

Technical Consultation on draft Arbitration Law
Consultation Feedback
Date: 18 December 2015

Summary

Three responses to the consultation were received for which the Department is grateful.

The Department and the Law Officers have carefully considered the responses and have now finalised the draft legislation.

The main issue that arose in the consultation responses was whether the model of a single law based on the principles of the Arbitration Act 1996, updated as necessary to provide a modern and comprehensive arbitration law for both domestic and international arbitration, is an appropriate model for Guernsey.

Two respondents argued that it would be beneficial to have a separate international arbitration law based on the UNCITRAL Model Law, as this could attract international arbitral work from those familiar with this model.

As a result, this issue has therefore been the subject of further review.

Arbitration - dual track or single track?

Detailed consideration has been given as to whether it would be better for Guernsey to have a single track or dual track system for arbitration throughout the drafting of the legislation. The consultation draft adopted a single track approach. Previous external expert advice, and the view of the Department's legal advisers, was that a single track system based on the principles of the Arbitration Act 1996, updated and adapted where appropriate, is most suitable for Guernsey at the present time in order to provide certainty as to the law applicable to arbitration in Guernsey and to avoid over-complicating the law. The UNCITRAL Model, whilst fairly comprehensive is not a complete solution and has some gaps which would need to be filled with supplementary provisions. Jurisprudence from civil and common law jurisdictions that have adopted the UNCITRAL Model Law would not necessarily have the same degree of persuasive authority before the Guernsey Court as decisions of the English Courts in respect of provisions of the Arbitration Act, 1996. A number of dual track jurisdictions have experienced difficulties with the distinction between domestic and international arbitration and indeed some have moved from dual track to single track systems in recent years.

The Department and its legal advisers are of the view that that the success of a jurisdiction as a venue for international arbitration is not primarily determined by whether a dual or single track system is adopted, or indeed whether an arbitration law is directly based on the UNCITRAL Model law.

Other factors such as the availability of a large number of qualified arbitrators, lawyers, specialist venues and administrators play a key role as does the geographic location and international repute of the relevant jurisdiction. This is why London (single track) is one of the most successful centres for arbitration in the world, along with New York (single track¹), Paris (single track²), Hong Kong (single track) and Singapore (dual track). It seems to the Department that the choice of single or dual track system is not in itself determinative of the success of a jurisdiction as a venue for international arbitration.

The Department has therefore concluded that it will proceed to recommend to the States the enactment of single track legislation at this time based on the principles of the Arbitration Act 1996, updated as necessary in order to provide a modern and comprehensive arbitration law for both domestic and international arbitrations. That is not to say that introduction of a dual track system should not be reconsidered in due course should matters change.

¹ The Federal Arbitration Act, not based on the UNCITRAL Model Law, applies to domestic US (interstate) and international commercial arbitration, albeit New York State Law applies to purely local arbitration.

² A single book of the French Code of Civil Procedure, Livre IV, not based on the UNCITRAL Model Law, covers arbitration, albeit separate provision is made in respect of domestic and international arbitration.