JENNER & BLOCK

The English Arbitration Act - Key Changes and Implications for Businesses

Client Alerts

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By: James Rogers

On 24 February 2025, the Arbitration Act 2025 received Royal Assent, bringing into effect long-touted amendments to the English Arbitration Act 1996 (the "1996 Act"). This soft-touch reform introduces several changes aimed at enhancing the efficiency and adaptability of the arbitration process, solidifying London's position as a leading hub for international dispute resolution.

Here the Jenner arbitration team distil the core amendments and the potential impacts for businesses.

1. Harmonisation of the Law Governing Arbitration Agreements

The most noteworthy amendment is the introduction of a statutory rule governing the law of the arbitration agreement. A new Section 6A has been introduced into the 1996 Act which does away with the existing position under the English common law that an arbitration agreement is typically governed by the law governing the primary contract unless the parties expressly agree otherwise. The new Section 6A stipulates that, unless expressly agreed otherwise, the law of the arbitration agreement will automatically align with the law of the seat of the arbitration.

This change provides greater clarity and predictability over an area of arbitration law that has garnered considerable attention since the UK Supreme Court decision in Enka v Chubb [2020] UKSC 38. That being said, businesses should still be cautious and review their arbitration clauses carefully to ensure alignment with this new provision, particularly in cases where the seat of arbitration and the governing law differ.

New Section 6A does not apply to standing offers to submit disputes to arbitration contained in investment treaties or non-UK legislation. This exemption was introduced to prevent unintended consequences in non-ICSID investor/state treaty-based arbitrations which may be seated in the UK.

2. Revised Procedure for Challenging Awards

The amendments also streamline the process for jurisdictional challenges to arbitral awards. Section 67 of the 1996 Act, which concerns jurisdictional challenges, has been amended such that the introduction of new evidence or arguments not previously presented to the tribunal during the

arbitration may not be introduced for the first time during a subsequent challenge to the award before the courts. A narrow caveat to this is that new jurisdictional objections may still be raised if the basis for the challenge or the evidence in support could not have been discovered with reasonable diligence during the arbitration.

The English courts have a non-interventionist approach to arbitration, and this is a difficult jurisdiction within which to challenge an award. These amendments bring further certainty to the arbitration process meaning that, other than in exceptional circumstances, losing parties will not be able to run a new case on jurisdiction in the courts.

3. Introduction of Summary Disposal Powers

In a move aimed at speeding up the arbitration process, a new Section 39A has been added to the 1996 Act granting tribunals the express power to dispose of claims and/or issues summarily. This new power, subject to an obligation to "afford the parties a reasonable opportunity to make representations", allows tribunals to strike out claims that "have no real prospect of success," mirroring the threshold test used for summary judgment in English court proceedings.

Tribunals seated in England arguably had this power already, pursuant to Article 34(1) of the 1996 Act, which empowers tribunals "to decide all procedural and evidential matters, subject to the right of the parties to agree any matter." This mechanism will also be familiar to regular arbitration users as it has been adopted into the rules of many of the major arbitral institutions in recent years. Nonetheless, this reform is welcomed as it reinforces the inherent flexibility of arbitration and will hopefully facilitate a reduction in time and cost by deterring parties from bringing frivolous claims that have little chance of success.

4. Empowerment of Emergency Arbitrators

The amendments to the 1996 Act also strengthen the role of emergency arbitrators. Emergency arbitration has become increasingly common in the last decade following the adoption of emergency arbitration mechanisms in most major institutional arbitration rules. However, national legalisation has not necessarily kept pace with this change in most jurisdictions. New provisions have therefore been introduced into the 1996 Act which give emergency arbitrators the same powers as fully constituted tribunals in relation to peremptory orders (i.e., a final order or direction of the tribunal, which specifies a time for compliance, usually made following failure by one of the parties to adhere to an earlier order) and to grant permission to the parties to apply to the court for preliminary injunctive relief under Section 44 of the 1996 Act.

These changes aim to make arbitration more responsive to the immediate needs of the parties, particularly in cases where urgent interim relief is needed to protect assets or rights prior the constitution of the full tribunal.

5. Extension of Arbitrator Immunity

The amendments to the 1996 Act have also expanded the scope of immunity for arbitrators. Under the updated provisions, arbitrators will not be held liable for their resignation, except in cases where it can be proven that the resignation was unreasonable or unjustified. Further, in proceedings where an arbitrator's removal is sought, the arbitrator will not be liable for any associated costs, unless it is conclusively demonstrated that the arbitrator acted with bad faith, dishonesty, or in a manner that deliberately undermines the arbitration process.

This extension of immunity aims to safeguard the impartiality and independence of arbitrators while also promoting fairness in arbitration proceedings.

6. Potential Missed Opportunities

Most commentators have suggested that these soft-touch reforms, after a significant period of gestation and broad consolation with arbitration users, confirm the underlying merit and workability of the 1996 Act. Most say that, while the amendments are welcome, little change was in fact needed.

That said, some commentators would argue that the amendments have not gone far enough in a couple of important respects. A notable gap is the lack of explicit provisions on confidentiality, an area also overlooked by the 1996 Act. In England and Wales, there is a common law presumption of confidentiality in the arbitration process and ultimately the Law Commission chose not to codify an explicit duty of confidentiality. Interestingly, Scotland (an arbitration jurisdiction in its own right, distinct from England and Wales and Northern Ireland to which the 1996 Act applies) has a separate arbitration act of its own which does include an obligation of confidentiality.

There were also belated submissions following the controversial High Court decision in Nigeria v Process & Industrial Developments Limited [2023] EWHC 2638 (Comm) for the introduction of additional safeguards around fraud and corruption in the arbitration process. However, having consulted with major stake holders, including important institutions such as the International Chamber of Commerce, the London Court of International Arbitration and the Chartered Institute of Arbitrators, among others, these proposals were dropped. As the Minister of Justice, Lord Ponsonby explained, the government opposed the introduction of a general duty on the tribunal to “safeguard the arbitration proceedings against fraud and corruption” because it would add little to the existing powers of the tribunals under the 1996 Act: “it is unclear what additional benefit it would provide over the current regime, which provides both parties and arbitrators with routes to challenge and address corrupt conduct, as well as duties on the arbitrator to ensure fair and proper proceedings”.

Jenner & Block’s international arbitration team, spanning our London and US offices, brings together top-tier legal expertise, strategic advocacy, and decades of experience handling complex arbitrations and enforcement matters worldwide, including in particular under the English Arbitration Act 1996 and in the English courts. If you have any questions about our work in this area, please reach out to James Rogers (jrogers@jenner.com), Elizabeth Edmondson

(eedmondson@jenner.com), Kenneth Beale (kbeale@jenner.com), or Ronan O'Reilly (ronan.oreilly@jenner.com).

Related Attorneys

James Rogers
Partner
jrogers@jenner.com
+44 330 060 5463

Related Capabilities

International Arbitration

Related Locations

London