Written Evidence from Dr Julio-Cesar Betancourt

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

1. Although the proposed "reforms" — which may be more accurately described as 'amendments' — to the Arbitration Act 1996 ("the 1996 Act") are not a panacea, they are intended to give effect to the Law Commission's recommendations and/or proposals for improvement of the 1996 Act. To that extent, the so-called reforms achieve what they are intended to do.

2. I have examined the background to the Law Commission's proposals for legislative reform in a book chapter entitled 'The Reform of the Arbitration Act 1996' (see *International Arbitration in England: Perspectives in Times of Change*, edited by Greg Fullelove, Laila Hamzi, and Daniel Harrison), which was published by Wolters Kluwer in the second half of 2022.

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

(a) 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

3. Yes, it makes sense to provide that the proposed amendment to Section 6 of the 1996 Act (i.e., which calls for the insertion of a new section dealing with the law applicable to the arbitration agreement, viz., Section 6A Law applicable to arbitration agreement) applies 'to an arbitration agreement whenever made'.

(b) Extending the extent of the bill to Northern Ireland

4. Yes, the territorial extent of the proposed amendments to the 1996 Act should include: (i) England and Wales and (ii) Northern Ireland.

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

5. London continues to be one of the most commonly chosen arbitral seats in the international commercial arena. The proposed amendments are unlikely to generate a tidal wave of London

seated arbitrations. It is difficult to vaticinate whether such amendments may have a long-term impact on the arbitration market in the United Kingdom/the City of London.

(4) 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]?

6. Whilst I do not purport to make an analysis of the content of Section 6A of the Arbitration Bill (as originally drafted), it seems to me that the language used by the drafters of the Bill (not only in that section of the Bill, but also in the rest of it) do not always correspond with the language used by the drafters of the 1996 Act.

7. In line with the language of the 1996 Act, and by reference to the purpose of the proposed amendment to Section 6 of the 1996 Act (which seeks to ensure that, in the absence of the parties' agreement, the arbitration agreement will be governed by the law of the seat), it is suggested that Section 6A of the Arbitration Bill should say the following:

> 6A Law applicable to an arbitration agreement
>
> (1) Unless the parties otherwise agree, where—
>
> (a) the seat of the arbitration has been designated or determined (within the meaning of Section 3), and
>
> (b) the parties have failed to choose expressly the law applicable to the arbitration agreement which forms (or was intended to form) part of another agreement;
>
> the arbitration agreement is to be governed by the law of the seat of the arbitration.

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

8. I have already expressed my views on the question of whether an amendment to Section 67 of the 1996 Act would be justified in the book chapter referred to above.

6 February 2024