



# Finnish Arbitration Act in light of the Model Law



# UN framework for international arbitration



## Resolutions adopted by the General Assembly

40/72. *Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law*

*The General Assembly,*

*Recognizing* the value of arbitration as a method of settling disputes arising in international commercial relations,

*Convinced* that the establishment of a model law on arbitration that is acceptable to States with different legal, social and economic systems contributes to the development of harmonious international economic relations,

*Noting* that the Model Law on International Commercial Arbitration<sup>1</sup> was adopted by the United Nations Commission on International Trade Law at its eighteenth session, after due deliberation and extensive consultation with arbitral institutions and individual experts on international commercial arbitration,

*Convinced* that the Model Law, together with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards<sup>2</sup> and the Arbitration Rules of the United Nations Commission on International Trade Law<sup>3</sup> recommended by the General Assembly in its resolution 31/98 of 15 December 1976, significantly contributes to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations,

1. *Requests* the Secretary-General to transmit the text of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, together with the *travaux préparatoires* from the eighteenth session of the Commission, to Governments and to arbitral institutions and other interested bodies, such as chambers of commerce;

2. *Recommends* that all States give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice.

# UNCITRAL Model Law on International Commercial Arbitration

1985

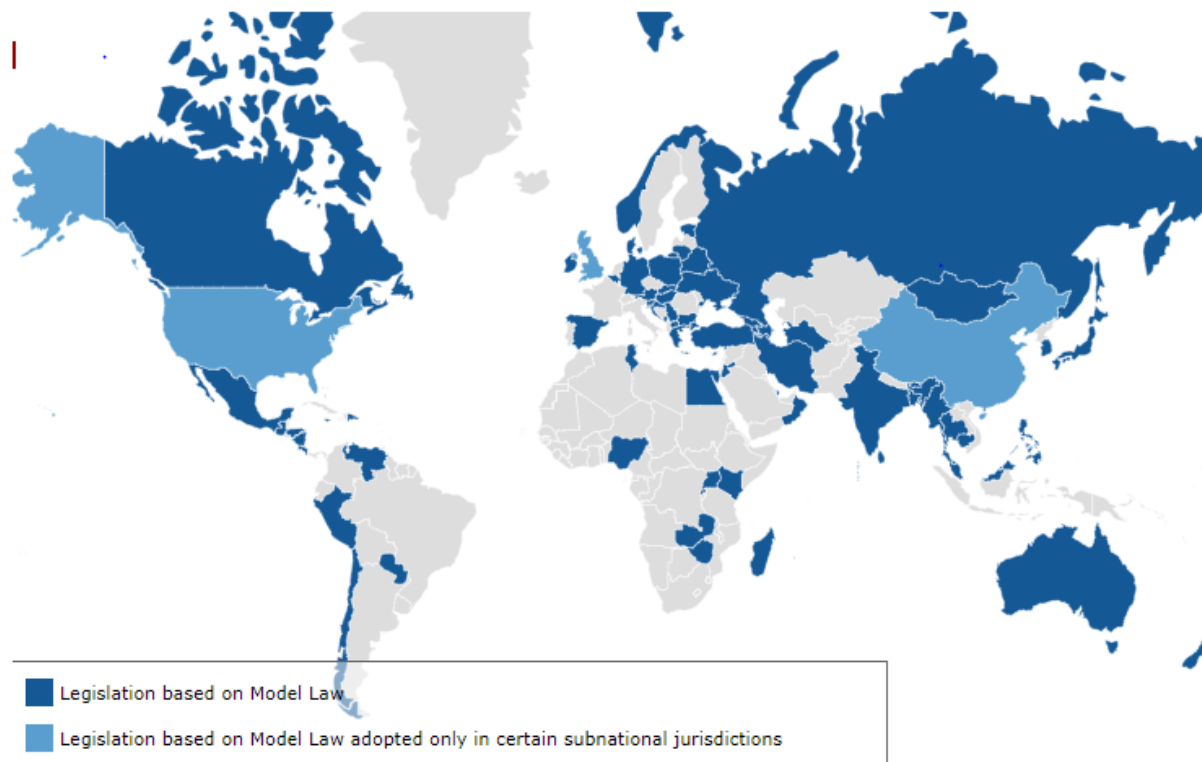
With amendments  
as adopted in 2006



# Role of the Model Law in setting an international standard

- Adopted by 108 jurisdictions: reflects **global consensus** and internationally accepted principles of arbitral practice
- Provides **certainty and predictability** to foreign investors
- Covers all stages of the arbitral process from the arbitration agreement to the **recognition and enforcement of the arbitral award**

# Model Law: Map of enactments



# Model Law

## *Main purpose*

- Reduce discrepancy between domestic procedural laws affecting international commercial arbitration

## *Moreover...*

- Sound basis for harmonization and modernization of national laws
- Permits flexibility in enactment and allows for local adaptation
- Creates the basis for a solid domestic arbitration regime

# Model Law: perceived advantages by practitioners and academics

- **Julian Lew QC (ICC-UK keynote 2012)** : non-adoption of Model Law could be a deterrent to parties wishing to seat arbitrations in a certain country.
- **Brewer/Koh/Hager (2012)** – Because the neutrality of international arbitration depends on the process being relatively free from judicial interference, and because the point of international arbitration is to allow a neutral, flexible, predictable, private process that may depart in important respects from either party's local legal practices, Washington [State] should consider adopting legislation based on the UNCITRAL Model Law.

