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Correction of the Name of a Party to an Arbitration

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# Correction of the Name of a Party to an Arbitration

by SIMON CROOKENDEN QC\*

## ABSTRACT

*A number of recent English cases have considered the question of the circumstances in which an error as to the naming of a party to an arbitration can be corrected. The principles established are based on English law but, it is suggested, are generally applicable to international arbitrations subject to any system of law. A three stage test is proposed consisting of an exercise in contractual construction to identify the intended parties to the arbitration, an enquiry as to whether the conditions required for any valid reference to arbitration such as authority and notice are satisfied, and the exercise of a discretion.*

## I. INTRODUCTION

MISTAKES AS to the naming of parties to an arbitration can occur for any number of reasons. A company may have changed its name or transferred its business, there may have been an assignment, the contractual documentation might be unclear or there may simply have been a clerical mistake. In court proceedings this problem is normally dealt with by rules of court which permit amendment to the name of a party in appropriate circumstances. The problem when it arises in arbitration, however, needs to be approached from first principles since it may affect the fundamental issue of whether there is a reference to arbitration between the intended claimant and respondent. It is thus a matter that may go to the jurisdiction of the arbitral tribunal and, for that reason, may well be reviewable by a court.

Arbitration being a creature of contract, the issue must be determined by an enquiry which is contractual in nature.<sup>1</sup> While different systems of law have different rules and approaches to issues of contractual construction, the end result of seeking to ascertain the intentions of the parties is common to all developed systems of law. There may, therefore, be differences of detail as to the evidence that is admissible or the approach to be adopted to the exercise of contractual

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<sup>1</sup> As Tomlinson J stated in *Harper Versicherungs AG v. Indemnity Marine* [2006] 2 Lloyds Rep. 263 at para. 40: 'the enquiry is of course entirely contractual in nature'.

construction, but it is suggested that the general approach to the problem of misnamed parties in arbitrations governed by English law should be broadly applicable to arbitrations governed by other systems of law.

The issue of the correct identification of the parties to an arbitration becomes of particular importance if the mistake as to the naming of one of the parties is only discovered after the expiry of an applicable time bar. Unless the arbitration can be treated as having throughout been between the intended parties, the claimant is likely to have lost the opportunity to pursue his claim. If no time bar issues arise, it will often be easier, if the matter cannot be sorted out by the agreement of the parties, for a new arbitration to be commenced in the name of the correct parties. Before time and expense is expended in determining an application (which might be reviewable by a court) to amend the name of one of the parties to an arbitration, it is sensible for all parties concerned to consider whether it matters sufficiently to justify the delay and costs involved.<sup>2</sup>

## II. WRONGLY NAMED CLAIMANT

The problem seems to arise most often when it is the claimant who is wrongly named. The test has been stated by the Court of Appeal to be ‘who would reasonably have been understood by the party against whom the claim was asserted to be the entity bringing the claim’.<sup>3</sup> This is a test that is easier to state than to apply.

### (a) *What Types of Mistake Can be Corrected?*

If the mistake is obvious (e.g. an arbitration brought in the name of A Company Ltd on a contract made by A Company plc) then there is no particular problem. Even if there were two different entities, the respondent will usually know which one he contracted with and with whom he therefore has an arbitration agreement.

The sort of mistakes that can be corrected are not, however, restricted to those that would have been obvious to the respondent at the time the arbitration was commenced but include circumstances where the error was not apparent to either party until some time later. In the *Unisys* case the arbitration was commenced in the name of the contracting party as at the time of the contract. It was later realised that the contracting party had changed its name and the original name of the contracting party had been passed to a subsidiary. The party that had started the arbitration was, therefore, the subsidiary that was not a party to any arbitration agreement. The Court of Appeal held the mistake to be ‘simply as to an attribute of the contracting party, namely its name, and not as to any more fundamental characteristic of identity’.<sup>4</sup>

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<sup>2</sup> An example of an occasion when it did not appear to matter sufficiently is *Harper Versicherungs AG v. Indemnity Marine*, *supra* n. 1; see per Tomlinson J at para. 3).

<sup>3</sup> Per Buxton LJ in *AMB General Holding AG v. SEB Trygg Liv Holding* [2006] 1 Lloyd's Rep. 318 at para. 51.

