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A photograph of a wooden gavel resting on a wooden surface, with scales of justice and books in the background, symbolizing law and justice.

MODEL LAW ON INTERNATIONAL COMMERCIAL CONCILIATION & UNCITRAL CONCILIATION RULES

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UNCITRAL MODEL LAW ON INTERNATIONAL
COMMERCIAL MEDIATION AND INTERNATIONAL
SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION

BACKGROUND: THE MODEL LAW ON INTERNATIONAL COMMERCIAL CONCILIATION

- UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018
- Amended the UNCITRAL Model Law on International Commercial Conciliation, 2002
- Purpose
 - Designed to assist States in modernizing their laws on mediation procedure
 - Provides uniform rules in respect of the mediation process and aims at encouraging the use of mediation and ensuring greater predictability and certainty in its use

BACKGROUND: THE MODEL LAW ON INTERNATIONAL COMMERCIAL CONCILIATION

- Initially adopted in 2002
 - Known as the "Model Law on International Commercial Conciliation"
 - Covered the conciliation procedure [conciliation = active involvement by neutral in proposing settlement]
- Amended in 2018
 - With the addition of a new section on international settlement agreements and their enforcement
 - Renamed "Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation"
 - In its previously adopted texts and relevant documents, UNCITRAL used the terms "conciliation" and "mediation" interchangeably
 - Decided to adopt 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 of the Model Law
 - Mediation = embraces facilitative /and more active engagement by neutral in settlement

BACKGROUND: THE MODEL LAW ON INTERNATIONAL COMMERCIAL CONCILIATION

- To avoid uncertainty resulting from an absence of statutory provisions, the Model Law addresses procedural aspects of mediation
 - Includes: appointment of conciliators, commencement and termination of mediation, conduct of the mediation, communication between the mediator and other parties, confidentiality and admissibility of evidence in other proceedings as well as post-mediation issues, such as the mediator acting as arbitrator and enforceability of settlement agreements
- Provides uniform rules on enforcement of settlement agreements and addresses the right of a party to invoke a settlement agreement
 - Provides an exhaustive list of grounds that a party can invoke
- Can be used as a basis for enactment of legislation on mediation, included, where needed, for implementing the United Nations Convention on International Settlement Agreements Resulting from Mediation

CURRENT STATUS



- Legislation based on or influenced by the Model Law has been adopted in 33 States
- A total of 46 jurisdictions



CURRENT SIGNATORIES

- Albania (2011)
- Belgium (2005)
- Benin (2017)
- Bhutan (2013)
- Burkina Faso (2017)
- Cameroon (2017)
- Canada: Nova Scotia (2005)
- Canada: Ontario (2010)
- Central African Republic (2017)
- Chad (2017)
- Comoros (2017)
- Congo (2017)
- Côte d'Ivoire (2017)
- Croatia (2003)
- Democratic Republic of the Congo (2017)
- Equatorial Guinea (2017)
- France (2011)
- Gabon (2017)
- Guinea (2017)
- Guinea-Bissau (2017)
- Honduras (2000)
- Hungary (2002)
- Luxembourg (2012)
- Malaysia (2012)
- Mali (2017)
- Montenegro (2005)
- Nicaragua (2005)
- Niger (2017)
- North Macedonia (2009)

CURRENT SIGNATORIES (CONT.)

- Senegal (2017)
- Slovenia (2008)
- Switzerland (2008)
- Togo (2017)
- United States of America: District of Columbia (2006)
- United States of America: Georgia (2021)
- United States of America: Hawaii (2013)
- United States of America: Idaho (2008)
- United States of America: Illinois (2004)
- United States of America: Iowa (2005)
- United States of America: Nebraska (2003)
- United States of America: New Jersey (2004)
- United States of America: Ohio (2005)
- United States of America: South Dakota (2007)
- United States of America: Utah (2006)
- United States of America: Vermont (2005)
- United States of America: Washington (2005)



