

Cuniberti on the International Attractiveness of Contract Laws

I (University of Luxembourg) have posted The International Market for Contracts - the Most Attractive Contract Laws on SSRN.

The aim of this Article is to contribute to a better understanding of the international contracting process by unveiling the factors which influence international commercial actors when choosing the law governing their transactions.

Based on the empirical study of more than 4,400 international contracts concluded by close to 12,000 parties participating in arbitrations under the aegis of the International Chamber of Commerce, the Article offers a method of measuring the international attractiveness of contract laws. It shows that parties' preferences are quite homogenous and that the laws of five jurisdictions dominate the international market for contracts. Among them, two are chosen three times more often than their closest competitors: English and Swiss laws.

International Attractiveness, 2007-2012

- **English Law: 11.20**
- **Swiss Law: 9.91**
- **U.S. State Laws: 3.56**
- **French Law: 3.14**
- **German Law: 2.03**

The Article then inquires which features made these laws more attractive than others and seeks to verify whether the postulate that international commercial parties are rational actors is true. It concludes that while some parties might have the resources to study the content of available laws before deciding which one to choose, others have no intention of investing such resources and are happy to rely on cheaper means to assess the content of foreign laws, including

proxies. Furthermore, some parties suffer from cognitive limitations, the most important of which being the fear of the unknown and the correlative need for selecting a law resembling their own. Finally, unsophisticated parties might not fully appreciate the extent of their freedom to choose the law governing their transaction and might wrongly believe that it is constrained by largely irrelevant factors such as the venue of the arbitration.

The article is forthcoming in the *Northwestern Journal of International Law and Business*.