The Kentucky Bar Association
Alternative Dispute Resolution Section
presents

The UNCITRAL Mediation
Framework

This program has been approved in Kentucky for 1.00 CLE credit
Editor’s Note: The materials included in the following Kentucky Bar Association Continuing Legal Education handbook are intended to provide current and accurate information about the subject matter covered as of the original publication date. No representation or warranty is made concerning the application of legal or other principles discussed by the instructors to any specific fact situation, nor is any prediction made concerning how a particular judge or jury will interpret or apply such principles. The proper interpretation or application of the principles discussed is a matter for the considered judgment of the individual legal practitioner. The faculty and staff of these Kentucky Bar Association CLE programs disclaim liability therefor. Attorneys using these materials, or information otherwise conveyed during these programs, in dealing with a specific legal matter have a duty to research the original and current sources of authority. In addition, opinions expressed by the authors and program presenters in these materials do not reflect the opinions of the Kentucky Bar Association, its Board of Governors, Sections, or Committees.
Judith Knieper
Secretariat of the United Nations Commission on International Trade Law
Vienna, Austria

Judith Knieper is a legal officer at the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL) in Vienna. Until her appointment to the secretariat, she had been working in South East Europe from 1998-2013 for numerous donors/organizations, e.g. OSCE, CoE, Worldbank and GIZ, the Deutsche Gesellschaft für internationale Zusammenarbeit, the German international cooperation. She obtained both Legal State Exams in Frankfurt, Germany as well as her Ph.D. and is also qualified and certified as a Mediator.
International UNCITRAL Mediation Framework
Having in mind the responsibilities of the United Nations Conference on Trade and Development in the field of international trade,

Recalling that the Conference, in accordance with its General Principle Six,\textsuperscript{9} has a particular interest in promoting the establishment of rules furthering international trade as one of the most important factors in economic development,

Recognizing that there is no existing United Nations organ which is both familiar with this technical legal subject and able to devote sufficient time to work in this field,

Decides to establish a United Nations Commission on International Trade Law (hereinafter referred to as the Commission), which shall have for its object the promotion of the progressive harmonization and unification of the law of international trade, in accordance with the provisions set forth in section II below;

1497th plenary meeting, 17 December 1966.
WHAT IS UNCITRAL?

Inter-governmental body with limited membership
The core legal body of the UN system in the field of private international trade/commercial law

Established by the United Nations General Assembly (Resolution 2205 (XXI) of 17 December 1966)

UNCITRAL's mandate
Modernization
Harmonization

of international trade law
New Package (1)

- United Nations Convention on International Settlement Agreements Resulting from Mediation
- UNCITRAL Mediation Rules (2021)
New Package (2)


UNCITRAL Notes on Mediation (2021)

Recommendations to assist mediation centres and other interested bodies with regards to mediation under the UNCITRAL Mediation Rules
"The Singapore Convention on Mediation fills the gap in the existing mediation landscape that the New York Convention filled for arbitration over 60 years ago."

"It allows parties to retain control, provides opportunities for innovative solutions, offers confidential, non-adversarial way for parties to settle disputes amicably, and preserves business relationships."
54 Signatory States (including 6 Parties) to the Singapore Convention on Mediation

[Map showing countries that have signed the Singapore Convention on Mediation]
Effective Method for Resolving Trade Disputes

To Prove That Matter Has Been Resolved

Flexible, Effective, Efficient, Affordable

Enforce Cross-Border Mediated Settlement Agreements

Preserve Long-Term Business Relationships

Need to Enforce Mediated Settlement Agreements Across Borders

UNCITRAL United Nations Commission on International Trade Law
States party to the Convention shall enforce a Settlement Agreement (SA) resulting from mediation.

If a dispute is already resolved by a SA, the party is allowed to invoke it.
Exclusions from scope

Personal, family, inheritance and employment matters

Settlement enforceable as a judgment or as an arbitral award

Aims at avoiding possible overlaps with existing and future conventions:
- New York Convention (1958);
- Convention on Choice of Court Agreements (2005); and
- HCCH Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.
Requirements for reliance on SA

Signature by parties

Evidence that the settlement agreement resulted from mediation, such as:
(i and ii) The mediator’s signature on SA / a document;
(iii) Attestation by the mediation institution; or
(iv) Any other evidence.

Translations

Any necessary document
Grounds for refusing to grant relief

(a) Incapacity of parties

(b) The settlement agreement
   (i) Is null and void, inoperative or incapable of being performed;
   (ii) Is not binding or is not final; or
   (iii) Has been subsequently modified.

(c) The obligations in the settlement agreement
   (i) Have been performed; or
   (ii) Are not clear or comprehensible.

(d) Granting relief contrary to terms of agreement

(e) Serious breach by mediator of standards applicable to the mediator / causality

(f) Mediator’s impartiality + causality

(g) Contrary to the public policy

(h) The subject matter not amenable to mediation
Reservations

Agreements with governmental agencies / person acting on behalf of a governmental agency being a party

Apply Convention only to the extent that the parties to the settlement agreement have agreed to its application
Effect on SA

Convention applies to SA concluded after the Convention enters into force!
Model Law

Section 3
(Art. 16-20)
new: //
convention

Law applies to
international commercial mediation and
international settlement agreements

Basis: Model Law on
International Commercial Conciliation 2002
MAL // Convention

Art. 16: Scope of application & def.

Art. 17: General Principles regarding
- Para 1: enforcement of SA
- Para 2: the right for a party to invoke SA as a defence against a claim

Art. 18: Requirements for reliance on SA
- Balance formalities and need for the instrument to preserve flexible nature of process

Art. 19: Grounds for refusing to grant relief
- Discussion on regrouping

Art. 20: Parallel applications or claims
- Apply to both when enforcement of SA and when a SA was invoked as a defence
UNCITRAL Mediation Rules (2021)
General Principles

General rules providing comprehensive procedural rules for conduct of mediation and model provisions

Revision of UNCITRAL Conciliation Rules (1980)

Reflects current practice and ensures consistency with:
- Singapore Convention on Mediation (2018); and
Provisions

The Rules cover all aspects of mediation, including:

1. Commencement and termination of mediation
2. Number and appointment of mediator(s)
3. Conduct of mediation and costs
4. Confidentiality and evidence in other proceedings
5. Role of mediator(s) in other proceedings
General Principles

Provides background and explanatory information to assist States in incorporating the Model Law (2018) into and in accordance with national law

Largely derived from the *travaux préparatoires* of the Model Law (as revised in 2018) which reflects the:

- Deliberations of the Commission during the sessions at which the Model Law was adopted; and
- Considerations of UNCITRAL’s Working Group II which conducted the preparatory work.
General Principles

Seeks to assist mediation practitioners and parties in dispute in better understanding mediation

Prepared with a focus on international mediation
Focus of the Notes

The UNCITRAL Notes on Mediation (2021) cover the following matters:

- Commencement of mediation
- Selection and appointment of mediator(s)
- Preparatory steps for mediation
- Conduct of mediation
- Settlement agreements resulting from mediation
- Termination of mediation
Thank you for your attention!

Further information:
http://www.uncitral.org/