# Model Law: perceived advantages by practitioners and academics

- **Hu/Xiao – Chinese perspective on adoption of Model Law:** Insofar as more states will have legislation in accordance with the Model Law, all parties may find it easier to accept arbitration.
- **Herbert Smith - on adoption of Model Law in Australia:** Significant benefits:
  - The UNCITRAL Model Law is widely recognised and understood worldwide... ;
  - There will be national consistency in the regulation and conduct of international (...) commercial arbitration.



# Model Law: perceived advantages by international institutions

- **World Bank**
  - “An effective commercial arbitration regime matters for foreign investors.”
  - Indicators of arbitration and mediation (AMD) measure the strength of ADR laws and institutions:
    - The domestic laws and regulations, their accessibility, and whether or not they are considered to follow the Model Law
    - Accession to the New York Convention

# Model Law: perceived advantages

- **World Bank (cont'd)**
  - “The fact that a law on commercial arbitration follows the UNCITRAL Model Law is a good indication of the degree of an economy’s support for arbitration...”
  - The World Bank’s Investing Across Borders Report lists arbitration, including strength of arbitration laws, as a key indicator of a country’s *regulation of foreign direct investment...*

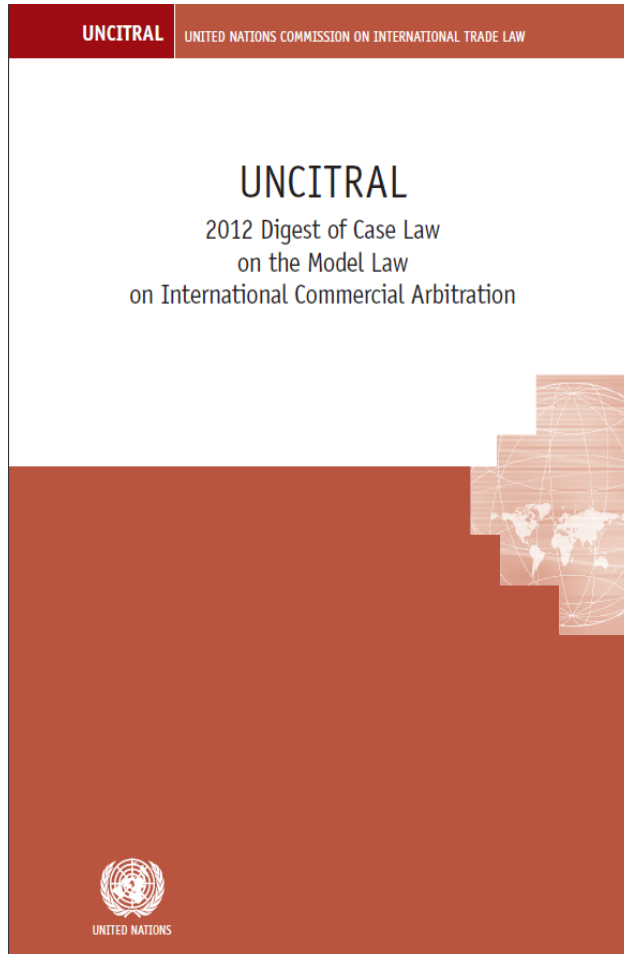
# Model Law – Finnish Act

- **Sections 7 -11 and 13-15 of the Finnish Arbitration Act in light of Chapter III of the Model Law on composition of arbitral tribunal**
  - In need of clarification and simplification
- **Conduct of arbitral proceedings, and missing elements**
  - Fundamental requirements of procedural justice
  - Hearings, written proceedings, default of a party: why it matters to address those issues in the Arbitration Act
- **Sections 30-39 of the Finnish Arbitration Act in light of Chapter VI of the Model Law on making of awards and termination of proceedings**
  - Missing elements, such as determination of the applicable law, reasoned award

# Model Law – Finnish Act

- **Recourse against an award in Finland**
  - Structural issues, and why it matters for the development of international arbitration in Finland
  - In need of conformity with internationally accepted standards, and beyond, with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)
- **Concluding remarks**
  - A need for modernization of the Arbitration Act, in order to create a sound legal environment for international arbitration
  - The Model Law is a well-tested and widely known model
  - Its adoption would constitute an important step in an overall framework to make Finland a place for international arbitration

# The Digest on the Model Law



- Launched June 2012
- Organised according to the Chapters and Articles in the Model Law
- Summary of case law for each Article, highlighting common views and reporting any divergent approach
- Footnotes with live links to cases
- 725 cases from 37 jurisdictions all over the world

# Purpose of the Digest

- Provide users with a means to better understand, interpret and apply the enactments of the Model Law
- Identify trends in the interpretation of the Model Law
- Identify whether any divergences as result of 1) interpretation of the text or 2) law enacting the Model Law differs in substance from the Model Law

# Thank You!

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