The Arbitration Act 2025 formally enters into force

On 1 August 2025, the Arbitration Act 2025 (the **"2025 Act"**) formally enters into force. The 2025 Act brings about a number of important changes to the Arbitration Act 1996 (the **"1996 Act"**), the principal statute governing international commercial arbitrations in England and Wales. Jonathan Schaffer-Goddard and Aphiwan Natasha King summarise some of the most important practical considerations in relation to the 2025 Act.

1. Governing Law of Arbitration Agreements

The 2025 Act establishes a presumption that arbitration agreements are governed by the law of the seat unless expressly agreed otherwise (section 6A). The statutory presumption effectively replaces the (controversial) line of jurisprudence established in Enka v Chub, Kabab-Ji, and UniCredit. It is notable that this change was progressed by Parliament simultaneously to the most recent restatement of the prior principle in UniCredit.

As a consequence, it is no longer clear, as a matter of English law, whether on the same facts as UniCredit – i.e. where a contract is governed by English law but provides for a foreign arbitral seat – the English court would be willing to grant an interim remedy to enforce that arbitration agreement. If parties wish to preserve the applicability of English law to the arbitration agreement itself and the right to apply to the English courts to enforce that agreement, it may be prudent to either select London as the seat or to expressly specify English law as the law governing the arbitration agreement (wherever the arbitration is to be seated).

2. Summary Awards

The 2025 Act establishes a power for the arbitral tribunal to make an award on a summary basis in circumstances where it considers that a claim, defence, or issue has no "*real prospect of succeeding*" (section 39A). This tackles a recognised problem in arbitration: even if there is a claim or counterclaim to which there is no defence, the presence of an arbitration clause means that a party can force their counterpart to try that claim in full.

The test effectively mirrors the test for summary judgment set forth in Part 24 of the Civil Procedure Rules (**"CPR"**). Notably, this procedure is additional to, and deviates from, the early determination and dismissal procedures in the rules of major arbitral institutions: The LCIA Rules (2020) provide the tribunal may make a determination where a claim or defence is *"manifestly without merit"* (Article 22.1(viii)). Similar provisions are provided for in the SIAC Rules 2025 (Article 47) and HKIAC Rules 2024 (Article 43). Such a procedure is not expressly provided for in the ICC Rules (although note the ICC's Practice Note on Article 22).

It remains to be seen the extent to which the new section 39A will be interpreted by tribunals in an equivalent manner to the existing jurisprudence under CPR Part 24, but it seems likely that tribunals will follow the CPR Part 24 case law. It remains to be seen if tribunals applying the existing early determination standards will develop and apply those tests in ways which are increasingly co-extensive with the section 39A power.

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Practically, if parties want to opt out of the summary award procedure, they will need to expressly agree to do so as contemplated in section 39A(1). Parties may seek to do so either in the contractual clause itself, through institutional rules that provide for opt out, or by agreement in the early stages of the arbitration.

3. Arbitration Challenges on Jurisdiction

The 2025 Act introduces an important limitation on challenges under section 67. The English court will now no longer be able to entertain any objections or evidence raised in the context of a section 67 challenge of an award if the applicant could, with the exercise of reasonable diligence, have put those objections or that evidence before the tribunal. The same principle is applicable where the evidence has in fact already been heard by the tribunal (section 67(3C)).

The amendment effectively reverses the line of jurisprudence established in cases such as Azov Shipping Co and Dallah v Pakistan and will significantly limit the abilities of unsuccessful parties in an arbitration to launch *de novo* challenges as to jurisdiction before the English court.

4. Arbitration Applications on Preliminary Points of Jurisdiction and Law

Arbitration applications before the English court may now be made under sections 32 (on issues of jurisdiction) and 45 (on issues of law) provided that there is either agreement between the parties or permission from the tribunal. There will no longer be a requirement under either provision to demonstrate that the question is likely to produce a substantial saving in cost and that the application was made without delay. This will make it easier to satisfy the English court that it should be seized of applications under section 32 and 45.

In respect of section 32, however, the Act imposes a further limitation by clarifying that challenges may only be brought before the English court to the extent that they are not a challenge "*in respect of a question on which the tribunal has already ruled*" (section 32(1A)). This ensures that section 32 clearly performs a different function to the review of jurisdiction under section 67.

5. Other Amendments

The 2025 Act introduces a number of other "housekeeping" amendments designed to codify existing principles in English common law and to bring the statute in line with the UNICTRAL Model Law and major arbitral rules. For example, the 2025 Act enshrines a duty of disclosure for arbitrators in a provision which largely (although not exclusively) codifies the common law principles set out in Haliburton v Chubb. The test at the new section 23A(3)(a) mirrors the principles set forth in *Halliburton,* albeit that the test in section 23A(3)(b) arguably goes further in establishing that the constructive knowledge of the individual arbitrator is relevant.

Similarly, the 2025 Act provides enhanced immunity for arbitrators in respect of costs (sections 24(5A) and 29); making express provisions for emergency arbitrators where such an arbitrator is provided for in the relevant arbitration rules (sections 41A and 44); and clarifies the (previously unsettled) right of the Court to make orders against third parties in support of arbitral proceedings under section 44 of the Act. The Act also repeals the otiose sections 85 to 87 of the 1996 Act.

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6. Commencement

The 2025 Act applies to all arbitral proceedings commenced after 1 August and to all court proceedings commenced after 1 August (so long as they are not (a) in connection with arbitral proceedings which commenced prior to 1 August, or (b) in connection with awards made in pre-commencement arbitral proceedings).

Conclusion

The 2025 Act introduces a number of welcome changes designed to modernise arbitration procedure in England and to keep pace with developments in other jurisdictions. Procedures such as early determinations and emergency arbitrators can be desirable for reasons of both cost and efficiency, and there has been a growing use of both procedures in London-seated arbitrations: see the LCIA Report 2024 and ICC Report 2024. It further remains to be seen, however, how certain provisions of the 2025 Act – such as the new sections 67(3C) and 39A – will be interpreted. In the interim, parties and their advisors should take stock of the new statute and consider whether their existing dispute resolution clauses remain fit for purpose.

The summary above is for informational purposes only and should not be construed as legal advice.

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