

# Case Note

## **APPLICABLE LAW TO ARBITRATION AGREEMENT AND NO ORAL MODIFICATION CLAUSE: CASE NOTE ON THE DECISION OF THE ENGLAND AND WALES COURT OF APPEAL, 20 JANUARY 2020**

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### **ABSTRACT**

*On Jan. 20, 2020, the Court of Appeal of England and Wales refused the enforcement and recognition of an International Chamber of Commerce Award as a judgment rendered in the case of Kabab-Ji S.A.L. (Lebanon) against Kout Food Group of Kuwait. The Court of Appeal found that under the English law governing the arbitration agreement, the judge in the High Court should have made a final determination that Kout Food Group of Kuwait was not a party to the main contract in dispute, nor to the arbitration agreement, hence the Award was not enforceable against it under section 103(2) of the English Arbitration Act 1996. This Case Note discusses the factual background of the arbitration, the findings of the High Court and those of the Court of Appeal with respect to the Award, as well as the implications for determining the law governing the arbitration agreement and the effect of “no oral modification” clauses on non-signatories to an arbitration agreement under English law.*

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