Need for Revision of the Finnish Arbitration Act

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Introduction to the topic

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Background

• The Finnish Arbitration Act (967/1992; the ”Act”) has been in force for a quarter-century virtually unchanged

• The Act is largely outdated and needs to be fully revised
  • The Act causes problems even in purely domestic arbitration proceedings
  • Equally important, the Act discourages foreign parties and counsel from arbitrating in Finland as it deviates on many crucial points from the best international norms and practices (as set forth in the UNCITRAL Model Law)
Key problems with the Act

• Form requirement for a valid arbitration agreement is too strict (Section 3)
  • Gives room for dilatory tactics

• Procedure regarding the challenge of arbitrators is inefficient (Sections 11 and 41(1)(3))
  • A party who has raised an unsuccessful challenge has a right to raise the issue anew by bringing a setting aside action against the final award
Key problems with the Act (cont’d)

• Provisions on the choice of law are inadequate (Section 31)
  • Unclear which law the arbitral tribunal should apply – and on what basis – in the absence of a choice of law by the parties

• Rules regarding the determination of the parties’ legal costs are parochial (Section 49)
  • Reference to the Finnish Code of Judicial Procedure is ill-conceived as the provisions of the Code do not work well in the arbitration context
Key problems with the Act (cont’d)

• Provisions on the rendering of an additional award suffer from the legislator’s oversight (Section 39)
  • No rules on any time limit within which
    – a party should request an additional award
    – the arbitral tribunal should issue an additional award
Key problems with the Act (cont’d)

• Possibility to have a final award declared null and void is highly unusual from an international perspective (Sections 40 and 50(1))
  • In principle, the award is subject to an action for nullification indefinitely

• Also provisions governing the setting aside of an award are unsatisfactory (Sections 41 and 50(1))
  • Grounds for challenge not fully compatible with the Model Law
  • Procedure too long and cumbersome
Other problems – missing components

• No provisions regarding
  • the arbitral tribunal’s power to rule on its own jurisdiction
  • objections to the arbitral tribunal’s jurisdiction
  • how a party may appeal against the arbitral tribunal’s decision on jurisdiction
Missing components (cont’d)

• No provisions on the power of the arbitrators to issue interim measures of protection

• No provisions on key requirements of procedural justice, such as
  • the arbitral tribunal’s duty to treat the parties equally
  • the arbitral tribunal’s duty to give reasons for its award
Conclusions

• A major reform is needed – not sufficient to make just a few modest amendments to the Act

• The best and easiest solution: to adopt the Model Law (2006) without any meaningful derogations from it