29A of the Israel Arbitration Law, 1968, provides that arbitral awards to which an international convention applies (i.e., awards governed by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards) are to be enforced in accordance with the terms of such Convention. Accordingly, if a settlement agreement were to be given the effect of an award as part of the arbitral proceedings ("consent award"), it would likely be enforceable as an ordinary arbitral award pursuant to Article 29A.

(1) There is no provision in Israeli law dealing specifically with the matter [whether the settlement agreement can be treated as an award on agreed terms without involving the actual commencement of arbitral proceedings].

(2) Article 9(A) of the Regulations (Settlement reached within the framework of a pre-existing court case) provides that the agreement must be in writing, it must contain all relevant terms and conditions of the settlement, and it must be signed by the parties and the mediator.

With respect to an application for validation of a Settlement resulting from stand-alone mediation proceedings, article 10(B) of the Regulations requires that the facts of the dispute and the details of the agreement be described. In addition, the agreement, signed by the parties and the mediator, must be included.

(3) Courts consider awards on agreed terms enforceable under the New York Convention.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

As provided above.

Question 3: Validity of international commercial settlement agreements

The applicable criteria for the validity of an international commercial settlement agreement would presumably be the same as those that apply to contracts generally.

Additional information: According to article 5(h) of the Regulations, after the termination of the mediation, the parties may agree that the mediator be appointed as arbitrator in the dispute. In such a case, the parties can also agree to empower the mediator to issue a consent award.

14. Japan

[Original: English]
[Date: 4 November 2014]

Question 1: Information regarding the legislative framework

(i) Civil Conciliation Act (Act No. 222 of 1951, last amended by Act No. 53 of 2011) provides: "When a dispute arises over civil affairs, a party may file with a court a petition for conciliation." (Art. 2) The Act is also applicable to international commercial conciliation (Art. 3(4)). Article 16 provides: "When an agreement is reached between the parties at conciliation in court entered in a record, conciliation becomes successful, and such entry shall have the same effect as a judicial settlement." The legal effect of judicial settlements is stipulated in Art. 267 of the Code of Civil Procedure (Act No. 109 of 1996, last amended by Act No. 30 of 2012), which provides: "When a settlement or a waiver or acknowledgement of a claim is stated in a record, such statement shall have the same effect as final and binding." Art. 22 of the Civil Execution Act (Act No. 4 of 1979, last amended by Act No. 96 of 2013) provides: "Compulsory execution shall be carried out based on any of the following […] (i) A final and binding judgment".

Regarding international commercial settlement agreements other than those reached at conciliation in court, see (iii) below.

(ii) There is no procedure for expedited enforcement of international commercial settlement agreements.

(iii) 1. The Code of Civil Procedure provides: "With regard to a civil dispute, a party may file a petition for settlement with the summary court that has jurisdiction over the location of the general venue of the opponent, by indicating the object and statement of claim as well as the actual circumstances of the dispute." (Art. 275(1)) The legal effect of such settlements is also governed by Art. 267 of the Code of Civil Procedure. The settlement prior to filing of action is used when the disputing parties have agreed to a settlement before coming to the court, which ascertains the validity of the settlement.

2. The settlement needs to be made in writing (Art. 275(1), Code of Civil Procedure). The disputing parties must appear before the summary court (Art. 275(3), idem.).

3. Arbitration Act (Act No. 138 of 2003, last amended by Act No. 147 of 2004) provides: "An arbitral award (irrespective of whether or not the place of arbitration is in Japan; hereinafter the same shall apply in this Chapter) shall have the same effect as a final and binding judgement; provided, however, that a civil execution based on such arbitral award requires an execution order under the provisions of the following Article." (Art.45(1)), "A party, who intends to have a civil execution based on an arbitral award carried out, may file an application with the court for an execution order (meaning an order allowing the civil execution based on an arbitral award; the same shall apply hereinafter), by specifying the obligor as the respondent."(Art.46(1))

The Japan Commercial Arbitration Association submitted on 13 November 2014 the following complementary information on question 1 as follows:

With respect to the above subject matter, the Japan Commercial Arbitration Association (JCAA) has the International Commercial Mediation Rules effective as of January 1, 2009 (the "Rules") in which under Rule 11 of the Rules, the parties, upon arriving at a settlement agreement, may agree to appoint the mediator as an arbitrator and request him or her to make an arbitral award which incorporates with the settlement agreement. Under the present Japanese law, a mediated settlement agreement is merely an agreement between the parties and it cannot be enforceable equally as an arbitral award.

