

The 2025 English Arbitration Revolution

What International Businesses Must Know



Introduction

The English Arbitration Act (EAA) 2025, which came into effect on August 1, 2025, represents an important development to the alternative dispute resolution framework of England and Wales in almost three decades. Although the Arbitration Framework of 1996 had been instrumental in shaping London into a preferred hub for international commercial arbitration, evolution in cross-border commercial transactions necessitated an amendment to the arbitral framework.

The EAA 2025, issued following the recommendations of the Law Commission of England and Wales after a two-year consultation, does not repeal the EAA 1996 but rather makes necessary amendments to address ambiguities that had previously required resolution through expensive and often unpredictable litigation in Court.

These changes have significant implications for international businesses, including resource management and the avoidance of relitigating issues already adjudicated by the arbitral tribunal. This work explores how the EAA 2025 applies to all arbitral and court-related proceedings instituted after it came into force on August 1, 2025, and the necessity for in-house counsel to re-evaluate their existing dispute resolution clauses in contracts where disputes have not yet arisen.

Key Milestone

The EAA 2025 does not repeal the 1996 Act but makes crucial amendments to address ambiguities, avoiding expensive and unpredictable court litigation.

✓ Section 6A

New default rule for determining applicable law

✓ Section 39A

Summary disposal for unmeritorious claims

✓ Section 41A

Recognition of emergency arbitrators

✓ Section 23A

Enhanced disclosure requirements

What International Businesses Must Know

Key changes in the English Arbitration Act 2025 that impact cross-border commercial transactions and dispute resolution



Global Impact

Cross-border commercial transactions



New Rules

Section 6A governing law changes



Efficiency

Summary disposal procedures

 The EAA 2025 applies to all proceedings instituted after August 1, 2025

The Governing Law Ambiguity

Perhaps the most impactful introduction for international businesses is Section 6A of the EAA, which sets a new default rule for determining the applicable law governing an arbitration agreement. Previously, the English courts relied on the decision of the Supreme Court in *Enka Insaat Ve Sanayi AS v OOO Insurance Company, Chubb*¹, where it was held that if the parties had agreed on a law to govern the main contract but did not choose a specific governing law for the arbitration proceedings in their arbitration agreement, the law of the main contract would generally be inferred to govern the arbitration agreement as well.

While this assumption was adopted to reflect the parties' intention, it created risks for English-seated arbitrations. For instance, if a main contract was governed by a foreign law that was not arbitration-friendly, or a jurisdiction with narrower views on arbitrability or different standards for the formation of an agreement, that foreign law could inadvertently undermine the very clause that parties intended to use for dispute resolution. Section 6A fundamentally changes this assumption by providing that, in the absence of an express governing law for the arbitration agreement, the governing law will be the law of the seat of arbitration.

The practical implications for international commerce are extensive. By defaulting to the law of the seat of Arbitration, London-seated arbitrations will now almost universally benefit from the pro-arbitration stance of English law. This shift also clarifies the availability of anti-suit injunctions. Under the *Enka* regime, parties could sometimes seek English anti-suit relief for foreign-seated arbitrations by arguing the clause was impliedly governed by English law; under Section 6A, such relief will be much harder to obtain for foreign-seated arbitrations unless English law is explicitly chosen for the clause itself.



The Section 6A Reform

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Strategic Use of Summary Disposal to Ensure Procedural Efficiency

The difficulty that arbitral tribunals faced in making a summary award due to unmeritorious issues was a pain point for international businesses. Although many institutional rules, such as the London Court of International Arbitration (LCIA) Rules and the International Chamber of Commerce (ICC) Rules, introduced the concept of a summary dismissal procedure, it remained unrecognised by the EAA 1996. This made arbitrators reluctant to make a summary award because it could be challenged in court under Section 68 of the Act on the ground that the award failed to provide the parties with a fair opportunity of being heard.

