



Staff Memorandum

EXECUTIVE COMMITTEE Agenda Item # 20

REQUESTED ACTION: Approval of recommendations by the Committee on Resolutions for the implementation of recommendations contained in the report of the Task Force on New York Law in International Matters.

Attached is a chart from the Committee on Resolutions that outlines a plan for implementing recommendations contained in the report of the Task Force on New York Law in International Matters.

The Task Force's report was created to educate lawyers, business leaders, and investors about the benefits of selecting New York law and a New York forum for international dispute resolution. The House of Delegates and the Executive Committee approved the Task Force's report in June 2011.

According to the attached chart, the Committee on Resolutions recommends the creation of an informal working group to coordinate aspects of the plan that involve joint implementation. The working group would be composed of representatives of the following sections: (1) Business Law Section; (2) Commercial and Federal Litigation Section; (3) Dispute Resolution Section; and (4) International Section. (These sections are the ones that are most commonly identified in the chart as "implementing entities.")

The Committee on Resolutions also recommends involving other NYSBA and non-NYSBA entities with respect to implementation. These entities would be welcome to designate representatives to the informal working group as well.

The report will be presented at the meeting on November 4, 2011 by David P. Miranda in his capacity as the chair of the Committee on Resolutions.



NEW YORK STATE BAR ASSOCIATION

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COMMITTEE ON RESOLUTIONS

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Re: Task Force on New York Law in International Matters

Dear Executive Committee Members:

For your consideration, enclosed please find a chart showing the Committee on Resolutions' recommendations for the implementation of recommendations contained in the report of the Task Force on New York Law in International Matters. The committee prepared these recommendations at the request of the Executive Committee.

Sincerely,

David P. Miranda

Enclosure

New York State Bar Association
Resolutions Committee
Implementation of Recommendations Contained in the
Report of the Task Force on New York Law in International Matters

We recommend that an informal working group be formed to coordinate the many instances of joint implementation that are identified below. The working group would be composed of one or more representatives from each of the following entities (which are the ones that are most commonly listed below): Business Law Section; Commercial and Federal Litigation Section; Dispute Resolution Section; and International Section. Participation in the working group also would be open to representatives from any other section or committee listed below that wishes to participate.

Recommendations	Implementing Entities
1. NYSBA should continue to investigate and support the establishment of a permanent Center for International Arbitration in New York -- in collaboration with New York City officials, the Urban Development Corporation, and major real estate developers. (3, 39, 45)	• Dispute Resolution Section • International Section • New York City Bar² • New York County Lawyers' Association
2. NYSBA should support the joint proposal by JAMS and the ICDR to make available for international arbitration proceedings in New York approximately fifty hearing rooms in their respective offices. (45)	• Dispute Resolution Section • International Section • New York City Bar • New York County Lawyers' Association
3. NYSBA should distribute the Task Force Report (via paper copies and the Internet) and encourage better coordination regarding relevant issues among the following: (a) U.S. and foreign law firms with significant international practices;	• Resolutions Committee

¹ Fuller explanations of these recommendations can be found in the Final Report of the New York State Bar Association's Task Force on New York Law in International Matters at the designated pages (listed in parentheses). The report can be found at the following link: www.nysba.org/InternationalReport.

² We will reach out to New York City Bar and other non-NYSBA entities to invite them to participate in implementing Task Force recommendations.

(b) the Association of Corporate Counsel and similar groups; (c) New York bar associations (New York City Bar, New York County Lawyers' Association, and bar associations connected to NYSBA via the New York State Conference of Bar Leaders listserve); (d) international and foreign bar associations; (e) business groups and associations; (f) the judiciary; (g) law school deans, head librarians, and professors of relevant subjects; (h) New York City officials; (i) relevant NYSBA groups (International Section members; Dispute Resolution Section members; Corporate Counsel Section members; and non-resident NYSBA members (outside the U.S.)); (j) New York State-Federal Judicial Council; and (k) International Arbitration Club of New York. (42, 43, 45, 46)	
4. NYSBA should support establishing a dedicated reporter to publish (periodically and in an accessible format) decisions by New York courts in international business disputes and matters of significance to international arbitration. (45)	• Business Law Section • Dispute Resolution Section • International Section
5. NYSBA should encourage institutions in New York providing arbitration services (e.g., JAMS, CPR, ICDR, and ICC) to make better known their internal appeal mechanism for parties who agree upon the procedure. (45)	• Dispute Resolution Section • International Section
6. NYSBA should support the creation of an independent "Council of New York International Law Firms" affiliated with NYSBA to promote and advance New York law, which could possibly commit greater financial resources to the Task Force's objectives than a bar association. (43, 45) (Note: please consider Crowell & Moring LLP for participation in the council, pursuant to a request by the firm to NYSBA.)	• Business Law Section • Commercial and Federal Litigation Section • Dispute Resolution Section • International Section
7. NYSBA should support the adoption of the Uniform Fraudulent Transfer Act. (18-20, 46)	• Committee on Federal Legislative Priorities