On the other hand, however, like the UNCITRAL Arbitration Model Law, under Article 38 of the Japanese Arbitration Law, if, during arbitral proceedings, the parties have reached the settlement agreement and the parties so request, the arbitral tribunal may make a ruling on agreed terms, which shall have the same effect as an arbitral award. Rule 11 of the Rules aims to make the settlement agreement an enforceable arbitral award under Article 38 of the Arbitration Law.

In this respect, the JCAA recognizes that there is a view that if the dispute has been settled by the agreement of the parties in the mediation proceedings before the parties appoint the arbitrator, the arbitrator has no jurisdiction because there is nothing for the arbitrator to arbitrate. However, there is also a different view that even if the parties have reached the settlement in the mediation proceedings, the dispute may still exist between the parties in that if the parties request the arbitrator to make an arbitral award based on the agreed terms, the dispute has not been ultimately settled between the parties and it will be finally settled when the arbitrator renders the arbitral award.

As a matter of fact, there have been no Japanese court decisions on this issue while in practice, such a med-arb case can be found in a sufficient number of the domestic mediation cases particularly at the dispute resolution centres operated by the local bar associations in Japan. In the context of international dispute settlement, whether a mediated settlement agreement can be enforceable under the New York Convention still remains untested while the similar provision can be found in Article 14 of the Mediation Rules of the Arbitration Institute of the Stockholm Chamber of Commerce, providing that in case of settlement, the parties may, subject to the consent of the mediator, agree to appoint the mediator as an arbitrator and request him/her to confirm the settlement agreement in an arbitral award.

Under such present circumstances, in view of the benefit of the final settlement of the disputes for parties and the possibility that a mediated settlement agreement can become an enforceable arbitral award, this provision was introduced in the JCAA Rules in 2009.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

With respect to a settlement reached at conciliation in court (1)(i) above) or to a settlement prior to filing of action (1)(iii)(1) above), the court may refuse its enforcement if it finds any illegality in the enforcement procedure or if it finds that the claim pertaining to the title of obligation is absent or has disappeared.

Question 3: Validity of international commercial settlement agreements

In cases of conciliation in court, an agreement between the parties is necessary (see (1)(i) above). However, where the conciliation committee[1] finds that the agreement reached is inappropriate, it may close the case, considering that conciliation is unsuccessful (Art. 14, Civil Conciliation Act).

In cases of settlement prior to filing of action (1)(iii)(1) above), the validity of the agreement between the parties is verified by the court, as indicated above.

15. Mauritius

[Original: English]
[Date: 3 November 2014]

Question 1: Information regarding the legislative framework

(i) In Mauritius, there is no law applicable to the enforcement of international commercial settlement agreements arising out of conciliation or mediation proceedings. The closest applicable mechanism would be the Supreme Court (Mediation) Rules 2010 (hereinafter the "Mediation Rules"). The Mediation Rules cater specifically for a civil suit, action, cause or matter which has been brought and is pending before the Supreme Court and which the Chief Justice refers for mediation before a Judge of the Mediation Division of the Supreme Court. Any party to the civil action may also apply to the Chief Justice for the matter to be referred to mediation.

Under the Mediation Rules, where the parties have reached a formal agreement, the mediation judge records the settlement agreement in the form of a memorandum setting out the terms of the agreements. The agreement which is embodied in the memorandum is thereafter executed in the same manner as if it were a judgement of the court of Mauritius by consent of and between the parties who have signed it.

(ii) No procedure for expedited enforcement of international commercial settlement agreement is available in Mauritius.