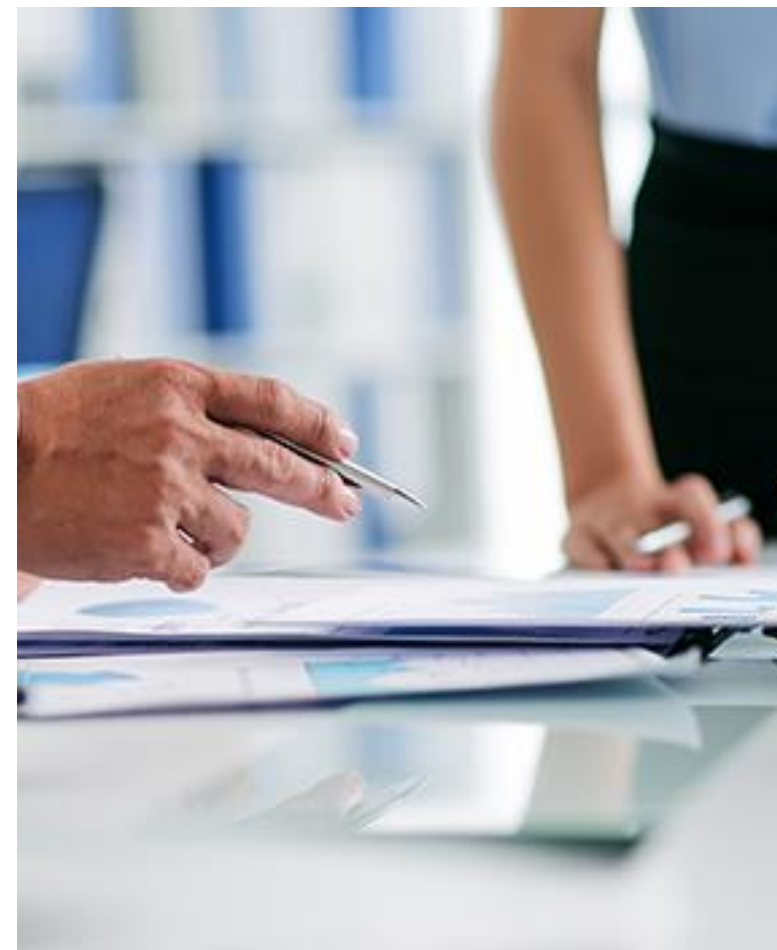


KEY PROVISIONS

INTERNATIONAL
COMMERCIAL MEDIATION

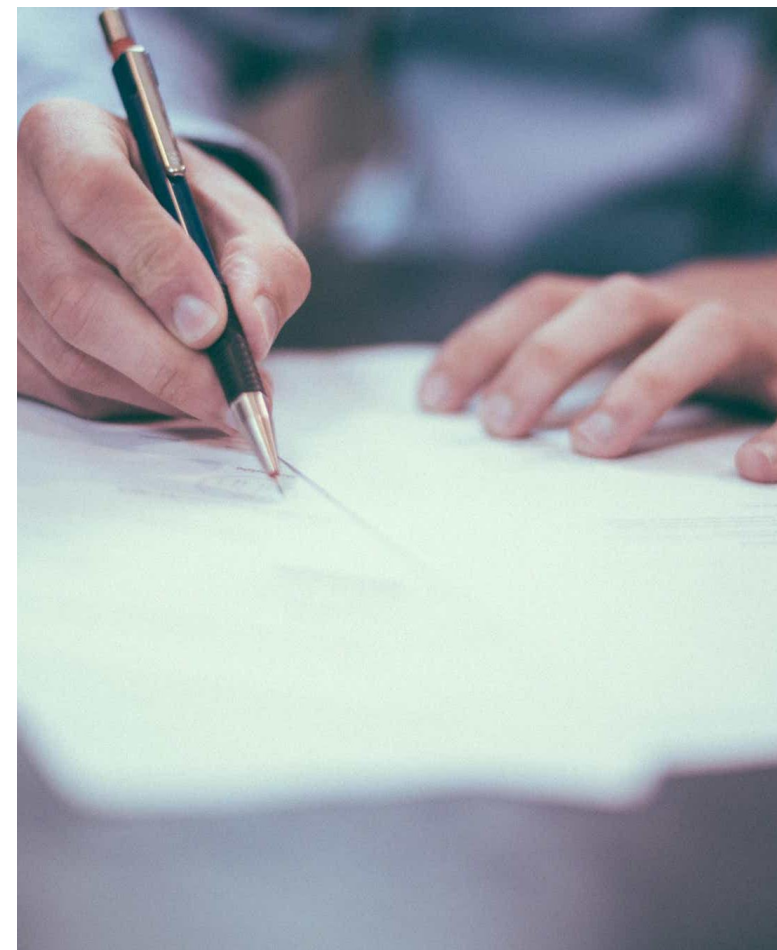
ARTICLE 4.VARIATION BY AGREEMENT

- Subject to certain provisions, the parties may agree to exclude or vary any of the provisions of this section



ARTICLE 5. COMMENCEMENT OF MEDIATION PROCEEDINGS

- 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
- 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

- The parties shall endeavour to reach agreement on a mediator or mediators, unless other appointment procedures are agreed on
- Parties may seek the assistance of an institution or person regarding the appointment of mediators
 - Request recommendations for suitable persons to act as mediator; or
 - Agree for an institution/person to directly make such appointment
- Considerations when making recommendations or appointing a mediator
 - Independence and impartiality of the individual
 - Advisability of appointing a mediator of a nationality other than the nationalities of the parties
- (Potential) mediator shall disclose circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence

ARTICLE 7. CONDUCT OF MEDIATION

- Parties are free to agree on the manner of the mediation
- If parties fail to agree on manner of mediation
 - Mediator may decide on the appropriate manner taking into account the circumstances of the case
- In conducting the proceedings, the mediator shall seek to maintain fair treatment of the parties
- The mediator may make proposals for a settlement of the dispute at any stage of the mediation proceedings



