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AUTHORITY TO SETTLE

PUBLIC LAW AND THE ENFORCEABILITY OF INVESTOR-STATE MEDIATED SETTLEMENTS

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ABSTRACT

Settlement of an investment dispute may require powers distributed among ministers, legislatures and regulators, leaving the negotiator dependent on other institutions for expenditure and the public acts promised in return for the investor's release. This article examines how a record of completed domestic approval can acquire evidential and legal significance in foreign proceedings. It reads the Singapore Convention on Mediation alongside institutional rules, international law on official conduct and public instruments from Peru, Viet Nam and Pakistan, while using India and Thailand to establish the limits of treating negotiated outcomes as mediated agreements. The proposed authority certificate would identify the approved text, competent institutions, fiscal powers and outstanding conditions. Domestic legislation would give that record presumptive evidential force and protect reliance against narrowly defined internal irregularities, subject to constitutional review and third-party rights. An investment treaty could reinforce the protection through a specific undertaking and remedy; contractual incorporation would depend on the law applied by the enforcing forum. A certificate-based reservation offers a defensible proposed classification of government settlements, although its consequences outside the reserving State remain unresolved. The argument specifies the risks that public institutions may lawfully allocate through certification and the evidence on which that allocation depends. Approval would consequently support a more durable compromise while leaving appropriation, regulatory competence and execution immunity to the legal rules governing each.

Keywords: investor-State mediation; settlement authority; Singapore Convention on Mediation; public accountability; sovereign immunity; investment treaties

1 INTRODUCTION

The Reko Diq settlement depended on powers distributed among institutions whose decisions governed different parts of the bargain. Pakistan faced an investment award of approximately US$5.9 billion, including interest and costs, together with further anticipated exposure in commercial arbitration. Negotiators sought to restructure the mining project and resolve the outstanding claims. Their agreement depended on federal and provincial approvals, constitutional scrutiny through a presidential reference and legislation supporting the promised investment protections. The Supreme Court's opinion expressly preserved statutory discretion and made its conclusions on the proposed investment legislation conditional on necessary provincial resolutions and enactment. Negotiated terms could take legal effect only through the decisions of the institutions competent to approve and implement them.[1]

That distribution of power presents a recurring difficulty for consensual dispute resolution. A State may consent to mediation and authorise officials to negotiate, yet retain separate rules governing compromise of public claims, expenditure, taxation and regulatory decisions. An investor contemplating a release needs to know which of those rules have been satisfied. People whose land, environment or public services are affected have a different interest in the same inquiry: they need assurance that negotiations have respected the procedures through which public power is lawfully exercised. A settlement that conceals an absent approval may disappoint the investor and bypass a safeguard intended to protect the public.

[1] *In the matter of Presidential Reference No 2 of 2022* (Supreme Court of Pakistan, Opinion, 9 December 2022) paras 3–6, 9(iii)–(vi), 10(ii), 13 https://www.italaw.com/sites/default/files/case-documents/italaw171044.pdf ('Reko Diq Opinion').

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These approval requirements already inform the institutional mediation instruments. The 2022 Mediation Rules of the International Centre for Settlement of Investment Disputes (ICSID) require the parties to identify who can negotiate and settle and explain how an agreement will be concluded and implemented. The United Nations Commission on International Trade Law (UNCITRAL) recommends early engagement with the institutions that must approve the result.[2] The information disclosed during mediation can identify the route to approval, but a later enforcement court must determine the legal consequences of the decisions actually taken. Where a successor administration challenges its predecessor's authority after the investor has released claims or performed its obligations, that inquiry determines whether the investor can obtain the promised remedy.

The proposed response is an authority certificate tied to an identified settlement text and supported by legislation. Legislation would have to define both the verification required before issuance and the consequences of the record in later proceedings. A certificate could consolidate approvals that would otherwise be scattered across ministries, explain the competence of each signatory, distinguish existing funding from a future appropriation and disclose conditions still affecting performance. Legislation could then allocate the burden of proving a certified defect and protect reasonable reliance against defined internal irregularities. Constitutional competence, mandatory procedures and the rights of non-parties would remain judicially examinable.

The resulting allocation of risk must remain coherent as the settlement moves from domestic approval to treaty protection and foreign enforcement. Earlier scholarship already identifies governmental authority, participation and confidence in implementation as obstacles to mediation. Kessedjian and her co-authors also place civil society's concerns within the design of the process.[3] The proposed contribution is to specify the approval record that accompanies the settlement and the objections which the State may lawfully undertake to forgo. Its justification depends on consequences beyond those already supplied by existing approval instruments, with constitutional competence remaining open to examination despite the certificate.

The analysis is doctrinal and functional. Peru and Viet Nam supply standing arrangements for resolving investment disputes; Pakistan supplies a settlement assembled through several constitutional institutions. India's statutory tax compromise and Thailand's termination of mining arbitration test the boundary between public accommodation and an enforceable mediated agreement. The comparison identifies possible institutional arrangements, subject to the limits of illustrative examples in establishing prevalence or comparative effectiveness. On the law as at 9 November 2026, it develops legislative and treaty provisions for adoption by States whose existing arrangements leave the identified risks unresolved.

2 SETTLEMENT AND LEGAL FORM

2.1 WHAT THE AVAILABLE EVIDENCE ESTABLISHES

ICSID reported that 37 per cent of arbitrations concluded in the fiscal year ending 30 June 2026 were settled or otherwise discontinued. Its separate mediation figures recorded a cumulative total of seven requests under the dedicated Mediation Rules as at 30 June 2026: one under rule 5, based on an existing agreement to mediate, and six under rule 6, where such an agreement had not yet been reached. The Centre administered the rule 5 mediation.[4] Because the figures concern different populations and periods, they cannot be read as competing measures of mediation's use. Discontinuance may follow withdrawal or other developments without a settlement, and privately negotiated or informally mediated resolutions extend beyond the recorded requests. The extent to which defective governmental authority explains the limited recorded use of the Mediation Rules therefore remains undetermined.

Officials' reported concerns provide a more direct, though still limited, basis for examining the approval problem. Chew, Reed and Thomas received 47 responses to a questionnaire sent to 97 experienced participants in investor-State dispute settlement. Respondents identified deferral of responsibility to an adjudicator, politicised media attention, public criticism and difficulties obtaining budgetary approval among the principal obstacles to settlement. The authors expressly qualified the survey's representativeness.[5] The findings justify examining how institutional incentives and approval procedures influence settlement, although the frequency of failure through absent legal power and the effect of certification on officials' decisions remain unanswered.

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[2] ICSID Mediation Rules (2022) r 20(4) https://icsid.worldbank.org/sites/default/files/ICSID_Mediation_Rules.pdf; UNCITRAL, *Guidelines on Mediation for International Investment Disputes* (United Nations 2024) para 26 https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/2401497e_mediation_guidelines_-ebook_eng.pdf ('Guidelines').