(iii) There are no legal provisions to the effect that an international commercial settlement agreement be treated in Mauritius as a final award rendered by an arbitral tribunal.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

As set out in paragraph l(i) above, there is no legislative framework in Mauritius for the enforcement of international commercial settlement agreements arising out of mediation proceedings.

A commercial settlement agreement arising out of mediation proceedings in Mauritius is given the full force and effect of a judgement of the Supreme Court.

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[1] Upon application, the court conducts conciliation by a conciliation committee (Art. 5(1), Civil Conciliation Act). A conciliation committee shall be composed of a chief conciliator and two or more civil conciliation commissioners (Art. 6).

Question 3: Validity of international commercial settlement agreements

Please refer to responses above.

Strictly speaking, as stated above, there is no specific law in Mauritius governing the enforcement of international commercial settlement agreements arising out of mediation/conciliation proceedings.

However, there is nothing, in an appropriate case, to prevent a party from challenging the validity of an agreement to refer a dispute to mediation/conciliation or the validity of the resulting mediated/conciliated settlement agreement, where that party claims that the agreement has been entered into by mistake or has been procured by misrepresentation, duress or undue influence (Article 1109 of the Mauritius Civil Code).

16. Norway

[Original: English]
[Date: 5 October 2014]

Question 1: Information regarding the legislative framework

According to section 4-1 of the Enforcement Act and section 19-16 of the Civil Procedure Act, a foreign settlement agreement may be recognized and enforced only if it can be considered as a decision rendered by a foreign court or as a foreign arbitral award. Of particular importance for the former is the 2007 Lugano Convention, and for the latter the 1958 New York Convention.

The legislation of the country of origin would be of importance to determine whether the foreign settlement may be considered as a court decision or as an arbitral award from that country.

In domestic Norwegian legislation (sections 8-3ff. of the Civil Procedure Act), a settlement may be considered as a court decision if it was reached in the framework of court mediation. Court mediation is offered to all parties who initiated a civil law suit, and requests the consent of both parties to be carried out. It can be carried out by a judge of the competent court or by a mediator appointed by the competent judge. If the court mediation results in a settlement agreement, this will have the status and effect as a court judgement. Settlement agreements deriving from out-of-court mediation proceedings do not have the status or effect as a court decision.

In domestic Norwegian legislation (section 35 of the Arbitration Act) a settlement may be considered as an arbitral award if the parties reached a settlement during an arbitration proceeding, asked the arbitral tribunal to record the settlement in an award and the arbitral tribunal rendered an award based on the settlement agreement.

17. Republic of the Congo

[Original: French]
[Date: 22 October 2014]

Question 1: Information regarding the legislative framework

In the Republic of the Congo, there is no specific legislative framework laying down rules for enforcing international commercial settlement agreements resulting from mediation/conciliation proceedings.

(i) Concerning difficulties arising from the enforcement of commercial settlement agreements, no distinction is made between those arising from domestic agreements and those from international agreements. These issues are brought before the commercial courts and commercial divisions of the national courts of appeal. As the Congo is a member of the Organization for the Harmonization of Business Law in Africa (OHADA), appeals in commercial disputes are brought before the Common Court of Justice and Arbitration (CCJA) of the OHADA, based in Abidjan, Republic of Côte d'Ivoire. Under the founding Treaty and the uniform acts of the OHADA, specific procedures are implemented for the settlement of disputes arising from the enforcement of commercial settlement agreements in general.

(ii) With regard to procedures for the expedited enforcement of international commercial settlement agreements, it should be noted that the Congo has recourse to the Uniform Act on Simplified Recovery Procedures of the OHADA, which was adopted on 10 April 1998 (OHADA Official Journal No. 6 of 1 July 1998).

(iii) In Congolese positive law, an international commercial settlement agreement is treated as a final award rendered by an arbitral tribunal solely between the parties by virtue of the principle of *pacta sunt servanda* (contracts entered into serve as law for the parties).

