DENTONS

International Arbitration Newsletter

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International Commercial Arbitration

Targeted reforms to the UK's arbitration framework become law

The UK Arbitration Act 2025 (2025 Act) received Royal Assent last month and is now law. The substantive provisions of the 2025 Act will take effect on a future date to be specified and will apply to arbitrations commenced after they come into force.

The 2025 Act makes several discrete amendments to the longstanding Arbitration Act 1996 (1996 Act) with the aim of finessing rather than overhauling the framework of rules governing English-seated arbitration.

Key reforms under the 2025 Act include:

1. **The law governing an arbitration agreement:** A new default rule which provides that an arbitration agreement will be governed by the law of the arbitral seat unless the parties agree otherwise. This replaces the common law position which was complex and favoured the law governing the contract. The new rule will not apply to arbitration provisions contained in treaties or foreign legislation.

2. **Restrictions on jurisdictional challenges:** Where a party challenges an arbitral award on jurisdictional grounds under the 1996 Act, new rules which (i) prevent the courts from re-hearing evidence already heard by the tribunal and (ii) restrict the ability of parties to raise new grounds or evidence, other than where the court rules otherwise in the interests of justice.

3. **Power of summary disposal:** A new provision empowering arbitrators to summarily dispose of claims which have no real prospect of success, akin to the summary judgment powers exercised by the UK courts. This is not a mandatory provision and parties are therefore free to exclude these powers.
4. **Powers in support of emergency arbitration:** Confirmation that the courts' ability to make orders in support of arbitration under the 1996 Act extends to third parties.

The long-awaited reforms are expected to bring welcome clarity and increased efficiency to London-seated arbitrations and reinforce its position as a leading arbitral seat.

Parties intending to resolve their disputes through arbitration seated in London should:

- Consider choosing arbitration as their preferred form of dispute resolution where they have been previously reluctant due to the new power to obtain summary disposal of claims.
- Note that it is no longer safe to avoid expressly specifying a governing law for the arbitration agreement on the assumption that it will follow the law of the main agreement. Particular care is needed where there is misalignment between the choice of seat and the choice of governing law.
- Carefully consider the more limited ability to raise new objections or evidence in a jurisdictional challenge to an award under the 1996 Act where they intend to raise a similar challenge during their arbitration.

Contributed by James Langley, Antonia Tjong, and Ishan Wad.

Enforcement and Set Aside

Bias of one arbitrator on a three-arbitrator tribunal requires award be set-aside

In the case of *Vento Motorcycles, Inc. v United Mexican States*, the Court of Appeal for Ontario addressed the critical issue of arbitrator impartiality within a three-member tribunal. The Court concluded that a reasonable apprehension of bias concerning even a single arbitrator necessitates setting aside the entire arbitration award, underscoring the fundamental importance of impartiality in arbitration proceedings.

The case arose when Vento Motorcycles challenged an arbitration award, alleging that undisclosed communications between Mexico's representatives and the arbitrator appointed by Mexico led to a reasonable apprehension of bias. The initial application judge acknowledged this apprehension but deemed it a "minor procedural error," using her discretion not to set aside the award. The judge reasoned that the impartiality of the remaining two arbitrators sufficed to uphold the tribunal's decision, emphasizing the potential costs and inefficiencies of setting aside an award resulting from a five-year arbitration process.

To the contrary, the Court of Appeal found that any reasonable apprehension of bias is a substantial violation of procedural fairness, not a trivial procedural flaw. The court emphasized that parties are entitled to an independent and impartial tribunal, not merely a majority of unbiased panel members. Therefore, the presence of bias in one arbitrator compromises the integrity of the entire tribunal. The court further clarified that, upon establishing a reasonable apprehension of bias, there is no need to demonstrate that the decision's outcome would have differed had the bias not existed; the appropriate remedy is to set aside the award.

The ruling reinforces the necessity for transparency and impartiality in arbitration, serving as a reminder that even the one arbitrator's bias can invalidate a three-arbitrator panel's award.

Contributed by Michael Schafler, Chloe Snider, Ekin Cinar.

