

# Why Finland Should Adopt the UNCITRAL Model Law on International Commercial Arbitration

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25 January 2018, Discussion and Seminar on the Need for Revisions of the Finnish Arbitration Act, Helsinki

# Why should Finland want to be a popular place for international arbitration?

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- Promotes the image of Finland as an advanced and neutral country that respects the rule of law and supports international commerce by the international arbitration of business disputes.
- Benefits the Finnish service economy:
  - Legal profession (lawyers, arbitrators, arbitral institutions, experts);
  - Technical personnel (such as language interpreters and transcription services providers);
  - Hospitality services (hotels and restaurants); and
  - Airlines.
- Benefits Finnish companies engaged in international business.
- Contributes to Finnish legal culture: increased knowledge of international commercial law and arbitration.
- Generally, helps make Finland better known in the world.

# Is Finland a popular place for international arbitrations?

- **NO**
- The reality is today that international arbitral institutions are unlikely to fix Finland as a place of arbitration.
- For the same reasons, foreign parties are unlikely to fix Finland as a place of arbitration, especially as there is a widely accepted place (Stockholm) so nearby.
- International cases that might otherwise be seated in Finland take place elsewhere, mainly in Stockholm.

This is a loss for Finland's image and its economy, for Finnish companies doing international business, for the Finnish legal profession and for Finland's reputation abroad.

# Statistics: Finnish presence in ICC arbitrations

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ARBITRAL SEATS FIXED BY THE ICC COURT				
YEAR	DENMARK	FINLAND	NORWAY	SWEDEN
2005	0	0	0	1
2006	0	0	0	1
2007	0	0	0	4
2008	1	0	0	0
2009	0	0	0	0
2010	3	0	0	1
2011	3	0	0	3
2012	1	0	1	1
2013	0	0	0	0
2014	1	0	0	0
2015	1	0	0	1
2016	0	0	0	0
TOTAL	10	0	1	12

NUMBER OF FINNISH PARTIES IN ICC CASES			
YEAR	CLAIMANTS	RESPONDENTS	TOTAL
2005	8	2	10
2006	3	8	11
2007	3	3	6
2008	6	6	12
2009	8	3	11
2010	10	7	17
2011	10	2	12
2012	4	4	8
2013	8	7	15
2014	1	5	6
2015	1	5	6
2016	6	4	10

# How does a country become a popular place for international arbitrations?

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- Criteria that parties and arbitral institutions use in selecting a place of arbitration:
  - ratification of **the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**;
  - a modern, liberal, and internationally well-recognized or accepted **arbitration law**;
  - a corruption-free **judiciary** supportive of arbitration and willing to recognize and enforce arbitration awards, as confirmed by **case law**;
  - availability of a well-established and efficient **arbitral institution**; and
  - a **geographically convenient location** with good facilities for hearings, technical support, accommodation, transportation and telecommunications.
- The above favorable legal and physical infrastructure is important to attract arbitrations!
- A reputation for political neutrality (e.g. Switzerland and Sweden) is also helpful.
- Active promotion internationally by the local arbitration community is also important.

# Why is Finland not seen as a good place for International Arbitration?

- ❑ Finland is not recognized by UNCITRAL as an UNCITRAL Model Law Country.
- ❑ Foreign parties and their counsel have neither the time nor the interest to study a local arbitration law, whether it be Finnish or any other. They just want assurance that it satisfies the latest international standards.
- ❑ Familiarizing oneself with the Finnish Arbitration Act is very difficult for an international practitioner.

