

New Legislation Highlights Importance of Arbitration

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A new arbitration law being introduced in Scotland will give companies a real choice between resolving their contractual disputes in court or arbitration, according to law firm Dundas & Wilson.

The Arbitration (Scotland) Act, which was passed by the Scottish Parliament yesterday (Nov 18), modernises the law and practice of arbitration. Previously it had been a mixture of old statutes and precedent – going back as far as the seventeenth century. What has now been produced is a modern, consolidated, statutory framework and well-regulated procedure that should meet the needs of the business community.

Arbitration is an alternative to litigation as a means of resolving disputes. Rather than being heard in open court in front of a judge, parties present their arguments in private to an arbitrator, qualified in the appropriate discipline, whose decision is final and legally binding.

However, there are some points in the new Act of which companies should be aware: the law will apply retrospectively so any contracts in place with the old arbitration provisions will automatically move to the new regime unless parties agree to opt out. As these give far greater powers to arbitrators than previously, it is important to understand the consequences of this.

Lindy Patterson, Head of Construction and Engineering at Dundas & Wilson, said that although arbitration had fallen out of favour in recent years because of concerns as to delay and cost, businesses should look again at what the new legislation in Scotland might give them by way of a more streamlined and cost effective process.

Issued by The BIG Partnership on behalf of Dundas & Wilson.

For more information or interviews contact:

Bryan Garvie on 0141 333 9585 / bryan.garvie@bigpartnership.co.uk

www.dundas-wilson.com

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