

What's in Santa's sack: what matters are caught by an arbitration clause'

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PRACTICES Litigation, International Arbitration

Parties agree to arbitrate because they consider that to be the most appropriate method for finally resolving disputes that might arise out of their legal relationship. A positive choice to include an arbitration agreement in your contract will (in most cases) bring with it a further choice, namely to exclude the substantive jurisdiction of the national courts which would otherwise be able to hear claims between the parties. As you know, arbitration agreements are construed widely. English law takes the view that businessmen want all claims arising from one contract to be resolved before one tribunal.

However, in complex disputes involving multiple contracts and parties, the straightforward proposition that an arbitration clause automatically excludes litigation does not always hold true.

The English Commercial Court has considered whether claims in complex litigation were caught by an arbitration agreement in a recent case, *The Republic of Mozambique v Credit Suisse International and Others* [2020] EWHC 2012 (Comm). The Republic of Mozambique was held to be entitled to pursue claims in the English Courts arising out of what it says was a major fraud, resulting in hundreds of millions of dollars of losses. This was notwithstanding the fact that three contracts relating to the allegedly fraudulent transaction provided for arbitration in Switzerland.

This article reviews just how widely arbitration clauses cast their net and what claims in Court might nevertheless be allowed to slip through.

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