Kluwer Arbitration Blog

2025 PAW: A Tale Of Two Reforms

Francois Wouter Landman (Cape Bar) and Cecilia Sanchez Bango · Saturday, April 19th, 2025

Alexis Martinez (Watson Farley & Williams) moderated an interesting panel discussion on the changes to the arbitration laws of England and the impending changes to the arbitration laws of France. The panel comprised of different experts, including two of whom were directly involved in the reform of the arbitration laws in England and France. Nathan Tamblyn (Law Commission) provided his insights on the English reform. In turn, Jérémy Jourdan-Marques (Université Lumière Lyon 2), a member of the working group for the reform of the French arbitration laws, provided his insights on the anticipated French reform. In addition, Živa Filipi? (ICC International Court of Arbitration) provided an institutional account of the reforms and Dr Gregory Travaini (ENGIE) offered the industry perspective. This post briefly considers the reform process adopted in each of these jurisdictions and the panels discussion on some of the (proposed or implemented) amendments.

Reform Process

The discussion highlighted the different procedures involved in each of the reforms.

The reform of the Arbitration Act 1996 (UK) involved stakeholder input from the outset. Much of the reform took into account opinion of stakeholders (including the opinion of the public) throughout the process. The stakeholders involved in the process of reform included arbitral institutions, law firms, arbitrators, counsel, and members of industry such as financial institutions. For example, the inclusion of summary judgment procedures in arbitration proceedings was influenced by concerns raised by financial institutions. The need to include a procedure to avoid the incurrence of unnecessary costs, which could weed out cases with little prospect of success, was supported by these groups.

Other issues addressed in the UK reform (for a more complete discussion see here) related to steps to be taken to challenge an arbitrator's jurisdiction provided for in section 32 and section 67 of the Arbitration Act 1996 (UK). On the other hand, the opt out provision contained in section 69 of the Arbitration Act 1996 (UK) has remained in place. The reform was therefore brought about by a need to change and not a mere overhaul of the whole of the Arbitration Act 1996 (UK).

The French reform, which is currently still in process, comprised of a working group with different stakeholders, including arbitration practitioners, judges, arbitrators and academics. The working group has now submitted a proposal for reform which remains open for consideration by the

French Government and comment.

Both of the reforms were, in part, brought about by an understanding of the significance of London and Paris as leading seats in international arbitration. The attraction of these seats is influenced by ensuring that the legislation governing proceedings at the seats remains updated.

The panel discussion also focused on the needs of users of arbitration legislation.

Why do Users Choose Arbitration?

Arbitration has, from experience, proven to be excessively complex. Users prefer predictability and efficiency. Arbitration proceedings are also preferred to Court proceedings for reasons such as neutrality, expertise of arbitrators and the advantages of enforcement. The attributes of predictability and efficiency are particularly important to control the costs of business incurred in arbitration proceedings. It is necessary to cater for these issues in the legislation governing arbitration. Summary judgment procedures were therefore a welcome addition to curb the expenditure for costs.

It was suggested that the working group on the French reform may be assisted by taking into account the perspective of industry which is ultimately the party whom these laws should serve. It was commented that summary procedures have been available under the ICC Rules for some time. While there is no statutory provision to adopt such procedures in France, the institutional rules have made provision for it.

In addition, it was mentioned that the availability of arbitrators often leads to a delay in proceedings. The delay militates against the use of arbitration proceedings. It was remarked that the relevant legislation provides that arbitration ought to be resolved without unnecessary delays. The sentiment is that the statute therefore already provides for a expeditious resolution of disputes. To improve the timing of arbitration procedures, the institutions will have to step in, as many already do by offering incentives to meet deadlines.

For example, to accelerate the lengthy process of constituting a tribunal, the ICC offers the possibility of expedited procedures. However, in using this method, the parties do not have a option of selecting the arbitrators. While this may be disappointing, parties should consider these options to facilitate a reduction in the time taken to resolve the dispute. It was mentioned that the role that arbitration users play in the delay of proceedings is not without importance.

