Kluwer Arbitration Blog

The English Arbitration Act 2025: What Does This Mean for LCIA Arbitration?

Eleanor Scogings (London Court of International Arbitration (LCIA)) · Tuesday, March 18th, 2025

The highly anticipated English Arbitration Bill has received Royal Assent, with the Bill enacted as the Arbitration Act 2025 ("2025 Act"). The 2025 Act modernises and amends the Arbitration Act 1996 ("1996 Act"), with the substantive amendments coming into force through regulation(s) on a date to be announced. The 2025 Act provides welcome legal clarity on several key issues, reinforces the robust framework that regulates arbitrations in England & Wales and Northern Ireland, and ensures that London remains a leading centre for international arbitration.

The new statutory regime will be relevant to many users of LCIA arbitration. While the LCIA is an international arbitral institution, administering cases across numerous seats and governing laws, London is the seat of the arbitration in approximately 85% of the LCIA's cases. In the absence of party agreement, London is also the default seat of arbitration (Article 16.2 of the LCIA Rules 2020 ("LCIA Rules")). The LCIA has therefore been keen to ensure that the legislative arbitration framework remains fit for purpose and supportive of international arbitration. As a key stakeholder, the LCIA contributed to the law reform by way of written submissions to the Law Commission, written evidence to the House of Lords Special Public Bill Committee, and oral evidence before the House of Lords – with many of the LCIA's recommendations being reflected in the legislation.

While wholesale reform was neither necessary nor desirable, the amendments are significant and strike the right balance by clarifying several key issues that impact international arbitrations (including arbitrations administered by the LCIA). For instance, the amendments put onto statutory footing existing best practice, such as, the tribunal's duties of disclosure, provision for a summary disposal power, and the express empowerment of emergency arbitrators. Moreover, the regime continues to uphold party autonomy and ensures the compatibility of the legislative regime with institutional arbitration.

Subject to regulations providing otherwise, the amendments do not apply to arbitration proceedings that have already commenced nor do they apply to related court proceedings (whenever commenced). The amendments will otherwise apply in relation to arbitration agreements whenever made, including existing arbitration agreements. Accordingly, LCIA users with arbitrations seated in London can expect the amendments to apply to any newly commenced arbitration proceedings, subject to appropriate modifications being agreed by the parties and application of the relevant LCIA Rules.

Law Applicable to the Arbitration Agreement

The law applicable to the arbitration agreement governs issues such as the scope and contractual interpretation of the arbitration agreement and its validity and formation. The 2025 Act introduces Section 6A, a new default rule that the governing law of the arbitration agreement will be the law of the seat of the arbitration unless the parties expressly agree otherwise. Importantly, Section 6A clarifies that the governing law chosen for the underlying contract of which the arbitration agreement forms a part does not constitute express agreement that the same law also applies to the arbitration agreement. The provision applies even if the seat of the arbitration is outside England & Wales or Northern Ireland, or no seat has been designated or determined (s2(2)(za)).

Section 6A resolves many of the uncertainties and complexities that have arisen from the Supreme Court's decision of *Enka v Chubb*. By replacing the common law rule and offering a straightforward default position, the prospect of disputes arising in relation to the law governing the arbitration agreement becomes less likely – thereby further promoting cost effective and efficient arbitration.

Such default position already features in the LCIA Rules (Article 16.4) which provides that unless the parties have agreed otherwise (and "such agreement is not prohibited by the law applicable at the arbitral seat"), the law of the arbitration agreement shall be the law applicable at the seat. To uphold party autonomy and to maintain flexibility, the new statutory provision clarifies that parties remain free to make an express choice as to the law governing the arbitration agreement. Parties can therefore continue to choose the applicable law of the arbitration agreement by including an express choice in their arbitration agreement, adopting the LCIA's Recommended Clauses, or selecting the LCIA Rules, which set out the default position. Expressly designating the applicable law of the arbitration agreement is particularly prudent where the governing law of the underlying contract and the seat do not align.