<sup>4</sup> *Unisys v. Eastern Counties* [1991] 1 Lloyd's Rep. 538, per Ralph Gibson LJ at 559, col. 2.

In other cases, the cause of action had been transferred from the original contracting party to a parent or associated company either by dissolution of the contracting party and transfer of assets to the parent company (in the *AMB/SEB* case)<sup>5</sup> or by a transfer of insurance business under the Financial Services and Markets Act 2000 (in the *Harper* case).<sup>6</sup> In both those cases, it was held that the claimant's name could be amended to that of the party holding the contractual rights.

(b) *The 'Correct Description but Wrong Name' Test*

Another way of describing the test to be applied is 'correct description but wrong name'. This was the test that had been developed by the English courts for the circumstances in which the name of a party to court proceedings could be amended despite such amendment depriving the other party of a limitation defence that would otherwise have accrued. This test is referred to as the test in *The Sardinia Sulcis*<sup>7</sup> and was stated by the Court of Appeal in the *AMB/SEB* case to be the same approach as the test applicable to arbitrations.<sup>8</sup>

To what kind of errors does the correct description but wrong name test extend? As Lloyd LJ pointed out in *The Sardinia Sulcis*: 'In one sense a plaintiff always intends to sue the person who is liable for the wrong which he has suffered. But the test cannot be as wide as that'.<sup>9</sup> Similarly, in one sense the claimant interests always intend to bring the claim in the name of the party with title to sue. That it is not sufficient to say simply that the intention was to bring the claim in the name of the party with title to sue is demonstrated by another decision of the Court of Appeal in *The Elikon*.<sup>10</sup> In that case, a claim in arbitration under a charterparty was commenced simply in the name of the vessel 'owner' without naming him. In due course, however, the registered owner of the vessel was named as the claimant and the arbitration continued on that basis. Eventually it was held that the contracting party was not the registered owner but another party that had signed the charterparty without qualification. It was held that, while the commencement of the arbitration was valid in that the reference to 'owner' sufficiently indicated that it was the party contracting as owner that was intended as the claimant, its continuation in the name of the registered owner was a nullity. The name of the registered owner could not be corrected to that of the contracting party even though it had been held that the registered owner was never a party to the charterparty, never had title to sue and was not a party to the arbitration agreement.

<sup>5</sup> *AMB General Holding AG v. SEB Trygg Liv Holding* [2006] 1 Lloyds Rep. 318.

<sup>6</sup> *Harper Versicherungs AG v. Indemnity Marine* [2006] 2 Lloyds Rep. 263.

<sup>7</sup> [1991] 1 Lloyds Rep. 201.

<sup>8</sup> *AMB General Holding AG v. SEB Trygg Liv Holding* [2006] 1 Lloyds Rep. 318, per Buxton LJ at para. 51.

<sup>9</sup> *The Sardinia Sulcis* [1991] 1 Lloyds Rep. 201 at 207, col. 2. This case was, in fact a wrong plaintiff rather than a wrong defendant case. Whether the test laid down in *The Sardinia Sulcis* is still appropriate under the current Rule 19.4 of the Civil Procedure Rules has been the subject of conflicting decisions but the current position appears to be that it is (see *Adelson v. Associated Newspapers Ltd* [2008] 1 WLR 585).

<sup>10</sup> [2003] 2 Lloyds Rep. 430.

(c) *Against What Evidence and Background is the Test to be Applied?*

The primary source of the claimant's intention must, of course, be the notice of arbitration and any other relevant arbitration documents. The object of the exercise is to ascertain the objective intention of the claimant as it would be understood by a reasonable respondent. It differs, therefore, from the exercise of construing a contract where it is the common agreed intention of both parties to the contract that is to be ascertained. To what extent is evidence of matters extraneous to the arbitration documents admissible to assist in determining the claimant's intention?