[3] Catherine Kessedjian and others, 'Mediation in Future Investor–State Dispute Settlement' (2023) 14 *Journal of International Dispute Settlement* 192, sections 4 and 5(A)–(C), especially 5(B) https://doi.org/10.1093/jnlids/idac015.

[4] ICSID, 'ICSID Releases Caseload Statistics for the 2026 Fiscal Year' (14 August 2026), 'Outcomes and Awards' and mediation figures https://icsid.worldbank.org/news-and-events/news-releases/icsid-releases-caseload-statistics-2026-fiscal-year; World Bank, *Annual Report 2026*, 'ICSID: Case Management and Dispute Resolution' https://www.worldbank.org/en/about/annual-report/icsid.

[5] Seraphina Chew, Lucy Reed and J Christopher Thomas QC, 'Report: Survey on Obstacles to Settlement of Investor-State Disputes' (NUS Centre for International Law Working Paper 18/01, September 2018) 1–7, 28–29 https://law.nus.edu.sg/wp-content/uploads/2020/04/022_2018_CIL01.pdf.

2.2 THE PROCEDURAL INSTRUMENTS

The ICSID Mediation Rules apply to a dispute relating to an investment involving a State or regional economic integration organisation where the parties consent in writing. Rule 2 imposes no equivalent of the nationality conditions associated with Convention arbitration. Rules 5 and 6 distinguish initiation with and without a prior mediation agreement; a request under rule 6 alone supplies no consent by the recipient. The Rules also require relevant approval of agency consent and evidence of representative or internal filing authority, which remain distinct from authority to bind the State to the final settlement. At the first session, or within a period fixed by the mediator, rule 20(4) requires identification of the person or entity authorised to negotiate and settle and a description of the process for concluding and implementing an agreement.[6] A party may accordingly identify cabinet approval or another public act as an outstanding step in the disclosed process. Rule 20(4) makes that route visible within the mediation, leaving the source of constitutional power and completion of the required approvals to be established under the applicable law.

The UNCITRAL Guidelines, adopted in 2023 and published with the Model Provisions in 2024, expressly state their non-binding character. Paragraph 26 addresses settlement authority, including approval by one or several ministries or the cabinet. Paragraphs 36–39 recognise the public interest in transparency and the possibility of disclosure obligations, and paragraph 43 addresses domestic arrangements that can clarify responsibilities and reduce officials' exposure. Paragraph 45 directs attention to the Singapore Convention and relevant reservations.[7] A mandatory domestic approval procedure would require a binding legal basis, which a State may supply through legislation giving effect to these recommendations.

The accompanying Model Provisions organise access to mediation, its conduct, its relationship with other proceedings and the settlement agreement. They can help parties identify the necessary approvals early enough to obtain them. Their procedural commitments leave the source and extent of governmental competence to the applicable legal system.[8] Certification would follow this procedural preparation by recording the approvals actually obtained. Compliance with a mediator's request for information would leave that verification to be completed.

2.3 AWARDS ON AGREED TERMS

Where a competent arbitral tribunal is already constituted, the parties may seek an award embodying their agreement. Rule 55(2) of the ICSID Arbitration Rules provides for this route on submission of the complete signed settlement and the parties' request. An award attracts articles 53 and 54 of the ICSID Convention, including recognition of its binding character and enforcement of pecuniary obligations as if they formed part of a final domestic judgment. An order discontinuing the proceeding supplies no award to which those recognition and enforcement obligations can attach. Article 36 of the current UNCITRAL Arbitration Rules likewise permits an award on agreed terms where the parties request it and the tribunal accepts their request; recognition elsewhere then depends on the applicable award regime, including the New York Convention where its requirements are met.[9]

An award can consequently offer substantial procedural security for a monetary compromise. The ICSID route channels challenges through the Convention's own remedies, although article 55 preserves the enforcing State's law of execution immunity. Obtaining a consent award requires a tribunal with jurisdiction, beyond any authentication which a mediation institution could provide. Even with an award, a promised permit remains subject to the independent regulator's statutory powers.[10] A separate enforcement route remains valuable for settlements concluded before arbitration, or where proceedings end without an award recording the bargain.

3 THE SINGAPORE CONVENTION AND GOVERNMENTAL AUTHORITY

3.1 SCOPE AND PROOF

The Singapore Convention applies to a written settlement agreement which results from mediation, resolves a 'commercial dispute' and satisfies article 1's internationality requirements at the time of conclusion. Mediation under article 2(3) requires assistance by a third person without authority to impose a solution. Direct negotiations, however elaborate their governmental approval, do not meet that definition. Government participation is compatible with the Convention, as article 8's express reservation for public-party agreements confirms.[11] This establishes the possibility of coverage for investment settlements, without making every settlement of an investment claim commercial.

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6 ICSID Mediation Rules (n 2) rr 2(1)–(2), 3(3), 4, 5(3)(d), (f), 6(2)(a), 7 and 20(4).

7 UNCITRAL, *Guidelines* (n 2) paras 1, 26, 36–39, 43 and 45.

8 ibid annex, Model Provisions on Mediation for International Investment Disputes, provisions 1–5, especially 1(9) and 5.

9 ICSID Arbitration Rules (2022) r 55(2); Convention on the Settlement of Investment Disputes between States and Nationals of Other States (adopted 18 March 1965, entered into force 14 October 1966) 575 UNTS 159 ('ICSID Convention') arts 53–54; UNCITRAL Arbitration Rules (2021) art 36(1) https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/21-07996_expedited-arbitration-e-ebook.pdf; Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3, arts I, III–V.

10 ICSID Convention (n 9) arts 25, 48, 50–55 https://icsid.worldbank.org/rules-regulations/convention/icsid-convention/chapter-four; ICSID Arbitration Rules (n 9) r 55 (distinguishing an award from discontinuance).

11 United Nations Convention on International Settlement Agreements Resulting from Mediation (adopted 20 December 2018, entered into force 12 September 2020) UNGA Res 73/198, annex ('Singapore Convention') arts 1(1), 2(3) and 8(1)(a) https://treaties.un.org/doc/Treaties/2019/05/20190501%2004-11%20PM/Ch-XXII-4.pdf.

The dispute's relationship to an investment supports a broad commercial reading where the controversy concerns the economic operation of a project or compensation arising from it. A narrower reading remains plausible where the obligation invoked concerns taxation, land-use control or the exercise of statutory discretion. Article 1 leaves the enforcing authority to interpret the Convention in the relevant legal setting. A bilateral declaration that investment settlements are commercial cannot conclusively settle that interpretation in a third State. Even where the dispute is commercial, article 1(3)(a) excludes agreements approved by a court, or concluded in court proceedings, if they are enforceable as a judgment in that State. Article 1(3)(b) separately excludes settlements recorded and enforceable as arbitral awards.[12]

Drafting monetary obligations for independent performance may assist a court asked to enforce only that part of a hybrid settlement. The agreement must actually permit separation, and the chosen law and forum must recognise it. The Convention contains no express general right to sever regulatory terms, so payment language cannot automatically convert an otherwise excluded bargain into a commercial agreement. Article 5(1)(d), which permits refusal where relief would contradict the settlement's terms, is particularly relevant if the payment was expressly conditional on a permit or reciprocal release.[13] Escrow, conditional releases and separately specified consequences of regulatory refusal can reduce that difficulty without predetermining the court's characterisation.