Codification of Arbitrators' Duty of Disclosure

The 2025 Act puts onto statutory footing an arbitrator's duty to disclose circumstances that might reasonably give rise to justifiable doubts as to the arbitrator's impartiality, as set out in *Halliburton v Chubb*. Importantly, the provision is mandatory (so parties cannot agree for it to be dispensed with); specifies a continuing duty of disclosure (that expressly applies prior to the arbitrator accepting appointment); and confirms that the duty to disclose extends to relevant circumstances of which the arbitrator "ought reasonably to be aware".

This new statutory provision codifies the existing practice at the LCIA and in international arbitration generally, and therefore is a welcome codification. Specifically, Article 5.5 of the LCIA Rules sets out an express and continuous duty for arbitrators to disclose circumstances that are likely to give rise to any justifiable doubts as to impartiality or independence. While the disclosure standard set out in the LCIA Rules covers circumstances "currently known" (Article 5.4), or "becoming known" (Article 5.5) to the arbitrator and does not expressly cover what the arbitrator "ought reasonably to be aware", LCIA practice demonstrates that arbitrators tend to err on the side of caution in any event by making comprehensive disclosures.

Moreover, codification of the obligation sends the right message and ensures consistent practice across London seated arbitrations. Having the disclosure obligation enshrined in legislation further underpins the commitment to the rule of law in preventing bias and promoting fair dispute resolution.

Summary Disposal

The 2025 Act introduces Section 39A which provides that the tribunal may (on application of a party and subject to the parties agreeing otherwise) make an award on a summary basis in relation to a claim (or particular issue) if the tribunal considers that a party has "no real prospect of succeeding" on "the claim or issue" or in "the defence of the claim or issue". While tribunals already have broad discretion, a provision that expressly empowers tribunals to make an award on a summary basis is likely to encourage the efficient resolution of disputes.

Similarly, the Early Determination provisions in Article 22.1(viii) of the LCIA Rules apply where, for example, a claim or defence is "inadmissible", "manifestly without merit" or "manifestly outside the jurisdiction of the Arbitral Tribunal." By agreeing to have the arbitration administered pursuant to the LCIA Rules, the parties therefore agree that the tribunal, "after giving the parties a reasonable opportunity to state their views", will have the power to make an Early Determination subject to satisfying the relevant threshold tests.

While there are different standards set out in the legislation and the LCIA Rules (with the legislation broadly reflecting the summary judgment standard in the Civil Procedure Rules), it is arguable that the "manifestly without merit" standard will remain the applicable standard in LCIA arbitrations seated in London. Section 39A is a non-mandatory provision and was recognised by the Law Commission in its Final Report as a "default position" (para 6.47). Additionally, while it might be argued that Section 39A is framed to enable parties to opt out entirely ("[u]nless the parties otherwise agree"), the preferred interpretation would be that Section 39A is a provision that can be contracted out of, including by adopting institutional rules that substitute the "no real prospect of succeeding" standard with the standard in the applicable institutional rules.

Moreover, it is notable that while, on one hand, the Early Determination provision is broader than the statutory provision, encompassing situations where a claim or defence is "inadmissible or "manifestly outside the jurisdiction" of the tribunal, the "manifestly without merit" standard prevalent in Early Determination does not expressly reference an "issue" alongside claims and defences but instead references subsets of claims and defences ("counterclaim, cross-claim, defence to counterclaim or defence to cross-claim"). While it is arguable that this makes the statutory provision broader in scope, in practice the difference may be immaterial. Issues are often intertwined with claims/defences and so in many cases any perceived difference between the two mechanisms may be insignificant.

The LCIA reported data suggests that the threshold standard remains high and the success of applications for Early Determination has generally been low. In this regard, in 2023, there were 25 applications for Early Determination, of which three were granted, one was partially granted, 17 were rejected, and four were either withdrawn/superseded/still pending as of the date of this publication. While it remains difficult to make conclusive observations, the success rate demonstrates that tribunals are taking a measured approach when considering whether to exercise

their powers.

