

Editorial

The 31st of January 2022 will mark twenty-five years from the day the Arbitration Act 1996 was brought into force. Inspired by the UNCITRAL Model Law but, at the same time distinctly English, the Act has rightly been hailed as an ‘*exemplary piece of legislation*’.¹ It is a comprehensive, coherent and progressive Act which made it harder for a party to challenge an arbitration award before English courts and accorded parties greater freedom to conduct their arbitration and agree on the procedure that should be followed.

To appreciate the Act’s contribution to the development of English arbitration law, the Act should be seen as part of an uninterrupted series of pro-arbitration legislation that stretches back to the seventeenth century and the introduction of the 1698 Arbitration Act, one of the first arbitration statutes in the world. The 1698 Act is often referred to as the Locke Act, because it was singlehandedly drafted by John Locke, who was commissioned by the Board of Trade to ‘draw up a scheme of some method of determining differences between merchants by referees, that might be decisive without appeal’.

Locke, who was familiar with arbitration, understood that merchants would be willing to use arbitration only if an effective legal mechanism was introduced to ensure that arbitration agreements and awards were complied with and enforced. His draft was adopted by the Board, which submitted it to the Privy Council in January 1697, noting that statutory law was necessary to address the ‘great obstruction in trade arising from the tedious determination of controversies between merchants and traders concerning matters of accompt or trade in our ordinary methods’. The Board urged the Council to adopt the draft on the grounds of the ‘very great advantage to the Trade of this Kingdom’. The bill was finally enacted with minor amendments in May 1698.

The Locke Act expressly introduced a policy favouring arbitration by stating that a legal mechanism for the protection of arbitration agreements was necessary ‘for promoting Trade and rendering the Awards of Arbitrators the more effectual in all Cases’. Locke’s vision and the pro-arbitration policy, embedded in the 1698 Arbitration Act, was then treasured and further developed in all subsequent arbitration acts. The 1889 Act, for example, enshrined the rule of irrevocability

¹ Merkin and Flannery on the Arbitration Act 1996 (6th Edition Informa Law Routledge).

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for arbitration agreements and offered statutory protection to arbitration agreements for both existing and future disputes. Subsequently, the Arbitration Act 1950 accorded arbitrators the power to grant interim relief, while the Arbitration Act 1979 accorded parties the significant power to take their arbitration disputes out of the purview of judicial review for errors of law. Importantly, the Act abolished the power of the courts, which they had since the 1854 Act, to order arbitrators to refer ('state') a question of English law arising in the course of an arbitration or an award in the form of a special case for the decision of the High Court.

Starting with the Locke Act and currently with the 1996 Act, English law has in the last three centuries given effect to a clear policy favouring arbitration as a means of promoting business. It is a remarkable legal tradition that has proved to be the catalyst for London's reputation as one of the most important arbitration places worldwide and has inspired pro-arbitration legislations in other parts of the world. Irrespective of whether the 1996 Act will be amended or not in the coming years (the Law Commission will review this matter soon), it is a good time to recognise the Act's contribution to the field of international arbitration and celebrate its remarkable achievements.

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