This issue is addressed in the EAA 2025 through the incorporation of Section 39A, which provides that the tribunal may make an award on a summary basis if it is of the opinion that a claim, defence, or particular issue has no real prospect of success. This standard is identical to the "no real prospect of success" standard set out in Part 24 of the English Civil Procedure Rules, providing a familiar and stable body of jurisprudence for arbitrators and legal practitioners to draw upon.

For international businesses, Section 39A serves as a critical mechanism for cost and time containment. It allows for the early elimination of frivolous or vexatious claims and prevents parties from using speculative defences to delay the inevitable enforcement of a debt or obligation. Crucially, despite the EAA 2025 providing for the power of summary dismissal, it remains subject to party autonomy. In this regard, the parties may, under their arbitration agreement, expressly opt out of summary disposal procedures if they believe that, given the nature of their commercial transaction, any dispute arising from that transaction would require a full evidentiary hearing.

✓ Key Benefits of Section 39A

- ✓ Early elimination of frivolous claims
- ✓ Cost and time containment
- ✓ Prevents speculative defences
- ✓ Subject to party autonomy
- ✓ Opt-out mechanism available
- ✓ Full evidentiary hearing option

Recognition of Interim Measures

The drafters of the English Arbitration Framework in 1996 did not recognise emergency arbitrators or interim measures. It was only in the last decade that many arbitral institutes incorporated provisions for emergency arbitrators and interim measures in their institutional rules. The court remained the only recourse for parties seeking injunctive or preservative relief.

The EAA 2025 closes this gap by introducing Section 41A, which recognises the authority of emergency arbitrators where the parties' chosen rules provide for them. It empowers this class of arbitrators to issue peremptory orders, which the court can then enforce as an interim award. Section 44 of the EAA 2025 further clarifies that, with the emergency arbitrator's permission, the parties may proceed to seek the court's intervention on interim issues.

In addition to the above, section 44 further confirms that court orders can now relate to a party or "any other person". This matters for evidence preservation, asset preservation, and other supporting orders where key materials are held by third parties. Where international businesses anticipate problems with third-party evidence, the arbitration seat should be in England.

➤ Section 41A

Emergency arbitrators can now issue peremptory orders enforceable by courts as interim awards, with parties able to seek court intervention on interim issues.

✔ Key Benefits

- Emergency arbitrator authority recognized
- Court orders can extend to third parties
- Enhanced evidence preservation powers

Arbitrator's Disclosure and Immunity

Section 23A requirements for transparency and protection

The integrity of international commercial arbitration fundamentally lies with the impartiality and independence of the arbitral tribunal. The EAA 2025 not only codifies but also strengthens arbitrators' duty of disclosure. This duty of disclosure has now been elevated from a common law principle to a statutory requirement under Section 23A of the EAA 2025. The arbitrator must disclose to all parties every relevant circumstance that may raise reasonable doubts about his impartiality.

The duty of disclosure now includes circumstances that the arbitrator ought reasonably to be aware of, imposing a greater duty of diligence on the arbitrator to thoroughly check for potential conflicts of interest within their organisations and professional networks. The duty of disclosure is now a continuing requirement, and parties cannot agree to waive it. This ensures a minimum level of transparency that underpins the integrity of the entire system.

To balance the heightened duty of disclosure, the EAA 2025 has strengthened arbitrators' immunity to prevent their professional reputations from being needlessly exposed to litigation. Arbitrators would not be liable for the costs of an application for their removal unless it can be shown that they have acted in bad faith.² Similarly, an arbitrator's resignation will not give rise to liability unless it is found to be "unreasonable" under the circumstances.³ This provides arbitrators with the necessary security to make robust decisions and manage proceedings effectively without fear of personal financial ruin.