Institutional News

SIAC's new 2025 Arbitration Rules: key reforms for faster, fairer arbitration

The Singapore International Arbitration Centre (SIAC) finally introduced the 7th edition of its Arbitration Rules (effective 1 January 2025) after a long period of public consultation. These revisions aim to enhance the fairness and efficiency of the arbitral process and make arbitration more accessible for lower value claims.

Among the key developments are the introduction of a new Streamlined Procedure and a mechanism to apply for *ex-parte* preliminary orders.

Streamlined Procedure: This applies to disputes not exceeding SGD 1 million in value, and enables parties to achieve an award within 3 months. The Tribunal and SIAC's fees will also be capped at 50% of the maximum limits under SIAC's fee schedule. This however means that the arbitration will by default be conducted documents-only and parties will not be able to call fact or expert witnesses or seek disclosure of documents from the other party.

This complements SIAC's existing Expedited Procedure, which under the new version of the Rules is available for disputes up to SGD 10 million (previously SGD 6 million under the 6th Edition of the Rules) and leads parties to an award within 6 months.

Protective Preliminary Orders: Parties may now apply for urgent interim relief without notifying the other party in the context of an Emergency Arbitrator (EA) application. The EA will determine the protective preliminary order application within 24 hours and the order shall be valid for 14 days, subject to the EA making further orders under the main EA application after all parties have had a chance to be heard.

On top of this, the SIAC has codified and clarified procedures for preliminary determination of issues and disclosure of third party funding arrangements, as well as introduced a procedure for *prima facie* determination of jurisdictional objections by the SIAC Court prior to constitution of the tribunal. Parties will now also have the option to coordinate multiple arbitrations involving common issues of fact or law (referred to as Coordinated Proceedings), allowing the cases to be heard either concurrently or sequentially, with aligned procedural aspects.

What this means is that parties arbitrating at the SIAC now have a plethora of innovative tools at their disposal to make their arbitrations more cost- and time- efficient. Parties can also utilize SIAC's web-based case management system, the SIAC Gateway, to manage communications, submit documents, maintain a record of proceedings, and further improve efficiency.

Contributed by Melissa Thng.

Enforcement and Set Aside

English Supreme Court confirms the importance of the rule in Browne v Dunn to expert evidence

A feature of English civil procedure which has the potential to take Civil Law practitioners by surprise – and which has ramifications for arbitrations sited, or being enforced, in England - is the so-called rule in *Browne v Dunn*. The rule, simply stated, is that a party is required to challenge in cross-examination the evidence of any witness of the opposing party (whether factual or expert) if it wishes to submit to the court that the evidence should not be accepted on that point.

Perhaps surprisingly the English courts have shown themselves willing to apply the rule in the context of challenges to arbitral awards issued in England. In *P v D* [2019] EWHC 1277 (Comm) the English High set aside an award for "serious irregularity" under s.68 of the Arbitration Act 1996 because, among other reasons, the arbitrators had made a decision on a core issue without the losing party's main factual witness being cross-examined on that issue. That was held to be a breach by the arbitrators of their duty under s.33 of the Arbitration Act 1996 s.33 to act fairly and impartially as between the parties.

The recent case of *Griffiths v TUI* [2023] UKSC 48 was an opportunity for the English Supreme Court to re-assess, and perhaps limit, the scope of the *Browne v Dunn* rule, though not specifically in an arbitration context. Griffiths concerned an expert report which, though it expressed a clear conclusion, set out inadequate reasoning. The opposing party, the defendant, did not call the expert for cross-examination, did not submit any expert evidence of its own and did not give any indication that it would be criticizing the expert's reasoning until the trial itself; yet the judge found in favour of the defendant, on the basis that the weak reasoning meant the claimant had not

met its burden of proof. The Supreme Court overturned the judgment and held that the claimant had not had a fair trial.

The conclusion for arbitrators is this: be careful about rejecting witness evidence which is not controverted merely because it appears weak. There has to be directly opposing evidence, or the party in question has to have been on notice that the witness evidence would be disputed.

