

International Commercial Arbitration

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ABSTRACT

This article is devoted to the complex analysis of the English legislation of the international commercial arbitration. The author analyzed the commercial disputes and the bodies that proceed these disputes in England as well as main statutes regulating the international commercial arbitrations of England. The international commercial practices of the London International Court of Arbitration are described. Moreover, the author represents the main conclusions formed on the basis of the provisions of the national legislation on commercial arbitration and the regulations of the most well-known international arbitrations in England.

KEYWORDS: *International commercial arbitration, commercial disputes, arbitration institution, the London International Court of Arbitration (LCIA), the LCIA Rules, Arbitration Act 1996*

INTRODUCTION

The development of international business has often been accompanied by disagreements among the participants in the trade and monetary relations. This contributes to the recognition of international commercial arbitration as the most effective means of resolving such legal disputes. International commercial arbitration shall settle foreign economic disputes arising between entities of foreign economic activity whose enterprises are registered in the territories of different States and has become, particularly in the context of globalization, an integral part of the international business infrastructure. The attractiveness of international commercial arbitration to companies and entrepreneurs of different countries, including foreign investors, is related to its political neutrality, the freedom of parties to choose arbitrators, Greater confidentiality and effectiveness of the dispute settlement procedure, as well as acceptance of the results of the procedure by the vast majority of States.

The Model Law of The United Nations Commission on International Trade Law (UNCITRAL) the international character and balance of most of the formulations of which embody the essential principles of the arbitration of international commercial disputes and determine the legal mechanism for regulating them. A review of the laws and regulations of the standing international arbitration centres of some countries reveals the undeniable merits of international commercial arbitration versus business disputes The Court of International Jurisdiction of a State. These advantages apply both to the litigation procedure itself, which is specifically designed to deal effectively with commercial disputes between companies from different countries, but also to the relevant procedural results.

One such country with great influence in the world of arbitration is the United Kingdom. The usefulness of such a

territorial selection for this study is not random. The main reason for this is that the United Kingdom is today a country whose arbitration centres are known all over the world. It is a State whose courts have been involved in both national and international disputes for many years.

Therefore, the study of the activities of international commercial tribunals in the United Kingdom in the examination and resolution of trade disputes and the compilation of their practices is becoming increasingly relevant.

This paper will deal with the manner in which commercial disputes are heard and resolved in England and Wales, since English law is limited to England and Wales, and although Scotland and Northern Ireland are part of the United Kingdom, each of them has separate jurisdictions.

Main part

The term «arbitration» in English is explained as «A non-court alternative method of resolving disputes, where an arbitrator or panel of arbitrators is appointed by the parties to make a binding decision, from which there are very limited grounds of challenge» [11]. English researchers most often define arbitration by its distinctive characteristics. Arbitration for commercial disputes is referred to in the literature as "commercial arbitration". In England, most researchers note the lack of a clear definition of «arbitration» in both legislation and practice.

The widespread use of alternative (ADR) commercial dispute resolution in England does not diminish the role of international commercial arbitration. The various ways of settling commercial disputes and the active introduction of alternative dispute resolution methods not only do not diminish the role of commercial arbitration in England, but also increase the substantive and procedural aspects and legal aspects of its effectiveness in dealing with individual commercial disputes by improving the choice of the procedure for resolving such disputes and reducing the overall burden on international commercial arbitration.

The English legal system has traditionally been geared towards giving full support to the arbitration proceedings by State courts. While, of course, it is possible here to challenge a decision of international arbitration in serious violation of the rights of one of the parties, such cases are not known recently, because it is unlikely that London-based arbitrators would allow one of the parties to be offended in the arbitration proceedings.

Statistics

According to a recently published study on international arbitration, 64% of the lawyers of large companies with global business operations identified London as the best

place to arbitrate (whereas Paris - 53% and Singapore - 39%) [12]. It is not by chance that the English capital has gained this reputation, the English courts' attitude to international arbitration and the activities of the London Court of International Arbitration are the most significant factors in the choice of experts.

Arbitral institutions

The London International Court of Arbitration («LCIA») is one of the oldest and leading institutional institutions of international arbitration, which administers the arbitration efficiently and impartially, regardless of the location of the parties and within any system of law. A.D. Kejlin pointed out that the content of the London Court of Arbitration cases «...deal with various issues arising in trade turnover, in particular, disputes related to concluded trade transactions, interpretation of their terms, execution etc.» [5, p15].

