Kluwer Arbitration Blog

2024 in Review: Arbitration-related Developments in England and Wales and Ireland

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2024 has been another fruitful year for arbitration developments in the British Isles. As part of the 2024 Year in Review series, this post considers the key judicial, legislative and institutional developments in England and Wales in the past year, as well as highlights from Ireland's arbitration landscape.

Judicial Developments in England and Wales

As usual, the English courts have been active with their arbitration-related caseload this year, providing guidance on issues at the intersection between arbitration and other areas of law and jurisdictions.

Arbitration and Insolvency

First, the Privy Council overruled the leading English authority on the issue of winding up proceedings being automatically stayed or dismissed where the disputed debt is subject to an arbitration agreement (see here). In *Sian Participation Corp (In Liquidation) v Halimeda International Ltd*, the Privy Council held, overruling *Salford Estates (No 2) Ltd v Altomart Ltd (No 2)*, that a stay or dismissal in those circumstances should not be automatic. Instead, it should be subject to the court's discretion on whether the relevant debt is disputed on "genuine and substantial" grounds. Unusually, while Privy Council decisions are ordinarily not binding precedents upon English courts, in reliance on *Willers v Joyce (No 2)*, the Privy Council determined that this judgment is binding and to be followed by the English courts going forward.

It remains to be seen whether other common law jurisdictions, as discussed here, may take the opportunity to decide if they wish to align themselves with the approach now endorsed by the Privy Council.

Arbitration and Foreign Courts

The inherently cross-border nature of international arbitration has resulted in courts being occasionally put in the uncomfortable position of having to decide what the laws of another jurisdiction mean or, worse, declaring that the courts of another sovereign state have no jurisdiction over a dispute that should be referred to arbitration. The UK Supreme Court had the opportunity to do both in *UniCredit Bank GmbH v RusChemAlliance*, where it was asked to determine whether the arbitration agreements were governed by the governing law of the contract (i.e., English law), or the law of the seat (Paris), and was further asked to decide whether England was the proper place to bring the claim for an anti-suit injunction against Russian court proceedings.

On the first issue, the Supreme Court held that, notwithstanding the Arbitration Bill (which is not yet law), the correct approach is that laid down in *Enka v Chubb*, such that English law was applicable. On the second issue, since the English court is not the curial court, it is not concerned with whether England is the *forum conveniens* but only with whether to enforce the parties' agreement. Because neither the French courts nor arbitration proceedings are a forum in which the claimant could obtain any (or any effective) remedy for the defendant's breach (and threatened further breach) of the arbitration agreements, England and Wales was the proper place for the claim. Accordingly, the Court of Appeal was entitled to grant the claimant a mandatory injunction requiring the respondent to discontinue Russian proceedings.

Challenges to Awards

Given London's popularity as a seat of arbitration, it is no surprise that English courts continue to consider challenges to arbitration awards regularly. For example, in the long-running case of *Diag Human & Mr. Josef Stava v Czech Republic*, the English courts handed down several judgments in 2024, the latest to determine *inter alia* the Czech Republic's s. 67 challenge of the award (see here). The court considered in particular the *ratione materiae*, *ratione personae* and *ratione temporis* objections raised by the state. All three objections were rejected, upholding the Tribunal's findings.

Other recent appeal decisions include *Aiteo Eastern E & P Company Ltd v Shell Western Supply and Trading Ltd & Ors* on the question of apparent arbitrator bias and the requirements of disclosure (see here) and *Sharp Corp Ltd v Viterra BV (formerly known as Glencore Agriculture BV* on the scope of arbitration appeals under s. 69 of the Arbitration Act 1996 (see here).

Lessons From the Litigation Space

Finally, even litigation cases that do not relate to arbitration proceedings or awards may nevertheless have an impact on arbitrations. For example, in *Tui UK Ltd v Griffiths*, the Supreme Court affirmed the rule in *Browne v Dunn* and the requirement for a party to "put" a case to a witness who has given contrary evidence so they have an opportunity to respond (see here). This may apply in English-seated arbitrations but may also have a broader relevance given a tribunal's broad discretion in applying rules of evidence under most institutional rules as well as *ad hoc* arbitrations. In *Martin v Herbert Smith Freehills LLP*, the court provided a timely reminder that, although remote hearings and the taking of evidence by video-conferencing have become increasingly common in both litigation (and arbitration) proceedings in the post-pandemic world, it should not be readily accepted as a matter of course as there may be instances where this is

unsatisfactory (see here).