1. Recognition of a private settlement agreement as an award rendered by an arbitral tribunal may ensue only from a specific arbitral proceeding ending in an award separate from the settlement agreement, and furthermore the parties must previously have included in their international commercial settlement agreement an arbitration clause or must agree to settle their dispute by arbitration.

2. In Congolese positive law as it stands, a written document remains the supreme form of proof of commitments made by parties in commercial settlement agreements, all the more so in international agreements. The process of recognizing a commitment signed by one of the parties to an agreement begins with authentication of the signature of the counterparty to whom the undertaking is imputed. That is the principal task of the ombudsman institution or arbitrator/conciliator.

3. With regard to third parties, awards on agreed terms are enforceable only on the basis of a decision of the competent court authorizing the affixation of the enforcement order at the conclusion of an approval process. This is because the Congo is not a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

There are no specific grounds for refusing enforcement of a commercial settlement agreement in the Congo except for non-compliance with the legal provisions in force as defined in paragraphs (iii)(1) and (iii)(2) above. With that sole proviso, an international commercial settlement agreement may be enforced in Congolese territory only on the initiative of the parties concerned, who must seek approval of the agreement before the competent court of the place of enforcement.

Question 3: Validity of international commercial settlement agreements

In addition to the standard conditions of validity of agreements (capacity of the parties, mutual consent, and lawfulness of the object and the cause), the Congo does not impose specific conditions that do not reflect the will of the parties themselves.

Question 4: Any other comment

International commercial trade has always been the basis of human solidarity and interdependence. It follows that international society is not the result of coexistence and the proximity of States but of the intermingling of peoples through international commerce. The Congolese authorities conclude that it would be senseless not to support the harmonization of global trade standards. That is why the process of expedited ratification of a number of UNCITRAL instruments is under way.

18. Republic of Korea

[Original: English]
[Date: 4 December 2014]

Question 1: Information regarding the legislative framework

A. Under Article 731 of the Civil Act of Korea, a compromise shall become effective when the parties have agreed to terminate a dispute between them by mutual concessions. Also under Article 732, a contract of compromise shall have the effect that the rights conceded by one of the parties are thereby extinguished and the other party will in turn acquire the pertinent rights by virtue of the compromise.

Where the compromise was worked out through private mediation or conciliation (as opposed to court-annexed conciliation), however, if the terms of the contractual agreement is not fulfilled, the offended party has no recourse but to take a legal action or resort to binding arbitration for compulsory execution/enforcement of the agreed terms.

Compulsory execution of the settlement terms may be commenced only when the names of an applicant therefor, and of the person subject to such execution have been indicated in the execution titles with an execution clause attached thereto (Article 39, Paragraph 1, of the Civil Execution Act).

- An execution title refers to a notarial act which indicates the existence and scope of the right to claim performance in private law and recognizes the legal enforceability of the claimed right.

- Primarily, judicial judgement or comparable court decisions have effect as execution titles, but certified notarial acts done by a notary public or a law firm, etc., in compliance with the entrustment of the parties, can become execution titles as well.
- The executor, contents and scope of enforcement is determined according to the execution titles.
- The execution titles must have an execution clause which is a clause that a court official performing his/her notarial functions ex officio, adds at the end of execution titles in order to notarize the executory power of the execution titles and the relevant parties thereto (Article 29, Paragraphs 1 and 2, of the Civil Execution Act).

An execution clause is granted upon an application for compulsory enforcement, and a creditor shall attach and submit such execution clause when he/she applies for compulsory execution by an executing institution (the court of execution or an execution officer).

There is no specific enforcement procedures, no procedure for expedited enforcement of international commercial settlement agreement and no provision to the effect that an international commercial settlement agreement be treated as a final award rendered by an arbitral tribunal.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

Because a commercial settlement agreement is treated like any other agreement between private parties, to have such commercial settlement agreement enforced, the applying party needs to acquire execution titles with an execution clause attached thereto. Enforcement of a commercial settlement agreement will be refused in absence of execution titles.