Article 4 requires the signed agreement and evidence of its mediated origin. A mediator's signature or attestation, or an administering institution's attestation, can establish mediated origin. In the absence of those forms, other evidence acceptable to the competent authority may do so. Alongside that proof of mediated origin, a public authority certificate would document the powers exercised by the institutions responsible for the State's commitments. It may assist a request for necessary documents under article 4(4), with proof of mediation still required under article 4(1)(b). Its evidential use in a particular case supplies no basis for imposing certification as an additional treaty formality on every applicant.[14]

3.2 CAPACITY, REPRESENTATION AND VALIDITY

Article 5(1)(a) permits refusal where a party was 'under some incapacity'. Legal personality, capacity and representative authority must be distinguished before choosing the applicable law. A ministry may act as an organ of the State without separate personality; a separate public corporation may possess capacity to contract; and either may be represented by an official whose delegation excludes the proposed compromise. A fiscal or regulatory limitation can concern the substance of the commitment even where the correct signatory executed it. The enforcing court must accordingly identify whether the objection concerns the party's capacity, the representative's delegation or the legal limits of the particular commitment.

That classification matters because the Convention supplies no express connecting rule for incapacity, although article 5(1)(b)(i) directs the validity inquiry to the law to which the parties validly subjected the settlement, or, failing such a choice, to the law deemed applicable by the competent authority. The UNCITRAL Guide to the parallel Model Law provisions recognises the possibility of different applicable laws and the role of the forum's conflict rules.[15] A contractual choice may therefore govern ordinary validity and performance without controlling every question of public capacity, delegation or overriding legislation. The law selected for each question will consequently determine the weight and effect of certification under the host State's law.

Under article 5(1), the resisting party must furnish proof of the ground invoked. An authenticated record of actual approvals should make a successor government's unsupported denial difficult to sustain. The same record may reveal a defect: a certificate which identifies an unfulfilled appropriation cannot establish that payment is presently authorised. The court must then determine the consequence of any established defect. Absence of authority to incur the liability may affect formation or validity, although a later failure to fund an otherwise lawful debt may constitute non-performance under the law governing that obligation.[16]

Proof of authority also leaves the other article 5 grounds to be considered: an agreement may lack binding or final effect, have been subsequently modified, contain obligations already performed or unclear, or face a request for relief inconsistent with its terms. Specified serious mediator misconduct and non-disclosure provide further grounds. Article 5(2) permits refusal for the forum's public policy or subject matter incapable of settlement by mediation under its law.[17] The effect of an advance waiver of a particular article 5(1) objection therefore depends on the applicable law. In the absence of an express general power under the Convention to contract out of its safeguards, the State's covenant and certificate remain subject to mandatory review.

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[12] Singapore Convention (n 11) art 1(1), (3); UNCITRAL, *Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation with Guide to Enactment and Use (2018)* (United Nations 2022) Model Law art 1 n 1 https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/22-01363_mediation_guide_e_ebook_rev.pdf ('Guide') (illustrative commercial definition in the parallel Model Law).

[13] Singapore Convention (n 11) arts 1 and 5(1)(b)(ii), (c)–(d).

[14] ibid art 4(1)(a)–(b), (3)–(4), particularly art 4(1)(b)(iv).

[15] ibid art 5(1)(a) and (b)(i); UNCITRAL, *Guide* (n 12) paras 142, 144–145, 148–152 (explaining the parallel Model Law provisions).

[16] Singapore Convention (n 11) art 5(1); UNCITRAL, *Guide* (n 12) paras 148–152.

[17] Singapore Convention (n 11) art 5(1)(b)(ii)–(iii), (c)–(f) and (2).

3.3 PARTICIPATION AND RESERVATIONS AT THE CUT-OFF

The United Nations depositary record of deposits made by 9 November 2026 listed 60 signatories and 25 States with deposited instruments of ratification, acceptance, approval or accession. The Convention was in force for 22 of those States. Oman's accession of 10 March 2026 and Colombia's ratification of 12 March 2026 took effect that September. Mauritius, Uzbekistan and the United Arab Emirates had deposited instruments during 2026, with entry into force due on 17 February, 28 February and 8 April 2027 respectively.[18] For an enforcement application, the relevant distinction is between deposit of an instrument and the date on which the forum's Convention obligations became operative.

Seven States with deposited instruments had made article 8(1)(a) reservations: Belarus, Brazil, Georgia, Kazakhstan, Saudi Arabia, Uzbekistan and the United Arab Emirates. The last two had yet to reach entry into force. Pakistan had made a comparable reservation on signature without becoming a contracting State through ratification. Article 8 also permits a reservation conditioning application on the disputing parties' agreement.[19] Convention coverage must therefore be established for the particular forum, relevant declarations and settlement date before the legal effect of certification can be assessed.

4 PUBLIC AUTHORITY ACROSS LEGAL ORDERS

The State's responsibility for an official act and the validity of the resulting bargain are separate legal questions. Articles 26 and 27 of the Vienna Convention on the Law of Treaties govern performance of treaty obligations. Article 46 restricts reliance on violations of internal rules governing competence to conclude treaties, requiring a violation that is 'manifest' and concerns a rule of 'fundamental importance'. An investor-State settlement is ordinarily outside the treaty definition in article 2(1)(a).[20] Article 46 can inform a proposed allocation of risk between concealed irregularity and fundamental competence, but it does not itself validate the settlement or supply a defence to article 5 of the Singapore Convention.

Attribution of the official's conduct to the State raises a further question under the Articles on State Responsibility. Article 4 attributes conduct of State organs, and article 7 preserves attribution where an organ or empowered entity acts in an official capacity even if it 'exceeds its authority or contravenes instructions'. Attribution must still be connected to breach of an international obligation. Article 32 prevents reliance on internal law to avoid the consequences of responsibility once established.[21] International responsibility may consequently coexist with the absence of a valid contractual obligation under domestic law. The appropriation and contractual powers needed to perform the official's promise must still be established from their municipal legal sources.

The jurisdictional decision in *Kardassopoulos v Georgia* shows how international protection can survive alleged domestic illegality. Georgia argued that its enterprises had exceeded their powers in granting the investment rights. The tribunal read the treaty's legality condition in light of the investor's conduct and rejected an attempt to defeat jurisdiction through the State's own alleged illegality. Governmental assurances and years without objection also supported the investor's reliance.[22] The investor thus retained access to treaty adjudication despite possible invalidity under Georgian law. In *Southern Pacific Properties v Egypt*, governmental acts communicated to investors similarly remained capable of engaging international responsibility despite alleged nullity under municipal law. The tribunal's reasoning under article 42 of the ICSID Convention concerned the availability of an international remedy for reliance on official conduct.[23] These decisions support a distinction between international relief and contractual validity that must also govern certification. The proposed legislation or treaty must identify whether the record changes the evidence of approval, protects reliance on a commitment or supports a separately defined international remedy.

