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Proposed Amendments to the English Arbitration Act

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The English Arbitration Act of 1996 is revered as underpinning the subsequent success of London as perhaps the world's busiest arbitration venue. However, as the Act approaches its 30th anniversary, light touch reform is being considered.

- **The law of the arbitration agreement**: This is perhaps the most discussed reform to the Act. The current law in England & Wales for determining the proper law of an arbitration agreement was set in Supreme Court decision *Enka v Chubb* [2020]. However, the consensus is that the law remains unnecessarily complex. The Law Commission therefore wish to confirm that the law of the arbitration agreement is the law of the seat unless the parties expressly agree otherwise. This amendment has been welcomed by local practitioners.

- **Confidentiality**: Under English law, there is an implied duty to maintain arbitral confidentiality. This is a court developed concept established under the common law. It is not prescribed by the Act. This was therefore one area that was much discussed during the Law Commission consultation. Ultimately however, the Law Commission concluded that the Act should not codify the law of confidentiality.

- **Jurisdictional challenges**: Currently under the Act, challenges to the court on the basis that the Tribunal lacked jurisdiction involve a full rehearing. The Law Commission has proposed that rights of challenge should be limited to a review by the court of the Tribunal's decision. However, the Commission has suggested that this change be made via amendments to the rules of court rather than to the Act.

There are several other minor amendments being proposed. But as the above discussion demonstrates, there was little appetite for major change with most London arbitration practitioners feeling strongly that the Act works well as it is. When it passes into law the updated Act will therefore look much as it already does.

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