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International Quarterly provides informative and practical information regarding legal and commercial developments in construction and energy sectors around the world.

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Welcome to Issue 37

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Welcome to our latest edition of *International Quarterly* which highlights issues important to international arbitration and projects.

In our 37th issue, we begin by looking at the right to terminate for convenience, with Mark Pantry and Caitlin Binns assessing how the wording of the termination for convenience clause has changed in the FIDIC Red, Yellow and Silver Books, and how these changes can be interpreted.

We next turn to a case summary of a recent ruling out of the United States District Court system. Nicholas Gould and Sana Mahmud review *Baker Hughes v Dynamic Industries*, in which the court rejected claims of forum non conveniens, setting precedent for future disputes containing DIFC-LCIA clauses.

Then, Ben Smith and Tajwinder Atwal provide an update on a recent ruling from the English High Court upholding a challenge to arbitral awards obtained by fraud, with the judgment demonstrating the high standard that challenges under section 68 of the Arbitration Act 1996 must meet in order to succeed.

Finally, Giuseppe Franco and Amelia Adams consider appeals on a point of law, turning to the Law Commission's recent decision not to recommend any reform of section 69 of the Arbitration Act 1996, which allows arbitral parties to appeal an award on the question of law, and looking at the position in Italy.

If there are any areas you would like us to feature in our next edition, please let me know.

Jeremy

News and Events

News

Congratulations to *Building Magazine* and the Building the Future Commission on the recent publication of The Long-Term Plan for Construction report, which features numerous recommendations for the industry and government. We are delighted to have supported this research and look forward to continuing to work with *Building* as a partner for its ongoing Building the Future Think Tank. Download a copy of the report *here*.

Events

Jeremy Glover is helping to organise and will be part of the DRBF Central and Eastern European Conference, which takes place in Sofia, Bulgaria on 14-15 March 2024. *Click here* for more information.

Partner Nicholas Gould is a featured presenter at this year's Nuclear Decommissioning & Waste Management Summit, taking place in London on 3-4 April. Nicholas will be presenting on "Procurement and Contractual Procedures; NEC or FIDIC?". *Click here* for more information or to register to attend.

Webinars

Fenwick Elliott hosts regular webinars that address key issues and topics affecting the construction industry. Our next webinar covers disruption, with Senior Associate Katherine Butler and J.S. Held's Alan Whaley discussing the keys to successful disruption claims on Thursday, 15 February 2024. Please *click here* to register to attend.

As well as our hosted webinar series, many of our specialist lawyers also contribute to webinars and events organised by leading industry organisations, where they are asked to share their knowledge and expertise of construction and energy law and provide updates on a wide range of topical legal issues.

We also are happy to organise webinars, events and workshops elsewhere. We are regularly invited to speak to external audiences about industry specific topics including FIDIC, dispute avoidance, BIM, digital design and technology.

If you would like to enquire about organising a webinar or event with some of our team of specialist lawyers, please contact Stacy Sinclair (ssinclair@fenwickelliott.com). We are always happy to tailor an event to suit your needs.

This publication

We aim to provide you with articles that are informative and useful to your daily role. We are always interested to hear your feedback and would welcome suggestions regarding any aspects of construction, energy or engineering sector that you would like us to cover. Please contact Jeremy Glover with any suggestions jglover@fenwickelliott.com.

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The developing right to terminate for convenience under FIDIC

A termination for convenience clause will give one party, usually the employer, the right to terminate an agreement at its discretion. For parties contracting under the FIDIC suite of contracts, a termination for convenience clause is often included as standard.

Termination for convenience has evolved under FIDIC across the various versions and forms of conditions. In this article, we will review how the wording of the termination for convenience clause has changed in the FIDIC Red, Yellow and Silver Books, and how those changes can be interpreted.

FIDIC Orange Book 1995

One of the earliest inclusions of a termination for convenience clause within FIDIC's standard forms was within the Conditions of Contract for Design-Build and Turnkey (Orange Book 1995). Sub-Clause 2.4 gives the employer the entitlement to terminate the contract "*at the Employer's convenience, at any time after giving 56 days' prior notice to the Contractor*". The termination for convenience is subject to the following limitation: "*After such termination, execution of the Works shall not be recommenced within a period of six years without the Contractor's consent*".