The converse limit appears in *World Duty Free v Kenya*. The tribunal rejected claims dependent on a contract procured through bribery, invoking transnational public policy and the applicable English and Kenyan law. Although Kenya relied on the corruption of its own former President, the tribunal held that the pleaded contractual claims could not be maintained.[24] The proposed protection accordingly depends on lawful competence and reasonable reliance, with challenges to corrupt procurement preserved at both domestic and international levels.

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[18] United Nations Treaty Collection, 'United Nations Convention on International Settlement Agreements Resulting from Mediation', ch XXII.4, participant table and dated deposit entries https://treaties.un.org/pages/ViewDetails.aspx?chapter=22&clang=_en&mtdsg_no=XXII-4&src=TREATY; Singapore Convention (n 11) art 14(2).

[19] UN Treaty Collection (n 18), declarations of Belarus, Brazil, Georgia, Kazakhstan, Saudi Arabia, Uzbekistan, the United Arab Emirates and Pakistan; Singapore Convention (n 11) art 8(1), (3).

[20] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 ('VCLT') arts 1, 2(1)(a), 26–27 and 46 https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

[21] International Law Commission, 'Articles on Responsibility of States for Internationally Wrongful Acts', annex to UNGA Res 56/83 (12 December 2001), arts 2–4, 7 and 32 https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

[22] *Ioannis Kardassopoulos v Georgia* (Decision on Jurisdiction) ICSID Case No ARB/05/18 (6 July 2007) paras 179, 182–184, 190–194 https://energycharter.org/fileadmin/DocumentsMedia/Disputes/ISDSC-009dj.pdf.

[23] *Southern Pacific Properties (Middle East) Ltd v Arab Republic of Egypt* (Award) ICSID Case No ARB/84/3 (20 May 1992) paras 81–85 https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C135/DC671_En.pdf.

[24] *World Duty Free Company Ltd v Republic of Kenya* (Award) ICSID Case No ARB/00/7 (4 October 2006) paras 157, 179–180 https://www.italaw.com/sites/default/files/case-documents/italaw15005.pdf.

5 COMPARATIVE PUBLIC LAW

5.1 PERU

Peru's Law No 28933 established the System for Coordination and Response of the State in International Investment Disputes, known as SICRECI. The Ministry of Economy and Finance coordinates the system, and the Special Commission represents the State through the relevant dispute process, including direct negotiation. Its institutional structure brings finance, foreign affairs, justice and investment promotion into the process, with participation by involved public entities.[25] A certifying body could therefore draw on an approval process already organised beyond the individual negotiator.

Article 13 of the implementing regulation allows the Commission to recommend a transaction, conciliation or amicable settlement during arbitration, conciliation or direct negotiations. The formula must be authorised by Supreme Resolution after a report to the Council of Ministers, with the prescribed ministerial countersignatures and, where applicable, that of the sector responsible for performance. Articles 17–20 protect specified deliberative and legal information.[26] The Spanish text distinguishes reporting to the Council from formal authorisation by Supreme Resolution. A separate requirement of Council approval would need its own basis in the applicable instruments.

Supreme Resolution No 013-2016-EF demonstrates the division of functions. The dispute with Aby Transmisión Sur concerned guarantees and possible penalties under an electricity transmission concession. Article 1 authorised the recommended settlement formula; article 2 authorised the Commission's President to sign the comprehensive agreement. A recital preserved action concerning administrative and functional responsibilities identified by the Comptroller General. Article 3 specified the countersigning ministers.[27] Approval and signature authority therefore coexisted with continued accountability for antecedent conduct. The public resolution does not disclose the full contractual bargain or establish that mediation, as defined by the Singapore Convention, occurred.

Approval of the compromise leaves the financing of performance to Law No 28933, article 14.3, which assigns payments arising from settlements and awards to the involved public entity within the budget-law framework.[28] The Supreme Resolution is strong evidence of authorisation, but the resolution alone cannot establish every necessary appropriation or regulatory power. A new certificate would add value only by assembling those separate decisions, identifying any conditions and giving the resulting record a defined evidential consequence. A certificate that merely repeats the resolution would leave a foreign court with the same unanswered questions about appropriation, regulatory competence and outstanding conditions.

5.2 VIET NAM

Resolution No 20/2026/QH16, adopted on 23 April 2026 and effective from 1 May, established coordination mechanisms and special policies for preventing and resolving international investment disputes. Decree No 323/2026/NĐ-CP of 17 August 2026 supplies implementing detail.[29] The relevant Vietnamese term, *hoà giải*, is rendered here as conciliation. Its domestic use does not establish that every resulting process involves the third-person assistance required by article 2(3) of the Singapore Convention.

Article 16 of the Resolution requires consideration of conciliation and preparation of a plan for approval by the Prime Minister or the interdisciplinary steering committee within the prescribed allocation of responsibility. Paragraph 3 permits independent advice where necessary. Paragraph 4 refers to lawyers and conciliators, if any, and requires the investor to relinquish all rights to bring claims arising from the dispute resolved by conciliation. The optional reference to a conciliator confirms the need to establish mediated origin separately in any Convention application.[30] The Convention applicant must establish the required third-person assistance even where the plan was approved and independent counsel advised on its terms.

Paragraph 6 provides protection for persons preparing and implementing a conciliation solution through the prescribed procedure, on independent advice and with competent approval, subject to the applicable civil-service framework and rules of competent authorities. The scope of personal protection consequently depends on those procedural and substantive conditions. Decree article 16 requires a plan addressing the dispute, legal basis, strengths and weaknesses, proposed solution, implementation responsibilities and recommendations.[31] The role of advice thus depends on the legal consequence claimed: paragraph 3 permits its procurement where necessary, while paragraph 6 makes it relevant to the conditions of personal protection.

The distinction between approval and officials' protection also defines the comparison with Peru. Viet Nam expressly addresses officials' protection within its conciliation framework; Peru's Aby resolution expressly preserves identified

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[25] Ley No 28933, Ley que establece el Sistema de Coordinación y Respuesta del Estado en Controversias Internacionales de Inversión (Peru, 2006), as amended by Ley No 29213, arts 2–8 https://www.mef.gob.pe/NORLEGAL/leyes/Ley_28933.pdf.

[26] Decreto Supremo No 125-2008-EF (Peru, signed 22 October 2008, published 23 October 2008), Reglamento de la Ley No 28933, arts 13, 17–20 https://www.mef.gob.pe/contenidos/inv_privada/normas/sicreci/DS_125_2008_EF.pdf.

