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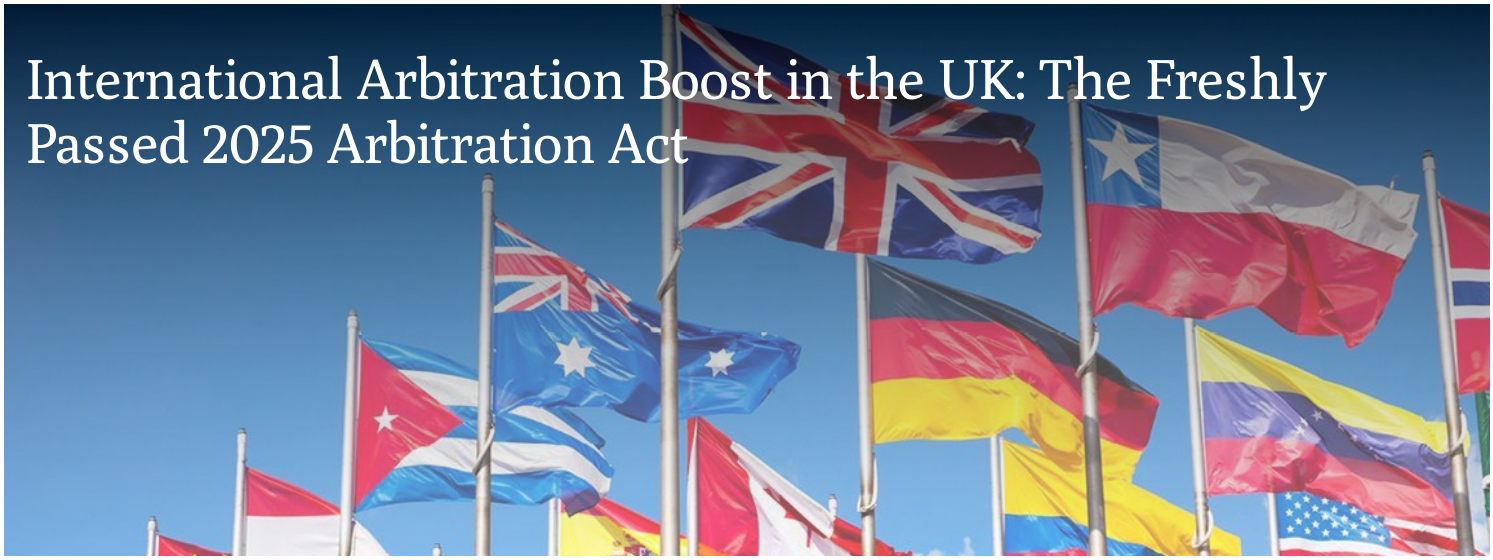
CLIENT ALERT

International Arbitration Boost in the UK: The Freshly Passed 2025 Arbitration Act



MARCH 13, 2025

On 24 February 2025, the UK adopted a new arbitration law: the **Arbitration Act 2025** (**the "2025 Act"**). The 2025 Act modernises key aspects of arbitration regulation in the UK, and by doing so is intended to reinforce London's status as a premier destination for international commercial disputes resolved by arbitration.

In short, and as described below, key reforms within the 2025 Act include:

- Expressly granting the power to arbitrators to issue summary decisions and grant emergency injunctive relief;
- Enhancing arbitrators' duty of disclosure as to any conflicts of interest;
- Reducing lengthy post-arbitration award jurisdictional challenges and delays in the English courts; and
- Providing clarity as to the governing law of the arbitration agreement – a legal issue that, when in dispute, can sometimes add significant time to proceedings as a preliminary issue and delay substantive proceedings.

WHY DID THE ENGLISH ARBITRATION STATUTE NEED REFORM?

English contract law, praised for its predictability and historically tested commerciality, governs many cross-border contracts. London also stands as one of the most-favoured "seats" for international arbitration proceedings – the "seat" being the legal place of the arbitration, the predominant jurisdiction for court applications in support of an arbitration and for formal challenge of an arbitral award.

As a result of these factors, the arbitration sector within the UK has been estimated by the UK Ministry of Justice to contribute £2.5 billion annually to the British economy. However, the rise of other arbitration-friendly jurisdictions in the last decade (including Singapore, Hong Kong, Dubai and Abu Dhabi), together with continued competition from other long-standing popular seats such as Paris and Geneva, has intensified global competition to be an attractive destination for cross-border disputes.

The UK's Arbitration Act 1996 (the "**1996 Act**") already offers one of the most recognised frameworks for international arbitration, enshrining cornerstone principles such as autonomy of the arbitration agreement and minimal interference of the courts. Yet, following 25+ years of application of the 1996 Act, the UK Law Commission felt it was time to conduct a review of the 1996 Act and its application.

Following a 2-year consultation process with arbitration stakeholders, institutions, users and counsel, the UK Law Commission presented an Arbitration Bill in November 2023 which was eventually adopted on 11 February 2025 by Parliament and received Royal Assent on 24 February 2025 as the Arbitration Act 2025. The 2025 Act does not aim to completely change the tried and tested system of the 1996 Act. Rather, the 2025 Act introduces strategic modernised provisions. Key changes are described below.

KEY REFORM 1: NEW PROVISIONS TO GRANT TO ARBITRATORS THE POWER TO MAKE AN AWARD ON A SUMMARY BASIS AND TO CONDUCT EMERGENCY ARBITRATIONS

Summary disposal of unmeritorious claims allows arbitrators, like courts, to dispose of any issue, claim or defence, including jurisdictional objections, which lack merit. Such power, which was granted to arbitrators under the rules of certain arbitral institutions such as the LCIA, was not expressly stated in the 1996 Act.