However, there remains other procedures which delay the arbitration process such as delays in submitting arbitration awards due to capacity constraints on the part of arbitrators. A suggestion was made that the French reform should consider providing that a tribunal should set a fixed date for the delivery of an award upon notice to the parties.

The Law Governing the Arbitration Agreement

An important point of reform under of the UK legislation concerned the changes made to the provisions concerning the determination of the law governing the arbitration agreement.

In the UK, the uncertainty brought about by cases like *Enka v Chubb* in the determination of the law governing the arbitration agreement, and consequently its validity, meant that the law required clarification and a simpler approach. In particular, the decision of *Enka v Chubb* brought about a somewhat convoluted tiered approach to the determination of the law governing the arbitration agreement. The court decided in that decision that, unless an express choice is made, the law applicable to the arbitration agreement is the system of law with which the arbitration agreement is most closely connected. Generally, a choice of governing law for the contract will apply. A choice of a different country as the seat of arbitration is not, without more, sufficient to negate the inference that a choice of law to govern the contract was intended to apply to the arbitration agreement. Factors which may negate such an inference are: (a) a provision of the law of the seat indicating that the arbitration agreement will also be treated as governed by that country's law; or (b) the existence of a serious risk that, if the arbitration agreement is governed by the choice of governing law, the arbitration agreement will be ineffective. Where no choice of law to govern the contract is made, the arbitration agreement will generally be governed by the law of the seat even if this differs from the law applicable to the parties' substantive obligations.

Arbitration users indicated the need for a reform of the law to simplify the approach. of the Arbitration Act 2025 (UK) will bring about the change required in this context. The provision states, briefly put, that the law applicable to the arbitration agreement is: Firstly, the law expressly agreed by the parties. Secondly, if there is no express agreement on the law to be applied to the arbitration agreement, the law of the seat will apply. The Arbitration Act 2025 (UK) is mostly not yet in force, including section 6A. Section 6A in itself will, it is hoped, reduce unnecessary litigation on these issues in its current formulation. It was commented that many of the changes to the reform of the Arbitration Act 1996 (UK) was surgical, aiming to clarify, rather than re-write the laws.

The accessibility to users of arbitration played an important role in the reform and in the decision to clarify the position through legislation. Even so, the utility of such a codification was questioned as most parties rely on their representatives to advise on such issues. It was suggested that this could still, however, reduce the costs of arbitration.

The French system did not propose a reform of its approach to a determination of the law governing the arbitration agreement. Cases such as *Dalico* and *Kout Food* have guided the determination of this issue for many years. The arbitration clause is legally independent of the main contract of which it forms part, either directly or by reference. Unless the parties have chosen a particular law to govern the validity and effect of the arbitration agreement, the existence and efficacy of the arbitration agreement is to be assessed without reference to any state law subject only to the mandatory rules of French law and international public policy.

It was commented that the historic application of these principles has been good. However, the aims of the French reform have included to provide better accessibility to users of the legislation. The promotion of the understanding and readability of the prior laws in one location was therefore considered. As such, the position on the law governing the arbitration agreement is codified in the proposed reform.

Final Remarks

It is yet to be determined whether these reforms will lead to an increase in users of arbitration. The likelihood of this happening is not certain. However, the reform of the provisions to the Arbitration Act 1996 (UK) and proposed reform of the French legislation appears to be useful insofar as it updates and clarifies the position in each of these jurisdictions. For the moment London and Paris continue to stand out as pre-eminent seats for the conduct of international arbitration proceedings.

The reform to the arbitration laws applicable to both cities is therefore to be welcomed to ensure that the attraction of these seats remains. Other leading seats may follow suit to reform. For example, Singapore last month also begun consultations on the reform of its arbitration laws. One of the issues forming part of the consultation is also "How to ascertain the governing law of the arbitration agreement."

This post is part of Kluwer Arbitration Blog's coverage of ***Paris Arbitration Week 2025****.*

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This entry was posted on Saturday, April 19th, 2025 at 8:00 am and is filed under English Law, France, French Law, judicial reform, Paris Arbitration Week, UK
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