[27] Resolución Suprema No 013-2016-EF (Peru, 5 July 2016), recitals and arts 1–3 https://www.mef.gob.pe/contenidos/inv_privada/sicreci/c_arbitrales/aby_transmision_sur_sicreci.pdf (preserving identified administrative and functional responsibilities in a recital).

[28] Ley No 28933 (n 25) arts 14.3 and 15.

[29] Resolution No 20/2026/QH16 on coordination mechanisms and special policies for preventing and resolving international investment disputes (Viet Nam, 23 April 2026) arts 16, 20(1) https://sonnmt.hochiminhcity.gov.vn/portal/document/2026/07/22043837/D13_NQ20_NQ%20TCDTQT.pdf; Decree No 323/2026/NĐ-CP (Viet Nam, 17 August 2026) https://datafiles.chinhphu.vn/cpp/files/vbpq/2026/8/323_2026_nd-cp_17082026-signed.signed.pdf (English descriptions paraphrased from the signed Vietnamese texts, without an authenticated English translation).

[30] Resolution No 20/2026/QH16 (n 29) art 16(1)–(4); Singapore Convention (n 11) art 2(3).

[31] Resolution No 20/2026/QH16 (n 29) art 16(3), (6); Decree No 323/2026/NĐ-CP (n 29) art 16(2)(a)–(đ).

administrative accountability. Both require examination of the relevant public instruments before their legal consequences can be asserted abroad. These instruments permit comparison of particular safeguards, without establishing that either system provides greater protection overall or gives its approval records conclusive effect internationally.

5.3 PAKISTAN

The Reko Diq process supplies a concentrated example of authority assembled for a particular transaction. The Supreme Court's 2022 opinion recounts the earlier invalidation of the mining agreement, the investment award and the negotiations undertaken with independent financial, technical and legal advice. It records Balochistan Cabinet approval, consideration through an Apex Committee and briefing of the Provincial Assembly.[32] The reported US$5.9 billion investment-award exposure included damages, interest and costs. The further commercial-arbitration exposure was anticipated on the advice presented to the Court, whose account supplies no separately verified final commercial award.

The opinion was given in the Court's advisory jurisdiction under article 186 of the Constitution. Its institutional contribution was constitutional scrutiny of the proposed arrangements and legislation. Paragraph 9(v) preserved the exercise of statutory discretion and the need to obtain lawful consents. Paragraphs 10(ii) and 13 made the conclusions on the proposed investment legislation conditional on the relevant provincial resolutions and passage of the Bill.[33] Whatever the broader legal effects of Pakistani advisory opinions, the conditions expressed in this one left enactment to the legislature and implementation of the bargain to the competent public bodies.

The Foreign Investment (Promotion and Protection) Act 2022 then supplied specified protections and implementation duties. Section 3(13) makes certain fiscal commitments actionable where the relevant federal or provincial Cabinet has reviewed and approved them. Sections 6 and 7 address implementation and supporting public acts, and the First Schedule identifies the Reko Diq project. The durability offered by the Act is qualified: sections 3(10), 3(12) and 14(1) preserve the possibility of express contrary legislation.[34] The assurance therefore rests on specified statutory commitments and implementation duties which remain open to express legislative alteration.

The dispute's scale, history and federal dimensions explain the involvement of several institutions and bespoke legislation, limiting its suitability as a routine settlement procedure. What can be transferred is the insistence that each required power must come from its competent source. A certificate could assemble that authority without attributing Parliament's legislative power, a regulator's discretion and the executive's contractual competence to the certifying body itself.

5.4 INDIA AND THAILAND

India's Taxation Laws (Amendment) Act 2021 created a statutory route to resolve specified retrospective indirect-transfer tax demands concerning transactions before 28 May 2012. Relief from existing demands depended on the prescribed withdrawal and waiver conditions, with collected amounts refundable without interest. Rules 11UE and 11UF specified undertakings and a sequence of certification, compliance and consequential orders.[35] Within that mechanism, Form 2 records acceptance of the taxpayer's undertaking. Its function differs from certification of a State representative's settlement authority: the power to grant tax relief derives from the legislation. A certificate therefore cannot supply a tax compromise that the existing regime does not permit. These instruments provide no evidence of a mediated settlement.

Thailand's Kingsgate episode illustrates another boundary. Kingsgate's interim report for the half-year ended 31 December 2025 states that both parties sought termination of the Thailand–Australia Free Trade Agreement arbitration without an award or settlement agreement, and that the tribunal issued its order on 29 December 2025. The company also reported the resumption of the mine's operations.[36] This is an issuer's account, rather than an independently inspected termination order. On that evidence, an administrative accommodation and the end of arbitration cannot be treated as an undisclosed mediated agreement capable of Convention enforcement.

Across the five examples, the form of public approval depends on the powers exercised, and some resolutions produce no settlement agreement. A transferable certification model would therefore collect the legal acts of the competent institutions, preserving the distinction between approval, mediated origin and an agreement capable of foreign enforcement. Its institutional form must accommodate those differences. The question for legislation is which matters the record proves and whose rights to challenge the bargain remain protected.

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[32] *Reko Diq Opinion* (n 1) paras 3–6, 9(iii)–(vi); *Tethyan Copper Company Pty Ltd v Islamic Republic of Pakistan* (Award) ICSID Case No ARB/12/1 (12 July 2019) para 1858(II)–(VIII) https://www.italaw.com/sites/default/files/case-documents/italaw10737.pdf (itemising principal, interest and costs).

[33] *Reko Diq Opinion* (n 1) title page and paras 9(v), 10(ii) and 13.

[34] Foreign Investment (Promotion and Protection) Act 2022 (Pakistan), Act XXXV of 2022, as amended in December 2022, ss 3(10), (12)–(13), 6–7, 14(1), First Schedule para 1 https://pakistancode.gov.pk/pdffiles/administrator07bf5c69a91f18474d286f256c2b7ff3.pdf.

[35] Taxation Laws (Amendment) Act 2021 (India), Act 34 of 2021, ss 2–3 https://judicialacademy.nic.in/sites/default/files/THE%20TAXATION%20LAWS%20%28AMENDMENT%29%20ACT%2C%202021.pdf; Income-tax (31st Amendment) Rules 2021, Notification No 118/2021, GSR 713(E) (1 October 2021), rr 11UE(1)–(3), 11UF(2)–(3), (7)–(8), Forms 1–4 https://www.incometaxindia.gov.in/documents/20117/6507196/Notification_No_118_2021.pdf/d6c056f1-b115-61ee-3d5d-fc804312942b?t=1763192870599.

[36] Kingsgate Consolidated Limited, *Appendix 4D and Half-Year Report for the Half-Year Ended 31 December 2025* (25 February 2026) 2 (PDF p 5) https://announcements.asx.com.au/asxpdf/20260225/pdf/06wrg9cgxzx7kj.pdf; see also *Annual Report 2026*, 5, 7, 25 https://www.kingsgate.com.au/annual-reports/ (company reports of termination and resumed operations).