	• Real Property Law Section
8. NYSBA should support the adoption of the Revised Uniform Arbitration Act for domestic arbitration. (18, 20-21, 46)	• Committee on Legislative Policy • Dispute Resolution Section
9. NYSBA should work with the Urban Development Corporation, major real estate developers, and governmental bodies such as the New York State Economic Development Corporation and the Office of the U.S. Trade Representative to publicize the conclusions of the Task Force domestically and overseas. (43, 46)	• Resolutions Committee
10. NYSBA should explore with the New York Judiciary policies, practices, and rules to improve the administration of justice in relation to international disputes, including but not limited to the following: (a) the creation of a degree of judicial specialization, such as a designation of particular judges as specialized chambers to deal with international arbitration matters; (b) the creation of a “rocket docket” in the Commercial Division for expedited litigation for international arbitration-related disputes; and (c) the use of “judicial referee” decisions by New York judges on issues presented to them by foreign courts, rather than by litigants, that require interpretation of New York law. For example, New York and New South Wales, Australia, entered into a Memorandum of Understanding in 2010 permitting such judicial referee decisions. (3, 26-29, 38, 46)	• Commercial and Federal Litigation Section • Dispute Resolution Section • International Section • Judicial Section
11. NYSBA should encourage international bar association sponsors to invite New York judges to conferences abroad to speak about New York law and the New York courts. (47)	• International Section • Judicial Section
12. NYSBA should develop programs to highlight that the New York international arbitration community follows the “international standard” with regard to discovery,	• Commercial and Federal Litigation Section

the mix of common law and civil law characteristics that arbitration allows, the financial and commercial expertise of New York arbitrators and advocates, the significant advantages of mediation, the stability of New York law, and the advantages of New York as a forum for resolution of international litigation. (42, 47)	• Dispute Resolution Section • International Section
13. NYSBA should support -- in conjunction with other bar groups -- conferences, programs, presentations, and webcasts to present the conclusions of the Report and to discuss the advantages of New York law and New York as a forum for dispute resolution, involving the following: (a) the state judiciary; (b) New York federal judges; (c) the general counsels of multinational corporations based in the New York area; (d) transactional lawyers in global law firms in New York; (e) foreign and international bar associations; (f) in-house counsel organizations; and (g) American Chambers of Commerce abroad. (42-43, 47)	• Business Law Section • Commercial and Federal Litigation Section • Committee on Continuing Legal Education • Corporate Counsel Section • Dispute Resolution Section • International Section • Judicial Section
14. NYSBA should recommend and develop, in conjunction with overseas chapters of the International Section and other New York bar associations, continuing legal education (CLE) programs to promote the Task Force objectives, and should explore the following: (a) a CLE program to train New York lawyers in the substance and culture of commercial international law and practice (NYSBA as a "School of International Practice"), built on the NYSBA International Section's "Fundamentals" of International Practice; (b) programs that highlight the advantages of New York law in international agreements as well as the benefits of selecting New York as the forum for international dispute resolution; and (c) CLE programs for international and out-of-state lawyers in locations where there	• Committee on Continuing Legal Education • International Section • New York City Bar • New York County Lawyers' Association

