# SCOTLAND LEADS THE WORLD IN ARBITRATION

## By Hew Dundas and David Bartos

Today is truly a Great Day in Scots legal and commercial history: the Arbitration (Scotland) Act 2010 has come into force. Arbitration, potentially the quickest and least expensive route to a binding decision in civil disputes, has been reborn in Scotland.

Parties have always been entitled to have civil disputes decided by an arbitrator of their own choosing rather than by a court but still have the court recognise and enforce the decision of the arbitrator. Arbitration has declined in recent years because of the many inadequacies of the pre-2010 law which lacked certain essential features and contained serious anomalies. Arbitration was seen as unresponsive to the needs of the business user who would have had great difficulty in even finding out what the exact rules of arbitration were, buried as they were in old law dating back centuries.

Scotland now possesses world-beating arbitral legislation which has already attracted high praise internationally for the quality of its drafting, for its innovative and user-friendly structure, for the depth of detail of its research and coverage, for its carefully-balanced relationship between courts and arbitrator and for its innovative absorption of the UNCITRAL Model Law. In a recent debate in Paris pitting the arbitral laws of England, France, Germany, Scotland and Switzerland against each other, audience feedback strongly favoured Scotland (repeating a similar success in 2009).

The Act is easy to read, structured (after consultation with the business community) to assist the business user and, most importantly, not only empowering but obliging the arbitrator to "get on with the job" without unnecessary delay or expense. As is the worldwide norm, the role of the courts is restricted to the minimum necessary to assist the arbitrator or to ensure that (s)he does not overstep the mark. For example, the court can (but no arbitrator can) compel witnesses to attend the arbitration to give evidence; further, it can remove the arbitrator or overturn arbitral awards (but only in a very limited range of circumstances, e.g. where substantial injustice to one of the parties arises). The business community made it clear that they do not want to arbitrate and litigate in tandem and the Act gives them the clear separation of arbitration and litigation which that entails.

A key basis of the Act is the extensive research into arbitral law and procedures around the world carried out by the Chartered Institute of Arbitrators (CIArb) Scottish Branch through the CIArb's worldwide network of approximately 12,000 members in 105+ countries; few other countries have researched and consulted so widely before enacting their arbitration law.

Why arbitrate ? The arbitral process is flexible and can be tailored to the specific needs of the case and the wishes of the parties. The arbitrator can be a specialist in the area of dispute in question, e.g. an expert in construction, oil/gas/energy, property/rent review etc. Arbitration can be a much less expensive, much quicker and a more accessible route to a fair and binding decision. Proceedings can take place anywhere the parties agree, e.g. in Applecross, Barra or Duns, and in private. It can be a more user-friendly process, e.g. in a case concerning a dispute over a house extension, the arbitration could easily be held in the house, in a shirtsleeve environment around the kitchen table, a far cry from the wigs and gowns of a courtroom.

In parallel with the coming into force of the Act, the CIArb Scottish Branch has published a set of arbitration rules, the Scottish Short Form Arbitration Rules, wholly consistent with the Act but offering parties a greatly simplified procedure designed to be read and used by non-lawyers especially proprietors of smaller businesses or even sole traders. These short form rules even have explanatory notes to aid users to understand and follow them.

The potential benefits to Scotland do not end there: the Act has been carefully drafted with an eye to the market for international arbitration and not only incorporates the best ideas from around the world, but also builds upon Scotland's global reputation as a centre of legal and judicial excellence.

Also published today is a new book "Arbitration (Scotland) Act 2010" by Messrs Davidson, Dundas and Bartos (see below), the core of the CIArb team which made such a significant contribution to the Act, warmly and graciously recognised by the First Minister.

John Campbell QC, a past President of the CIArb and himself involved in the process of developing the Act, commented

> "After more than a decade of hard work, the passage of the Act brings enormous credit to the officials and Ministers who have supported our efforts to bring this extraordinarily powerful and effective tool to Scotland's business and other communities. They must be heartily congratulated."

Brandon Nolan, Chairman CIArb Scottish Branch, said

> "The new Act provides a great spring board for using arbitration as means of determining disputes and the CIArb Scottish Branch fully intends vigorously to promote arbitration in Scotland, both domestically and also with the aim of attracting international arbitrations to Scotland."

Jim Mather MSP, Minister for Enterprise, Energy & Tourism said

> "The Act provides Scottish arbitrators with a new, more competitive, basis upon which they can promote arbitration in Scotland as a method of dispute resolution with increased confidence and a higher chance of success."

*Note: "Arbitration (Scotland) Act 2010" by Professor Fraser Davidson, Hew R Dundas and David Bartos, published by W Green & Co ISBN 978-041401-772-6; £70,* See www.wgreen.co.uk