Contributed by Dominic Pellew.

International Commercial Arbitration

The future of arbitration in the artificial intelligence era

Artificial Intelligence (AI) is rapidly transforming the legal industry, reshaping legal practice. Today, many legal practitioners already rely on AI-powered databases, search engines, and automated translation tools to enhance efficiency. However, AI is making even greater strides, particularly in arbitration, where its impact is poised to grow significantly.

Recently, the AAA-ICDR partnered with Clearbrief, a leading legal tech company, to provide their arbitrators and mediators with AI-driven tools for writing and document analysis. This collaboration offers panelists features such as document summarization, drafting assistance, and automated fact-checking.

While some practitioners have expressed skepticism, citing risks such as inaccurate results, privacy concerns, biases, and hallucinations, the rapid progress of AI technology suggests that these fears may be overstated. In fact, advancements in AI are likely to address many of these concerns, making the tools more reliable.

One common criticism is the "black box" issue, where critics argue that AI's decision-making process remains unclear. However, current AI tools are being designed to explain the reasoning behind their conclusions, similar to how an arbitrator justifies an award.

Another concern is the presence of bias in AI systems, but it's important to note that biases are inherent in human decision-making too. Moreover, AI models are being trained to reduce bias, and ongoing improvements suggest that this issue will continue to diminish.

Skeptics also point to the problem of "hallucinations," where AI generates confident but inaccurate responses. Yet, by using authoritative datasets, AI can be directed to base its outputs on specific, reliable sources, minimizing the likelihood of generating incorrect or fabricated results.

These issues are likely to be further resolved with the introduction of Artificial General Intelligence ("AGI") in the coming years. AGI will be capable of performing a broad range of tasks across disciplines, adapting to new situations and reasoning through complex problems. AGI is expected to revolutionize various fields, much like past innovations such as electricity, the internet, and computers.

As AI and AGI evolve, data access will be crucial. Arbitral institutions will play a crucial role in this regard, as they hold accurate and unbiased data that consists not only in the awards but also in all the documents essential for their issuance. Also, law firms with broad territorial coverage and large and established arbitration practices will have an advantage in developing AI models by leveraging the vast amounts of data they store. This access will enable them to predict dispute outcomes, identify effective strategies, analyze large volumes of documents quickly, and calculate damages with precision.

While AI will undoubtedly transform the legal profession, it's unlikely to fully replace human lawyers. Instead, lawyers' roles will shift toward overseeing AI-generated solutions and ensuring they align with legal principles and ethical standards. Humans will remain the gatekeepers of the system, ensuring that AI-generated outcomes meet the expectations of fairness and transparency.

In conclusion, while the AI revolution in arbitration and the legal field is already underway, the presence of humans will remain essential to ensure that the results provided by AI tools align with legal principles and ethical standards of the community.

Contributed by Roberto Lipari.

Institutional News

2024 Round Up

Leading international arbitration institutions have now started to release their case statistics for 2024, providing insights into the latest trends shaping the arbitration landscape.

HKIAC

In February 2025, the Hong Kong International Arbitration Centre (HKIAC) released its 2024 case statistics. Highlights include:

Record caseload: A total of 503 matters were submitted to HKIAC, representing a record high in the institution's caseload.

Record amount in dispute: The total amount in dispute across all arbitrations in 2024 was HK$106 billion (approximately US$13.6 billion), also representing a record figure. The average amount in dispute in administered arbitrations was HK$375 million (approximately US$48.1 million).

Recent contracts forming the subject of disputes: Of the arbitration filings received in 2024, over 65% arose from contracts signed in 2020 or later, and over 40% arose from contracts signed in 2022 or later demonstrating continued party confidence in Hong Kong arbitration.

Party origin: Parties to HKIAC arbitration came from a diverse range of international backgrounds. 76.4% of all arbitrations and 86.1% of administered arbitrations were international with at least one non- Hong Kong party. 59.4% of all arbitrations submitted to HKIAC in 2024 involved no parties from Mainland China. Nearly 15% of all arbitrations submitted to HKIAC in 2024 involved no Asian parties.