While it has been argued for quite some time now that arbitrators already had this power in England, arising from their duty to adopt procedures which avoid unnecessary delay and expense (Section 33 of the 1996 Act), that situation gave rise to uncertainty. It also sometimes gave rise to "due process paranoia" on the part of some arbitrators who were reluctant to proceed on a summary basis, as they were naturally mindful of reducing the likelihood of any challenges to their award later on.

A **new Section 39A**, introduced by the 2025 Act, expressly empowers a tribunal, on the application of a party, to make an award on a summary basis in relation to a claim or issue if the tribunal considers that relevant party has ***no real prospect of success*** in making or defeating that claim or issue.

The 2025 Act also addresses the practice of emergency arbitrations, offered under certain institutional rules such as those of the ICC and the LCIA. The 2025 Act introduces a **new section 41A** which confirms the possibility of recourse to such emergency arbitration procedures where the parties have so agreed and which grants to emergency arbitrators the power to make peremptory orders against a party who fails to comply with their orders.

KEY REFORM 2: A NEW PROVISION TO IMPOSE A CONTINUOUS DUTY OF DISCLOSURE TO ARBITRATORS

At common law, arbitrators are under a statutory duty to disclose any "*relevant circumstances*" that might reasonably give rise to justifiable doubts as to their impartiality. A breach of this duty can create a ground to challenge the award. With the 2025 Act, this duty becomes statutory and is codified into a **new Section 23A**. Section 23A also makes clear that the arbitrator's duty of disclosure is a continuous duty: it starts from the moment the arbitrator is approached for a potential appointment and covers the entire arbitration process. This aligns with other international standards, such as the IBA Guidelines on Conflicts of Interest in International Arbitration.

KEY REFORM 3: AMENDMENTS TO AVOID THE RE-HEARING OF JURISDICTIONAL CHALLENGES

Section 67 of the 1996 Act allows a party to challenge a tribunal's award before the courts on the grounds that the tribunal lacked substantive jurisdiction. This challenge sometimes gave rise to full re-hearings (*de novo* review) of the jurisdictional objection by the English courts. These re-hearings could be costly, inefficient, and potentially unfair, particularly where arguments or evidence could be re-litigated. To address these concerns, the 2025 Act **amends Section 67** by (i) restricting the re-hearing of evidence already heard by the arbitral tribunal itself; and (ii) limiting the admissibility of new grounds or evidence to cases where such new grounds or evidence could not, with reasonable diligence, have been raised during the arbitration.

KEY REFORM 4: CERTAINTY AS TO THE GOVERNING LAW OF ARBITRATION CLAUSES

It has long been recognised that arbitration clauses are autonomous from the contracts in which they are inserted and can be governed by a law different from the law that governs their underlying contracts. The law applicable to the arbitration clause is important because it governs issues such as: (i) the validity of the arbitration agreement (and as a consequence the possibility to litigate the same dispute before national courts); (ii) the type of disputes which can be arbitrated (the concept of "arbitrability" – for example, depending on the jurisdiction disputes concerning

antitrust and/or IP issues cannot be subject to arbitration); and (iii) whether additional parties can be joined to the arbitration proceedings.

Yet, under the 1996 Act, the determination of that applicable law was unclear. This uncertainty often allowed parties to engage into protracted disputes as to which law governed their agreement to arbitrate, as illustrated by the dispute in *Enka v. Chubb* [2020] UKSC 38, where the parties had to escalate the issue to the UK Supreme Court. The 2025 Act puts a halt to these disputes and provide a keenly awaited and clear-cut default rule on this issue.

With the 2025 Act, a **new Section 6A** provides that unless the arbitration clause is found in an international treaty or foreign legislation, or unless the parties have expressly chosen a particular law to govern the arbitration clause itself, **the governing law of the arbitration clause will be the law of the seat of the arbitration**. This clarity, especially where parties have drafted an arbitration clause selecting London as the seat of the arbitration, will help parties avoid considerable time and costs.

The 2025 Act will apply to all arbitration proceedings commenced after the date that the 2025 Act formally comes into force, regardless of when the applicable arbitration agreement was made. The 2025 Act commencement date is to be designated by government regulations, anticipated in the coming months (spring/summer 2025).

These updates to the 1996 Act through the 2025 Act are particularly welcome. They will provide improved clarity and efficiency to the way we conduct international arbitration in London, thereby reducing the costs and duration of the arbitral proceedings for end users of the process, the companies which select London-seated arbitration in their dispute resolution clauses.

5 Min Read

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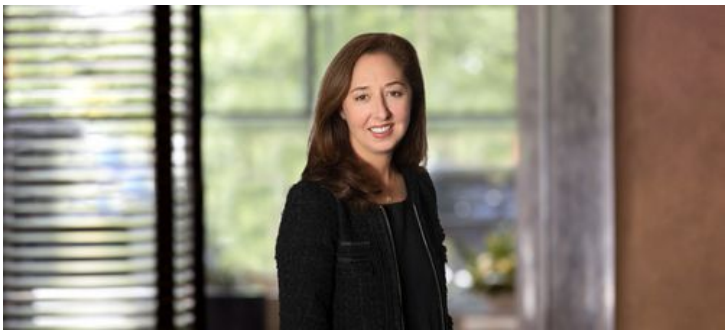

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