In any event, Early Determination is a useful tool in a tribunal's armoury and looking ahead, with these provisions set out in both the 2025 Act and the LCIA Rules, there may be a positive uptick in applications given the legislative and rule-based footing for tribunals to make awards on a summary basis.

Jurisdiction of the Tribunal

The 2025 Act makes several modifications to existing provisions in the 1996 Act on the jurisdiction of the tribunal, in particular regarding the different avenues for court intervention (namely s32 – determination of a preliminary point of jurisdiction, which is not available if the tribunal has already ruled on jurisdiction, and s67 for jurisdictional challenges to arbitral awards). There is also an amendment regarding the tribunal's power to award costs where the tribunal has ruled, or a court has held, that the tribunal has no jurisdiction (such as via a wasted costs order). Such amendments promote efficiency and fairness – while safeguarding the fundamental principle enshrined in the LCIA Rules that the tribunal has the power to rule on its own jurisdiction.

With respect to challenges to awards on jurisdictional grounds (s67), the amendments provide the court with a list of the remedies available including two new options: remitting the award to the tribunal (in whole or in part) for reconsideration or declaring that the award (in whole or in part) has no effect, and the amendments also aim to increase efficiencies by conferring powers on the Civil Procedure Rule Committee to implement rules of court in order to avoid jurisdictional challenges becoming full re-hearings. While such rules have not yet been finalised, the expectation is that the challenge procedures will be streamlined.

The amendments state that "subject to the court ruling otherwise in the interests of justice", such rules of court may, for example, provide that there should be no new ground for objection that was not previously raised and no new evidence, unless it was not reasonably possible to have put it before the tribunal. On balance, this will likely increase efficiency and demonstrates the pro-arbitration approach of the English courts where awards can only be unravelled in limited circumstances. Such amendments are timely given the significant increase in the number of Section 67 applications – with 25 applications in the October 2023 to September 2024 period compared to eight in the October 2022 to September 2023 period, as released by the Commercial Court User Group in February.

Overall, the amendments ensure cost and time efficiencies by preventing abuse of the challenge mechanism or having a "second bite at the cherry" while preserving a key statutory safeguard to the tribunal's jurisdiction. Importantly, the legislation does not impose any such limitations for non-participating parties since in those cases the Section 67 procedure would be that party's first challenge.

Emergency Arbitrators

Emergency arbitration was not a crystallised feature of international arbitration when the 1996 Act was drafted. Accordingly, the 2025 Act modernises the arbitral framework by including express

references to emergency arbitrators and ensuring that where the parties have agreed to the application of arbitral rules that provide for the appointment of an emergency arbitrator (such as via Article 9B of the LCIA Rules) and such appointment has taken place, the emergency arbitrator is expressly empowered to make a peremptory order, which is enforceable by the court, where a party fails to comply with the emergency arbitrator's order or directions (unless the parties have agreed otherwise). Additionally, Section 44 now enables the emergency arbitrator to give permission to a party seeking to make an application to the court (such as regarding the taking of witness evidence).

The legislation therefore reinforces the status of emergency arbitrators under the LCIA Rules. Article 9B of the LCIA Rules enables parties to apply for the appointment of an emergency arbitrator, whose role is confined to addressing a request for emergency interim relief pending formation of the permanent tribunal that will determine the merits of the dispute. From 2019-2023, the LCIA received 23 Article 9B applications, of which eight were successful. Among the successful applications, emergency arbitrators granted, for example, relief to restrain a party from asset dissipation and orders to disclose relevant information. While Article 9A (expedited formation of the tribunal) continues to be more popular (with 63 Article 9A applications of which 13 were successful in the same period), the express recognition of emergency arbitrators in the 2025 Act may encourage further utilisation of Article 9B of the LCIA Rules.