Established in 1892 and serving as the leading administrative international arbitration institution in the United Kingdom, LCIA is located in London and is highly sought after by businessmen and lawyers from many countries around the world who seek to ensure that their international disputes are handled independently and competently, as well as to ensure that arbitration is supervised by English courts known for their positive attitude to arbitration.

LCIA is a non-profit organization managed by the Board and the Court. The LCIA Board, "made up largely of prominent London-based arbitration practitioners, is principally concerned with the operation and development of the LCIA's business and with its compliance with applicable company law", whereas the LCIA Court includes a President, six Vice Presidents and up to 35 members, of whom only six can be UK citizens at a time. In this way, the true international character of the activities of LCIA is ensured. The functions of the LCIA Court are mainly "appointing tribunals, determining challenges to arbitrators, and controlling costs" [4]. However, the full Court does not administer individual cases – these functions are delegated in accordance with Article 3.1 of the to the President and Vice Presidents of LCIA [8]. They offer a combination of the best features of the civil and common law systems, including in particular:

- Maximum flexibility for parties and tribunals to agree on procedural matters
- Speed and efficiency in the appointment of arbitrators, including expedited procedures
- Means of reducing delays and counteracting delaying tactics
- Emergency arbitrator provisions
- Tribunals' power to decide on their own jurisdiction
- A range of interim and conservatory measures
- Tribunals' power to order security for claims and for costs
- Special powers for joinder of third parties and consolidation
- Waiver of right of appeal
- Costs computed without regard to the amounts in dispute
- Staged deposits - parties are not required to pay for the whole arbitration in advance [9].

The procedure of arbitration proceedings of LCIA is determined by special rules issued by this court. The current

rules of the London International court of Arbitration entered into force on 1 October 2014 and apply to arbitration proceedings initiated on or after that date. "These LCIA Rules comprise this Preamble, the Articles and the Index, together with the Annex to the LCIA Rules and the Schedule of Costs as both from time to time may be separately amended by the LCIA Rules" [7].

These rules contain a number of new features, such as:

- LCIA arbitration tribunals are explicitly empowered to impose costs sanctions on parties who engage in 'non-cooperation resulting in undue delay
- Party representatives are deemed to have agreed to abide by principles of ethical conduct set out in the Annex to the 2014 LCIA Rules
- New rules were adopted for the appointment of emergency arbitrators [4,p125].

Thus, attractiveness of the London Court of International Arbitration for companies and entrepreneurs from different countries, including foreign investors, is largely due to:

- Its continuing status of the largest financial center and world market
- Its reputation as a neutral and impartial jurisdiction
- Accounting for the activities of courts in enforcing arbitration agreements and awards [2].

This is also evidenced by the statistics of the number of appeals to this court. According to LCIA's 2019 Annual Casework Report, a record number of arbitrations were referred to the LCIA - 406 cases, of which 346 were referred under the LCIA Rules, with non-UK parties accounting for 81% of its users. In 20% of those cases where the claims were quantified, the sum claimed was between USD5 million and USD50 million, with the sum claimed exceeding USD50 million in a further 9% of cases. Trending industries once again included banking and finance, energy and resources, and transport and commodities (accounting for 32%, 22% and 15% of disputes respectively). Moreover, one of the distinctive features of LCIA, to date, is the leadership in gender diversity, with a further increase in the overall number of female arbitrators in LCIA arbitrations (163 out of 566) – representing 29% of all arbitrator appointments, compared with 23% in 2018 [10, p2].

In addition to the LCIA, there are a number of other institutions that are commonly used in international arbitrations held in England and Wales: International Chamber of Commerce (ICC), London Maritime Arbitrators Association, Chartered Institute of Arbitrators (CIArb), etc.

