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Finland Takes Important Steps to Increase its Attractiveness as a Venue for International Arbitration: Launch of the Revision Process of the Finnish Arbitration Act Announced

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The Finnish Minister of Justice announced at the end of January this year that the revision process of the 1992 Finnish Arbitration Act would be launched during the current government term. Finnish business and arbitration communities greatly welcomed the statement, as it mirrors their long-time efforts towards this goal. The Ministry of Justice has begun an internal project and will appoint an external group to monitor the work of the Ministry.

It was December 2016 when the Finland Chamber of Commerce submitted a proposal to the Finnish Ministry of Justice for the reform of the Finnish Arbitration Act (“Act”). The Finland Chamber of Commerce requested an amendment of the Act’s obsolete provisions and deficiencies. The goal of such revision is an arbitration act fully consistent with current internationally-recognized standards embedded in the UNCITRAL Model Law on International Commercial Arbitration (1985; with amendments adopted in 2006; “UNCITRAL Model Law”).

Enacted in 1992, the Act has been in force almost unchanged for over 25 years. Based on the 1985 version of the UNCITRAL Model Law, the Act, nevertheless, differs in some respects from it. The Finland Chamber of Commerce’s reform proposal, therefore, covers, amongst other things, the following divergences:

- The Act’s strict written form requirement for a valid arbitration agreement: The Act specifies that an arbitration agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telegrams or telexes or other such documents between the parties; further, it states that an arbitration agreement is in writing if an agreement made in an aforementioned manner refers to a document containing an arbitration clause. The requirement is not only outdated in the light of modern means of communication but also problematic in practice. It excludes the formation of a valid arbitration agreement, for example, where, during negotiations, one of the parties referred to the arbitration clause contained in the general terms and conditions and the other party has accepted it only orally. To overcome these problems, the Finland Chamber of Commerce proposed to derogate from the written form requirement and to make the provision correspond to Article 7 of the UNCITRAL Model Law.
- The possibility to have a final award declared null and void: The current provisions of the Act allow the unsuccessful party in the arbitration to bring an action for annulment of the arbitration award at any time, without any time limits. The absence of a time limit for filing an action for

annulment of the arbitral award is seen as undermining the finality of arbitral awards. Therefore, the Finland Chamber of Commerce suggested deleting the provisions on annulment of awards.

- The setting aside procedure is inefficient: The time limit for instituting setting aside proceedings based on the grounds set forth in the Act—which are not completely in line with the UNCITRAL Model Law—is three (3) months of the date on which the party filing the action received a copy of the award. The action must be brought before the District Court in whose jurisdiction the arbitral award was made. Setting aside proceedings may take a long time if the decision is appealed and goes through all court instances. The Finland Chamber of Commerce suggested that the grounds for setting aside of awards be fully aligned with the UNCITRAL Model Law, that the time limit for instituting setting aside proceedings be reduced to two months, and that there be a one-instance appeal.
- The lack of provisions on the granting of interim measures by the arbitral tribunal: In the absence of these provisions, it is unclear whether arbitrators have the right to issue any interim measures in arbitration in Finland. For the same reason, in Finland, arbitrators have no jurisdiction to issue interim measures that are enforceable, if necessary, on the party against whom the measures are sought. The fact that Finnish courts have jurisdiction to issue interim measures also in arbitration proceedings and without prejudice to an arbitration agreement cannot be regarded as sufficient for national and international parties who, naturally, expect to obtain effective interim measures from an arbitral tribunal. While the Act does not contain provisions on arbitrator-ordered interim measures, the Arbitration Rules and the Rules for Expedited Arbitration of the Arbitration Institute of the Finland Chamber of Commerce (FAI), in force as of 1 June 2013, provide specific regulations regarding interim measures that may be ordered by the arbitral tribunal at the request of a party.

Further to the above, the Act fails to explicitly address certain principles of due process, such as the power of arbitrators to decide on their own jurisdiction; the arbitrators' duty to treat the parties equally; and the requirement that the arbitrators give reasons for the arbitration award, although all these principles are also applicable in Finnish arbitration. Enacting statutory provisions compliant with the UNCITRAL Model Law would eliminate any such inconsistencies.

Against this background and considering that, over the lifetime of the Act, commercial and business contractual relations and needs have indeed become significantly more diversified and international, there is a need to revise the Act and ascertain that today's international practices are fully reflected in its provisions.

To support its proposal for the reform of the Act, in January 2018, the Finland Chamber of Commerce and the FAI held a seminar and discussion on the "Need for Revisions of the Finnish Arbitration Act". The event focused on key problems arising from the Act and addressed topics, such as why Finland should adopt the UNCITRAL Model Law and why the Swedish example cannot be applied to Finland in order to make arbitration in Finland more attractive for international cases. The seminar report and the presentations of the distinguished speakers can be accessed [here](#).

Following the proposal and the well-attended seminar, more than 200 lawyers and business representatives signed a petition for the reform of the Act, which was handed over by the Finland Chamber of Commerce to the Minister of Justice in spring 2018.

In September 2018, the Ministry of Justice held its own seminar on the need for reform of the Act, after which it called a public hearing on the matter. During the public hearing, nearly 40 written

statements were submitted to the Ministry of Justice, showing overwhelming support for the revision of the Act.

Finally, after long-time efforts of the Finnish business and arbitration communities, the Ministry of Justice has found that there is a need for a reform of the Act. The long-awaited news came at the Annual Conference of the Finnish Bar Association at the end of January, where the Finnish Minister of Justice announced that the revision process would be launched during the current government term. In his speech, the Minister pronounced the need for modern legislation, stating that

“the functioning of the justice system is one of the most important pillars of Finland’s economic success. Trust in dispute resolution and in the enforcement of rights is becoming an increasingly important factor for business and investment. Arbitration provides businesses with a competitive way to resolve disputes. We have noticed room for improvement in the current Act; hence, we will launch a reform of the arbitration legislation.”

Currently, the Ministry of Justice is setting up a Monitoring Group for the law reform whose term will end on 31 December 2020. The Finland Chamber of Commerce has nominated three members to this committee. The Finnish Bar Association and other stakeholders have been given the right to nominate members to the Committee as well.

The Finland Chamber of Commerce is confident that the reform will have a significant positive impact for Finland and hopes that, as a result of it, Finland will have an arbitration act that meets international standards reflected in the UNCITRAL Model Law. In this way, Finland will meet all the conditions to build systematically towards international recognition in the field of international dispute resolution, increasingly emerging as an important seat for dispute resolution. Finland’s geographical location, low corruption, and reputation as an impartial country, together with a well-functioning regulatory and operational environment, are factors that set a good basis to build upon.

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