6 A STATUTORY AUTHORITY CERTIFICATE

6.1 INSTITUTIONS AND LEGAL EFFECT

The most credible certificate would emerge from the State's ordinary approval machinery. An existing Supreme Resolution or comparable instrument should qualify where it contains the prescribed information and has the required legal effect. A new commission is justified only where no institution can perform the verification with adequate independence. Separation from the agency responsible for the disputed conduct is useful, although a finance or investment-promotion ministry may itself have an interest in securing the bargain. Published recusal rules, independent advice and reviewable reasons are therefore more important than the office's name.

The certificate should identify the precise text approved, the signatory's mandate, each necessary institutional decision and the distinction between authority to incur a liability and authority to pay it. The certifier must also distinguish an unconditional undertaking from a promise whose performance depends on a later legislative or regulatory act. Viet Nam's implementing decree provides a useful fiscal illustration: article 23 identifies expenditure on settlement implementation but retains allocated-budget limits and accounting, monitoring and audit requirements.[37] Certification of present authority to enter a conditional agreement must not represent that future appropriation as already available.

Domestic legislation should give this record presumptive evidential force while protecting reliance against immaterial internal irregularities. Where a certificate incorrectly records a parliamentary appropriation or an independent regulator's approval, the investor's ignorance cannot supply the missing power. Within an institution's lawful competence, however, legislation may preserve an otherwise valid decision despite a harmless organisational omission, provided that courts remain able to determine whether the specified conditions are satisfied. The distinction allows certification to carry a defined legal consequence without making an erroneous statement of substantive authority conclusive.

6.2 MODEL DOMESTIC PROVISIONS

MODEL A Certified investment settlements

(1) The legislation shall establish or designate a Settlement Authority, define its subject-matter and financial remit, and require published appointment, recusal and quorum rules. The Authority shall obtain legal advice independent of the negotiating team and of any agency whose conduct is materially in issue. An interested agency may supply evidence and assist implementation planning without controlling certification of its own conduct.

(2) Before the settlement is concluded, the Authority may certify an identified final text after verifying the authentic decisions of every institution whose approval is required for its conclusion and the legal basis of each promised act. The certificate shall identify the parties, authorised signatories, approving decisions, applicable legislation, payment authority, conditions of performance and any separately authorised immunity waiver. It shall distinguish authority to incur liability from authority to disburse funds and identify any later appropriation on which payment depends. A material amendment requires renewed certification.

(3) Certification supplies no missing constitutional or statutory power, appropriation or approval. An agreement requiring a later legislative or regulatory act shall identify that act and the consequences of its non-occurrence. The Authority may certify present competence to undertake the stated conditional obligations, without certifying the future act as accomplished or committing an independent decision-maker to an unlawful outcome.

(4) In proceedings governed by this legislation, an authentic certificate is rebuttable evidence that the identified decisions were made and the stated requirements examined. The State bears the burden of establishing a defect in a matter so recorded, without alteration of non-parties' procedural rights or burdens. A court shall not invalidate the settlement solely for an internal organisational irregularity where the legally competent institution actually approved its terms, the irregularity could not materially affect the decision or a mandatory safeguard, and the investor neither knew of it nor disregarded an objectively apparent defect. This rule applies insofar as the constitution permits that legislative consequence.

(5) Judicial review remains available, with the consequence of an immaterial organisational irregularity governed by subsection (4). Certification does not restrict review of substantive competence, fiscal legality, corruption, fraud, material deception, mandatory procedure or third-party rights. The investor shall receive notice and an opportunity to be heard in proceedings challenging the certificate. Interim suspension and final decisions shall be recorded promptly in the public register with their reasons and effect. A later administration may not revoke certification merely because it prefers different commercial terms.

(6) An official acting honestly, within lawful powers and prescribed procedure, after disclosing material information and considering competent independent advice, shall incur no personal civil, disciplinary or administrative liability solely because the settlement later appears financially disadvantageous. This protection excludes dishonesty, corruption, undisclosed benefit, deliberate concealment, gross negligence, reckless disregard of legal limits and serious procedural misconduct. Certification shall not prevent investigation or displace criminal liability otherwise established by law.

(7) The Authority shall publish the certificate, its legal basis and reasons sufficient to explain the public purpose, principal fiscal commitments and treatment of affected interests, subject to specific lawful redactions. It shall record completion of required consultation, participation and environmental or other assessment. Privileged advice and

[37] Decree No 323/2026/NĐ-CP (n 29) art 23(1)(e), (2).

confidential mediation exchanges may remain protected. Certification neither extinguishes non-parties' rights nor establishes an appropriation, licence or immunity waiver. An existing approval instrument satisfying these requirements may serve as the certificate.

Subsections (4) and (5) allow a court to examine whether the competent institution approved the terms and whether an omitted step protected participation or another mandatory interest, while limiting the consequences of a defect found to be immaterial. Omission of a legally required community hearing would therefore remain open to challenge even if officials characterised it as internal administration. Subsection (6) applies a corresponding distinction to official responsibility: honest judgement about an uncertain litigation outcome receives the specified protection, whereas corruption remains investigable and subject to the liability established by law.

7 TREATY PROTECTION AND FOREIGN ENFORCEMENT

Once relief is sought abroad, the enforcing court must select the law applicable to the disputed question, determine the significance of the certificate under that law and apply the Singapore Convention's conditions where relevant. Article 7 preserves more favourable rights available under the law or treaties of the State where relief is sought. An investor relying on a bilateral investment treaty must therefore establish any necessary direct effect, implementation, standing and jurisdiction even in a treaty party's courts, and cannot treat article 7 as extending that treaty's obligations to a third State.[38]

An investment treaty can address the respondent State's conduct by specifying the authority objections it undertakes not to advance. The proposed undertaking protects reliance on an actual approval against limited organisational defects, while preserving objections based on missing substantive powers. Its usefulness to the investor also depends on an express remedy for breach. Model B accordingly creates a confined claim that remains distinct from ordinary enforcement of the settlement and from the underlying dispute released by it.

MODEL B Certified settlement undertaking

(1) Each Party shall notify the other of the authority designated under its law to certify investment settlements, the legislation conferring competence and the authority's remit. The notification, subsequent changes and an authentication register shall be publicly available. A certificate must identify the final settlement text and the decisions certified.

(2) Where an investor of the other Party concludes a settlement with a Party in reasonable reliance on an authentic certificate issued within the notified authority's remit, that Party shall not resist the agreement solely by invoking an internal organisational irregularity in a certified approval which the legally competent institution actually gave. The undertaking applies where the irregularity could not materially affect the decision or a mandatory safeguard and the investor neither knew of it nor disregarded an objectively apparent defect. A subsequent administration's disagreement with the commercial merits shall not constitute an authority objection.

