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Insights

THE UK'S NEW ARBITRATION ACT COMES INTO FORCE

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The Arbitration Act 2025 comes into force on 1 August 2025.

The new Act is largely based on the recommendations made in the Law Commission's Final Report, published following a public consultation seeking views on potential areas for reform.

The new Act doesn't represent a dramatic change to the arbitration framework in England, Wales and Northern Ireland. Feedback from the Law Commission's consultation was that the Arbitration Act 1996 works well and that significant reform was neither needed nor wanted. As a result, the new Act makes a series of discrete amendments to the Arbitration Act 1996, delivering incremental improvement as opposed to root and branch reform.

Here is a reminder of the key changes implemented by the new Act.

SUMMARY DISPOSAL

The new Act introduces a new power of summary disposal of a claim or defence has no real prospect of success. The power is akin to the summary judgment powers exercised by the courts and is a welcome amendment, giving arbitrators the express power to deal swiftly with claims or defences that have no real prospect of success.

GOVERNING LAW OF THE ARBITRATION AGREEMENT

The new Act introduces a new default rule specifying the governing law of the arbitration agreement. This is another welcome amendment.

In Enka v Chubb the UK Supreme Court sought to clarify the English common law principles for determining the governing law of an arbitration agreement. However, uncertainty persisted over the application of the Enka Principles in cases where the law of the underlying contract and the law of the seat of arbitration differed. These issues are discussed in our BCLP Insight Lessons from UniCredit v RusChemAlliance: What law governs your arbitration clause?

The new Act removes that uncertainly. It provides that (unless the parties specifically agree otherwise) an arbitration agreement is governed by the law of the seat and that an agreement on

the governing law of the main contract does not constitute express agreement that that law also applies to the arbitration agreement.

ARBITRATORS' DUTY OF DISCLOSURE

The new Act introduces a duty of disclosure for arbitrators. This new statutory duty reflects the common law rule, as set out in *Halliburton v Chubb,* requiring arbitrators to disclose circumstances that would or might give rise to doubts as to their impartiality. The duty encompasses what an arbitrator actually knows or ought reasonably be expected to know. However, it does not address the scope of the disclosure required or set out any specific circumstances that must be disclosed. This is deliberate and designed to retain flexibility. It recognises that arbitration is used across a broad range of sectors and that in custom and practice as to what should be disclosed varies.

EXTENSION OF ARBITRATOR IMMUNITY

The new Act extends the scope of arbitrator immunity. Under the new Act, arbitrators will have no liability for resignation, unless the resignation is shown to be unreasonable. In applications to remove arbitrators, arbitrators will not be liable for costs, unless it is shown that they have acted in bad faith.

SECTION 44 AND THIRD PARTIES

The new Act amends Section 44 of the 1996 Act to make it clear that orders can be made against third parties. A third party will have full rights of appeal in respect of any order made under section 44. This is another welcome amendment. Conflicting case law had created uncertainty as to whether court orders under section 44 are available against third parties. This uncertainty has now been removed.

POWERS OF EMERGENCY ARBITRATORS

The new Act makes targeted amendments to the 1996 Act to give Emergency Arbitrators powers that mirror those of ordinary arbitrators. This is another welcome amendment which removed uncertainty as to whether the Act supports court enforcement of the decisions of emergency arbitrators.

SECTION 67 CHALLENGING AN AWARD ON JURISDICTIONAL GROUNDS

The new Act amends the procedure for challenging an award under section 67 of the 1996 Act. In cases where an objection has been made that the tribunal lacks jurisdiction, and the tribunal has ruled on this, any subsequent section 67 challenge by a party who participated in the arbitral proceedings should not be in the form of a full rehearing. The new Act provides that: (1) the court

should not entertain any new grounds of objection, or any new evidence, unless even with reasonable diligence the grounds could not have been advanced or the evidence submitted before the tribunal; and (2) evidence should not be reheard, save exceptionally in the interests of justice.

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