As with any exercise of contractual construction under English law, the actual intentions and understandings of the parties are not relevant. In the *Unisys* case, Ralph Gibson LJ stated that:

Evidence as to the uncommunicated intentions of the solicitor acting for [the claimant] and as to the nature or origin of the mistake made by him, or as to what the solicitor for [the respondent] thought was the intention of the claimants, would be for this purpose of no assistance or relevance.<sup>11</sup>

The above statement that the nature or origin of the mistake is of no relevance would at first sight seem to differ somewhat from the approach of the Court of Appeal in *The Elikon*. Rix LJ clearly regarded the absence of a frank explanation of the reason for the mistake to be of importance.<sup>12</sup> Possible reasons for this apparent difference are discussed below.

English law generally admits evidence of the matrix or background to a contract known to the parties as an aid to construction.<sup>13</sup> There is no reason why such matrix or background should not be equally admissible to construe a notice of arbitration. It would clearly be appropriate, in particular, to construe the notice in the light of the facts known to the recipient of the notice as to any relevant contract or arbitration agreement that he had entered into.<sup>14</sup>

What, then, are the relevant background circumstances that should be taken into account when one or both of the parties is either mistaken as to the correct position or is not aware what the correct position is? One approach might be to include within the facts taken into account those that were discoverable by the respondent at the time the arbitration was commenced. Thus, in the *Unisys* and *AMB/SEB* cases, the change of company name could have been discovered by accessing the relevant companies registry, and in the *Harper* case it was established

<sup>11</sup> [1991] 1 Lloyd's Rep. 538 at 560, col. 1.

<sup>12</sup> [2003] 2 Lloyd's Rep. 430 at paras. 61, 75 and 78.

<sup>13</sup> *Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1998] 1 WLR 896.

<sup>14</sup> There is discussion in the textbooks and authorities as to the extent to which 'extrinsic' evidence is admissible in cases of misnomer in contracts or notices. The authorities are not clear as to the nature of such 'extrinsic' evidence or the circumstances in which it is admissible (see *Chitty on Contracts* (30<sup>th</sup> edn, 2008), vol. I, para. 12–122 and *Dumford Trading AG v. OAO Atlantnybflot* [2005] 1 Lloyd's Rep. 289, per Rix LJ at para. 32). It is suggested, however, that whatever the admissibility of extrinsic evidence in cases of contractual misnomer (see *The Double Happiness* [2007] 2 Lloyd's Rep. 131 for a recent example in which no special rule was recognised), there is no reason why the normal contractual rules about the admissibility of evidence as to the matrix or background should not apply to the construction of a notice of arbitration.

that the required notices of the transfer of the insurance business had been given to the respondents.<sup>15</sup> This approach does not explain, however, why *The Elikon* falls on the other side of the line, and there is no hint in any of the decisions that discoverability is the relevant test. Further, there is no logical reason why it should make any difference whether the mistake was discoverable or not.

It seems to the writer that the approach taken in the above cases, although it is not expressed in these words, is to consider who the reasonable respondent would understand to be the entity bringing the claim *in the light of the facts as they are subsequently discovered to be*. There is nothing in such an approach that is inconsistent with the English law rules of contractual construction which permit the correction of mistakes in the light of the background circumstances as they are established to be. In the well known words of Lord Hoffmann:

On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had.<sup>16</sup>

Taking the above approach enables one to make sense of the decisions in *Unisys*, *AMB/SEB* and *Harper*. Given that the contracting party has changed its name or the cause of action has been transferred, would a reasonable respondent consider the entity bringing the claim to be the party that had been dissolved or otherwise stripped of its title to sue, or the party that had the title to sue at the time the reference to arbitration was made? Putting the question in that way, the decisions reached in those cases are readily understandable.

The writer recently had to decide a misnomer issue where the arbitration was commenced by a party stated to be an assignee of the contract. It later transpired that no such assignment had been made. Application was made to amend to substitute the name of the original contracting party as the claimant. Although the arbitration documents included a positive averment of a transfer of title to sue, that did not seem to the writer to differ in principle from cases such as the *AMB/SEB* and *Harper* cases, in which there was an implied averment that title to sue had not been transferred when in fact it had. In the light of the facts as they were subsequently shown to be, it was clear which party was the intended claimant.

(d) *Is it Possible to Correct only Mistakes of Fact rather than of Law?*

The above approach, while making sense of the exercise of construction that has to be undertaken, still does not explain where the line is to be drawn and which types of mistake can be rectified. One possibility is that it is only mistakes of fact rather than of law that can be rectified. This could explain why *The Elikon* falls on the other side of the line. In that case, it was an issue litigated between the parties whether it was the registered owner or the signatory to the charterparty that was

<sup>15</sup> [2006] 2 Lloyds Rep. 263 at para. 12.

