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## Chapter 684

### Part II

#### **§684.0050** Short title

This Part may be cited as the “Florida International Commercial Conciliation Act”

#### **§ 684. 0051** State policy; resolution of disputes by Conciliation

It is the policy of this state to encourage parties to an international commercial agreement or transaction which qualifies for arbitration or Conciliation pursuant to Fla. Stat. Section 684.001 et seq. to resolve disputes arising from such agreements or transactions through Conciliation.

#### **§ 684. 0052** Scope of application and definitions

1. This Part applies to international commercial conciliation.

For the purposes of this Part (or Chapter) the following definitions apply:

2. “Conciliator” means a sole Conciliator or two or more Conciliators, as the case may be.

3. “Conciliation” means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons (“the Conciliator”) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The Conciliator does not have the authority to impose upon the parties a solution to the dispute.

4. A Conciliation is international if:

- (a) The parties to an agreement to conciliate have, at the time of the conclusion of that agreement, their places of business in different countries; or

- (b) The country in which the parties have their places of business is different from either:

- (i) The country in which a substantial part of the obligations of the commercial relationship is to be performed; or

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(ii) The country with which the subject matter of the dispute is most closely connected.

5. For the purposes of this section:

(a) If a party has more than one place of business, the place of business is that which has the closest relationship to the agreement to conciliate;

(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

6. This Law also applies to a commercial Conciliation when the parties agree that the Conciliation is international or agree to the applicability of this Part.

7. The parties are free to agree to exclude the applicability of this Part.

8. Subject to the provisions of paragraph 9 of this section, this Part applies irrespective of the basis upon which the Conciliation is carried out, including agreement between the parties whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent governmental entity.

9. This Part does not apply to:

(a) Cases where a judge or an arbitrator, in the course of judicial or arbitral proceedings, attempts to facilitate a settlement.

#### **§ 684.0053. Interpretation**

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

#### **§ 684.0054. Variation by agreement**

Except for the provisions of s. 684.0053 and s. 684.0057, paragraph 3, the parties may agree to exclude or vary any of the provisions of this Part.

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**§ 684.0055.** Commencement of Conciliation proceedings

1. Conciliation proceedings in respect of a dispute that has arisen commence on the day on which the parties to that dispute agree to engage in Conciliation proceedings.

2. If a party that invited another party to conciliate does not receive an acceptance of the invitation within thirty 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 conciliate.

**§684.0056.** Number and appointment of Conciliators

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

2. The parties shall endeavor to reach agreement on a Conciliator or Conciliators, unless a different procedure for their appointment has been agreed upon.

3. Parties may seek the assistance of an institution or person in connection with the appointment of Conciliators. In particular:

(a) A party may request such an institution or person to recommend suitable persons to act as Conciliator; or

(b) The parties may agree that the appointment of one or more Conciliators be made directly by such an institution or person.

4. In recommending or appointing individuals to act as Conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial Conciliator and, where appropriate, shall take into account the advisability of appointing a Conciliator of a nationality other than the nationalities of the parties.

5. When a person is approached in connection with his or her possible appointment as Conciliator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A Conciliator, from the time of his or her appointment and throughout the Conciliation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.

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**§684.0057. Conduct of Conciliation**

1. The parties are free to agree, by reference to a set of rules or otherwise, on the manner in which the Conciliation is to be conducted.

2. Failing agreement on the manner in which the Conciliation is to be conducted, the Conciliator may conduct the Conciliation proceedings in such a manner as the Conciliator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.

3. In any case, in conducting the proceedings, the Conciliator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.

4. The Conciliator may, at any stage of the Conciliation proceedings, make proposals for a settlement of the dispute.

5. The Conciliator(s) shall conduct the Conciliation in this state in such a manner as they consider appropriate, taking into account the circumstances of the case and the wishes of the parties.

**§ 684. 0058. Communication between Conciliator and parties**

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

**§684.0059. Disclosure of information**

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

**§684.0060. Confidentiality**

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

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**§684.0061.** Admissibility of evidence in other proceedings

1. A party to the Conciliation proceedings, the Conciliator and any third person, including those involved in the administration of the Conciliation proceedings, shall not in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding any of the following:

(a) An invitation by a party to engage in Conciliation proceedings or the fact that a party was willing to participate in Conciliation proceedings;

(b) Views expressed or suggestions made by a party in the Conciliation in respect of a possible settlement of the dispute;

(c) Statements or admissions made by a party in the course of the Conciliation proceedings;

(d) Proposals made by the Conciliator;

(e) The fact that a party had indicated its willingness to accept a proposal for settlement made by the Conciliator;

(f) A document prepared solely for purposes of the Conciliation proceedings.

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

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

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

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

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**§684.0062. Termination of Conciliation proceedings**

The Conciliation proceedings are terminated:

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

**§684.0063. Conciliator acting as arbitrator**

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

**§684.0064. Resort to arbitral or judicial proceedings**

Where the parties have agreed to conciliate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred arbitral or judicial proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to conciliate or as a termination of the Conciliation proceedings.

