

Understanding English Arbitration: Appeal of a Point of Law

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Unlike the U.S. Federal Arbitration Act, the English arbitration regime, set forth in the Arbitration Act of 1996 (the “Arbitration Act”), allows a party under certain circumstances to appeal a question of law arising out of an arbitral award. The right is found in Section 69 of the Arbitration Act. This provision applies to arbitrations where the seat of the arbitration is in England and Wales (or Northern Ireland) and questions of the law of England and Wales (or for a court in Northern Ireland, the law of Northern Ireland).

The Arbitration Act embodies within its express guiding principles the modern policy of non-interventionism of courts in the arbitral process. The English courts will only intervene in order to support the arbitral process (this policy was clearly stated in the Departmental Advisory Committee Report on Arbitration (the “DAC Report”) which reported on the consultation prior to the enactment of the Arbitration Act. On the question whether the rights of appeal should be abolished, the DAC Report concluded that a limited right of appeal was consistent with the parties’ choice of arbitration. It was an important safeguard of the arbitral process to ensure that English law was properly applied. Having chosen to submit their disputes to arbitration subject to an express choice of law, “the parties have agreed that that law will be properly applied by the arbitral tribunal” and “if the tribunal fail[s] to do this, it is not reaching the result contemplated by the arbitration agreement”.

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