# How can Finland become an attractive place for foreign users of international arbitration?

- The perception of Finnish arbitration law by international arbitral institutions and foreign users – in parallel with the reality – is the most critical element.
- It must be changed!
- International users must be convinced that Finland is a good place for arbitration without much study – ideally with none!
- First step is to adopt an arbitration law that is universally recognized as representing the best practice in the field: **the UNCITRAL Model Law of 1985 (updated in 2006).**

# Benefits of adopting the UNCITRAL Model Law

- The UNCITRAL Model Law is a universally acclaimed piece of model legislation:
  - The result of many years of work by an international group of experts.
  - Reflects international best practices.
  - Adopted by 78 States and over 100 jurisdictions.
- Adoption will allow Finland to be (like e.g. Denmark, Germany, Hong Kong and Singapore) instantly recognized around the world as having a modern and internationally acceptable arbitration law.
- Adoption will relieve Finland from having to draft its own new arbitration law – only translation into Finnish and Swedish is necessary.
- The Model Law is the subject of a vast amount of existing case law and legal literature to assist in its interpretation.

# Example of Hong Kong

- One of the main reasons countries have adopted the Model Law (without amending it) has been precisely to attract international arbitrations:

“[the] primary reason for recommending the adoption of the Model Law [...] is the need to make knowledge of our legal rules for international commercial arbitration more accessible to the international community [...] We are convinced that it is much better [to avoid changes than] trying to improve what is already the result of many years work by an international group of experts.” (Emphasis added) (Law Reform Commission of Hong Kong, Report on the Adoption of the UNCITRAL Model Law of Arbitration)

- Since its adoption of the Model Law in 2010, Hong Kong has seen an increase in international arbitration proceedings seated in its territory, being listed for the first time in 2015 among the most favored arbitration seats.

# Countries that have not adopted the Model Law are not good examples for Finland

- While certain major arbitration centers have not adopted the Model Law (**Sweden, Switzerland, England, France and the Netherlands**) they have not done so because:
  - Each is already a well established international business center whose arbitration law is widely known and accepted – hence they do not need to convince anyone of their suitability.
  - Sigvard Jarvin will explain why **Sweden** is not the best model for Finland.
  - **Switzerland** is renowned for its international character with a majority of international organizations (the UN, WTO, CERN, etc.) having their major operation or headquarters there as well as for having a very modern international arbitration law.

# Countries that have not adopted the Model Law are not good examples for Finland

- That **England's** law of 1996 is not a model for others is evidenced by the fact that other countries close to **England** (e.g. **Scotland, Canada, Australia and New Zealand**) have not adopted **England's** law but instead the Model Law.
- The Model Law dating from 1985 was strongly influenced by the reform of **France's** arbitration law in 1980/81 (revised again in 2011) – hence there was no need for it to adopt the Model Law - as the home of the ICC, France's law is also at least as favorable as the Model Law.
- While the **Netherlands** has not adopted the Model Law, its law is very close to it and it is a celebrated and historic international legal and arbitration center (host to the ICJ, the PCA, the U.S.-Iran Claims Tribunal and the International Criminal Court).

# Countries that have not adopted the Model Law are not good examples for Finland

- **Finland's** situation is not comparable to any of these well known and established arbitration centers.
- Moreover, **Finland** does not need to compete with most of these seats as its competition is mainly elsewhere. For example, the situation of **Finland** can be compared to **Hong Kong** or **Singapore** (before the adoption of the Model Law) and, like **Hong Kong** or **Singapore**. **Finland** could become an acceptable and popular arbitration center in the future, *e.g.* for East/West disputes.

# Conclusion: Why should Finland adopt UNCITRAL Model Law Without Significant Changes?

- Importance of being officially recognized by UNCITRAL as having adopted the UNCITRAL Model Law (vs. being “compatible” with the Model Law).
- Any departures from the UNCITRAL Model Law (e.g. to “localize” it) will be viewed with suspicion by the international community.
- Ideally, Finland should not just adopt the Model Law. If it wants to make an impact, it should consider what additional measures it might take to make Finland even more attractive for international arbitration.
  - *E.g.* Sweden is envisaging that court proceedings to set aside arbitral awards must be in English (not just Swedish).
- Finland satisfies most – if not all – of the other criteria for becoming a good place for arbitration.

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Questions?

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