ARTICLE 9. DISCLOSURE OF INFORMATION

ARTICLE 10. CONFIDENTIALITY

Article 9. Disclosure of information

- 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
- Exceptions: 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

Provides a list of items which **cannot** be introduced as evidence or be given as testimony in arbitral / judicial / similar proceedings

- (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



ARTICLE 11. ADMISSIBILITY OF EVIDENCE IN OTHER PROCEEDINGS

- Shall not be ordered by an arbitral tribunal, court or other competent governmental authority
- If offered as evidence in contravention, the evidence shall be treated as inadmissible
- Subject to being disclosed or admitted to the extent required under the law or for the purposes of implementation or enforcement of a settlement agreement



ARTICLE 12. TERMINATION OF MEDIATION PROCEEDINGS

Ways to terminate mediation proceedings:

- (a) By the conclusion of a settlement agreement by the parties
- (b) By a declaration of the mediator that further efforts at mediation are no longer justified (upon parties' consultation)
- (c) By a declaration of the parties addressed to the mediator to the effect that the mediation proceedings are terminated
- (d) By a declaration of a party to the other party to the effect that the mediation proceedings are terminated



ARTICLE 13. MEDIATOR ACTING AS ARBITRATOR

- Unless otherwise agreed, the mediator shall not act as an arbitrator in respect of a dispute that was or is the subject of the mediation proceedings