<sup>16</sup> *Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1998] 1 WLR 896 at 913.

the contracting party. No evidence was adduced of any mistake of fact having been made. Whilst this possible distinction between mistakes of fact and errors of law could explain why *The Elikon* falls on the other side of the line, nothing in the judgments in *The Elikon* or the other cases cited above supports a conclusion that the important distinction is between mistakes of fact and errors of law. Any such distinction would, in any event, be difficult to apply since mistakes can rarely be classified as entirely mistakes of fact or errors of law.

(e) *Is it only Obvious Mistakes that can be Rectified?*

It may be that it is necessary for the mistake to be obvious. There are suggestions in the decided cases that this is at least a factor to be considered. In the *Unisys* case, Parker LJ considered that it was ‘fairly obvious’ that the party commencing the arbitration was intended to be the contracting party.<sup>17</sup> In the *AMB/SEB* case, Buxton LJ considered that it was ‘obvious to the extent of not even needing thought’ that the arbitration was being commenced by the vendors of an insurance company and the fact that the title to the proceedings did not record that one vendor had transferred all its rights to another was a ‘mere misnomer’.<sup>18</sup> In *The Sardinia Sulcis*, it was held that there was no reasonable doubt as to the identity of the person intending to sue,<sup>19</sup> and indeed on the wording of the then applicable court rules, that was one of the conditions required to be satisfied for the grant of relief.<sup>20</sup>

Any requirement that the mistake should be obvious or not such as to cause any reasonable doubt as to the party intending to sue would mean that a mistake that amounts to an incorrect view of the law, which though wrong is arguable, would not normally justify amending the name of the claimant. This could be a reason why the attempt to amend the claimant’s name failed in *The Elikon*. It was only after the registered owner had been held (contrary to the claimant’s submission) not to be the contracting party that the claimant sought to amend the claimant’s name to the correct contracting party.

Although a requirement that the mistake should be obvious can explain the result in *The Elikon*, it does not appear to be the reason given by the Court of Appeal in that case. The reasoning of the Court of Appeal is based on there being a choice to be made as to who was the contracting party and on the natural inference, in the absence of a frank explanation of what went wrong, that those acting for the claimant simply chose the wrong party.<sup>21</sup> Nevertheless, it would clearly have been impossible for the claimant in that case to argue that the correct

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<sup>17</sup> [1991] 1 Lloyds Rep. 538 at 550, col. 2.

<sup>18</sup> [2006] 1 Lloyds Rep. 318 at para. 52.

<sup>19</sup> [1991] 1 Lloyds Rep. 201 at 207, col. 2.

<sup>20</sup> Order 20 Rule 5(3) of the Rules of the Supreme Court at that time provided: ‘An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued’.

<sup>21</sup> [2003] 2 Lloyds Rep. 430, per Rix LJ at para. 75.

claimant had been chosen in the first place but in the alternative to argue that, if that was wrong, it would have been obvious to the respondent that the other possible claimant has been the intended claimant.

(f) *Can the Arbitration be Treated as having been Commenced by the Intended Claimant?*

Even if the exercise of construction of the arbitration documents clearly indicates the intended claimant, the tribunal still needs to be satisfied that the arbitration can be treated as having been commenced by that claimant. For instance, the notice of arbitration must have been given with that party's authority. Where the error is in naming one member of a group of companies rather than another there may be no real problem in establishing such authority.<sup>22</sup> In other cases, difficult questions of actual or ostensible authority or ratification can arise.<sup>23</sup>