Question 3: Validity of international commercial settlement agreements

There are no specific criteria for validity that only apply to international commercial settlement agreements. Nothing that specifically applies only to mediation/ conciliation.

19. Singapore

[Original: English]
[Date: 27 October 2014]

Question 1: Information regarding the legislative framework

There is presently no legislation in Singapore that addresses international commercial mediation. Enforcement of international commercial settlement agreements is governed by the usual common law principles of contract.

However, the proposed introduction of a Mediation Act is presently in the works, which contemplates provisions allowing parties to additionally enforce certain mediated settlement agreements as orders of court. The details are still being worked through.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

Commercial settlement agreements can be reviewed and invalidated at common law, under the usual contractual principles, if there are vitiating factors that render the agreement or part of it, either void or voidable, or which allow the court to order the rescission of the agreement. Such vitiating factors include the incapacity of one or more parties to the agreement, misrepresentation, mistake, duress and undue influence.

Question 3: Validity of international commercial settlement agreements

Please see the answer to question 2 above. A commercial settlement agreement may be deemed void if there are vitiating factors rendering it invalid.

There is no legislative basis governing the validity or enforcement of an agreement to mediate. The validity of an agreement to mediate and any resulting settlement agreement will be determined according to general contractual principles. Thus, for example, a mediation clause may be struck down for want of certainty.[2] Nonetheless, the Singapore courts are supportive of the mediation process, and generally will not refuse to enforce express dispute resolution clauses requiring private mediation where the nature of the exercise and the extent of parties' obligations are clear.[3]

Question 4: Any other comment

Singapore is generally supportive of mediation/conciliation processes, and the enhanced enforceability of international mediated/conciliated settlement agreements will be useful for mediation users. That said, it would be useful to hear more about what the proposers have in mind for such a multilateral convention on the enforceability of international commercial settlement agreements reached through mediation, bearing in mind that the implementation details of such a convention will have to be carefully worked out, taking into account different approaches across jurisdictions.

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[2] See e.g. *Insigma Technology Co Ltd v Alstom Technology Ltd* [2009] 1 SLR(R) 23, where a clause requiring a dispute to be referred to parties for "settlement through friendly consultations" was held to be too uncertain to be enforceable.

[3] See e.g. *International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd and another* [2013] 1 SLR 973, citing the Court of Appeal's comments in *HSBC Institutional Trust Services (Singapore) Ltd v Toshin Development Singapore Pte Ltd* [2012] 4 SLR 738, to note that Asian and Western perspectives on negotiation and mediation dispute resolution clauses differed, and in considering the enforceability of such clauses, "clearly, it is in the wider public interest in Singapore as well to promote such an approach towards resolving differences".

20. Slovakia

[Original: English]
[Date: 3 November 2014]

Question 1: Information regarding the legislative framework

(i) Agreements resulting from mediation as agreements on the successful resolution of the dispute through mediation are enforceable if these are drafted in the form of enforceable notarial act with the consent of the parties to the dispute with the execution or if agreements on mediation as a settlement are approved by a general court or arbitration body — the Court of Arbitration.

(ii) Relatively flexible enforcement procedure of international settlement agreements is governed by Act. No. 244/2002 Coll. Arbitration Act, as amended (the "ZRK"), which allows enforceability of the settlement agreement in case the agreement was approved by the arbitration body under the rules of arbitration and on this basis becomes immediately enforceable. In this connection we also pay attention to amendment of the Arbitration Act (parliamentary papers no. 1126), that significantly makes arbitration flexible, with reference to former changes of the UNCITRAL rules.

(iii) A settlement agreement resulting from arbitration is according to ZRK regulated in Art. 39, which provides: "(1) Where the parties to arbitration partway conclude a settlement, the arbitration court stops arbitration. At the request of the parties to arbitration, the tribunal records the settlement in the form of a closed arbitration award on agreed terms. "(2) […] The arbitral award on agreed terms shall have the same effect as an arbitration award on the merits."