**§684.0065. Enforceability of settlement agreement**

If the parties conclude an agreement settling a dispute prior to the commencement of arbitration

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proceedings or before the arbitral tribunal is constituted, that settlement agreement is binding and enforceable as follows:

- (1) If the result of the Conciliation is reduced to writing in the form of an arbitral award on agreed terms and signed by the parties, the written agreement shall, with the consent of the parties, state that it is an award. Such an award shall be treated as an arbitral award rendered by an arbitral tribunal duly constituted in and pursuant to the laws of this state, and shall have the same force and effect as a final award in arbitration.
- (2) The award shall be deemed to be made at the place in this state where the Conciliation was successfully concluded. Such an award may be on agreed terms under § 684.0041, unless the parties have agreed that no reasons are to be given. The award shall be signed by the Conciliator and shall have the same status and effect as any other award on the merits of the case.

#### **§684.0066** Non-liability of Conciliator

1. The Conciliator(s) may assist the parties in preparing a settlement agreement. The parties and their representatives, however, remain fully responsible for the form and content of any settlement agreement and the mediator shall have no liability for the form of the agreement, or in connection with any term or terms that the settlement agreement contains or fails to include.
2. Conciliator(s) serving under Sections 684.0050-59 shall have judicial immunity in the same manner and to the same extent as a judge.
3. The Conciliator does not have immunity if he or she acts in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

#### **§ 684.0067.** Nonwaiver of rights or remedies by submission to Conciliation

By submitting to Conciliation, no party shall be deemed to have waived any rights or remedies which that party would have had if Conciliation had not been initiated, other than those set forth in any settlement agreement which results from the Conciliation.

#### **§ 684.0068.** Equality of costs among parties; expenses

All costs of the Conciliation shall be borne equally by the parties unless the parties agree otherwise. All other expenses incurred by a party shall be borne by that party.

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## Procedure Governing the Enforcement of International Commercial Arbitration Awards

(additional section to ch. 684 - FIAA).

### Definitions:

“Petitioner” means the party seeking to confirm or vacate the award.

“Respondent” means the party responding to the petition to confirm or vacate the award.

This section only applies to international commercial arbitration awards governed by s. 648.0001 *et. seq.*

1. A petition to confirm an award shall be served and filed not later than three years after the date of service of a signed copy of the award on the petitioner. A petition to vacate an award or to correct an award shall be served and filed not later than 90 days after the date of the service of a signed copy of the award on the petitioner.
2. A response requesting that an award be vacated or that an award be corrected shall be served and filed not later than 3 months after the date of service of the petition to confirm the award upon the respondent.
3. No petition may be served and filed under this chapter until at least 10 days after service of the signed copy of the award upon the petitioner.
4. If an application is made to the arbitrators for correction of the award, a petition may not be served and filed under this chapter until the determination of that application.
5. If an application is made to the arbitrators for correction of the award, the date of the service of the award for the purposes of this article shall be deemed to be whichever of the following dates is the earlier:
  - (a) The date of service upon the petitioner of a signed copy of the correction of the award or of the denial of the application.
  - (b) The date that such application is deemed to be denied under.



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**Legislative Proposal – Limited State 28 U.S.C. § 1782 Analogue**

A bill to be entitled

An act relating to judicial assistance to foreign and international arbitral tribunals and to litigants before such tribunals; section 1 amending s. 684.0002, F.S.; sections 2 – 4 to be added as a new provision to Chapter 684, F.S. (potentially s. 684.0070); providing an effective date.

**Section 1.** Section 684.0002(2), Fla. Stat., is amended to read; “(2) This chapter, except ss. 684.0009, 684.001, 684.0026, 684.0027, 684.0028, 684.0047, ~~and~~ 684.0048, and 684.0070, applies only if the place of arbitration is in this state.”

**Section 2.** It is the express intent of the legislature to provide an effective means for arbitral tribunals presiding over an international commercial arbitration, litigants before such tribunals, and interested persons to obtain judicial assistance in conducting discovery and gathering evidence for use in such international commercial arbitrations.

**Section 3.** Unless otherwise agreed to by a person seeking an order under this section, a court may order a person who resides or is found in the state of Florida, or is otherwise subject to personal jurisdiction in the state of Florida to give his or her testimony or statement or to produce a document or other thing for use in an international commercial arbitration, as defined by s. 684.0002(3), provided, however, that the place of arbitration is not in the United States, its territories, or its possessions. The order may be made pursuant to an application for judicial assistance by the arbitral tribunal itself or any interested person to such arbitration and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. The person appointed shall have the power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or in part the practice and procedure of the arbitral tribunal, for the taking of testimony or statement, or producing a document or other thing. To the extent the order does not prescribe otherwise, the applicable practice and procedure, including any motion practice, shall be in accordance with the laws of the state of Florida, the Florida Rules of Civil Procedure, and the administrative orders and local rules of the court issuing the order.

**Section 4.** This chapter does not preclude a person within the state of Florida from voluntarily giving his or her testimony or statement, or producing a document or other thing, for use in an international commercial arbitration before any person and in any manner acceptable to him or her.

**Section 5.** If an application for judicial assistance under this section is made by an arbitral tribunal, or a majority of arbitrators to such tribunal, then to the extent this section conflicts with the provisions for arbitrators to summon or compel the attendance of witnesses to testify or

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produce any book, record, document, or paper under Title 9 of the United States Code, Title 9 shall apply.