Arbitration Act 1996 under review

The Law Commission Of England and Wales consults on reform of the Arbitration Act 1996.

What is arbitration?

Arbitration is a form of alternative dispute resolution that does not involve court process and instead involves the appointment of a third party tribunal to determine a dispute. Arbitral awards have limited recourse for appeal, proceedings run in 'private' and awards are confidential and not publicly available.

England, London especially, has long distinguished itself as a global leader for the resolution of disputes by arbitration. Much of this is due to the legislation enshrined in the Arbitration Act 1996 (the "Act") which provides a distinguished framework of rules and procedures along which arbitration proceedings can run independently, or alongside an arbitral institution's own set of prescriptive rules. The efficiency of the arbitral regime, supplemented by the scope of enforceability under the "New York Convention"[1] (the Act itself gives effect to both domestic and foreign enforcement) has helped mitigate the uncertainty around the recognition and enforcement of UK and EU Court judgments in the wake of Brexit. Arbitration therefore, is a major source of business for the UK economy.

Why the need for change?

Despite continued high regard for the act and the conclusion that it continues to function well even after 25 years in force, the Law Commission of England and Wales has recognised that it needs to update and modernise the legislation in order to bring it into line with reforms in other nations and to ensure that the UK's position as a world leader as an arbitral seat continues. As such, a consultation process was initiated in September 2022 and

the Law Commission has proposed a number of reforms.

The proposal

Whilst the main provisions on the Act will remain unchanged, the new proposals include:

- Provisions to enable arbitrators to summarily dismiss matters which have no merit (akin to summary judgment), the threshold test of either 'manifestly without merit' or 'with no reasonable prospect of success' is currently under consultation;
- Measures to give further protections to arbitrators – alongside codifying the need to disclose conflicts of interests, proposals include extending immunity to arbitrators and ensuring the equality of appointment;
- Extra provisions for the court system to support arbitral proceedings, in respect of the taking and preservation of evidence, orders relating to property or the sale of goods, and interim orders – and codifying when such orders can be made;
- A means to challenge an arbitrator and jurisdiction the Act using a more simplified form, and with recourse to an appeal as opposed to a full rehearing.

Fundamentally, provisions relating to privacy, confidentiality and impartiality are being retained, on the basis that the law in this area is already proportionate and effective. So too is s.69 of the Act, which relates to the restrictive circumstances in which an arbitral award can be challenged, i.e. where the award is 'obviously wrong' or where it would be in the public interest for the award to be reconsidered. The scope of s.69 was considered by the Law Commission who have concluded that, despite being an area of much debate, it works well for the purpose of achieving finality of process.

The Law Commission's consultation period remains open until 15 December 2022 and a link to the full consultation paper can be found on the Law Commission website.

How we can help

Should you have a contract or agreement that specifies arbitration for dispute resolution and/or London as the seat of arbitration, please get in touch with one of our experienced practitioners who can help guide you through the process.

[1] *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, concluded in 1958 – the Convention provides a regime for the enforcement and recognition of arbitral awards within contracting states*

Written by

Cripps

Moya Faulkner

Legal Director