The limitation above effectively restricts the employer's operation of the termination for convenience clause to circumstances where the project is no longer continuing or will not continue for at least six years after the date of termination. The limitation is included as, under the Orange Book, the contractor is not entitled to be paid any loss of profit following the contract being terminated for convenience. This principle was further developed in the FIDIC Red, Yellow and Silver Books 1999.

FIDIC Red, Yellow and Silver Books 1999

In the FIDIC Red, Yellow and Silver Books 1999, the employer has the entitlement, at Sub-Clause 15.5, to "*terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor*". The termination has effect 28 days after the later of the date on which the contractor receives the notice and the date on which the employer returns the contractor's performance security.

The entitlement to terminate for convenience also contains an additional caveat that the "*Employer shall not terminate the contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another Contractor*". This follows the principles established in the Orange Book, preventing the employer from using termination for convenience to switch contractors or complete the works without the contractor. The intention of the clause is to limit the ability to terminate for convenience in circumstances where the works are no longer proceeding. It is not clear whether the employer could instruct another contractor to complete part of the works or a modified version of the works and, if the employer did so, what the contractor's remedies would be.

Following termination of the contract for convenience, the contractor is required to cease work and promptly remove its equipment from the site. On termination, the contractor is also paid its costs, including the amounts payable for work carried out, cost of plan and materials ordered and any other cost which was reasonably incurred by the contractor in the expectation of the completion of the works. The contractor is also entitled to be repaid for the cost of removal of temporary works and equipment, and the cost of repatriation of the contractor's staff and labour engaged in connection with the works at the date of termination.

The contractor is not entitled to claim for loss of profit as a result of such termination for convenience. The reasoning behind this must be that the additional caveat mentioned above prevents the employer from completing the works and effectively brings the project to a close. As there is no further profit to be had in the project for the employer, it is perhaps more reasonable for a contractor to accept a position where there is no ability to claim its loss of profit following a termination for convenience provided that the contractor is paid those additional costs it incurs, such as repatriation and other costs.

FIDIC Red, Yellow and Silver Books 2017

The 2017 suite of contracts revised and expanded the termination for convenience provision (Sub-Clause 15.5). As with the 1999 suite, the employer has the entitlement to terminate the contract at any time for the employer's convenience by giving notice to the contractor. Issuing a notice of termination triggers a number of restrictions on the employer:

- the employer has no right to further use any of the contractor's documents, except for those which the contractor has received payment or for which payment is due;
- the employer has no right to allow the continued use of any of the contractor's equipment or temporary works, facilities, services, etc.; and
- the employer must make arrangements to return the performance security to the contractor.

Termination takes place 28 days after the later of the date on which the contractor receives the notice and the date on which the employer returns the contractor's performance security.

Sub-Clause 15.5 also provides that, unless and until the contractor has received payment of the amount due to it under its termination account, the employer "*shall not execute (any part of) the Works or arrange for (any part of) the Works to be executed by any other entities*". Unlike the 1999 version, the 2017 versions allow the contractor to claim the "*amount of any loss of profit or other losses and damages*" suffered by the contractor as a result of the termination for convenience.

The amendments between the 1999 and 2017 versions reflect the frequent amendments made to the FIDIC Red, Yellow and Silver Books in the period to remove the effective restriction in the termination for convenience provided that the contractor is allowed to recover its loss of profit following such termination.

Conclusion

The evolution of the termination for convenience drafting within the FIDIC versions provides an insight into how termination for convenience has been adapted to suit usage and the requirements of the employer. Initial versions of the clause were limited in scope but did not allow the contractor to claim for loss of profit following termination for convenience. The FIDIC Red, Yellow and Silver Books 2017 introduced an unlimited right for the employer to terminate for convenience with the corollary being the payment of loss of profit to the contractor.

Unrestricted termination for convenience clauses with clear consequences and prohibitions should provide comfort for contractors in that they will be able to claim for their loss of profit and other costs in result of termination. Amendments to these standard clauses should be treated with caution to prevent the consequences of termination being radically changed.

