THE ARBITRATION ACT 1996 – 15 YEARS ON

Olivia Furmston: Claims Executive
Telephone: +44 20 3320 8858
E-mail: olivia.furmston@ctcplc.com

INTRODUCTION

The Arbitration Act 1996 (the Act) was six years in the making and its aim was not only to consolidate English arbitration law into one piece of legislation, but to clarify and modernise certain points of law (the text can be found at www.legislation.gov.uk/ukpga/1996/23/contents). For example, section 41 of the Act contains the powers of an arbitration tribunal in the event of a party's default; section 41(3) gives a tribunal the power to strike out a claim if the claimant is guilty of "*inordinate and inexcusable delay*" in the prosecution of their claim. This was deemed to be necessary, as in earlier cases, it was held that a tribunal had no power to strike out such a case under English common law.

The Act came into force on 31 January 1997 and was hailed by many legal commentators as being one of the most liberal/least restrictive and user-friendly pieces of legislation ever passed by Parliament. It uses plain English and its structure follows a logical progression.

PARTY AUTONOMY

The Act provides for legal freedom between two contracting parties. Many of the provisions within the Act are default provisions, meaning they only apply if the parties do not agree their own bespoke provisions.

For example, in almost all matters of procedure, the "*parties are free to agree*" other arrangements if they wish. Therefore the parties are at liberty to agree how many arbitrators are to be appointed to hear a dispute, and the method by which they are to be appointed. The parties under the Act are able to agree how the arbitration is to proceed, for example, by written submissions only or by way of an oral hearing. They can also agree evidential issues, such as disclosure and what evidence is to be put before the arbitrator(s). Contrast this with the English High Court, which has compulsory rules and procedures, and strict timeframes.

The mandatory provisions within the Act (which are listed within schedule 1 of the Act) are not onerous and, indeed, often provide safeguards so as to protect the parties to the arbitration. For example, section 33(2) places a positive obligation on the arbitrator(s) appointed to '*adopt procedures...avoiding unnecessary delay and expense*'. Section 33(1) places a positive obligation on the arbitrator(s) to '*act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent…*'.

ARBITRATION VERSES COURT PROCEEDINGS

Following the enactment of the Act, arbitration was viewed in the UK as being the best alternative to litigation. Not only were the parties free to agree much of the procedure for the arbitration process, which remained strictly private and confidential between those said parties (as did the result), but it was also viewed to be a cheaper and quicker alternative to proceeding through the English courts. Fifteen years have passed since the Act came into force. The complaint often now made is that arbitration can be just as expensive as litigation and it can take longer to get a decision than if the matter were to go to court.

APPEALS UNDER THE ACT

Under the Act, there is very limited scope for a party to appeal a tribunal's decision to the High Court. Indeed, appeals can only be made on the basis of a tribunal's substantive jurisdiction, serious irregularity and appeals on points of law (under sections 67, 68 and 69 of the Act). For example, under section 69, a party can only obtain leave to appeal on a point of law if the question is one of '*general public importance and the decision of the tribunal is at least open to serious doubt*' or the decision made by the arbitrator(s) is '*obviously wrong*'.

COMMENTARY

The Arbitration Act 1996 is viewed by many as having been a success in codifying the law in this area. Whilst arbitrations still have the advantage of privacy and confidentiality, they can be as slow and expensive as court litigation. However, arbitrators should remain robust and diligent when a party is late with its submissions/evidence or if the parties needlessly increase costs. Delays and wasted costs will discourage commercial parties from choosing London as their preferred arbitral jurisdiction.

Currently, London arbitration remains one of the most popular forums for dispute resolution, with the standard of arbitration awards generally being high and the impartiality of arbitrators rarely being raised as a sustainable issue.