Arbitration Law

In the history of arbitration law in England, many arbitration laws were adopted, which laid the foundation for the development of arbitration law in England. One of the last significant statutes is Arbitration Act 1996 of England [1] of 17 June 1996 (entered into force on 31 January 1997), which relates to arbitration in England & Wales or Northern Ireland (Section 2) and is based on the freely expressed will of the parties, provides Contracting parties with a number of appropriate tools that provide the greatest possible certainty as to the interpretation and fate of their contractual relations in the event of a trade dispute. Although the Arbitration Act of 1996 contains many of the principles enshrined in UNCITRAL (UN Commission on International Trade Law),

but it has some important differences, including the following:

- The 1996 Act applies to all forms of arbitration, whereas the Model Law only applies to international commercial arbitration;
- Under 1996 Act, a party may appeal an arbitral award on a point of law (unless agreed otherwise);
- Under 1996 Act, an English court is only able to stay its own proceedings and cannot refer a matter to arbitration;
- The default provisions of the 1996 Act for the appointment of arbitrators provide for the appointment of a sole arbitrator as opposed to three arbitrators;
- Under 1996 Act, where each party is required to appoint an arbitrator, a party may treat its party-nominated arbitrator as the sole arbitrator in the event that the other party fails to make an appointment;
- There is no time limit for a party to oppose the appointment of an arbitrator under the 1996 Act;
- The 1996 Act does not prescribe strict rules for the exchange of pleadings.

English courts demonstrate a pro-arbitration attitude by defending and supporting the parties' agreement to arbitrate their disputes. This support may include suspension of proceedings in English when the case is to be submitted to arbitration (Section 9), or temporary proceedings in support of arbitration by suspension of proceedings or injunction (Section 44).

The 1996 law expressly requires that the settlement of arbitration disputes be fair and uninterrupted (Section 1) and that the arbitrator be impartial (Section 33). Based on the authority granted to the court to remove the arbitrator (Section 24), the arbitrator must also have the qualifications required by the arbitration agreement and be physically and mentally capable of conducting the proceedings.

It is also worth noting that, the 1996 Act cannot have any relations to cases, that were initiated prior to the date on which the 1996 Act came into force. Therefore, the overall impact of the new Act may take some time to bring to the attention of those who use English arbitration.

Conclusion

This study has shown that, international commercial arbitration in England has long been part of the system of foreign trade, having established itself as a reliable place for resolving disputes complicated by foreign elements. Having incorporated a high level of support for the arbitration procedure, it has become really flexible and efficient thanks to its laws and courts that are very respectful of arbitration and guarantee minimal involvement in arbitration proceedings, as well as many experienced arbitrators and lawyers based in London or in neighboring European jurisdictions.

In addition, a competent international lawyer will be able to choose an arbitration clause that corresponds to any contract, from multi-billion-dollar investments to the delivery of a small batch of inexpensive goods. A party to a dispute that makes full use of the English law granted to it by the applicable arbitration rules will have the full opportunity to present its own position, despite the fact that the arbitrators will be foreign specialists.

At the same time, recognizing some of the shortcomings and problems of English arbitration, arbitration institutions will improve their legal frameworks and expand the opportunities for parties to obtain interim measures of protection.

Apart from that, there has been some discussion as to whether Brexit will have any impact on the practice of arbitration in London. A 2018 survey carried out by the Queen Mary University of London determined, that more than half of the respondents, who took part in the survey, think that Brexit will not have any affect to English arbitration [13]. They believe that its 'formal legal structure' is likely to remain unchanged and to continue to support arbitration. The reasons for this, as noted by legal experts, are following:

- "First, the United Kingdom will remain a signatory to the New York Convention and the pro-enforcement attitude of the courts will continue;
- Second, the legislation governing arbitration will remain unchanged as this is domestic rather than European;
- Third, Brexit will not materially change the substantive content and application of English law as a governing law should not remain a popular choice for parties in their international contracts;
- Fourth, Brexit may make arbitration more attractive for commercial parties as court judgments will no longer be enforceable under the Brussels Regulation (recast), Regulation 1215/2012 after Brexit is completed;
- Fifth, Brexit may mean that English courts can issue anti-suit injunctions to restrain parties from bringing proceedings before courts of a European Member State.
- Sixth, the UK's obligations under EU law may sometimes conflict with its obligations under arbitration-related treaties (such as the Washington Convention) but this will no longer be the case" [3].

From the above, we can conclude that arbitration in England will remain in its high position among other arbitrations in the world for many years to come and will continue its dynamic growth in attracting more and more international disputes around the world.

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