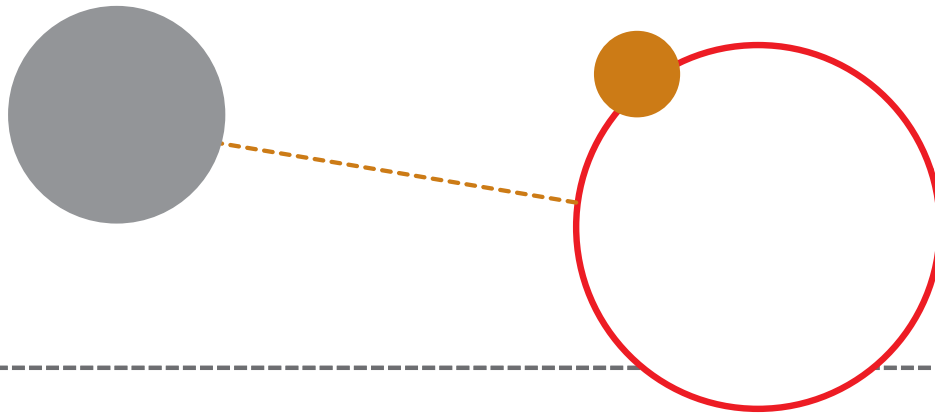


How to Compete as an International Arbitration Hub

Dr Yaraslau Kryvoi, LLM (Harvard), MCIArb

kryvoi@post.harvard.edu



Asian Arbitral Institutions

Table 3. International Cases at Asian Arbitral Institutions

Institutions	2008	2009	2010	2011	2012
CIETAC (China)	548	560	418	470	331
SIAC (Singapore)	99	160	198	188	235
KCAB (Korea)	47	78	52	77	85
HKIAC (HK)	n/a	29	16	41	68
VIAC (Vietnam)	35	26	26	83	64
BAC (China)	59	72	32	38	26
JCAA (Japan)	12	17	21	17	17

Sources: CIETAC, SIAC, KCAB, HKIAC, VIAC, BAC, JCAA. SIAC data includes both domestic and international cases.

Joongi Kim, International Arbitration in East Asia: From Emulation to Innovation, 4 Arb. Brief 1 (2014)

