

DRAFT “CONVENTION ON CROSS-BORDER ENFORCEMENT OF INTERNATIONAL MEDIATED SETTLEMENT AGREEMENTS”

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ABSTRACT

The Draft “Convention on Cross-Border Enforcement of International Mediated Settlement Agreements” is the result of a series of discussions and deliberations in connection with a research project and multiple arbitration and mediation conferences held in Taipei. The main ideas of this Draft are to recognize the desirability of cross-border enforcement of international mediated settlement agreements (iMSAs), to set forth the enforcement requirements for iMSAs, and to require countries to enforce iMSAs. It defines the scope of iMSAs eligible for cross-border recognition and enforcement to include those iMSAs of commercial matters arising from institutional or ad hoc mediations concluded in a Contracting State other than the Contracting State where its enforcement is sought. It imposes obligations on Contracting States to recognize and enforce iMSAs. The requirements for iMSAs to become eligible for recognition and enforcement are minimal, with some slight differences between iMSAs arising from institutional mediation and iMSAs arising from ad hoc mediation, in order to ensure that these iMSAs are genuinely concluded. The grounds for non-enforcement of iMSAs

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are also limited to some fundamental problems which would undermine the justifications for enforcing the iMSA. This Draft recognizes parallel and co-existing regimes for enforcing iMSAs. It also requires the protection of confidential information. It expects Contracting States to develop quality assurance mechanisms concerning the provision of mediation services by mediators and organizations providing mediation services, as well as to cooperate with each other and international organizations in promoting technical assistance. In order to appropriately ensure broader jurisdictional coverage, it defines States as including Separate Customs Territories.

KEYWORDS: *MSA, mediated settlement agreement, conciliated settlement agreement, EU Directive on Mediation, Model Law on Conciliation, New York Convention*