Questions and answers on the status and classifications of the Arbitration Act 1996

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1 Regarding the seat of the arbitration e.g. arbitration in London, does the 1996 Act automatically apply to all arbitrations whose chosen seat is in England and Wales ? If so is the 1996 Act then considered the procedural law for the arbitration and if not how does the act relate to the arbitration. ?

Section 2 says " 2. - (1) The provisions of this Part apply where the seat of the arbitration is in England and Wales or Northern Ireland." and "2) The following sections apply even if the seat of the arbitration is outside England and Wales or Northern Ireland or no seat has been designated or determined -

(a) sections 9 to 11 (stay of legal proceedings, &c.), and

(b) section 66 (enforcement of arbitral awards)."

Harris, Planterose and Tecks (The Arbitration Act 1996, a Commentary, Blackwell Science) says "Part I of the Act applies without exception where the seat is in England, Wales or Northern Ireland." See also the DAC report.

2 The procedural law : Does the 1996 Act and it's procedure automatically apply or do we have to choose it?

Yes, it applies automatically, but note that some provisions are mandatory and some allow a choice, failing which the default provisions apply. Moreover, the Act does not prescribe a procedure, it prescribes only minimum standards for a procedure.

3 What is the status of the 1996 Act if another procedural law is chosen for an arbitration whose seat is in London ?

The general rule is that any arbitration must comply with the mandatory rules of law at the seat, regardless of the parties procedural choice. I see that as meaning that the mandatory provisions of the Act prevail, but the provisions of other procedural law, chosen by the parties, may prevail where they do not conflict with mandatory rules of the Act. But note also (Section 46) that the Act permits a wide choice of law as to the merits.

4 Are the arbitration rules e.g. ICE Arbitration Rules classed as procedural law?

Strictly, any set of rules has only contractual force. The rules have effect because they record agreement upon a number of the issues left optional in the Act. For example, the CIMAR Rules provide (Rule 10) for the Arbitrator to have the powers of Section 39 of the Act, in the absence of agreement, there would be no such power. Thus, if the parties adopt those rules, then they have necessarily agreed upon that power.

5 Where the arbitrator chooses procedure in S34 does this mean procedural law or the rules for arbitration or just the matters listed in S34 ?

I don't think that S.34 is exclusive. Subsection (2) provides that "Procedural and evidential matters include- [the list which follows]". I don't think that the arbitrator chooses the procedural law or arbitration rules under this heading. What I think he or she does is choose the details of the procedure, specifically the practical aspects of procedure. The over-arching duty of S.33 guides that decision making.

The Arbitrator cannot impose a set of rules if to do so would imply choices which it is for the parties to make. For example, an Arbitrator could not impose the CIMAR rules of, by doing so, he would impose the provision of Rule 10 that I have mentioned. The parties have to make the choice.

The procedural law and the arbitration rules

6 What about the choice of Substantive law and the arbitrators choice of Conflict of Laws rules ?

That is all wrapped up in S.46. There is some scope for development of the meaning of Sub-Section (1)(b) "if the parties so agree, in accordance with such other considerations as are agreed by them or determined by the tribunal."

7 What is the best reference to read up on the topic ?

I would recommend the DAC report.