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Report Identifies Numerous Advantages of New York Law and New York Dispute Resolution for International Transactions

On June 25, 2011, the New York State Bar Association issued the final Report of its Task Force on New York Law in International Matters ([copy available here](#)), which identified numerous valuable benefits associated with using New York law and New York dispute resolution in international transactions. The report also set forth a plan for additional improvements that should make the use of New York law and New York dispute resolution even more attractive in international matters, including calling for the establishment of a center for international arbitration in New York.

Background

In today's global economy, New York competes with other major commercial centers for the use of its law in international commercial transactions, and competes with regional arbitration centers and the courts of other nations to handle the resolution of international commercial disputes. Remaining competitive in this environment requires laws that provide the stability, predictability and flexibility needed in sophisticated international commercial transactions, and dispute resolution institutions that provide fair, expeditious, enforceable, high-quality results that conform to parties' intentions and international commercial standards. The Task Force was charged with evaluating how New York performs in these areas compared to other leading international centers (which are themselves actively competing with New York and other jurisdictions), and identifying what more can be done to enhance New York's position even further.

New York's Advantages

Among the advantages that the Report identified in using New York law and New York dispute resolution in international transactions are:

- An established and well-developed commercial law equipped to deal with complex transactions
- A qualified bar with experience in complex commercial transactions and the business practices in many industries
- The stability of New York law
- A highly qualified professional judiciary
- The respect for freedom of contract and party autonomy under New York law, including with regard to matters such as discovery, class actions, jury trials, punitive damages and fee-shifting
- New York law's adherence to international commercial standards
- Compliance with relevant international treaties
- The accessibility of New York's courts to foreign parties

- New York’s respect for parties’ choice of arbitration
- New York’s enforcement of foreign judgments and arbitration awards
- The respect for the finality of litigation and arbitration results
- The enforceability of New York judgments abroad
- The availability of provisional remedies in both litigation and arbitration matters
- The availability of cross-examination in both litigation and arbitration
- The protection afforded to security interests, including those of foreign parties
- Enforceable rules concerning party and attorney confidentiality

Of particular interest, the Report noted that certain concerns sometimes expressed by parties to cross-border transactions about using New York or U.S. federal law — such as in regard to the extent of discovery, class action procedures, the use of jury trials, the potential for awards of punitive damages, and whether there can be “loser pays” fee-shifting — can be effectively addressed by appropriately-tailored contractual provisions.

The Report also concluded that:

- The increasingly global business community requires accurate and comprehensive information on choice of laws, procedures and legal systems to govern agreements, selection of the best forum in which to resolve disputes, and the most efficient and equitable means of that dispute resolution, which New York as a global financial and commercial capital provides.
- The Task Force’s review of New York law as an international standard and of the use of New York as a neutral forum for resolving international disputes (whether in arbitration or in the courts) confirms the continuing desirability of choosing New York law and a New York forum for cross-border agreements and international disputes.
- The use of New York law in international agreements is widespread in the global business community, due to its stability, predictability, neutrality and consistent application by New York courts and arbitrators.
- New York has thousands of experienced international lawyers, arbitrators and mediators, and there is overwhelming support by New York state and federal courts for international arbitration at every stage from the enforcement of the arbitration agreement to the recognition of the arbitral award.
- New York is at the forefront of providing legal support for global business expansion through the use of its law and its choice as a forum for arbitration and judicial dispute resolution.
- New York’s legal and business communities share the desire to preserve New York’s historic role as an international commercial and financial center, as well as New York’s well-deserved reputation as a home for experienced, impartial and fair arbitrators and judges.

The New York State Bar Association has also issued a publication “Choose New York for International Arbitration” ([copy available here](#)), which discusses these New York advantages in greater detail.

Steps for Further Improvements

Even with the numerous advantages identified in using New York law and New York dispute resolution in international transactions, the Task Force identified several areas where additional steps

could be taken that would help make New York law and New York's dispute resolution institutions even more attractive to international businesses. These include:

- Establishing a dedicated Center for International Arbitration in New York, in response to the establishment of such centers in other regional arbitration hubs.
- Designating local judges who will focus on arbitration matters, to encourage consistent and supportive court decisions and expeditious handling of arbitration-related court proceedings.
- In the international area, considering possible adoption of the UNCITRAL model law on international commercial arbitrations.
- For domestic commercial disputes, making passage of the Revised Uniform Arbitration Act a priority.
- Continuing to push for New York's adoption of the Uniform Fraudulent Transfer Act, to modernize New York law in this area and achieve greater consistency with federal bankruptcy law and other states' laws.
- Studying possible adoption of the Uniform Trade Secrets Act, to make the law in this area more adaptable to the high-tech economy.
- Studying possible adoption of the 1996 UNCITRAL model law on electronic commerce and communication, to help reduce costs for international businesses in New York by enabling them to follow national and global standards.

Chadbourne's Role on the Task Force

Chadbourne litigation partner Robert A. Schwinger served as a member of the Task Force that prepared the Report, and partners from Chadbourne's corporate and international practices contributed experiences and insights to the Task Force's efforts as well.

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Our client alerts are for general informational purposes and should not be regarded as legal advice. If you would like additional information or have any questions, please contact:

For Additional Information

Robert A. Schwinger

+1 (212) 408-5364

rschwinger@chadbourne.com

J. Allen Miller

+1 (212) 408-5454

amiller@chadbourne.com

William Greason

+1 (212) 408-5527

wgreason@chadbourne.com

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