(3) Paragraph (2) does not preclude reliance on absence of substantive constitutional or statutory competence, legally necessary fiscal authority, fraud, corruption, material deception, material breach of mandatory procedure or non-parties' rights. It does not restrict an enforcing court's powers concerning public policy, subject-matter settleability or other mandatory requirements. A later domestic judgment shall be assessed by its grounds and through the law of the forum; its existence alone does not determine breach of paragraph (2).

(4) Each Party shall provide a domestic judicial remedy for breach of paragraph (2). An investor of the other Party may submit a claim alleging that breach to arbitration under the UNCITRAL Arbitration Rules after the respondent has received 90 days' written notice specifying the certificate, conduct and relief sought. Each Party consents to such arbitration; the investor accepts that offer by commencing arbitration in accordance with those Rules. Jurisdiction is confined to breach of paragraph (2). The tribunal may grant declaratory relief and compensation for proven loss caused by the breach, preventing double recovery. It shall not direct legislation, appropriation or a regulatory decision. Release of the underlying dispute does not extinguish this undertaking unless the release expressly identifies it.

(5) The settlement shall identify its governing law and may reproduce paragraph (2) as an express contractual covenant, whose effect remains subject to the applicable law. This Article creates no obligation for a third State and determines neither commercial character nor the effect of a Singapore Convention reservation. Certification itself waives no immunity from adjudication or measures against State property. The effects of paragraph (4)'s arbitration consent and any separately authorised consent or waiver are determined under the forum's law. Arbitration consent does not of itself authorise measures of constraint against State property.

Paragraph (4) confines the new arbitration to breach of the certified settlement undertaking. Under this arrangement, the parties can release the underlying dispute without preserving the original arbitration solely to obtain an award on agreed terms, although the State's prohibited objection may generate a further proceeding. Compensation remains confined to proven loss caused by that objection. Ordinary non-payment does not itself establish the distinct breach, and an error in certification does not by itself create an indemnity.

[38] Singapore Convention (n 11) art 7; VCLT (n 20) art 34.

Where the undertaking is reproduced as a contractual covenant, the investor must establish the validity of the settlement, the official's power to undertake the covenant, its legal reach and the remedy available in the chosen forum. A valid covenant may support an answer to repudiation or a claim for breach under its governing law, subject to the enforcing forum's mandatory rules. Article 5(1)'s allocation of the burden of proof provides no express treaty licence for blanket prospective waiver.[39]

8 A RESERVATION LINKED TO CERTIFICATION

Article 8(1)(a) permits a State to exclude agreements involving itself, its governmental agencies or persons acting on behalf of those agencies 'to the extent specified in the declaration'. That formulation plausibly permits a classification based on certification, although the deposited reservations examined supply no precedent establishing its acceptance. Defining the exception by authentic issuance for an identified settlement text would keep the threshold inquiry separate from substantive validity. If the exception instead depended on the certificate's legal correctness, the authority dispute would recur at the threshold of Convention application.[40]

MODEL C Proposed declaration under article 8(1)(a)

> Pursuant to article 8(1)(a), [State] declares that it shall not apply the Convention to settlement agreements to which [State], a governmental agency of [State], or a person acting on behalf of such an agency is a party, except agreements for which, at conclusion, an authentic authority certificate identifying the final settlement text has been issued by [named authority] under [identified enactment and version]. The certificate shall identify the parties, date and certified text. Its issuance shall be capable of public authentication. This exception concerns the existence and authenticity of certification; it determines neither substantive validity nor satisfaction of the Convention's other requirements or any immunity issue. Changes to this reservation take effect only in accordance with articles 8 and 9.

Before deposit, the State would have to complete the bracketed particulars and provide for public authentication of issuance. A temporary failure of the register's website should leave the agreement's coverage unaffected. An authentic but erroneous certificate would leave the agreement subject to article 5. An uncertified agreement would fall outside the defined exception even though its negotiators might possess full authority and the agreement might remain enforceable through another route.

The classification directly modifies the reserving State's undertaking to apply the Convention, while its consequences for proceedings elsewhere depend on interpretation of the Convention, applicable reservation law and the forum's implementation. Articles 20 and 21 of the Vienna Convention inform the assessment of any reciprocal effect. The United Kingdom's consultation response records concern over precisely that possibility.[41] The reservation remains an optional means of limiting coverage: a State willing to apply the Convention to all qualifying public settlements needs no such exclusion.

Under article 8, a reservation made after entry into force takes effect six months after deposit, and withdrawal has the same six-month period. A reservation made on signature requires confirmation upon ratification, acceptance or approval. Article 9 makes the relevant application prospective for settlement agreements concluded after entry into force of the Convention, reservation or withdrawal for the Party concerned.[42] Within the proposed model, the certificate must also exist when the settlement is concluded. Later authentication may prove that issuance occurred in time, but later issuance cannot satisfy the condition retrospectively; nor can a change in domestic designation rules silently alter the deposited category for earlier agreements.

9 IMMUNITY AND LAWFUL PERFORMANCE

Even after a settlement has been held valid, recovery against State property depends on the forum's separate rules on adjudication, pre-judgment constraint and post-judgment execution. Articles 7 and 18–21 of the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property reflect these distinctions, although the Convention had not entered into force by the cut-off so those immunity provisions were not operative treaty obligations.[43]

Domestic legislation gives the distinctions practical effect. Section 13 of the United Kingdom's State Immunity Act 1978 distinguishes consent to jurisdiction from consent to execution and preserves particular rules for commercial-use property, while section 14(4) separately protects central-bank property. In the United States, the Foreign Sovereign Immunities Act separates jurisdictional exceptions from the immunity of property under section 1609, with further conditions and protections

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39 Singapore Convention (n 11) art 5(1)–(2); UNCITRAL, *Guide* (n 12) paras 148–152.

40 Singapore Convention (n 11) art 8(1)(a), (2); UNCITRAL, 'Report of Working Group II on its sixty-eighth session' (19 February 2018) UN Doc A/CN.9/934, paras 72–79, 93 https://documents.un.org/api/symbol/access?l=en&s=A/CN.9/934&t=pdf; UN Treaty Collection (n 18), declarations.

41 VCLT (n 20) arts 20–21; Ministry of Justice, 'Government response to the consultation on the United Nations Convention on International Settlement Agreements Resulting from Mediation' (2 March 2023) paras 4.68, 6.8 https://www.gov.uk/government/consultations/the-singapore-convention-on-mediation/outcome/government-response-to-the-consultation-on-the-united-nations-convention-on-international-settlement-agreements-resulting-from-mediation-new-york-20.