Parties are therefore advised that they should be clear of the consequences of what is being agreed and to be aware of variations across standard forms when considering the inclusion of a termination for convenience clause within a contract. ■

Case Summary: *Baker Hughes v Dynamic Industries*

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Baker Hughes Saudi Arabia Co. Ltd v Dynamic Industries, Inc., Dynamic Industries International LLC and Dynamic Industries International Holdings, Inc.

United States District Court (Eastern District of Louisiana)

Judgment dated 6 November 2023

The facts

The Plaintiff, Baker Hughes Saudi Arabia Co. Ltd ("**Baker Hughes**"), entered into a contract with the Defendants ("**Dynamic Industries**") to supply materials, products and services for an oil and gas project being performed by Dynamic Industries in Saudi Arabia (the "**Contract**"). The Contract was governed by Saudi law. Upon fulfilling its obligations under the Contract, Baker Hughes filed a suit in court, claiming that Dynamic Industries had failed to pay US$1.355 million for the works performed.

Dynamic Industries filed a motion at the court to dismiss Baker Hughes' claim against them on the ground of "*forum non conveniens*", or in the alternative, to compel Baker Hughes to arbitrate its claim.

The decision

The Contract contained a provision that required any dispute between the parties to be referred to and finally resolved by arbitration under the Arbitration Rules of the DIFC-LCIA Arbitration Centre ("**DIFC-LCIA**"), on which Dynamic Industries sought to rely. However, in 2021, the government of Dubai issued a decree abolishing the DIFC-LCIA and replacing it with the Dubai International Arbitration Centre ("**DIAC**").

Baker Hughes argued that the Contract's arbitration provision was unenforceable because the selected forum, the DIFC-LCIA, no longer existed.

The court agreed with Baker Hughes and denied Dynamic Industries' motion. In coming to its decision, the court considered relevant authorities and precedent, noting that:

1. Arbitration is a matter of a contract requiring consent and private arbitration agteements are enforced according to their terms.
2. The court could not, therefore, compel arbitration where the agreed upon arbitration tribunal is unavailable or no longer exists.
3. The Dubai government could not rewrite the agreement of the parties and order that the arbitration be held in a forum to which the parties did not contractually agree. Dynamic Industries had argued that the court could, nonetheless, order Baker Hughes to arbitrate its claims against Dynamic Industries in the DIAC, stating that the Dubai government issued a decree which dissolved the DIFC-LCIA and "*transferred [its] assets, rights and obligations*" to the DIAC, and "*expressly stated that DIFC-LCIA arbitration agreements entered into before the effective date of [the decree] are deemed valid*".

Accordingly, the court found that no enforceable forum selection clause in the Contract could compel the dismissal of the case on the ground of "*forum non conveniens*", and Dynamic Industries' motion was denied.

Analysis

This decision is a useful guide for any party to a contract that contains an arbitration clause pursuant to which disputes are referred and resolved by arbitration under the DIFC rules. Whilst in such cases a party may claim that the reference should be made to DIAC following the Dubai government's decree,[1] it is arguable that this is an entirely different forum to that which was originally agreed. Parties should, therefore, consider whether an agreed amendment to their arbitration clause is required to reflect the change in forum so that it remains enforceable. ■

Disclaimer

Fenwick Elliott LLP and its partner firm, Hammad & Al-Mehdar, provided Saudi law advice to the Defendent, Baker Hughes, in relation to the Contract subject to this dispute.

Footnote

[1] Decree 34 of 2021.

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The English High Court sets aside multibillion-dollar arbitral award against the Republic of Nigeria

Introduction

In *The Federal Republic of Nigeria v Process & Industrial Developments Limited* [2023] EWHC 2638 (Comm),[1] the High Court upheld a challenge to arbitral awards that had been obtained by fraud. While the facts of the case were highly unusual, the judgment demonstrates the high standard that challenges under section 68 of the Arbitration Act 1996 must meet in order to succeed.

Section 68 and "serious irregularity" – a reminder

Section 68 of the Arbitration Act 1996 (the "**Act**") allows challenges to awards on the ground of serious irregularity which has caused, or will cause, substantial injustice to the claimant. Under section 68(2)(g), an application may be upheld where an award is obtained by fraud or an award, or the way in which it is procured, is contrary to public policy.

