WRITTEN SUBMISSION FROM THE SCOTTISH COUNCIL FOR INTERNATIONAL ARBITRATION

1. The Scottish Council for International Arbitration has been urging reform of the Scottish law of arbitration many years, and has welcomed the decision of the present government to introduce an Arbitration Bill. The Council participated in the consultation process which preceded the introduction of the present Bill, and has had the opportunity, for which it is grateful, to meet with Mr. Fergus Ewing and others who have been concerned in the preparation of the bill from the government side. Regrettably, however, the members of the Council are convinced that the Bill in its present form will not achieve at least one of the objectives which they consider vitally important and which, it is understood, the government also regards as of major significance, that is to equip Scotland with a system of arbitration law which is capable of attracting international arbitration business and playing a part in presenting Scotland as a modern environment for international business generally. The Council would therefore request an opportunity to give oral evidence to the Committee considering the Bill in order to explain its anxieties.

2. Very briefly, the principal reason for anxiety is as follows. The Law Reform (Miscellaneous Provisions) Act 1990 adopted the Model Law on International Commercial Arbitration, known as UNCITRAL, as the law of Scotland applying to international arbitrations. The Model Law was prepared under the auspices of the UN and, as its name implies, provides a code for the conduct of international arbitrations. This code has been adopted in more than sixty jurisdictions worldwide, and will be familiar to anyone involved in international commerce. Since 1990, it has provided the framework for international arbitrations in Scotland. The Bill, however, proposes to repeal the relevant part of the 1990 Act, the effect of which will be that the provisions which the Bill makes for Scottish arbitrations will apply also to international arbitrations under Scots law. The only positive reason suggested for this change is to achieve simplicity and avoid confusion. There is, however, no reason whatever to think that the existence of special provision for international arbitrations has caused the slightest confusion or difficulty for anyone, whether concerned in international or in Scottish arbitrations. If the law is changed in the way proposed, the result will be to discourage international business from coming to Scotland. It must be understood that the international environment is very competitive indeed. Many jurisdictions have set up arbitration centres, often extensively funded by governments, and are anxious to advertise their expertise. Any parties who might consider arbitrating in Scotland are much more likely to do so if they can be assured that the rules which will be applied are those with which they are already familiar, and that they do not have to come to terms with new rules, even if those rules might in themselves be acceptable. The repeal of the Model Law will therefore be really damaging to the prospects of success in one major objective of the Bill, and the Council hopes that it may be permitted to elaborate on this disadvantage in oral evidence.

3. The Council has also a number of suggestions for technical improvements in the provisions of the Bill, which will be submitted in writing, and would be

prepared to deal with any other aspect of the Bill on which the Committee might invite comments.

Peter Anderson
Secretary
15 May 2009