42 Singapore Convention (n 11) arts 8(3)–(5), 9 and 14.

43 United Nations Convention on Jurisdictional Immunities of States and Their Property (adopted 2 December 2004, not in force at the cut-off) UNGA Res 59/38, annex, arts 7, 18–21, 30 https://legal.un.org/ilc/texts/instruments/english/conventions/4_1_2004.pdf; UN Treaty Collection, ch III.13, status https://treaties.un.org/Pages/ShowMTDSGDetails.aspx?chapter=3&lang=en&mtdsg_no=III-13&src=UNTSONLINE&tabid=2.

specified in sections 1610 and 1611. Even where consent is express, the creditor must satisfy the remaining statutory requirements for attaching a particular asset.[44]

The International Court of Justice also distinguished execution immunity from jurisdictional immunity in *Jurisdictional Immunities of the State*. While declining to decide whether every aspect of article 19 of the 2004 Convention represented customary law, it identified minimum conditions relevant to measures against State property.[45] A certificate should accordingly identify any immunity waiver, its legal basis and the signatory's authority, leaving the availability of particular assets and the requirements for pre-judgment attachment to the applicable immunity rules. Valid arbitration consent, including under the proposed treaty clause, may engage statutory arbitration exceptions without a separately worded jurisdictional waiver, while execution requires its own inquiry.[46] Before the underlying claim is released, the parties should identify realistic payment arrangements and potentially available commercial assets. Where performance requires an independent regulatory decision, conditional release, staged payment or an agreed lawful monetary alternative can allocate the risk of refusal, given that an enforcement order cannot supply a power which the regulator lacks.

10 OPERATION AND PUBLIC ACCOUNTABILITY

The payment and performance arrangements considered above also require an account of the public power exercised in approving them. Certification should identify who approved the bargain, on what authority and for what public purpose, with reasons sufficient to explain its principal fiscal consequences. The UNCITRAL Guidelines recognise the interests in public scrutiny and in protecting privileged advice and mediation communications.[47] Although a government may represent the public in negotiations, its participation establishes neither that affected communities were heard nor that they surrendered their own rights. Publication, completion of required consultation and access to review therefore form part of the certificate's credibility. The comparative materials support the need to identify lawful public authority; the additional safeguards remain proposed institutional choices for adoption within the relevant legal system. The consequences become apparent as certified settlements are performed, challenged and enforced in the following seven situations.

Consider first a successor government that repudiates a lawfully approved monetary settlement after an election. The investor may invoke the certificate in contractual or Convention proceedings, subject to the applicable scope, jurisdiction and refusal grounds. The separate treaty claim turns on whether the State advances an authority objection prohibited by Model B. Ordinary non-payment does not itself establish that distinct breach.

The second situation, certification that incorrectly records a necessary appropriation, turns on the distinction between a prohibited objection and a missing substantive approval. Because Model A cannot supply the missing fiscal act, the applicable law must determine whether its absence affects the undertaking's validity or only present disbursement. Model B preserves the substantive fiscal objection. Any further contractual or treaty claim must rest on its own legal basis; certification supplies no automatic indemnity.

Third, even where a certificate's issuer and signature are authentic, bribery or material deception in its procurement remains subject to the domestic integrity exceptions and treaty carve-outs. Article 5 and the applicable law govern foreign relief. Authentication establishes the document's source, while the legality of its procurement and of the underlying bargain remains open to examination.

In the fourth situation, the competent institution genuinely approved the terms but an undisclosed organisational step was omitted. Under Model A, the court would examine the legal importance of that omission: a harmless internal irregularity may fall within the proposed rule, whereas a breach affecting a mandatory safeguard or third-party participation remains challengeable. Protection is also unavailable where the investor knew of the defect or disregarded an objectively apparent irregularity.

Fifth, if the investor seeks enforcement in a Convention State outside the investment treaty, the forum must determine the significance of the certificate and any contractual covenant under the law it selects. Article 7 gives the bilateral undertaking no automatic domestic effect there. A refusal of relief by that court would not by itself establish a breach of Model B by the respondent State.

The sixth situation arises when an independent regulator declines a promised permit on lawful statutory grounds. The settlement's conditions, retained claims and any lawfully authorised alternative determine the parties' positions, since certification cannot compel the permit's issue and the proposed treaty tribunal cannot require the regulator to exceed its powers. The terms governing that refusal consequently matter at the point when the investor agrees to release its claims.

Seventh, even after obtaining relief, an investor identifying only protected diplomatic or central-bank assets must satisfy the enforcing State's immunity rules concerning any consent and the property's legal character. Certification supplies no execution exception. Attention to payment arrangements before release remains necessary because the only identified assets may be unavailable despite an otherwise enforceable settlement.

Across these situations, the State makes its approval process ascertainable and accepts limited responsibility for opportunistic reliance on harmless internal defects. The investor receives a usable record and a defined undertaking, while retaining the risk that mandatory law or protected property restricts the remedy. People outside the bargain retain the

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[44] State Immunity Act 1978 (UK), ss 13(2)–(5), 14(4) https://www.legislation.gov.uk/ukpga/1978/33/section/13/data.html; Foreign Sovereign Immunities Act, 28 USC §§ 1609, 1610(a)(1), (c)–(d), 1611(b) https://uscode.house.gov/us/usc/t28/s1610/.

[45] *Jurisdictional Immunities of the State (Germany v Italy: Greece intervening)* (Judgment) [2012] ICJ Rep 99, paras 113–118, especially 117 https://api.icj-cij.org/sites/default/files/case-related/143/143-20120203-JUD-01-00-EN.pdf.

[46] State Immunity Act 1978 (n 44) ss 9, 13(3); 28 USC § 1605(a)(1), (2), (6) https://uscode.house.gov/us/usc/119-136/t28/s1605/; ICSID Convention (n 9) art 55.

[47] UNCITRAL, *Guidelines* (n 2) paras 36–39; Kessedjian and others (n 3) section 5(B).

procedures and substantive rights which the mediating parties had no authority to surrender. Those retained rights are part of the proposed allocation of risk, including when their exercise prevents performance on the terms the investor expected.

11 CONCLUSION

Where settlement authority is distributed among ministers, legislatures and regulators, the investor's reliance depends on the legal effect of decisions made by each. Institutional mediation rules can bring that distribution of authority into the negotiations, and the Singapore Convention can assist enforcement of a qualifying agreement. The enforcing forum must nevertheless determine whether the requisite domestic authority existed and what consequences follow from any defect.

That inquiry defines the useful work of certification. An authenticated record should identify approvals and outstanding conditions, carry rebuttable evidential force in domestic proceedings and protect reliance against the specified class of immaterial internal irregularities. Treaty parties may reinforce that protection through an express undertaking and a remedy for its breach. Although contractual incorporation may assist enforcement elsewhere, its effect remains governed by the applicable law. The optional certificate-based reservation likewise remains an untested means of defining the excluded class of government settlements.

The assurance rests on powers actually exercised and conditions openly recorded. A certificate may document an existing appropriation or regulatory approval, or disclose that lawful performance awaits a further public act. Courts must remain able to examine constitutional competence, corruption and the rights of affected people. With those questions preserved, certification can make the approval history usable in enforcement proceedings and protect reliance against the defined internal defects, without committing public institutions to acts beyond their powers.