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United Kingdom
International Arbitration

Contributor

Baker Botts

Dr. Johannes Koepp

Partner and Section Co-Chair – International Disputes (Firmwide) | johannes.koepp@bakerbotts.com

Valeriya Kirsey

Senior Associate | valeriya.kirsey@bakerbotts.com

This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in United Kingdom.

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United Kingdom: International Arbitration

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

Arbitrations seated in England and Wales (and Northern Ireland) are governed by the Arbitration Act 1996 (the "1996 Act"). The 1996 Act is likely to be updated in the near future (following some delay due to the July 2024 UK general election). Mandatory provisions are listed under Schedule 1 of the 1996 Act and include provisions on the duties of arbitrators and parties, and challenges of arbitrators and arbitral awards.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

The United Kingdom is a signatory to the New York Convention (the "Convention"), which it signed and ratified in 1975, subject to a reciprocity reservation.

3. What other arbitration-related treaties and conventions is your country a party to?

The United Kingdom is also a party to the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards, the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "ICSID Convention"), and other bilateral and multilateral investment treaties.

The United Kingdom has recently announced its withdrawal from the Energy Charter Treaty, which is expected to take effect in April 2025.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

The 1996 Act was influenced by the UNCITRAL Model Law, but did not adopt it in its entirety.

Significant differences include provisions on the tribunal's power to rule on its own jurisdiction, appeals on a point of law, periods for challenging awards, default number of arbitrators, arbitrability and separability.

5. Are there any impending plans to reform the arbitration laws in your country?

Pending reform proposals include an express provision on arbitrator's duty of disclosure and an update to the framework for challenging awards on grounds of lack of substantive jurisdiction (including limitations on the evidence and grounds for objection where the arbitral tribunal has already heard a similar challenge). Relevant proposed changes are discussed in the answers below.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

There are several arbitral institutions located in the United Kingdom, including the London Court of International Arbitration (the "LCIA") and the London Maritime Arbitrators Association (the "LMAA").

The LCIA last amended its Arbitration Rules on 1 October 2020and published a revised Schedule of Arbitration Costs on 1 December 2023. The LMAA updated its Terms on 23 April 2021.

7. Is there a specialist arbitration court in your country?

There is no specialist arbitration court in England and Wales. Most arbitration-related matters are heard, in the first instance, by the Commercial Court of the King's Bench Division of the High Court.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

S.5(1) and (2) of the 1996 Act require that an arbitration agreement be in writing or evidenced in writing. This is broadly defined under S.5(3) to include an oral agreement to arbitrate by reference to "*terms which are in writing*".

9. Are arbitration clauses considered separable from the main contract?

S.7 provides that an arbitration agreement is separable

from the main contract, unless the parties agreed otherwise. The arbitration agreement may be declared invalid on the same grounds as the main contract in limited circumstances (such as forgery) (*see, e.g., Fiona Trust & Holding Corporation v. Privalov* [2007] UKHL 40).

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

The English courts do not apply a validation principle as such.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

S.35 provides for consolidation of arbitral proceedings or concurrent hearings, if agreed by the parties. Unless the parties agree to confer such power on the tribunal (*e.g.*, in their arbitration agreement or through the choice of institutional arbitration rules), the tribunal has no power to order consolidation of proceedings or concurrent hearings.

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

S.82(2) contemplates the potential for binding third parties to an arbitration agreement as it recognises that a "party" to an arbitration agreement includes "*any person claiming under or through a party to the agreement*". A non-party may be bound, *e.g.*, if: (a) a party assigns or transfers its rights or causes of action under the contract to the non-party; (b) a non-party replaces an original party as a result of novation; (c) under subrogation or agency principles (*see, e.g., Filatona Trading Ltd and Ors v Navigator Equities Ltd and Ors* [2020] EWCA Civ 109); (d) through piercing of corporate veil; or (e) the non-party is able to enforce the terms of the contract under the Third Parties (Rights Against Insurers) Act 1930 or the Contracts (Rights of Third Parties) Act 1999.

In *Kabab-Ji SAL v Kout Food Group* [2021] UKSC 48, the UK Supreme Court confirmed that whether a non-party was bound by the arbitration agreement will be determined by the law governing the validity of the arbitration agreement.

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

Certain disputes have been found to be non-arbitrable under English law. Examples include criminal disputes, disputes over the validity of foreign laws, certain employment claims under the Employment Rights Act 1996, small consumer disputes, and insolvency proceedings subject to the statutory regimes under the Insolvency Act 1986.

