

# Kluwer Arbitration Blog

## Breaking Traditions in Favor of German Efficiency? Frankfurt As a “Safe Seat” for International Arbitration

Felipe Volio Soley (Busse Disputes) · Wednesday, May 25th, 2022

Frankfurt am Main (“**Frankfurt**“) – [Germany’s No. 1 city for international arbitration](#) – could serve as a cost-effective and safe seat for international disputes. A “safe seat” of arbitration offers a fair, just and cost-efficient dispute resolution mechanism by offering effective arbitral law and practice (see [here](#)). The criteria for distinguishing a safe seat of arbitration is based upon objective parameters, as enshrined in the [London Principles](#). Reputation, tradition, and recognition are therefore not relevant aspects for classifying a seat as safe but are rather crucial factors that determine the seat’s final selection in the arbitration agreement (see [here](#)). In this sense, safe **and** traditional seats of arbitration (e.g. London, Paris, Singapore, New York, Geneva, and Hong Kong – see [here](#)) are usually at the forefront of a party’s mind for good reasons. Frankfurt however could join the race of arbitral seats and be considered as a viable alternative.

### A Safe and Cost-Efficient Seat

Frankfurt, known as the [most important](#) financial centre in continental Europe, could serve as a safe and cost-efficient seat for international arbitration users. This is mainly due to its excellent legal infrastructure, arbitral practice, accessibility, and reasonable costs.

The German law of arbitration is substantially based on the UNCITRAL Model Law on International Commercial Arbitration from 1985 (the “**Model Law**“). In this sense, the Tenth Book of the German Code of Civil Procedures (available in English [here](#)) is inspired by the Model Law and conforms with Germany’s modern legislation for both domestic and international arbitration (Sections 1025-1066). With regard to the few deviations made in respect of the Model Law, practitioners have considered the German arbitration law as more “*arbitration-friendly*” than the Model Law (see [here](#)). Importantly, Germany is also a signatory to the New York Convention ([here](#)).

As to the arbitration rules, parties are always free to choose the rules that they prefer when selecting Frankfurt as the seat of arbitration (such as the [ICC Rules](#) or the [DIS Rules](#)). Regarding the latter, the latest DIS statistics reveal that one third of the arbitration proceedings carried out pursuant to the DIS Rules are conducted in the English language ([here](#)).

From a practical perspective, the courts of Frankfurt have demonstrated experience with

arbitration. Courts have traditionally been receptive to the notion of arbitration both at a regional and federal level:

- The Higher Regional Court of Frankfurt (“**OLG Frankfurt**“) carries out most of the judicial functions for international arbitrations seated in Frankfurt. The OLG Frankfurt has a specialized chamber (No. 26) dealing with arbitration-related matters ([here](#)). This feature highlights the level of competence of the Frankfurt judiciary in arbitration.
- The 26th Chamber of the OLG Frankfurt has stressed that an arbitral award may only be set aside in extremely exceptional cases ([26 Sch 1/19](#)), interprets arbitration clauses broadly to uphold the parties’ choice to pursue arbitration ([26 Sch 1/18](#)), and has refused to review whether tribunals had wrongly admitted belated evidence ([26 Sch 18/20](#) and [here](#)). Recent studies show that only 3.31% of the cases before this court from 2012 to 2016 have been successful whereby a party raised a public order ground to set aside an award ([here](#)).
- German courts are also known for strongly favoring arbitration, and can generally be relied upon to uphold, recognize, and enforce arbitral awards (see [here](#), and [here](#)). The German Supreme Court has also adopted a non-interventionist approach towards international arbitration ([here](#), [here](#), or [here](#)). Furthermore, after reviewing more than 500 decisions concerning the setting aside and enforcement of awards in Germany, a study concluded that German courts generally treat foreign and domestic parties equally ([here](#)).

In terms of convenience, Frankfurt is one of the most accessible cities in central Europe (and worldwide). The Frankfurt International Airport is one of the largest passenger airports in the world and is located only 12 km away from the city centre ([here](#)). The [Frankfurt Hearing Centre](#) also offers rooms and accommodating services for arbitration hearings in the middle of Frankfurt ([here](#)). These features strongly highlight the attractiveness of Frankfurt as a place where in-person (or hybrid) arbitration hearings could be conducted. In this sense, it is not uncommon for Frankfurt to be considered as a place for arbitration in investment disputes as well.

In terms of costs, which are [often perceived](#) as arbitration’s worst feature, daily hotel rates in Frankfurt have been [reported](#) to be less expensive than in other European cities. Hourly rates for German counsel are also very competitive, especially the rates of boutique law firms specializing in international arbitration. German counsel may also be more inclined to avoid or limit the use of discovery and document production, thereby reducing the overall cost of the arbitration.

The above affirms that, due to its legal framework, judiciary, accessibility, and cost-efficiency, Frankfurt can be catalogued as a safe and cost-effective seat for international disputes.

### **Frankfurt as an emerging seat for international arbitration**

If Frankfurt is such a safe and convenient seat, then why is it only now improving its visibility within the top ranked arbitration seats?

First of all, it is important to mention that Frankfurt has seen an exponential growth of international arbitrations in the last few years ([here](#)). Frankfurt was mentioned as one of the preferred seats in the [2021 International Arbitration Survey](#) by Queen Mary University and White & Case, and was listed by 4% to 2% of the respondents, together with other eminent seats such as Zurich, Vienna, Washington DC, Miami, Shenzhen, São Paulo, and The Hague.

The fact that Frankfurt is not in the current “top 10” of the most preferred cities could be due to the parties’ unwillingness to grant a home-field advantage. As the world’s third largest exporter (after the US and China), German parties are largely involved in international transactions. Thus, non-German parties may protest against the selection of a German seat or opt for a seat, which they perceive as being more neutral.

Furthermore, due to the German federal system, Frankfurt closely competes with other German cities (e.g., Hamburg, Munich, Düsseldorf, Stuttgart, Berlin, Cologne) that are known for offering arbitration-related services. Thus, there may be a decentralization of arbitral seats in Germany. As competition tends to improve quality, this factor may ultimately contribute to a higher degree of sophistication in the German arbitration market at competitive prices.

The use of language may also be a relevant factor within this discussion. The standard rule is that German is the court language in German court proceedings pursuant to [Section 184](#) of the Courts Constitution Act. Nonetheless, courts in Frankfurt are well acquainted with international proceedings. This is highlighted by the introduction of an English-speaking [Chamber for International Commercial Disputes](#) at the Regional Court (Landgericht) of Frankfurt in 2018. Furthermore, lawyers in Germany usually have a very high proficiency in English.

Finally, tradition and biases may play an important role in the selection of an arbitral seat and, as described above, Frankfurt may not *yet* be perceived as the “go-to” city in international arbitration.

## Conclusion

The newly launched [GAR CI Arb Seat Index](#) rates various seats of arbitration in one-page reports in accordance with each of the [London Principles](#). Right now, the index only covers six jurisdictions (namely, Hong Kong, London, New York, Paris, Singapore, and Switzerland). According to the page, the index will be expanded over time to include additional cities and will be sorted according to grades in the style of bond ratings, or country risk (AAA, AA, A, BBB, BB, B, CCC, etc.). For the reasons mentioned above, Frankfurt should be included in the next round of expansions with a high rank, revealing Frankfurt as a hidden gem for international arbitration.

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