(g) *The Element of Discretion*

Another problem raised by *The Elikon*, as mentioned above, is that Rix LJ in that case clearly considered the reasons for the mistake having been made to be of relevance, whereas the approach based on the rules of contractual construction would normally consider such matters to be irrelevant. A possible answer to this problem is that an application to amend cannot be just an exercise in contractual construction. It must also include an element of discretion. The power of an arbitrator to allow an amendment is normally expressed in terms of a discretion<sup>24</sup> and it was indicated by Tomlinson J in the *Harper* case that the power to amend the name of a party is a discretionary one to which issues of prejudice are relevant.<sup>25</sup> The reasons for the original error must be relevant to the exercise of the discretion, whether or not they are relevant to the exercise of contractual construction. Order 20 Rule 5(3) of the now superseded Supreme Court Rules required it to be shown that a mistake was 'genuine'. While rules of court should only be referred to with care in the context of the contract based exercise to be carried out in the arbitration context,<sup>26</sup> any arbitrator would want to be satisfied that there was a bona fide mistake and the misnaming of the claimant was not for some ulterior purpose (e.g. to bring a claim in the name of an impecunious party to avoid any possible costs liability) before granting leave to amend.

A tribunal would also, no doubt, not wish to allow an amendment to the name of the claimant if that would cause significant prejudice to the respondent that could not be remedied by an appropriate award of costs. For these purposes, the fact that a respondent would, if the amendment were allowed, lose an accrued time bar defence could not count as a relevant head of prejudice since it begs the very question at issue as to the identity of the claimant in the arbitration.

<sup>22</sup> As in *Unisys v. Eastern Counties* [1991] 1 Lloyd's Rep. 538, per Ralph Gibson LJ at 561, col. 1.

<sup>23</sup> As in *AMB v. SEB* [2006] 1 Lloyd's Rep. 318, per Buxton LJ at paras. 16–47.

<sup>24</sup> See e.g., Arbitration Act 1996, s. 34(2)(c).

<sup>25</sup> [2006] 2 Lloyd's Rep. 263 at para. 46.

<sup>26</sup> *AMB v. SEB* [2006] 1 Lloyd's Rep. 318, per Buxton LJ at para. 51.

(h) *Suggested Approach of a Tribunal to Application to Amend Name of Claimant*

How then should an arbitration tribunal approach an application to amend the name of a claimant? It is suggested that it would be useful to separate out the exercise of construction of the arbitration documentation and the exercise of discretion. The construction issue is to be approached in the light of the facts as they are subsequently shown to be. The test to be applied can be expressed either as 'who would reasonably have been understood by the party against whom the claim was asserted to be the entity bringing the claim?', or as 'do the arbitration documents correctly describe the claimant even if he is wrongly named?'. For the purposes of this exercise, the uncommunicated intentions of those acting for the claimant, the uncommunicated understanding of those acting for the respondent, and the reasons for the mistake, are of no relevance. How abstract the description may be will depend on the circumstances. Merely saying that the respondent would reasonably understand the entity bringing the claim to be the party entitled to do so may not be enough; but it seems that it may be if the right to bring the claim has been transferred to another entity by some legal process. If there remains a reasonable doubt as to the identity of the intended claimant, then leave to amend should probably be refused.

Next, it needs to be determined that the reference to arbitration has indeed been validly made by the intended claimant. It needs to be shown that the arbitration was commenced with the authority of the intended claimant.

Having determined the construction issue and satisfied itself that the necessary requirements for the commencement of an arbitration by the intended claimant are present, the tribunal needs then to consider whether, as a matter of discretion, the amendment should be allowed. The absence of a satisfactory explanation as to how the error was made might be a reason for refusing leave to amend, as would significant prejudice (other than the loss of an accrued time bar) suffered by the respondent.

### III. WRONGLY NAMED RESPONDENT

(a) *Identification of the Intended Respondent*

The principles set out above regarding the identification of the intended claimant by a process of construction of the arbitration documents applies equally, it is suggested, to the identification of the intended respondent. The case of *The Sardinia Sulcis* with which the 'right description but wrong name' test is associated treats the test as being the same in court proceedings whether one is considering a wrongly named plaintiff or defendant.<sup>27</sup> There seems no reason why the same approach should not apply in arbitration.

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<sup>27</sup> [1991] 1 Lloyds Rep. 201, per Lloyd LJ at 207.

(b) *Can the Arbitration be Treated as having been Commenced Against the Intended Respondent?*

Different problems might arise in the next stage of the enquiry as to whether the requirements for commencing a valid arbitration against the intended respondent have been satisfied. The English court has power to amend the name of a defendant to an action even if the new defendant was previously unaware of the action and a time bar defence would otherwise have accrued in his favour.<sup>28</sup> Could such an amendment be made in arbitration proceedings?

