

A Convention on the enforcement of iMSAs AND a new Model Law

Kluwer Mediation Blog
March 16, 2018

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Please refer to this post as: Nadja Alexander (Editor), 'A Convention on the enforcement of iMSAs AND a new Model Law', Kluwer Mediation Blog, March 16 2018, <http://mediationblog.kluwerarbitration.com/2018/03/16/convention-enforcement-imsas-new-model-law/>

During its 68th session from 5 – 9 February in New York UNCITRAL Working Group II (Dispute Settlement) concluded its work on the preparation of an instrument or instruments on the enforcement of international commercial settlement agreements arising from mediation. In the mediation community we often refer to such settlements as (international) mediated settlement agreements or iMSAs. The deliberations on this task commenced in 2015 subsequent to a proposal by the United States. The session were held in Vienna and New York and were chaired by Singaporean delegate Natalie Morris-Sharma.

The Working Group reached consensus on two instruments: a Convention and a Model Law. The choice to move ahead with two instruments rather than one (Convention or Model Law) is a tribute to the determination and creativity of the Working Group. The current mandate began with a Working Group with differing views among the delegates in relation to whether there was a need for an instrument, and the preference for a Model Law over a Convention. However, the Working Group quickly found a common commitment to move forward to formulate both a Model Law and Convention in tandem. Showing an ability to move past differences in technical detail, the desired fulfilment of the mandate was achieved.

So the mediation community is now very close to getting its own "New York Convention" in addition to a Model Law (amending the 2002 Model Law on International Commercial Conciliation to include enforcement provisions and also changing the term "conciliation" to "mediation"). Many in the international mediation community are pinning their hopes on these instruments, and in particular the Convention, to do for mediation what the New York Convention is said to have done for arbitration: to lend mediation the regulatory robustness necessary to become a major international dispute resolution process in its own right. In a 2015 survey conducted by Stacie Strong 74% of respondents indicated they believed that an international treaty concerning the international enforcement of settlement agreements arising out of international commercial mediation would increase the number of such mediations in their home jurisdictions.

But let's not get ahead of ourselves. We are not quite there yet. In terms of next steps, the Convention must be finalised by the UNCITRAL Commission, and then adopted by the UN General Assembly. It is envisaged that these requirements could be completed by as early as the end of this year. It then remains for those jurisdictions wishing to participate in the multi-lateral Convention to officially sign on. In this regard, Singapore has offered to host a signing ceremony for the Convention – an offer that was fully supported by Working Group II.

At the Kluwer Mediation Blog, we will keep you informed of progress on the Convention and the Model Law resulting from the work of UNCITRAL Working Group II.