The English Arbitration Act 2025

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The LCIA is pleased to report that the highly anticipated English Arbitration Bill has now received Royal Assent, with the Bill enacted as the Arbitration Act 2025 (**2025 Act**). The 2025 Act modernises and amends the existing Arbitration Act 1996 (**1996 Act**) (with the substantive amendments coming into force on a date to be announced),[1] provides welcome legal clarity on a number of key issues, and reinforces the already robust framework that regulates arbitrations in England & Wales and Northern Ireland.[2] The amendments underscore the existing world-class legislative framework for the resolution of arbitral disputes and reinforce London as a leading centre for international arbitration. The new statutory regime will be relevant to a significant proportion of users of LCIA arbitration. The LCIA has therefore been keen to ensure that the legislative arbitration framework remains fit for purpose and supportive of international arbitration. Accordingly, as a key stakeholder, the LCIA contributed to the law reform process 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.

The amendments clarify a number of key issues that impact arbitrations administered by the LCIA and international arbitration generally. For instance, the amendments put onto a 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, including arbitrations conducted pursuant to the LCIA Rules 2020 (**LCIA Rules**).

Subject to the Secretary of State making regulations otherwise, the amendments do not apply to arbitration proceedings that have already commenced nor do they apply to related court proceedings (whenever commenced).[3] 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 in the 2025 Act 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 2025 Act introduces Section 6A, a new default rule on the law applicable to the arbitration agreement. Under this new provision, 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 further 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.

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.

Such a default position already features in the LCIA Rules (Article 16.4) which provide that *"unless and to the extent that the parties have agreed in writing on the application of other laws or rules of law"* (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 of the arbitration. Importantly, to uphold party autonomy and to maintain flexibility, the new statutory provision makes clear 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.

Codification of arbitrators' duty of disclosure

The 2025 Act puts onto a 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 existing practice at the LCIA. In particular, 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. Accordingly, while this statutory codification will largely align with existing

LCIA practice, 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 a new 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"*. Similarly, the Early Determination provisions in Article 22.1(viii) of the LCIA Rules apply where a claim (or defence, counterclaim, cross-claim, defence to counterclaim or defence to cross-claim) 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.

LCIA practice demonstrates that while Early Determination can result in significant time and cost savings, the threshold standard remains high. In this regard, in 2023, there were 25 applications for Early Determination, of which 3 were granted, 1 was partially granted, 17 were rejected, and 4 were either withdrawn/superseded/still pending as at the date of this publication.[4] Looking ahead, with these provisions set out in both the 2025 Act and the LCIA Rules, it is possible that there may be a positive uptick in applications given the stronger 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.

With respect to challenges to awards on jurisdictional grounds (s67), the amendments provide the court with a clear 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 the 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.

Emergency arbitrators

The 2025 Act modernises the arbitral framework by including express references to emergency arbitrators and ensuring, among other things, 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). In addition, Section 44 has been modified to permit the emergency arbitrator to give permission to a party seeking to make an application to the court (with respect to, for example, 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 make an application 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 8 were successful. 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 the emergency arbitrator mechanism under the LCIA Rules.

Immunity of arbitrators

With respect to 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).[5] The aim of these provisions is to ensure that arbitrators can act independently without any cost or liability consequences (albeit with necessary safeguards in place).

Section 44 and third parties

The 2025 Act amends Section 44 of the 1996 Act which concerns court powers exercisable in support of arbitration (such as concerning 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"*. Article 25.3 of the LCIA Rules 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

The 2025 Act amends Section 70 of the 1996 Act to make clear that where the tribunal has made a material correction[6] 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.[7] Importantly, the amendments acknowledge that the parties may have agreed on alternative regimes, such as, through the adoption of institutional rules[8] 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"*. 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 which concerns 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. Nonetheless, parties in LCIA arbitrations can take comfort from Article 30 of the LCIA Rules which contains confidentiality obligations that extend to the parties, any authorised representative, witness of fact, expert or service provider and the tribunal, any tribunal secretary and any expert to the tribunal – together with any obligations of confidentiality under the applicable law(s).

Concluding remarks

The 2025 Act clarifies a number of issues that are relevant to LCIA arbitrations and reinforces the pro-arbitration framework in England & Wales and Northern Ireland. Should users have any questions about the impact of the 2025 Act on their arbitration agreement or in relation to disputes intended to be submitted to LCIA arbitration, please contact casework@lcia.org.

[1] The 2025 Act's provisions on *"Extent", "Commencement and transitional provision"* and *"Short title"* came into effect immediately on 24 February 2025 when the 2025 Act received Royal Assent. The remainder of the provisions will come into force on a date selected by the Secretary of State by regulation(s).

[2] Arbitration in Scotland is governed by the Arbitration (Scotland) Act 2010.

[3] This includes *"court proceedings (whenever commenced) in connection with pre-commencement arbitral proceedings or an award made in pre-commencement arbitral proceedings,…"*. Similarly, the amendments will not apply to: *"any other court proceedings commenced before the day on which the section making the amendment comes into force".*

[4] The number of applications for Early Determination was under-reported in previous Annual Reports. The corrected numbers will be reflected in the Annual Casework Report 2024.

[5] Such provision is also subject to Section 25(3) which provides: *"An arbitrator who resigns his appointment may (upon notice to the parties) apply to the court—(a) to grant him relief from any liability thereby incurred by him, and (b) to make such order as it thinks fit with respect to his entitlement (if any) to fees or expenses or the repayment of any fees or expenses already paid."*

[6] As the Law Commission pointed out in its Final Report, para 11.87: *"The case law stresses that the application to the tribunal for correction or clarification must be material to the application or appeal under sections 67 to 69. A correction is material if it is necessary to enable a party to know if they have grounds to challenge an award."*

[7] Similarly, in cases where there has been any arbitral process of appeal or review, the clock starts ticking from the date when the applicant/appellant was notified of the result of that process.

[8] The relevant amendment provides: *"(9) In this section, a reference to available recourse, or to anything done, under section 57 includes a reference to available recourse, or to anything equivalent done, pursuant to agreement reached between the parties as mentioned in section 57(1)".*