In *Bridgehouse (Bradford No 2) Ltd v BAE Systems plc* [2020] EWCA Civ 759, the Court found that claims under Section 1028(3) of the Companies Act 2006 (which permits the court to direct that a dissolved but restored company be put in the same position as if never dissolved) were non-arbitrable because party autonomy was limited by the safeguards required to protect public interest, and only disputes under shareholders agreements or articles of association were considered arbitrable to the extent that they concerned essentially private matters.

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

In *Enka v Chubb* [2020] UKSC 38, the UK Supreme Court held that, when the law applicable to the arbitration agreement is not specified, a choice of governing law for the main contract will generally apply to an arbitration agreement which forms part of that contract. In the absence of an express or implied choice of law by the parties, the 'default rule' is that the arbitration agreement is presumed to be governed by the law of the arbitral seat, as the law 'most closely connected' to the arbitration agreement.

In *UniCredit v RusChem* [2024] UKSC 30, the UK Supreme Court provided further guidance on the principles set out in *Enka v Chubb*, confirming that the law governing the main contract will generally be presumed to govern the arbitration agreement contained therein.

The proposed reform of the 1996 Act contemplates the introduction of a default rule that the arbitration agreement shall be governed by the law of the seat, unless the parties expressly agree otherwise.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

S.46 provides that the tribunal shall decide the dispute according to: (a) the law chosen by the parties as applicable to the substance; or (b) if the parties agree, other considerations as agreed by them (such as UNIDROIT Rules or trade usages) or determined by the tribunal. Where there is no such choice or agreement, the tribunal shall apply the law determined by the applicable conflict of laws rules. If the tribunal decides to apply the English conflict rules, the Contracts (Applicable Law) Act 1990 sets forth the relevant rules for contractual claims, whereas for tortious claims, the Private International Law (Miscellaneous Provisions) Act 1995 is determinative.

16. In your country, are there any restrictions in the appointment of arbitrators?

English law generally places few restrictions on the selection of arbitrators; S.15 and S.16 allow the parties to select the number of arbitrators and their selection procedure (including any necessary criteria or qualifications).

17. Are there any default requirements as to the selection of a tribunal?

Ss.15-17 set out the default requirements and procedures for the selection of arbitrators. S.15 provides that, where there is no agreement as to the number of arbitrators, the tribunal shall consist of a sole arbitrator; where the parties agreed on two or any other even number of arbitrators, that agreement shall be understood as requiring the appointment of an additional arbitrator as chairman of the tribunal (unless otherwise agreed by the parties). S.16 sets out the default procedure for appointment of arbitrators where the parties did not agree on such procedure. S.17 sets out the process in case of a party's default to appoint its arbitrator.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

S.18 sets out the court's powers in the event of failure of appointment procedure. The court's powers include: (a) giving directions as to making arbitrator appointments; (b) directing that the tribunal be constituted by such appointments made; (c) revoking any previous appointments; or (d) making the necessary appointments itself.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

S.24 allows parties to remove an arbitrator by applying to the court on the grounds that: (a) circumstances exist giving rise to justifiable doubts as to their impartiality; (b) they lack the requisite qualifications or capacity; or (c) they refuse or failed to properly conduct proceedings or make an award. However, if the tribunal or institution has the power to remove arbitrators, the court will not exercise this power, unless it is satisfied that the parties have exhausted any available recourse to the tribunal or institution.

For example, the High Court recently removed an arbitrator pursuant to s. 24(1) of the 1996 Act, on the basis that the arbitrator's comments about personally knowing the expert witnesses and indicating that their evidence would be accepted at face value created an impression of pre-judging the dispute, particularly the outcome of a key issue in dispute (*H1 v W* [2024] EWHC 382 (Comm)).

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure?

In *Halliburton Co v Chubb Bermuda Insurance Ltd* [2020] UKSC 48, the UK Supreme Court found that arbitrators had a legal duty to disclose facts and circumstances that would or might reasonably give rise to the appearance of bias, applied the objective test of "a fair-minded and informed observer" and concluded that an arbitrator's appointment in several arbitrators relating to the same or overlapping subject matter may give rise to an appearance of bias. The latter test was recently applied by the High Court in *H1 v W* [2024] EWHC 382 (Comm).

The reform proposals include a provision codifying arbitrator's duty of disclosure.[1]

Footnote(s):

[1] The proposed new provision reads: "*An arbitrator must, as soon as reasonably practical, disclose to the parties to the arbitral proceedings any relevant circumstances of which the arbitrator is, or becomes, aware*." "*Relevant circumstances*" would be defined as "*circumstances that*

might reasonably give rise to justifiable doubts as to the individual's impartiality in relation to the proceedings, or potential proceedings, concerned, and an individual is to be treated as being aware of circumstances of which the individual ought reasonably to be aware").