are substantial international practices (e.g., London, Paris, Geneva, Rio de Janeiro, São Paulo, and Hong Kong). (43-44, 47)	• Business Law Section • Commercial and Federal Litigation Section • Committee on Federal Legislative Priorities • Dispute Resolution Section • International Section 15. NYSBA should investigate and develop the use of “ambassadors” (such as the president and officers of NYSBA and other New York bar associations) to continue spreading the message of the Task Force. On this front, NYSBA should coordinate with the following: (a) New York Trade Representatives abroad (currently 16 countries); (b) commercial officers of U.S. consulates abroad; (c) the American Chambers of Commerce abroad; (d) international and local business groups; (e) international bar and law associations; and (f) international meetings of jurists. Furthermore, NYSBA representatives should participate in meetings of UNCITRAL, UNIDROIT, Hague Conference, and similar groups. NYSBA should better communicate specific points about international arbitral practice to promote a much enhanced understanding of the realities of the practice. NYSBA should communicate the advantages of New York as an arbitral forum, with special emphasis on the following: (a) it is advantageous to have New York law as the law of the contract; (b) the quality and number of experienced lawyers who are available to handle matters -- whether as arbitrators, mediators or advocates -- is advantageous; and (c) New York City is perceived as a suitable place to stay during an arbitration. NYSBA also should better communicate the following characteristics of New York as an arbitral forum:
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(a) cost-effectiveness; (b) the importance of mediation; (c) New York courts' support of arbitration; (d) the elimination of exposure to punitive damages; and (e) the availability of appeal. NYSBA should consider studying and attempting to alleviate the concern of some non-U.S. parties that participating in arbitrations in the U.S. could result in their submitting to U.S. jurisdiction. (30, 31-37, 38, 44, 48)	
16. NYSBA should investigate with the New York Legislature amending Article VI, § 3 of the New York Constitution to permit responding to certified questions of law from foreign courts, and it should give further consideration to whether it would be useful to enact a statutory provision as to the confidentiality of evidence and awards in international arbitration. (38-39, 48)	• Commercial and Federal Litigation Section • Committee on Legislative Policy • Dispute Resolution Section • International Section
17. NYSBA should investigate with the New York Legislature New York's adoption of the UNCITRAL Model Law on International Arbitration. (18, 21, 38, 48)	• Committee on Legislative Policy • Dispute Resolution Section • International Section
18. NYSBA should study, through the appropriate NYSBA Sections, whether to recommend the adoption of the Uniform Trade Secrets Act. (18, 22-23, 48)	• Committee on Federal Legislative Priorities • Intellectual Property Law Section
19. NYSBA should study, through the appropriate NYSBA Sections, whether to recommend the adoption of the 1996 UNCITRAL Model Law on Electronic Commerce. (18, 23, 48)	• Business Law Section • Commercial and Federal Litigation Section • Committee on Legislative Policy • International Section

20. NYSBA should study, through the appropriate NYSBA Sections, whether to recommend the adoption of a modification to the New York General Obligations Law to create statutory limitations on risk allocation in construction contracts. (10, 18, 48)	• Business Law Section • Committee on Legislative Policy • Dispute Resolution Section
21. NYSBA should support the ratification of the Hague Convention on Choice of Court Agreements, which provides for the recognition of foreign judgments. (15, 25, 79, 81)	• American Bar Association State Delegation • Business Law Section • Commercial and Federal Litigation Section • Committee on Federal Legislative Priorities • Corporate Counsel Section • Dispute Resolution Section • International Section
22. NYSBA should encourage other New York bar associations and members of the New York Bar to support practices in New York that appropriately emphasize cost efficiency. (34)	• Business Law Section • Commercial and Federal Litigation Section • Dispute Resolution Section • New York City Bar • New York County Lawyers' Association
23. NYSBA should consider studying and attempting to alleviate the problem that parties occasionally have difficulty obtaining visas when they need to come to the U.S. solely for arbitrations. (38)	• American Bar Association State Delegation • Committee on Civil Rights
24. NYSBA should encourage judges and attorneys to educate international audiences about the advantages of New York as a governing law and forum when involved in panels and meetings of domestic and foreign bar associations. (43)	• Business Law Section • Commercial and Federal Litigation Section • Dispute Resolution Section • International Section

	Judicial Section
25. NYSBA should encourage parties to consider adapting model contract provisions to the circumstances of particular international agreements. (37, 54-55, 56-58)	• Business Law Section • Corporate Counsel Section • International Section
26. NYSBA should study the following treaties more closely with a view to recommending U.S. ratification or accession or recommending particular changes: (a) UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea ("Rotterdam Rules Convention") (79, 80); (b) UN Convention on the Use of Electronic Communications in International Contracts ("Electronic Communication Convention") (80); (c) UN Convention on the Assignment of Receivables in International Trade ("Receivables Convention") (79, 80-81); (d) Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary ("Hague Securities Convention") (79, 81); (e) Hague Convention on the Law Applicable to Trusts and on their Recognition ("Hague Convention on Trusts") (79, 81); (f) UNIDROIT Convention on Substantive Rules for Intermediated Securities ("Geneva Securities Convention") (80, 81); (g) UN Convention on Independent Guarantees and Stand-By Letters of Credit ("Letters of Credit Convention") (79, 82); (h) UNIDROIT Convention on International Financial Leasing ("UNIDROIT Financial Leasing Ottawa Convention") (which relates to leasing of real estate and equipment) (80, 82); (i) 1980 Convention on Contracts for the International Sale of Goods ("Convention on the International Sale of Goods") (12, 79, 82); (j) 1974 Convention on the Limitation Period in the International Sale of Goods; and Protocol (1980) ("Limitation Period Convention (1974) Protocol (1980)") (79, 82); and (k) 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") (12, 79, 82).	• American Bar Association State Delegation • Business Law Section • Committee on Federal Legislative Priorities • Corporate Counsel Section • International Section

