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Reinforcing the Regime: Key Updates to Arbitration in England and Wales

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Background

The Arbitration Act 2025 (the "Act") received Royal Assent on 24 February 2025. Its stated aim is to amend the Arbitration Act 1996, which governs arbitral claims seated in England and Wales. It marks a gentle evolution of the existing arbitration framework, rather than a wholesale overhaul, and is designed to respond to a number of uncertain or complex issues in the English arbitral regime, as well as developments in arbitral practice since 1996. Although it has received Royal Assent, as at the date of this article its provisions have not yet come into force.

What Do the Changes Mean for Parties?

As we wait for the new provisions to come into effect, we take a look at the key amendments which may give rise to practical considerations for commercial parties:

- **Clarification of Law Applicable to an Arbitration Agreement**: Arguably, the key change clarifies the law applicable to arbitration agreements. The leading English Supreme Court authority[1] states that, absent an express choice, the law chosen to govern the underlying contract is also to be treated as the governing law of the arbitration agreement contained within it (subject to a number of caveats). The Act now confirms that an arbitral agreement will be governed by the law of the "seat" chosen by the parties, save where an express choice has been made otherwise.

  Key Takeaway: Expressly state the law which will govern the arbitration

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agreement. This is particularly important where the governing law of the contract is different to the seat of arbitration. If the governing law of the contract is English law, we suggest that the law governing the arbitration agreement is also stated to be English law.

- **New Express Powers of Summary Dismissal**: Although already provided for in a number of established institutional rules, the Act expressly grants arbitrators the power to summarily dispose of an issue, claim or defence where it deems that a party has *"no real prospect of succeeding*" on such issue(s), claim(s) or defence(s). Although Tribunals will have discretion to determine the procedure for assessing any application, the guidance provided in existing English case law in respect of summary judgment applications is likely to benefit parties in assessing the merits of any potential application. In the right circumstances, applications of this nature could provide a more efficient and cost-effective way to deal with unmeritorious issues.

  Key Takeaway: This may provide parties with a means of resolving unmeritorious claims or counterclaims more efficiently. However, it remains to be seen whether arbitrators will be willing to exercise these powers. Arbitral tribunals have only rarely exercised similar powers provided under the rules of the arbitral institutions.

- **Simplification of Challenges to Arbitral Awards**: Previously, parties were at liberty to apply to the English Court to challenge arbitral awards on the basis that the Tribunal lacked substantive jurisdiction to render such an award.[2] Under existing case law, that involved a full rehearing of the application even where a Tribunal had already considered the issue of its own jurisdiction. The Act simplifies this framework and provides that evidence put before a Tribunal will not be re-heard by the Court (and evidence not put before a Tribunal must equally not be considered by the Court). It further provides that grounds of objection that were not raised before a Tribunal cannot be raised before the Court unless applicants can show that they could not, with reasonable diligence, have discovered said ground at the time of the arbitration. Although the Court is able to depart from these provisions "*in the interests of justice*"[3], taken together they will effectively avoid jurisdictional issues being re-litigated after an arbitral award is rendered.

  Although the full detail of the new framework is to be set down by the Court itself, these are mandatory provisions of the arbitral regime in England and Wales meaning that parties will be unable to opt out of them in their arbitration agreements.

  Key Takeaway: If you plan to challenge the jurisdiction of the Tribunal at an early stage of the arbitration, you must ensure you put forward all possible

arguments. A failure to do so could preclude you from raising them at a later date if you choose to challenge an arbitral award on the same basis.

Comment

Overall, these incremental changes are intended to reinforce the reputation of England and Wales as a leading arbitral seat for commercial disputes rather than introduce radical reform. In debate on the proposed bill in the House of Lords, it was described as "*evolution not revolution… It neither seeks to fix what is not broken, nor does it sell short the potential of our jurisdiction*"[4]; an apt description for a moderate, yet impactful, set of reforms.

[1] *Enka Insaat ve Sanayi AS v OOO "Insurance Company Chubb [2020] UKSC 38*

[2] Section 67 of the Arbitration Act 1996.

[3] Section 11 of the Act.

[4] Per Lord Ponsonby of Shulbrede, *Hansard, Volume 839, 30 July 2024, column 950 and 956*.