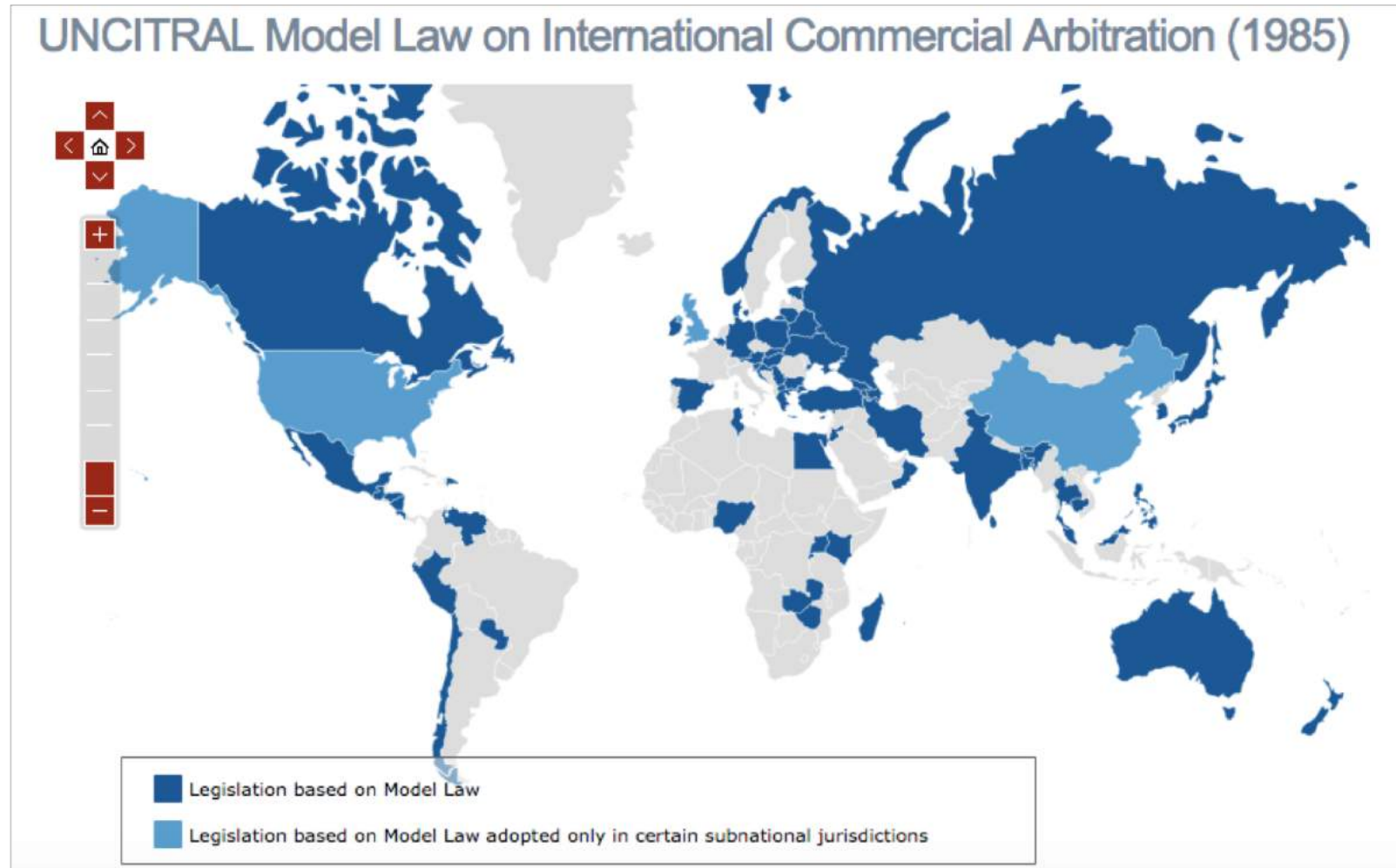
Japan and Arbitration

- The number of cases at JCAA remains less than 20 cases per year
- The total number of Japanese cases has not increased unlike the number of cases from other countries
- Stronger willingness to settle?
- General preference to resort to litigation
- A combination of these factors?

Arbitration Hub

- Domestic Market
- Legislation
- Ease of Doing business
- Courts and the rule of law
- Foreign investments
- Rule of law, particularly the role of judiciary

UNCITRAL Model Law (map)





Domestic Courts Important in International Arbitration

- At the beginning of arbitration (challenges to jurisdiction, arbitrators)
- During the arbitral proceedings (taking evidence, provisional measures, replacement of arbitrators)
- At the end of arbitration (challenges to the award)
- At the stage of enforcement (challenges, public policy, etc)
- National courts could exist without arbitration but arbitration could not exist without national courts
- Balance between cooperation and interference

Why London Succeeded?

- Strong rule of law and favorable investment climate
- Entered the market long time ago, slowly developed reputation
- Language
- Global financial center
- More than half the world's leading law firms have chosen the capital as their headquarters
- The largest concentration of judicial expertise anywhere in the world - experts, within a short walk of one another

World's Leading Traders in Services (2014)



Top ten traders in commercial services in 2014					
Exporters			Importers		
	US\$ billions	Per cent share		US\$ billions	Per cent share
US	686	14.1	US	454	9.6
UK	329	6.8	China	382	8.1
Germany	267	5.5	Germany	327	6.9
France	263	5.4	France	244	5.1
China	222	4.6	Japan	190	4.0
Japan	158	3.3	UK	189	4.0
Netherlands	156	3.2	Netherlands	165	3.5
India	154	3.2	Ireland	142	3.0
Spain	135	2.8	Singapore	130	2.7
Ireland	133	2.7	India	124	2.6
Memo:			Memo:		
Australia (#26)	52	1.1	Australia (#24)	62	1.3