To go back to the basic principles of arbitration, a reference to arbitration is a separate contract (save in the case of ad hoc arbitrations) to the contract containing the arbitration agreement pursuant to which the reference to arbitration is made.<sup>29</sup> For the new contract to come into existence, there must be some communication between the two parties to the reference even if it is simply a notice of arbitration served by the claimant. However obvious the claimant's mistake may be, it is difficult to see how a reference could come into being with a respondent who is not aware of the notice of arbitration at all.

When the mistake involves the naming of one member of a group of companies instead of another member of the same group, or where there is an agency relationship, it may be possible to find that notice of the arbitration was received by those acting on behalf of both the wrongly named and the intended respondent. In such circumstances, it may well be possible for the name of the respondent to be corrected if it would have been obvious to both the wrongly named and the intended respondent who the intended respondent was.

Formidable difficulties would arise, however, if there was no connection between the wrongly named and the intended respondent and no reason to think that any notice of arbitration was received by the intended respondent. It is difficult to see how, in those circumstances, the arbitration could be treated as though the intended respondent had been a party to the arbitration throughout.

In *The Antares*, an arbitration in respect of a claim for breach of a bill of lading contract was commenced in error against the charterers of the vessel rather than the owners who were the party to the bill of lading contract. An application to amend the name of the respondent on the basis that there was no reasonable doubt as to the person intended to be sued failed. The apparent reason given for the decision was that notice of arbitration served on the charterer who was not a party to the arbitration agreement was ineffective to commence an arbitration.<sup>30</sup> As subsequently explained by Ralph Gibson LJ in the *Unisys* case, however, the decision in *The Antares* should be understood as determining that on the facts of that case, the notice of arbitration on its true construction was a claim against the charterer and no one else.<sup>31</sup>

<sup>28</sup> *Horne-Roberts v. SmithKline Beecham plc* [2002] 1 WLR 1662 (incorrect manufacturer of vaccine sued).

<sup>29</sup> See the analysis of Mustill J in *Black Clawson v. Papierwerke* [1981] 2 Lloyd's Rep. 446 at 455, col. 1.

<sup>30</sup> *The Antares* [1987] 1 Lloyd's Rep. 424 at 432, col. 1.

<sup>31</sup> [1991] 1 Lloyd's Rep. 538 at 562.

A further reason, it is suggested, why the application in *The Antares* could not have succeeded is that the charterer was held not to have been the agent of the owner for the purpose of receipt of the notice of arbitration.<sup>32</sup> In the absence of any finding that notice of arbitration had in fact reached the owners or their authorised agent, it is difficult to see how any arbitration against the owners could have been commenced even if the notice of arbitration had, on its true construction, been a notice claiming arbitration against the owners.

*(c) The Element of Discretion*

Clearly, there must be a discretionary element in any decision to allow an amendment to the name of a respondent, just as there is in relation to a decision to amend the name of a claimant.

#### IV. CONCLUSION

The English authorities referred to above show that the correct approach to a request to amend the name of a party to an arbitration involves a number of elements. First, it is necessary to identify, in accordance with the rules of contract law applicable to the arbitration, the parties to the arbitration. This will be done by construing the arbitration documents in the light of the facts as they are subsequently established to be. The test is who would a reasonable respondent have understood to be the party bringing the claim or, as the case may be, the party against whom the claim was brought. If the description of the party was correct but he was wrongly named, the test is likely to be satisfied.

Secondly, it must be established that the elements necessary to make a valid reference to arbitration between the intended parties are present. The issues that might arise at this stage will differ depending on whether the application is to amend the name of the claimant or the respondent and can include issues as to the authority of those acting for the claimant to commence arbitration on behalf of the intended claimant and whether due notice of the arbitration was given to the intended respondent.

Thirdly, the decision to permit or refuse the application involves the exercise of discretion and the discretion should not be exercised in favour of amendment if to do so would cause significant prejudice to the respondent. For this purpose, the loss of an accrued time bar defence does not count as prejudice.

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<sup>32</sup> [1987] 1 Lloyds Rep. 424 at 430–431.