Immunity of Arbitrators

The amendments encompass several changes regarding the immunity of arbitrators. As regards the existing power of the court to remove arbitrators (s24), the 2025 Act amends the 1996 Act and ensures that arbitrators shall not pay the costs of an application to court for their removal unless "any act or omission of the arbitrator in connection with the proceedings is shown to have been in bad faith". Similarly, with respect to the resignation of an arbitrator, the amendments clarify that an arbitrator's resignation does not give rise to any liability unless such resignation was "in all the circumstances, unreasonable" (subject to any agreement between the parties and arbitrator regarding the arbitrator's fees or expenses). These provisions strike the right balance in ensuring that arbitrators can act independently without any cost or liability consequences (albeit with necessary safeguards in place).

Section 44

The 2025 Act amends Section 44 of the 1996 Act which concerns court powers exercisable in support of arbitration (with respect to, for example, the taking of witness evidence) including providing clarification, to an unsettled area of case law, that orders can be made "in relation to a party or any other person". This amendment is timely given that there has been a significant increase in the number of Section 44 injunction applications with 49 applications made pursuant to Section 44 in the October 2023 to September 2024 period, compared with 15 in the October 2022 to September 2023 period. This ties in with Article 25.3 of the LCIA Rules which permits parties to make applications to competent courts for interim or conservatory measures subject to obtaining the consent of the tribunal after it has been constituted.

Correction of Awards

Users of LCIA arbitration will also benefit from clarifications provided in the 2025 Act regarding the correction of awards. The 2025 Act amends Section 70 of the 1996 Act to make clear that where the tribunal has made a material correction to an award (or has made a material additional award) pursuant to Section 57, the clock starts ticking, for the purpose of the 28-day time limit for applications or appeals pursuant to Sections 67, 68 or 69, from the date of the correction or additional award. Moreover, where such an application has been made under Section 57 and the tribunal has decided not to grant the application, the relevant date will be the date when the applicant/appellant was notified of that decision. Importantly, the amendments acknowledge that the parties may have agreed on alternative regimes, such as, through the adoption of institutional rules and confirm that the timescale for applications or appeals has been amended for Section 57 and any other agreed arbitral processes.

For example, Article 27 of the LCIA Rules permits parties to request the tribunal "to correct in the award any error in computation, any clerical or typographical error, any ambiguity or any mistake of a similar nature". This clarification therefore ensures that parties still have time to make a challenge/appeal application following receipt of the correction in the form of an addendum to the award and/or following the tribunal's decision. By deferring commencement of the running time, parties can make an informed decision about making any application pursuant to Sections 67, 68 or 69, after having considered any corrections.

Key Omissions

No amendments have been made to Section 69 of the 1996 Act concerning appeals of awards on a point of law. Section 69 expressly permits the parties to opt out or agree that there is no right of recourse to appeal an award on a question of law. Indeed, by agreeing to have the arbitration administered pursuant to the LCIA Rules in a London seated arbitration and "insofar as such waiver shall not be prohibited under any applicable law", the parties agree to waive "any form of appeal, review or recourse to any state court or other legal authority" (Article 26.8).

Moreover, the 2025 Act does not introduce any statutory confidentiality provision – a position which may well be favourable given the complexities of setting out a comprehensive definition with the necessary carve-outs. Nonetheless, parties in LCIA arbitrations can take comfort from Article 30 of the LCIA Rules which contains confidentiality obligations that extend to the parties, the tribunal and others, including for example witnesses and any tribunal secretary – together with any obligations of confidentiality under the applicable law(s).

Conclusion

The 2025 Act provides welcome clarifications on numerous issues that are relevant to LCIA arbitrations (and international arbitration generally). It thereby bolsters LCIA arbitration and reinforces the existing world-class legislative framework for the resolution of arbitral disputes in England & Wales and Northern Ireland.

This post reflects the views of its author only. They do not necessarily reflect the position of the LCIA. The author thanks Keshav D. Joonarain for his assistance.

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