Effective July 1, 2010, Florida's Arbitration Act Now Incorporates the UNCITRAL Model Law on International Commercial Arbitration

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This year, the State of Florida, with significant help from the many international practitioners working in Florida, proposed and passed a bill changing the Florida Arbitration Act to substantially match the UNCITRAL Model Law on International Commercial Arbitration ("Model Law"). On May 12, 2010, Governor Crist signed into law Bill CS/HB 821 modifying Florida Statutes Chapter 684. Effective on July 1, 2010, Florida has joined the 6 other US states in becoming a Model Law jurisdiction (Illinois, Texas, California, Connecticut, Oregon, and Louisiana).

With over 50 countries enacting the Model Law, it is a widely accepted and highly regarded model law which in turn provides greater uniformity and predictability in the international commercial arbitration context. In fact, even the list of countries which the UNCITRAL.org provides as having accepted and enacted the Model Law doesn't provide an accurate reflection of just how universal this Model Law has become. Some countries, such as The Netherlands, were greatly influenced by its principles, enacting its core principles even if the differences remain substantial enough to not be listed on the UNCITRAL's website.

The Model Law's aim is to provide greater transparency for international parties seeking arbitration as its dispute resolution mechanism. Through past case law as well as incorporating both civil law and common law elements, foreign players can better understand how the process may work. Specifically, the Model Law standardizes what constitutes an arbitration agreement. It ensures existence of the compentence-compentence principle, and provides a uniform treatment of awards regardless of the country of origin, procedural rules involved, etc. amongst other standardizing attributes. With many jurisdictions having embraced the Model Law, there is a wealthy source of case law interpreting and applying its principles.

The question remains, to be addressed in my next blog: Why don't more US states follow Florida and the other 6 states' examples? Even more important is the question: Why the Federal Arbitration Act? Why not, instead, replace it with the Model Law? Hopefully, these questions will invoke opinions and answers as undoubtedly the practitioners worldwide have diverse and varying views on this point. My thoughts will be saved for my next blog, but I wanted to put the idea out there. If these US states and such countries as Australia and the United Kingdom (also common law jurisdictions) fell compelled to enacted its precepts, why not the United States?

The Federal Arbitration Act pre-dates the Model Law by some 60 years, being enacted in 1925. Over the years it has developed its own case law following and wealth of interpretive resources. I have heard comments that the Model Law simply wouldn’t work within the federal structure of the United States Clearly, that is not the case with the individual states (as others have already successfully incorporated the Model Law), but is that true from the federal perspective? Arguments to be considered in the next round include the argument, if it is not broken, why fix it, and why replace the FAA of 80 years of experience with something having only 25 years experience?