Why doesn’t New York Consider Adopting the Model Law After Florida’s Example?

Kluwer Arbitration Blog
August 23, 2010

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Please refer to this post as: Lisa Bench Nieuwveld, ‘Why doesn’t New York Consider Adopting the Model Law After Florida’s Example?’, Kluwer Arbitration Blog, August 23 2010, http://arbitrationblog.kluwerarbitration.com/2010/08/23/why-doesnt-new-york-consider-adopting-the-model-law-after-floridas-example/

Often viewed as one of the leading locations for international arbitrationss, why doesn’t the state of New York have a separate arbitration act for international arbitrations? Is it simply unnecessary? It is interesting to note in my 2 previous articles, that other states have found it absolutely necessary. Recently, as previously discussed, the state of Florida enacted the UN Model Law on International Commercial Arbitrations (“Model Law”), following the lead of 5 other U.S. states and several leading world jurisdictions. I already discussed some of the points made with respect to replacing the Federal Arbitration Act with the Model Law in my previous articles, but what about New York?

I recently sat in a meeting in which local arbitration professionals were discussing this very topic, briefly. It made me think, why not? As a newly relocated international arbitration practitioner to NYC after spending some years practicing with the Europeans, I thought it was an interesting idea. Certainly, as I heard frequently from my civil law counterparts in Europe, using New York (and even the U.S. altogether) makes many clients and their attorneys apprehensive, to put it lightly. I think most, if not all, of the readers will already know why: discovery. The fear of the fishing games breaking into mainstream international commercial arbitrations located in the US or even using US arbitrators is very real. While

practicing abroad, even US attorneys who had spent years practicing abroad would express those same concerns. Sometimes the concerns were expressed to them by clients, others were directly concerned themselves.

Is this a reality? Not in truly international arbitrations with experienced international arbitrators and practitioners, but the fear remains. However, that is not the purpose of this article – yet it is connected. Why not enact the Model Law? Whether it is truly necessary due to the FAA, institutional arbitration rules and other mechanisms that prevent much of New York law playing a large role in the international arbitration itself….still, would it send a good message? Likely yes. So, what am I advocating here? Not just creating a separate international arbitration act to re-enforce the message that the state of New York is a serious player in the international arbitration arena, but to enact specifically the Model Law.

As my previous articles mentioned, the Model Law attempts to reflect a sort of marriage between the civil law and common law perspectives. It is a "known entity", a familiar environment if you will for those unfamiliar with the realities of choosing the US, and specifically, the state of New York as the situs for the international arbitration.

Could it happen? I heard comments from those arbitration practitioners that were concerned with the reality of getting it through the legislator, but what I did not hear were substantive expressions of concern that it was a bad idea. I cannot say they do not exist anymore than I could read these practitioners' minds. I can say, no solid argument was presented, but it wasn't the main purpose of the meeting either. So – what are the reasons? In this economy, are we not all trying to "send the right message"? For that purpose alone – marketing – is it not a viable idea? Please, share your comments to this experienced practitioner, freshly minted in NYC.