The facts

In January 2010, a 20-year Gas Supply and Processing Agreement for Accelerated Gas Development (the "GSPA") was signed by the Federal Government of Nigeria ("Nigeria") and Process & Industrial Developments ("P&ID"), a company registered in the British Virgin Islands. Under the terms of the GPSA, Nigeria was to build gas pipelines and supply specified quantities of "wet" gas to P&ID while P&ID agreed to construct the gas processing facilities to process the "wet" gas into "lean" gas and deliver it to Nigeria so it could be used for power generation. The GPSA was governed by Nigerian law and provided for arbitration seated in London.

However, by 2012, neither Nigeria nor P&ID had performed their obligations. The parties sought to renegotiate the GSPA, but P&ID subsequently alleged that Nigeria had repudiated the GSPA and claimed damages in an arbitration.

The tribunal issued awards on jurisdiction, liability and quantum. The final award, dealing with quantum, was issued on 31 January 2017 and ordered Nigeria to pay P&ID US$6.6 billion in damages, which, at the time, was material to Nigeria's federal budget, plus 7% interest.

What happened next?

In February 2016, Nigeria used its Economic and Financial Crimes Commission to investigate P&ID and undertook an investigation into the GSPA in 2018.

The investigations led Nigeria to allege that P&ID had committed a fraud by procuring the GSPA through bribery and, significantly, in its conduct of the arbitration. In light of these allegations, on 5 December 2019, Nigeria applied to the High Court for an extension of time to bring challenges against the awards under 68(2)(g) of the Act.

The High Court found that Nigeria had established a strong prima facie case of fraud affecting both the GSPA and the arbitral proceedings. This meant that, if Nigeria was deprived of the opportunity to challenge the awards, Nigeria would suffer a substantial injustice and it would be contrary to public policy. Therefore, despite the 28-day statutory time limit having expired in 2017, the court granted an unprecedented extension of time for the challenge.

The decision

In his judgment, Knowles J considered whether, for the purposes of section 68(2)(g):

- the awards were obtained by fraud or if the way in which they were procured was contrary to public policy; and
- substantial injustice had been or would be caused to Nigeria.

Knowles J identified three matters regarding P&ID's conduct in the arbitration amounting to a serious irregularity within section 68(2)(g) of the Act as follows:

1. **Knowingly providing false evidence:** P&ID provided to the tribunal and relied on evidence that was material that P&ID knew to be false. Knowles J specially referred to the witness statement of Michael Quinn, P&ID's founder. In his witness statement which purported to "*explain how the GSPA came about*", Mr Quinn did not mention that P&ID had made numerous payments to a former legal director at the Ministry of Petroleum Resources ("**GT**") who negotiated the GSPA on behalf of Nigeria.
2. **Bribery:** Knowles J found that P&ID had continued to pay bribes to GT during the arbitration. Knowles J found that the corrupt payments were made by P&ID to keep GT "*on-side*", to "*buy her silence about the earlier bribery*".[2]
3. **Retention of Nigeria's internal legal documents:** P&ID had been provided with, and retained improperly, Nigeria's internal legal documents during the course of the arbitration. Among the 40 or so legal documents that P&ID had obtained were internal letters or reports outlining Nigeria's consideration of the merits, strategy and settlement. Rather than returning the documents immediately, P&ID took the benefit of the information to monitor Nigeria's strategy and its awareness of the deception.

Unsurprisingly, Knowles J had "*no hesitation*" in finding that each of the above matters caused substantial injustice to Nigeria; the outcome in the arbitration would have been different and favourable to Nigeria had the truth been available to the tribunal during the proceedings.

Nigeria was also required to demonstrate that it could not, with reasonable due diligence, have discovered the grounds it relied on for its section 68(2)(g) challenge sooner and, therefore, raised the objections at an earlier point.

Knowles J found that Nigeria first began to acquire knowledge of the bribery of GT when she was interviewed by the Nigerian authorities in September 2019. Further, Nigeria first began to acquire knowledge that P&ID had obtained the internal legal documents only on 29 October 2021.