In any case, the settlement agreement cannot be approved by the arbitration body without the beginning of the arbitration procedure.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

(1) Slovak law recognizes, in principle, two cases of settlement agreements as enforcement orders which must meet the following conditions:

(a) In the case of a settlement agreement approved by the arbitration body — the essentials of the arbitration award on agreed terms, which are the same as in case of the final arbitration award;

(b) In the case of a settlement agreement approved by a general court — the essentials of resolution of the approval of court settlement under the provisions of Act no. 99/1963 Coll. Code of Civil Procedure, as amended;

(c) In the case of a settlement agreement, respectively mediation agreement drawn up in form of a notarial act — the requirements under Art. 41, paragraph 2, of Act no. 233/1995 Coll. on Judicial Distrainers and Execution proceedings (Execution Code).

In all three cases, the written form agreed by the parties to the dispute must be preserved and the agreement shall be approved by competent national authorities.

Courts consider awards on agreed terms enforceable under the New York Convention.

(2) The refusal of settlement agreement's enforcement may be invoked in the execution proceedings, e.g. the person can bring the action for annulment of an arbitration award, for the annulment of the court settlement (within three years of its approval), for annulment of mediation agreement drawn up in a form of notarial act. If the effects of the settlement agreement will be revoked, or if the conflict with the substantive law will affect the enforceability of the execution title, it will lead to discontinuance of execution.

(3) In accordance with the classification set out in paragraph (1) Slovak law recognizes the following remedies: (a) an action for annulment of an arbitration award, (b) an action for annulment of the court settlement, (c) the application for annulment of legal action drawn up in the form of a notarial act.

21. Sweden

[Original: English]
[Date: 3 March 2015]

Question 1: Information regarding the legislative framework

(i) Under the Swedish Act (2011:860) on mediation in civil and commercial matters an agreement resulting from mediation can be rendered enforceable. An application for declaration on enforceability shall be submitted to a District Court. The local jurisdiction is primarily decided by the place of domicile of any of the parties. The Swedish legislation implements Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

(ii) There is no particular procedure for expedited enforcement of international commercial agreements.

(iii) There is no provision in Swedish law to the effect that an international commercial settlement agreement be treated as a final award rendered by an arbitral tribunal.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

A precondition under the Mediation Act is that the agreement resulting from mediation concerns an obligation that is enforceable in Sweden.

There are also objections to enforcement that can be made during the enforcement stage (that is after a declaration of enforceability has been rendered by the court). Pursuant to the Swedish Enforcement Code (1981:774) enforcement may not take place if the defendant shows that he or she has satisfied an obligation to pay or other obligation to which the application concerning enforcement relates. This also applies if the defendant as a set-off refers to a claim, which has been confirmed by an enforcement title that may be enforced or which is based on a promissory note or other written evidence of debt, and the general preconditions for set-off exist. Nor may enforcement take place if the defendant claims that another circumstance

involving the relationship of the parties constitutes an impediment to enforcement and if the objection cannot be ignored.

Question 3: Validity of international commercial settlement agreements

See reply to question 2.

22. Thailand

[Original: English]
[Date:17 November 2014]

Question 1: Information regarding the legislative framework

Under the Thai judicial system, conciliation and/or mediation proceedings are based on the consent of parties to the dispute. Thailand has no legal requirements for the parties to the dispute to resort to these types of alternative dispute resolution. In addition, there are no specific laws (*lex specialis*) on the enforcement of international commercial settlement agreements ("settlement agreements") arising out of mediation and/or conciliation proceedings.

(i) The Thai legislation has no specific provisions on enforcement of, or enforcement procedure for, the settlement agreement arising out of mediation or conciliation proceedings.

However, the settlement agreements are considered contracts of compromise under the Thai Civil and Commercial Code, Title XVII (Compromise), Sections 850-852. Such contract of compromise can be enforced by a court decision if it is in writing and signed by the party held liable in that particular case or by his/her agent.

Incidentally, the Act on Conflict of Laws of B.E. 2481 (A.D. 1938), Section 13 will apply in case where there is a question as to which law is applicable to the settlement agreements that are international in nature, i.e. concluded by the disputing parties having different nationalities or residing in different countries.