Legislative Developments in England and Wales

The Arbitration Bill is undoubtedly one of the more keenly-watched developments of the year. First proposed in 2023 under the previous government, its fate was left uncertain after the snap general election in May. In July 2024, the Arbitration Bill was introduced into Parliament again, and has now completed the third reading in the House of Lords.

As discussed in earlier coverage (here and here), the Arbitration Bill is expected to bring about significant amendments to the existing English Arbitration Act. These include clarifying the law applicable to arbitration agreements, codifying a duty of disclosure on arbitrators, strengthening arbitrator immunity, empowering arbitrators to make awards on a summary basis, empowering courts to make orders in support of emergency arbitrators and revising the framework for s. 67 challenges.

Institutional Developments in England and Wales

As the jurisdiction's flagship institution, the London Court of International Arbitration ("LCIA") has had another busy year. It has also ramped up inclusivity efforts with the publication of the Equality, Diversity and Inclusion Guidelines in December. Shortly before Christmas, the LCIA also published a third batch of arbitrator challenge decisions, helping to further shed light on the LCIA Court's decision-making process.

2025 will see the LCIA step into a new era, with new Secretary-General Kevin Nash at its helm after a decade under the leadership of Professor Dr Jacomijn van Haersolte-van Hof who oversaw the institution's steady rise to become one of the most important arbitration institutions internationally.

Key Developments in Ireland

Finally, across the Irish Sea, the Blog covered a number of developments in Ireland, notably the only common-law jurisdiction in the European Union ("EU").

Ireland has in recent times legalised third-party funding for international commercial arbitration and other dispute resolution proceedings as defined in the Arbitration Act 2010 (see here). This development brings Ireland in line with other EU jurisdictions, particularly in the context of the European Parliament resolution of 13 September 2022 with recommendations to the Commission on Responsible private funding of litigation for the regulation of the third-party funding industry.

The Irish courts also considered some interesting arbitration-related cases. For instance, in *Jephson & Jephson v Aviva Insurance Ireland DAC*, the Irish High Court lifted a stay on court proceedings where there was an arbitration agreement (see here), despite the applicability of Article 8 of the Model Law, which has been incorporated into Irish law by the Arbitration Act 2010. The parties

had expressly agreed that the stay was subject to the dispute being referred to arbitration, and the inherent jurisdiction of the court would be exercised to lift the stay in certain circumstances (i.e., failure to proceed with the arbitration in a timely and efficient fashion). The Irish High Court determined that such failure had clearly subsequently occurred, and thus the claimant was entitled to an order lifting the stay on proceedings despite the parties' arbitration agreement.

Looking Ahead to 2025

2025 looks set to be similarly eventful.

First, the Arbitration Bill is scheduled to be considered by the House of Commons and, subject to the debates, may soon be passed into law. This represents a significant milestone for English arbitration law, which has remained largely unchanged since 1996.

Second, the limits of what the international legal community considers to be the ambit of judicial powers of one state *vis-à-vis* foreign law and proceedings will continue to be tested with the retreat of Russia from international legal systems. This is especially so given the limited number of authorised foreign arbitration institutions, and the exclusive jurisdiction of Russian courts over sanctioned parties notwithstanding arbitration clauses in their contracts pursuant to an amendment to their arbitration law after the Russian invasion of Ukraine (see also here). English courts in particular remain a hotspot for testing these boundaries given the propensity for English law in existing commercial contracts.

Finally, the advancement of artificial intelligence, including but not limited to generative AI, is likely to remain a hot topic in the arbitration space. English courts are especially alive to the need to adapt to this new age of technology, in light of remarks made by the judiciary in recent times. Given the inherent flexibility and parties' control of the process, international arbitration is a prime candidate for testing out the efficiencies that AI could bring to dispute resolution, and it will be interesting to see how that may impact upon the English courts' approach towards such cases going forward.

The Blog will continue to monitor the arbitration developments in these jurisdictions and elsewhere in the coming year.

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