Commentary

While the facts of this case are remarkable, it provides a very real opportunity to consider whether the arbitration process needs further attention particularly where the sums claimed are significant and where states are involved. Knowles J, himself, drew attention to four particular points:

1. **Drafting major commercial contracts involving a state:** the imbalance between the parties enabled the GSPA to be in the form it was, although bribery and corruption allowed this imbalance. Knowles J noted that this happens in other cases without bribery and corruption but simply where experience or resources are grossly unequal.
2. **Disclosure or discovery of documents:** this case is a significant example of the value of a robust disclosure/discovery process, as it is this that enabled the truth to be reached in this case.
3. **Participation and representation in arbitrations over major disputes involving a state:** Nigeria was compromised, because legal representatives did not do their work to the standard needed, experts failed, and politicians and civil servants failed to ensure that Nigeria, as a state, participated properly in the arbitration. As a result, this meant the tribunal did not have the assistance it was entitled to in order to make the arbitration process work.
4. **Confidentiality in significant arbitrations involving a state:** In the oral closing argument, Lord Wolfson KC, leading counsel for P&ID, stated: "*section 68 is not there to give a remedy if you instruct an honest lawyer who makes a mess of it or doesn't take an available point. That is just tough. You have made your arbitration bed and you lie in it*". Knowles J agreed this was correct; however, commented that "*unless accompanied by public visibility or greater scrutiny by arbitrators, how suitable is the process in a case such as this where what is at stake is public money amounting to a material percentage of a state's GDP or budget? Is greater visibility in arbitrations involving a state or state-owned entities part of the answer*".[3] ■

Footnotes

[1] *https://www.judiciary.uk/wp-content/uploads/2023/10/Nigeria-v-PID-judgment.pdf*

[2] Paragraph 495 of the judgment.

[3] Paragraph 591 of the judgment.

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Appeals on a point of law: striking the right balance between finality of arbitral awards and judicial supervision

Implemented over 25 years ago, the Arbitration Act 1996 (the "**Act**") is undergoing the review initiated by the Ministry of Justice in 2021. The Law Commission published their final report in September 2023[1] and, as of December 2023, the Arbitration Bill is under scrutiny of the House of Lords.[2] The Bar Council has welcomed the review, emphasising the importance of upholding London's status as a leading hub for international arbitration.[3] Among other topics, the Law Commission took a stand on section 69 of the Act, which covers the appeal of arbitral awards on points of law.

Section 69 according to the Law Commission

Section 69 of the Act allows arbitral parties to appeal an award on a question of law. To bring the appeal, the agreement of all parties involved in the arbitration is required. Alternatively, a party may seek to obtain permission from the court. This section operates on an opt-out basis, allowing parties to agree to exclude the right to appeal. Parties often waive such right by agreeing on arbitral rules that include a provision to that extent, such as the ICC Rules (Article 35.6) or the LCIA Rules (Article 26.8).

The Law Commission considered amending section 69 reasoning on two opposing goals. On the one hand, it considered that there is a need to enhance the finality of arbitral awards by limiting the possibility of appealing. On the other hand, the Law Commission observed that certain mechanisms of oversight are necessary to correct at least obvious errors of law.