(ii) Under the Thai laws, there are no specific provisions on procedure for expedited enforcement of the settlement agreement. In this connection, the period of limitation for such settlement agreements is ten years, as stipulated in the Thai Civil and Commercial Code, Title VI, Prescription, Chapter II (Period of Limitation), Section 193/30. Thus, if a disputing party fails to fulfil his/her obligations under the settlement agreement, the other party can file an application to the competent court to enforce such agreement within ten years from the date of the conclusion of the agreement.

(iii) The Thai legislation has no provision treating the settlement agreement arising out of mediation and/or conciliation proceedings as a final award rendered by an arbitral tribunal. Such settlement agreement can be enforced under the relevant provisions regarding a contract of compromise, as mentioned above.

However, the parties may give the effect to the settlement agreement by mutually agreeing to submit the dispute to an arbitral tribunal with a request to settle the dispute in accordance with the settlement agreement. As a consequence, the settlement agreement shall enjoy the same status and effect as a final award by an

arbitral tribunal in accordance with the Arbitration Act of B.E. 2545 (A.D. 2002), Section 36. The award must be made in accordance with Section 37, and like other final awards rendered by an arbitral tribunal, can be enforced within three years from the date that the award is enforceable in accordance with Section 42 of the Arbitration Act.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

The settlement agreements which fulfils the conditions of a contract under Thailand's Civil and Commercial Code shall bind the disputing parties and can be enforced under the law of compromise, as mentioned above.

Consequently, the grounds for refusing enforcement of a settlement agreement are based on the same grounds for refusing enforcement of a contract that is void or voidable under the laws due to, inter alia, the lack of legal capacity, fraud, prohibition by laws or contrary to the public order and good morals.

Question 3: Validity of international commercial settlement agreements

The validity of those settlement agreements and legal bases for challenging their validity are the same as those for a contract and a contract of compromise under Thailand's Civil and Commercial Code, as explained in (1) and (2) above.

23. Turkey

[Original: English]
[Date: 7 January 2015]

Question 1: Information regarding the legislative framework

There is no legislation concerning the reconciliation/mediation actions emerging from the execution of international commercial reconciliation agreements. Therefore, no answer is available for the questions set forth in the paragraphs (i), (ii) and (iii). Our country has got legislation regarding the recognition and enforcement of foreign arbitral awards and court decisions. Foreign arbitral decisions may be executed according to the New York Convention of 1958. If a country is not a party to the said Convention, then an arbitral decision rendered in that country may be implemented according to the International Private and Procedural Law. Likewise, the enforcement of foreign court decisions shall be done according to the relevant provisions of that International Private and Procedural Law.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

There is no regulation related to rejection of execution, because there is no legislation concerning the reconciliation/mediation actions emerging from the execution of international commercial reconciliation agreements. Liabilities of enforcement are regulated by the New York Convention and International Private and Procedural Law. As it was stated above, validity criteria are not in place, because no legal legislation exists regarding the international commercial reconciliation agreements. There is no legal regulation concerning the nature of an

agreement rendered through mediation agency of a foreign State. Thus, it is considered to be a convention concluded between the parties. Inconsistency with this convention shall be another matter of dispute. Information on the current Law concerning mediation is as follows. Our country adopted the Law on Mediation in Civil Disputes No. 6325 in 2012. This law is applied only for the settlement of private law disputes emerging from cases or actions that the parties can freely dispose, including the ones that have the nature of foreignness.

Article 18 of the Law on Mediation in Civil Disputes No. 6325 states that: (1) The scope of the agreement reached as the result of the mediation activity shall be determined by the parties; in case of preparation of an agreement document, this document shall be signed by the parties and the mediator. (2) Should the parties reach an agreement at the end of the mediation process, they may submit such agreement to an enforcement court — whose authority is to be determined according to the rules of authority concerning the actual dispute — and may demand for the issuance of a commentary regarding its enforceability. The agreement containing such commentary shall be considered as a document with the force of a verdict.