Hong Kong – Mainland China Interim Measures: In 2024, HKIAC processed 40 applications made to 21 different Mainland Chinese Courts under the Hong Kong – Mainland China Arrangement for Interim Measures, seeking to preserve evidence, assets or conduct worth a total of RMB 9.1 billion (approximately US$1.2 billion) in Mainland China.

ICC

The International Chamber of Commerce (ICC) has released its preliminary dispute resolution statistics for 2024, with highlights including:

Caseload: In 2024, 831 cases were filed under the ICC Arbitration Rules and 10 cases under the ICC Appointing Authority Rules. This was consistent with the ICC's average caseload in the last five years.

Value in dispute: The aggregate amount in dispute for new cases reached US$103 billion, with an average of US$130 million and a median of approximately US$5 million.

Party origin: Parties to ICC arbitration originated from 136 jurisdictions, with an increased presence compared to 2023 in North and West Europe, Sub-Saharan Africa, Latin America and the Caribbean, South and East Asia, and the Pacific.

Contributed by Julian Ng.

What's happening at Dentons

Paris Arbitration Week

Dentons was delighted to host a successful hybrid seminar with over 100 participants joining in person and online. The event titled "Cross-Pollination between Investor-State, WTO, and Court of Arbitration for Sport Dispute Settlement Mechanisms," today was part of the Paris Arbitration Week conference in Paris.

Our distinguished panel featured Anna Crevon-Tarassova (Dentons), Christian Lau (Dentons), Anna Kozmenko (Curtis, Mallet-Prevost, Colt & Mosle LLP), and Julien Fouret (HFW).

Amid ongoing discussions surrounding the future of Investor-State Dispute Settlement (ISDS), our experts engaged in an insightful analysis of lessons that can be learned from the WTO and CAS mechanisms.

The vibrant discussion offered valuable insights into proposed ISDS reforms, critically evaluating their viability through comparisons with established practices in WTO and CAS contexts.

Check out the recorded session **here**.

Dentons ranked again as one of the top 10 international arbitration law firms in the prestigious GAR30 global ranking

Global law firm Dentons has ranked once again among the elite international arbitration practices worldwide, achieving an eighth place ranking in Global Arbitration Review's GAR30 list for 2025.

This year's advancement marks the Firm's continuous upward momentum, progressing from ninth place in 2024, eleventh in 2023 and eighteenth in 2022. Dentons' sustained rise underscores its relentless dedication to excellence, innovation, and client-focused service across its expansive global network. Read the full press release **here**.

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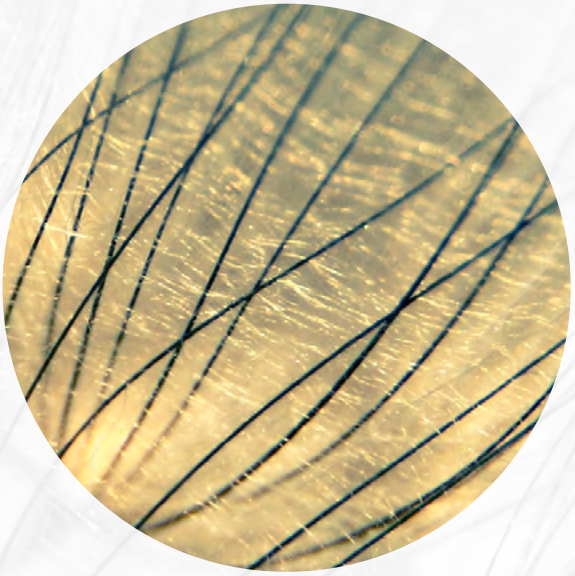
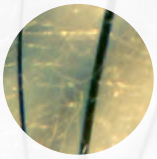
Check out our International Commercial Arbitration Toolkit, a free to use online toolkit that provides an overview of the laws of a contemplated place of arbitration (seat) and what enforcement laws look like – presented in highly structured format for a quick comparative analysis of jurisdictions of interest.





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