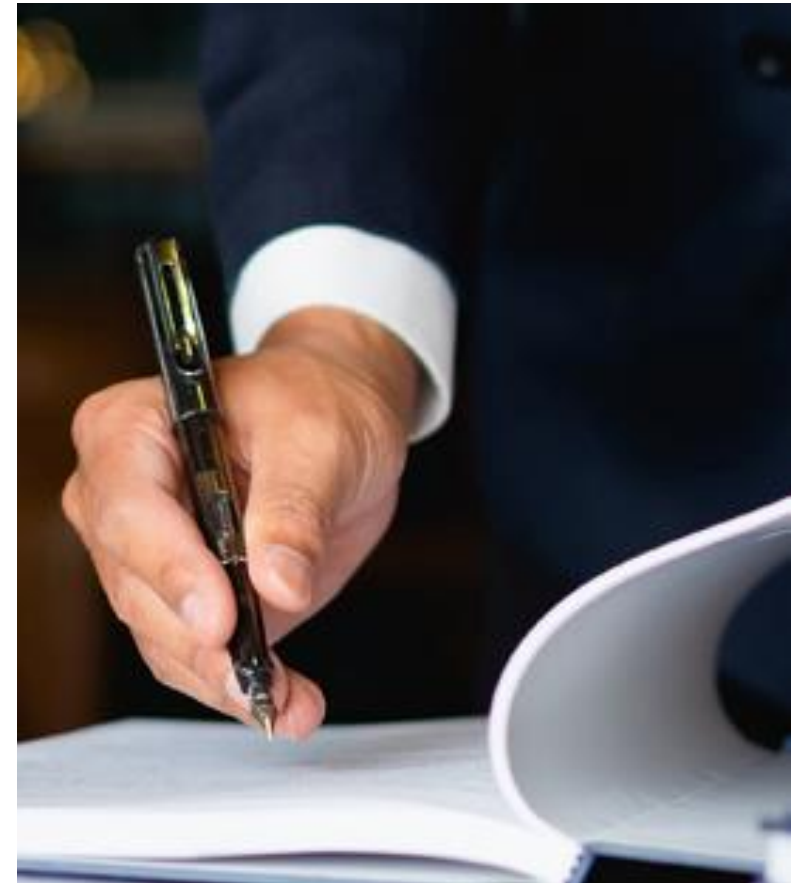
ARTICLE 14. RESORT TO ARBITRAL OR JUDICIAL PROCEEDINGS

- Where the parties have agreed to mediate and have expressly undertaken not to initiate arbitral / judicial proceedings during a specified time period or until a specified event
- Such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with
- Exception: Unless necessary for a party to preserve its rights and only to that extent



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





INTERNATIONAL
SETTLEMENT
AGREEMENTS

SPECIFIC PROVISIONS

Applies to international agreements resulting from mediation and concluded in writing by parties to resolve a commercial



A settlement agreement shall be enforced in accordance with the rules of procedure of this State and the conditions in the Model Law



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 to prove that the matter has already been resolved

ARTICLE 17. GENERAL PRINCIPLES

ARTICLE 18. REQUIREMENTS FOR RELIANCE ON SETTLEMENT AGREEMENTS

- To rely on a settlement agreement, the party shall supply:
 - (a) The settlement agreement signed by the parties; and
 - (b) Evidence that the settlement agreement resulted from mediation
- Requirements for signature of electronic communication
- If the settlement agreement is not in an official language of the relevant state, translation may be required
- Other documents which are necessary may be required to verify the compliance of the above requirements



ARTICLE 19. GROUNDS FOR REFUSING TO GRANT RELIEF

- (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
 - (ii) Is not binding, or is not final; 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) Serious breach by the mediator of applicable standards; or
- (f) Failure by the mediator to disclose his potential impartiality or independence which has a material impact or undue influence on the parties' decision to enter into the settlement agreement



QUESTIONS FOR DISCUSSION



- To what extent does the Model Law provide guidance for states in the implementation or enactment of their own legislature?
- To what extent is the scope of the Model Law sufficiently broad and/or comprehensive?

The background of the slide features the United Nations logo, which consists of a world map surrounded by olive branches, and the word "United" in a blue, sans-serif font. A dark blue rectangular box is overlaid on the bottom half of the image, containing the text "UNCITRAL CONCILIATION RULES" in white, uppercase, sans-serif font. A horizontal cyan line is positioned at the top of the slide, above the logo.

