Response by the Royal Institution of Chartered Surveyors (RICS).

Arbitration Bill [HL] Special Public Bill Committee

Introduction

The Royal Institution of Chartered Surveyors (RICS) are delighted to have the opportunity to respond to the House of Lords' Special Public Bill Committee, Call for Evidence on the Arbitration Bill.

Established in 1868, RICS is the largest organisation of its kind for professionals in property, construction, land, and related environmental issues, setting and upholding professional standards for 125,000 qualified professionals and over 10,000 firms. RICS regulates both its individual qualified professionals and those firms that have registered for regulation by RICS. Over 80,000 of our qualified professionals work in the UK, where our goal is to deliver a healthy and vibrant property and land sector as a key pillar of a thriving economy while addressing the need for the creation of green, safe communities.

RICS has appointed over 100,000 arbitrators since its Dispute Resolution Service was established in the 1970s. We have 236 actively qualified arbitrators registered on our panels and approximately 200 professionals who have successfully graduated from our Arbitration Diploma. RICS members practicing as arbitrators are regulated by mandatory RICS professional standards which not only include practices and behaviours intended to protect clients and other stakeholders, but also ensures their reasonable expectations of ethics, integrity, technical competence and diligence are met.

We are not a trade body; we do not represent any sectional interest, and under the terms of our Royal Charter the advice and leadership we offer is always in the public interest.

Call for evidence response

Whether you agree with the proposed reforms and whether the reforms achieve what they are intended to;

We agree.

Provisions in the Government's bill that differ from the version proposed by the Law Commission concerning:

- **Changing the bill so that it now provides the changes to the law apply to all arbitration agreements whenever made except those where arbitrations have already commenced**

We agree with this proposed reform. By explicitly stating that the changes to the law will pertain to all agreements where arbitrations have not already commenced, it establishes certainty for all stakeholders, including parties, tribunals, and appointing bodies.

- **Extending the extent of the bill to Northern Ireland**

We agree with this proposal. We believe that extending the extent of the bill to Northern Ireland will ensure continued uniformity across the jurisdictions.

What impact the reforms are likely to have on the arbitration market in the United Kingdom/the City of London

We believe these reforms will uphold the status of the Arbitration Act 1996 as a modern and prominent arbitral framework, consolidating London's pre-eminent position as the leading centre for international arbitration. Domestically, these reforms will ensure continued validity and widespread use of arbitration as a method for resolving a diverse array of disputes within both the consumer and commercial sectors.

Is clause 1(2) of the Bill (adding new Section 6A to the Arbitration Act 1996) sufficiently clear in its drafting (see Hansard 19 December 2023 Grand Committee Col 429GC-430GC and 433GC to 434GC)[2]?

We submit that although Section 6A(2) is clearly drafted, its practical implementation will pose a challenge. We recognise that Section 6A(2) is drafted to preserve the doctrine of separability that applies to arbitration agreements. However, in the absence of express agreement regarding the law and/or seat of the arbitration, we submit that the governing law of the contract should be presumed to govern the arbitration. Section 6A(2) lacks detail on where the law governing the arbitration should be construed should it not be

from the broader agreement. When an arbitration agreement is silent on its governing law, it would be a pragmatic approach to default to the law of the broader agreement. Section 6A(2) introduces unnecessary complexity in this regard.

Whether the amendment to section 67 of the Arbitration Act 1996 relating to challenges to substantive jurisdiction) set out a sufficiently clear approach?

We agree that streamlining the process of contesting arbitral awards on substantive jurisdiction through the establishment of court rules, which mandate that these applications contain no new evidence or arguments, is essential. Were such challenges to turn into complete re-hearings, the time and costs associated with court hearings that rehash arguments already presented before the tribunal would be detrimental to the arbitration process. We are of the view that the proposed amendment to s.67 achieves a sufficiently clear approach. We believe the proposed reforms will work to deter jurisdictional challenges which are spurious or ill-informed and provide effective review where there is need to ensure the interests of justice are served and/or arbitrators have clearly erred in their decisions on jurisdiction.

6 February 2024