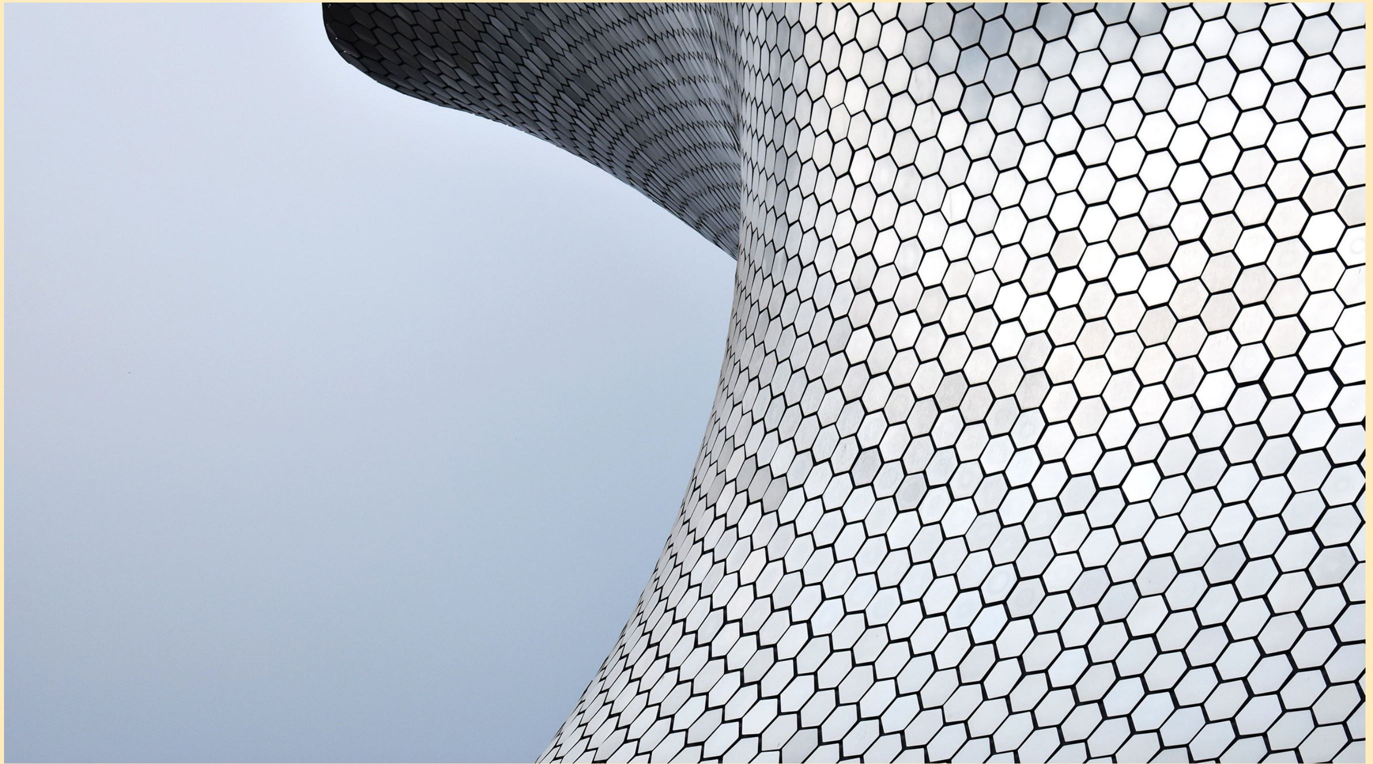
In the end, however, the Law Commission did not recommend any reform of section 69, upholding it as *"a defensible compromise between promoting the finality of arbitral awards ... and correcting blatant errors of law"*.[4]

Italy's position towards appeals on questions of law

Akin to the Act, Italian law does not distinguish between domestic and international arbitration, applying the same provisions to all proceedings seated in Italy. Italian arbitration law is enshrined in Articles 806 to 840 of the Code of Civil Procedure (the "**CCP**"). In particular, Article 829(3) of the CCP deals with appeals for errors in law relating to the merits of the dispute, establishing that an appeal is admissible *"if so expressly provided by the parties"*. Parties can agree to opt into the appellate mechanism, both in the arbitration clause or in a subsequent, ad hoc agreement.

It is interesting to note that, until 2006, Article 829(3) stated the opposite, namely that parties were always allowed to challenge the award for errors in law unless they had expressly agreed to exclude such recourse. In other words, with the 2006 reform, Italian arbitration law moved from an opt-out to an opt-in regime, aiming to consolidate the stability and finality of arbitral awards.

An opt-in mechanism for appeals on errors of law is also adopted in other jurisdictions,[5] although in most instances, laws simply do not provide parties with appellate mechanisms and only allow for setting-aside proceedings.[6]



Commentary

In line with the Law Commission's recommendation, the Arbitration Bill does not contain any provisions amending section 69 of the Act. However, some consultees have argued that section 69 could benefit from moving to an opt-in mechanism. The main argument for this change affirms that an opt-out regime may be viewed as inconsistent with party autonomy to select arbitration as the only forum to resolve disputes.[7] Here, it seems possible to counterargue that the parties' choice to exclude court litigation would be safeguarded under both regimes, the only difference consisting in the conduct required of the parties to express such choice: an affirmative action to exclude under the opt-out regime; an omission under the opt-in regime. Indeed, in contract drafting, the parties' deliberate omission to address certain issues can also be seen as a form of risk allocation and decision making.