UNCITRAL CONCILIATION RULES

BACKGROUND: UNCITRAL CONCILIATION RULES

- Adopted by UNCITRAL on 23 July 1980
- Provide a comprehensive set of procedural rules upon which parties may agree for the conduct of conciliation proceedings arising out of their commercial relationship
- Covers all aspects of the conciliation process, providing a model conciliation clause, defining when conciliation is deemed to have commenced and terminated and addressing procedural aspects relating to the appointment and role of conciliators and the general conduct of proceedings
- Address issues such as confidentiality, admissibility of evidence in other proceedings and limits to the right of parties to undertake judicial or arbitral proceedings whilst the conciliation is in progress



KEY PROVISIONS

UNCITRAL CONCILIATION
RULES

APPLICATION AND COMMENCEMENT

- Article 1. Application of the Rules
 - Applicable to conciliation of disputes arising out of or relating to a contractual or other legal relationship where the parties seeking an amicable settlement of their dispute have agreed that the UNCITRAL Conciliation Rules apply
 - Parties may agree to exclude or vary any of these Rules
- Article 2. Commencement of conciliation proceedings
 - By written invitation to conciliate, identifying subject of dispute
 - Commences when the other party accepts the invitation



NUMBER AND APPOINTMENT OF CONCILIATORS

- Article 3. Number of conciliators
 - Generally 1 conciliator
 - Unless otherwise agreed for there to be 2 or 3 conciliators
- Article 4. Appointment of conciliators
 - 1 conciliator – parties to reach an agreement on sole conciliator
 - 2 conciliators – each party appoints 1 conciliator
 - 3 conciliators – each party appoints 1 conciliator; parties to reach an agreement on the 3rd conciliator
 - May enlist the assistance of an appropriate institution / person in connection with the appointment of conciliators
 - Considerations in recommending or appointing individuals as conciliator – having regard to the independence and impartiality of the conciliator, as well as the nationality of the conciliator and the parties



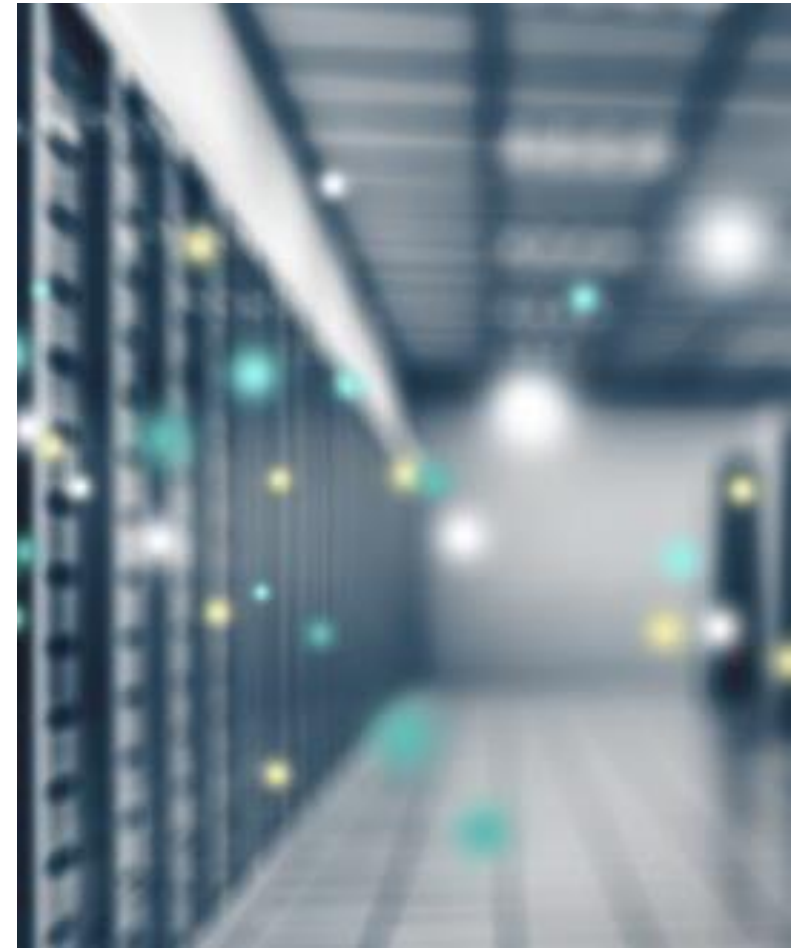
ROLE OF CONCILIATOR

- Article 7. Role of conciliator
 - Assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute
 - Guided by principles of objectivity, fairness and justice, giving consideration to the rights and obligations of the parties, the usages of the trade concerned and circumstances surrounding the dispute
 - May conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute
 - At any stage of the conciliation proceedings, may make proposals for a settlement of the dispute