Key Immunity Protections

- 1. Bad Faith Requirement:** Arbitrators not liable for removal costs unless bad faith proven
- 2. Resignation Protection:** Resignation only creates liability if "unreasonable"
- 3. Security for Decisions:** Provides security for arbitrators to make robust decisions

Strategic Planning for Restricted Post-Award Jurisdiction Challenges Following Tribunal Determinations

Kompetenz-Kompetenz has been a driving force in arbitration efficiency, as the Tribunal is empowered to determine its own jurisdiction and hear the dispute on that basis. However, the Tribunal's ruling on its jurisdiction may be set aside by a court of competent jurisdiction. A significant source of inefficiency in London-seated arbitration has been the challenge due to jurisdictional issues.

Following the precedent laid by the Supreme Court in *Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan*,⁴ the English Court treated a challenge to an award under Section 67 as a full de novo rehearing, i.e., the matter was heard afresh. The court would hear the evidence again, often with witnesses being recalled, and would give no weight to the tribunal's prior findings. This approach frequently turned jurisdictional challenges into a redundant and expensive replication of the arbitration itself.

The 2025 Act introduces a more streamlined and deferential framework. Where a tribunal has already ruled on its jurisdiction, and the objecting party participated in that process, any subsequent court challenge under Section 67 will now be a "review" rather than a "rehearing". This means the court will not entertain new grounds for objection or the introduction of new evidence unless the applicant can demonstrate, with reasonable diligence, that such evidence could not have been presented to the tribunal. Furthermore, oral evidence heard by the tribunal will not be reheard by the court unless it is deemed necessary in the interest of justice.

This reform significantly reduces parties' ability to use jurisdictional challenges as a tool for delay. It forces businesses to front-load their jurisdictional arguments and evidence during the arbitration phase, as they can no longer rely on jurisdictional issues as a second chance to fill gaps in their case identified by the tribunal, inviting the court to hear the matter afresh. By limiting the court's role to supervisory review, the EAA 2025 reinforces the finality of the arbitral process.

For businesses involved in cross-border commercial transactions, where a dispute has been referred to arbitration and jurisdictional issues have been identified, these objections must be raised early, clearly, and comprehensively during the arbitration. Where a party anticipates a court challenge, that party should maintain a detailed record of the arbitral process, including documenting information that was unavailable at the time and that could not reasonably have been discovered with due diligence. This record may become critical in determining whether to rely on the court's limited discretion to admit new material in the interests of justice..

Key Reform

The 2025 Act introduces a more streamlined and deferential framework for Section 67 challenges.

Strategic Impact

Forces businesses to front-load jurisdictional arguments during arbitration.

Conclusion

The combination of the EAA 1996 and 2025 provides a formidable mechanism for London-seated arbitrations. In particular, the 1996 and 2025, jointly, reinforce the core principles that make arbitration a preferred means of dispute resolution: efficiency, party autonomy, the independence and impartiality of the tribunal, minimal court intervention, and the finality of the Award. For businesses operating across borders, the message is now even clearer: preparation at the drafting and arbitral stages carries even greater strategic weight.



Efficiency

Core principle

Streamlined arbitration processes with minimal court intervention



Party Autonomy

Key feature

Enhanced flexibility in arbitration agreements



Finality

Critical element

Strengthened enforcement of arbitral awards

1996 + 2025

Combined framework

August 1, 2025

Effective date

London

Preferred seat

Endnotes

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1. [2020] UKSC 38
2. Arbitration Act 2025. s. 24 (5)(a)
3. Arbitration Act 2025. s. 29(4)
4. [2010] UKSC 46

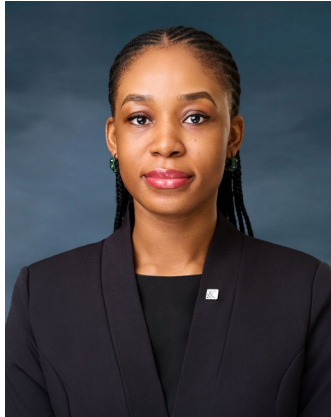
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