This argument seems, however, to neglect the reality of drafting of dispute resolution clauses, which have been notoriously nicknamed "midnight clauses". In what many litigators see as a reckless practice, parties often leave the review of dispute resolution clauses to the last moment ("*at midnight*"), especially when agreements are long and complex. In light of this risky context, one may understand why it could be beneficial to move to an opt-in regime in order to safeguard the parties' choice to arbitrate. Indeed, even if parties were to overlook the drafting of the arbitration clause, their intention to resolve disputes by arbitration would need to be nonetheless upheld. Arguably, this can be better achieved through a system that, as a default rule, forbids appeals on questions of law.

A similar reasoning can apply to the argument of stability of arbitral awards, namely that access to appeal should be limited in order to enhance the finality of arbitration. If the goal of stability prevails over that of judicial supervision, it might be more sensible to prohibit appeals on questions of law unless the parties agree otherwise. Limiting the access to appeal has been seen, however, as a restraint on the development of commercial law.[8] Reducing the number of applications for appeal would, indeed, mean fewer occasions for courts to develop and shape the law. Yet, this line of argument seems to imply that arbitral parties should owe some kind of higher duty to the advancement of the common law. The question might then be whether it is fair for party autonomy to be sacrificed in the name of higher, public policy reasons. One may suggest that businesspeople should not be held to such an obligation, especially if one considers the great sums that they spend to conduct arbitration.

Finally, the opt-out mechanism appears to suffer from the vexatious practice of bringing (meritless) appeals with the mere goal of exerting financial pressure on the counterparty. Between 2018 and 2021, of the 126 applications filed under section 69, only six (5%) were successful, indicating what can be seen as a party's readiness to exploit the system. If the system were to be reversed to an opt-in mechanism, parties would arguably have fewer occasions to do so.

Conclusion

It feels that both the opt-in and the opt-out regime have their compelling reasons to be. From our perspective, appropriate consideration should be given to the (mal)practice of late drafting of dispute resolution provisions. Bearing this in mind, lawmakers ought to determine their priorities. An opt-in mechanism will probably be a better choice for lawmakers that are determined to consolidate party autonomy and finality. Conversely, an opt-out mechanism will better suit those systems that see judicial supervision as a tool to shape and control the development of the law.

In case an opt-in approach is favoured, the question then arises as to whether it is still appropriate for courts to retain the authority to grant leave for appeal. While we recognise that this may be beneficial in order to oust unmeritorious appeals, we also consider that this might contradict the rationale of the opt-in regime, which is to promote party autonomy. Indeed, if parties have expressly agreed to opt into the possibility to appeal on a point of law, no further restriction should theoretically be imposed on their right to bring such challenge. As a matter of fact, this is the Italian position under Article 829 of the ICCP, which, indeed, does not require any permission to appeal. ■

Footnotes

[1] Law Commission, *Review of the Arbitration Act 1996: Final report and Bill* (Law Com No 413, 2023), *https://lawcom.gov.uk/project/review-of-the-arbitration-act-1996/.*

[2] *https://bills.parliament.uk/publications/53038/documents/4018.*

[3] *https://assets.publishing.service.gov.uk/media/654a21952f045e001214dcd7/The_King_s_Speech_background_briefing_notes.pdf.*

[4] Law Commission, paragraph 10.16.

[5] Section 99(e) Hong Kong Arbitration Ordinance.

[6] Article 1518 Code de procédure civile; Section 1059 ZPO; Section 24 Singapore International Act; Article 190 Swiss Private International Law Act.

[7] Centre of Construction Law & Dispute Resolution, *Response to the Law Commission Review of the Arbitration Act 1996* (King's College London 2022), page 23.

[8] Lord Thomas of Cwmgiedd, 'Developing commercial law through the courts: rebalancing the relationship between the courts and arbitration' (*The Bailii Lecture*, 9 March 2016), paragraph 22.

[9] The Commercial Court Report 2021-2021, paragraph 3.1.2, *https://www.judiciary.uk/wp-content/uploads/2022/02/14.50_Commercial_Court_Annual_Report_2020_21_WEB.pdf.*

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