Benefits of attracting arbitration business

International arbitration users benefit

- Arbitration institutions
- Local lawyers (support of proceedings, challenges)
- Legal support industry (paralegals, translators, notaries, etc)
- Hospitality (transportation, hotels, restaurants, sightseeing, etc)
- Prestige of the country confirming strong rule of law
- Attracting arbitration users is similar to attracting foreign investments

What matters for arbitration users

Country	Doing of Business (World Bank 2015)	Rule of Law Index (World Justice Project 2015)	EF English proficiency index (English First 2015)
Japan	34	13	30
United Kingdom	6	12	n/a
China	84	71	47
Hong Kong	5	17	n/a
Singapore	1	9	n/a
South Korea	4	11	27

Table 9 – Incidence of Rule of Law issues among investors

	Type of Rule of Law issue	Incidence ⁴³
1	Lack of transparency of regulatory/legal rule-making processes	41.6%
2	Arbitrary or discriminatory treatment by host country government	32.1%
3	Lack of recognition of intellectual property rights	30.5%
4	Lack of recognition of contract rights	30.5%
5	Unexpected and/or retrospective changes to regulatory/legal measures	30.0%
6	Lack of independent and impartial courts in host country	29.6%
7	Political or social instability	22.6%
8	Risk of physical security of in-country personnel	18.5%
9	Corruption (public or private)	11.1%
10	Risk of expropriation of investment without adequate compensation	6.6%
11	Non-democratic character of host country government	1.6%
12	Poor human rights conditions in host country	1.2%

Source: British Institute of International and Comparative Law, Risk and Return. Foreign Investments and the Rule of Law (2015)

Table 28 – Steps to improve Rule of Law situation by HQ region

Step	HQ Region	Americas (126)	Europe (101)	Asia (43)	Africa & Middle East (16)	Oceania (15)	Total (301)
Stronger laws for the enforcement of investor rights, including IP rights, and laws guarding against expropriation		52%	51%	56%	63%	33%	52%
Better trained judiciary, police/security forces, and legal profession		48%	45%	47%	38%	33%	45%
Improved transparency in legal/administrative rule-making		36%	44%	40%	19%	53%	39%
Adoption of bilateral investment protection treaties		37%	30%	33%	31%	40%	34%
Adherence to international agreements and standards on human rights, controlling corruption, etc.		29%	28%	30%	56%	40%	31%
Increased political/social stability		33%	22%	49%	31%	20%	31%
Greater independence of the police/security forces		29%	27%	21%	31%	33%	28%
Greater independence of the judiciary		16%	25%	14%	13%	13%	18%

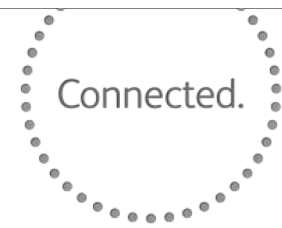


Japan as Arbitration Destination: Advantages and Disadvantages

Advantages	Disadvantages
Political stability & rule of law	Late entrance
Excellent infrastructure	Expensive
UNCITRAL Law Model	Not enough international legal expertise in arbitration
Major international trade power	Weak marketing
Reliable courts	English not official language

Possible steps to take

- As noted by 45% of respondents globally, ensuring and improving the training for members of the judiciary, the legal profession, and police and security forces
- Need to ensure training of lawyers on arbitration, legal English, learning from other arbitration institutions
- Raise awareness about arbitration among students, legal practitioners, organize profile-raising events – seminars, conferences, studies
- Stronger marketing campaign for Japan as an arbitration hub focusing on its strengths (rule of law, infrastructure, vibrant domestic market)
- Find a niche area to offer specialized arbitration



kryvoi@post.harvard.edu