

Solicitors have a pivotal role to play in determining whether the new Scottish arbitration law results in a renaissance in arbitration work in this jurisdiction

# Resolution is the key

The 18 November 2009 was a historic day in Scotland as the Scottish Parliament passed the Arbitration (Scotland) Bill 2009. The bill was given Royal Assent on 5 January 2010 and the Arbitration (Scotland) Act 2010 is likely to commence in late spring. A new era could dawn for Scottish domestic and international dispute resolution. In my view, Scottish solicitors are the key component to the success of the Act and will be the main beneficiaries of any new stream of legal business.

The Act brings Scottish domestic and international arbitration up to date and Scotland will benefit from having all of Scottish domestic and international arbitration law in one accessible and user friendly piece of legislation. Parties in Scotland, and from abroad, will have the choice to resolve their differences more quickly and more cost effectively than by litigation or arbitrating elsewhere. They can choose the arbitrator(s); they can choose the procedure; they can choose how and where the hearings will be conducted, and in what timeframe; and most importantly of all they can benefit from high quality and low cost Scottish legal services. Internationally, parties can benefit from an award that is generally more effective and enforceable than a judgment of a national court, thanks to the New York Convention which has now been ratified in 144 countries.

Parties engaged in international business usually choose a neutral venue in which to conduct their international arbitrations and resolve any disputes they may have. Scotland can directly benefit from this, thanks to the new Act. Scotland already has its own distinctive international and independent brand. Scotland is increasingly viewed abroad as being quite separate and distinct from England. This has become more so since devolution, more so again with the current SNP administration at Holyrood, and it is this distinction and separate branding that could be highly advantageous to Scotland in establishing itself as an independent,



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and importantly neutral, international arbitration venue of choice. This would allow Scotland to tap into a growing seam of international legal business which has thus far not been easily accessible.

When one considers the best venue for an international arbitration, the most important considerations are: (1) is the seat (i.e. the venue) a party to the New York Convention; and (2) is the national arbitration law based on or influenced by the Model Law? Essentially, is the seat arbitration friendly? The new Act ticks both of these boxes. However, as well as convenience, neutrality of the seat is a highly important consideration, as is the fact that we are English speaking and English is the international language of business. Again, Scotland is well placed to benefit. Scotland with its Roman law origins and common law influences is in a good position to bridge the civil-common law divide in international arbitration.

I don't think Scotland will become another England, which is an arbitration superpower, the mother of the common law and one of the world's leading financial centres. However,

there is much more potential for Scotland to develop and become another Sweden, which has successfully developed itself as a leading centre for international arbitration based largely on its perceived neutrality and good quality legal services.

The Act will not in itself achieve this, or result in a flood of international arbitrations using Scotland as a venue. Consumers of arbitration around the world need to know that Scotland has a new Act which is Model Law and New York Convention-compliant; they need to know that arbitrations conducted in Scotland will be conducted with greater speed and at lower cost than elsewhere; they need to know that the Scottish courts (and the judges who supervise the arbitral process), the advocates and solicitors are of high quality and good value. They need to know that we have a supply of well trained and able arbitrators skilled in commercial law, not just in construction law which has thus far been the national diet for Scottish arbitrators.

If foreign consumers of international arbitration services recognise the benefits of arbitrating in Scotland, if we embrace modern and internationally recognised methods of pleading in international arbitration, if we dispense with traditional Scots pleadings and technical pleading points, and with oral examination in chief in favour of written witness statements, if we proactively take control of the arbitral process (achieved by using good quality arbitrators) to ensure speed and cost efficiencies, we will position Scotland as a serious contender to be an arbitration venue of choice in the global arbitration marketplace. Scottish solicitors are uniquely placed to turn this great expectation into reality and to put Scotland firmly on the international arbitration map. **■**



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