Question 3: Validity of international commercial settlement agreements

The issuance of the commentary of enforceability is an undisputed judgement affair, and the examination concerning this is carried out on the file. However the examination concerning family law disputes suitable for mediation shall hold by oral hearing. The scope of such examination is limited to whether the content of the agreement is suitable for mediation and compulsory enforcement. In case that an application is made to the court for the issuance of commentary of enforceability for the agreement document, and in case that the concerned party appeals decisions given upon such application, the fixed fees shall be collected. Should the parties wish to use the agreement document in another official transaction without obtaining a commentary of enforceability, then fixed stamp duty shall also be collected. Therefore, if the parties fulfil their responsibilities in a dispute settled by mediation, including the ones having the nature of foreignness, they shall not encounter a lawsuit in terms of enforceability. If one of the parties does not fulfil its responsibilities, the other party has the right to bring the mediation agreement to the authorized court and get endorsement of enforceability, except disputes of family law, without any hearing. Such a mediation agreement containing endorsement of enforceability is considered to be a document in the capacity of a writ. This agreement text is considered to be enforceable in the framework of general provisions of Execution and Bankruptcy Law No. 2004.

24. United States of America

[Original: English]
[Date: 30 October 2014]

Question 1: Information regarding the legislative framework

(1)(i) through (1)(iii)(2): In the United States, settlement agreements (whether or not reached through conciliation) would generally be enforceable as contracts under

existing state law. See, e.g., Snyder-Falkinham v. Stockburger, 457 S.E. 2d 36, 39 (Va. 1995); 15B Am. Jur.2d Compromise & Settlement §10 (2014). At least one U.S. state imposes additional requirements on the content of settlement agreements in the context of mediation, see Minn. Stat. §572.35, while another provides that settlements can be enforceable as court orders if they are presented to and approved by a court, see Colo. Rev. Stat. §13-22-308.

However, at least five states — California, Texas, Ohio, North Carolina, and Oregon — have regimes in place that provide special treatment for settlement agreements resulting from conciliation in international, commercial disputes. For these regimes to apply, either the conciliation agreement or the underlying transaction must be "international," see Cal. Civ. Pro. §1297.13; Tex. Civ. Prac. & Rem. Code §172.003; Ohio Rev. Code §2712.03; N.C. Gen. Stat. §1-567.31; Or. Rev. State. §36.454, as well as "commercial," see Cal. Civ. Pro. §1297.16; Tex. Civ. Prac. & Rem. Code §172.004; Ohio Rev. Code §2712.04; N.C. Gen. Stat. §1-567.31; Or. Rev. State. Ann. §36.450. If an agreement settling such a dispute is in writing signed by the parties (or their representatives) and the conciliator, the agreement will be given the same effect as an arbitral award. Cal. Civ. Pro. §1297.401; Tex. Civ. Prac. & Rem. Code §172.211; Ohio Rev. Code §2712.87; N.C. Gen. Stat. §1-567.84; Or. Rev. State. §36.546. No arbitral proceedings need to have taken place for these regimes to apply.

(1)(iii)(3): U.S. courts have not resolved the issue of whether an arbitral award on agreed terms would be deemed eligible for enforcement under the New York Convention.

Question 2: Grounds for refusing enforcement of a commercial settlement agreement

(2) through (3): With respect to the special regimes that five states have in place for international commercial settlement agreements, the case law applying these statutory schemes does not appear to resolve whether the grounds for refusing enforcement are identical to those available for arbitral awards. Otherwise, as noted above, settlement agreements are generally governed by contract law in the United States; thus, the defences generally available under contract law would apply (e.g., duress and incapacity). Similarly, agreements to mediate may also be enforceable under contract law. See, e.g., Santana v. Olguin, 41 Kan. App. 2d 1086, 208 P.3d 328 (2009).

Question 3: Validity of international commercial settlement agreements

See question 2 above.

Question 4: Any other comment

See document A/CN.9/WG.II/WP.188.