DISCLOSURE OF INFORMATION

- Article 10. Disclosure of information
 - When the conciliator receives factual information concerning the dispute from a party, he discloses the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate
 - However, when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator does not disclose that information to the other party



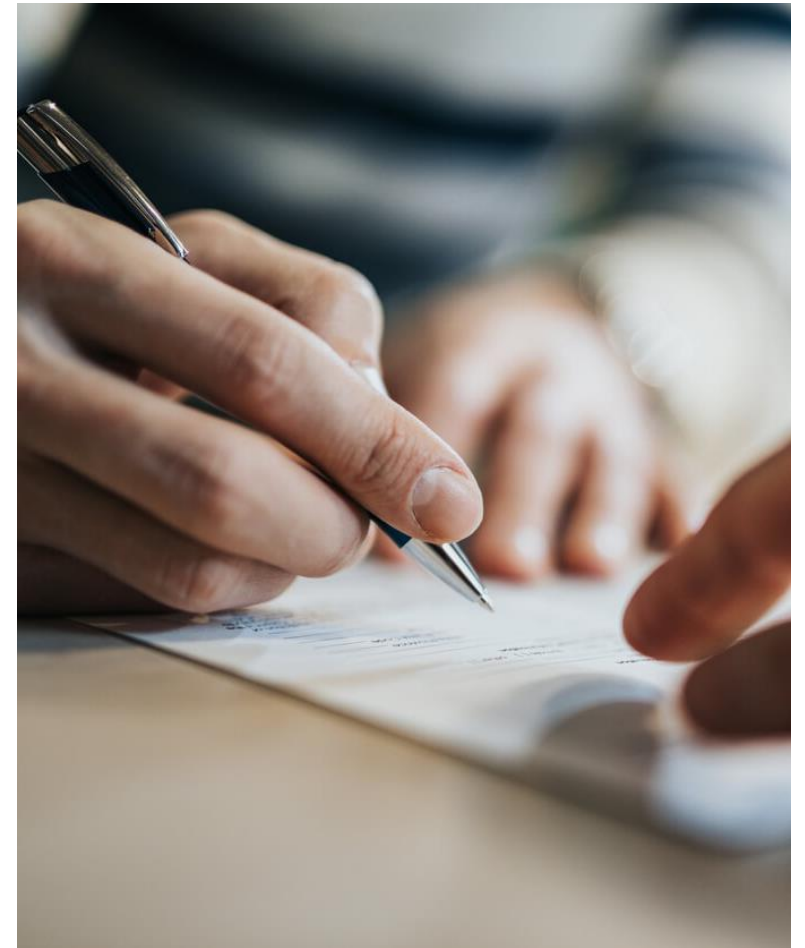
ROLE OF PARTIES

- Article II. Co-operation of parties with conciliator
 - Co-operate with the conciliator in good faith
 - Will endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings



SETTLEMENT

- Article 12. Suggestions by parties for settlement of dispute
 - Each party may submit suggestions for settlement of the dispute
- Article 13. Settlement Agreement
 - Where settlement may potentially be acceptable to the parties, the conciliator should formulate the terms of a possible settlement and submit them to the parties
 - May reformulate upon further observations
 - If parties agree – draw up and sign a written settlement agreement
 - If so requested – the conciliator may assist in the drafting
 - Effect – put an end to the dispute; parties are bound by the agreement



CONFIDENTIALITY

- Article 14. Confidentiality
 - The conciliator and the parties must keep confidential all matters relating to the conciliation proceedings
 - Confidentiality extends also the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement



QUESTIONS FOR DISCUSSION



- To what extent do the UNCITRAL Conciliation Rules provide adequate guidance for states?
- To what extent is the scope of the UNCITRAL Conciliation Rules sufficiently broad and/or comprehensive?

CASE APPLICATIONS

- Sharing of experiences by Judge Bokhary based on his observations in the judiciary and as a Judge on Hong Kong's Court of Final Appeal

ANY
QUESTIONS?