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

S.27(1) provides that the parties may agree on the procedure to be adopted, such as: (a) whether and, if so, how the vacancy is to be filled; (b) whether and, if so, to what extent the previous proceedings should stand; and (c) what effect their ceasing to hold office has on any appointment made by him/her (alone or jointly). Absent agreement, S.27(3) provides that S.16 (procedure for appointment of arbitrators) and S.18 (failure of appointment procedure) will apply to make the new appointment as they would for their original appointment.

S.27(4) vests the tribunal with power to determine whether and, if so, to what extent the previous proceedings should stand.

22. Are arbitrators immune from liability?

S.29(1) grants immunity to arbitrators for acts or omissions in the discharge or purported discharge of their functions, unless they are shown to have acted in bad faith. S.29(3) disapplies immunity in respect of any liability incurred by reason of their resignation.

The proposed reform contemplates a new provision exempting arbitrators from liability for resignation including costs in an application for their removal, unless they acted in bad faith or their resignation is proven to be unreasonable.

23. Is the principle of competence-competence recognised in your country?

Yes. S.30(1) provides that, unless otherwise agreed by the parties, the tribunal may rule on its own substantive jurisdiction, namely: (a) whether there is a valid arbitration agreement; (b) whether the tribunal is properly constituted; and (c) what matters have been submitted to arbitration under the arbitration agreement. A party may challenge such ruling under S.30(2).

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

S.9(1) provides that a party to an arbitration agreement against whom litigation is commenced may apply to the court for a stay of the court proceedings. The court shall grant a stay, unless it is satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed, according to S.9(4). In *Mozambique v. Privinvest* [2023] UKSC 32, the UK Supreme Court provided clarity on the application of S.9, stating that "*a matter*" to be referred to arbitration is "*a substantial issue that is legally relevant to a claim or a defence, or foreseeable defence, in the legal proceedings, and is susceptible to be determined by an arbitrator as a discrete dispute*" (para. 75). The Supreme Court found that Mozambique's claims of bribery, unlawful means conspiracy and dishonest assistance could not be stayed pursuant to S.9 because they fell outside the scope of the arbitration agreements.

The courts also have the power under S.37(1) of the Senior Courts Act 1981 to grant anti-suit injunctions where a party commences court proceedings in another jurisdiction in breach of an arbitration agreement.

The UK Supreme Court has recently confirmed that the English courts have the power to grant anti-suit injunctions in support of foreign-seated arbitration proceedings where the arbitration agreement is governed by English law (*UniCredit v RusChem* [2024] UKSC 30).

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

S.41(1) permits the parties to agree on the tribunal's powers where the respondent fails to participate. The tribunal may either dismiss the claim, continue the proceedings or make a peremptory order. Local courts cannot compel participation.

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

There is no provision on voluntary or tribunal/court-ordered joinder of third parties in the 1996 Act. If they are considered to be bound by the arbitration agreement under the law applicable to the arbitration agreement or

otherwise, third parties can be joined to arbitral proceedings if all parties to the arbitration consent to the joinder. Joinder cannot be imposed by the tribunal or the court.

However, the parties may confer upon the tribunal the power to join third parties to proceedings by selecting certain institutional rules which address joinder of third parties, such as the LCIA Rules.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

S.38(1) allows the parties to agree on the tribunal's powers in relation to the proceedings. In the absence of such an agreement, S.38 outlines the interim measures a tribunal can issue, such as security for costs and directions on the subject matter. Ss.44(1) and (2) outline that a court can issue other interim relief such as directions on witnesses, interim injunctions or appointments of receiver. S.44(5) provides that such relief is only available where it cannot be obtained from the arbitral process, such as where the tribunal has not yet been constituted.

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

If proceedings are commenced overseas in breach of an arbitration agreement in a UK-seated arbitration, S.37 of the Senior Courts Act 1981 allows UK courts to issue anti-suit injunctions where it is just and convenient to do so. This applies even where the arbitration proceedings have not yet commenced or been proposed. The requesting party must apply for the injunction promptly and before the foreign proceedings are too far advanced. Prior to Brexit, the English courts were prohibited from issuing anti-suit injunctions in respect of proceedings commenced before the courts of another EU Member State. However, following the UK's departure from the EU, such option is now also available in relation to proceedings commenced within the EU.S.37 further recognises the power to issue anti-arbitration injunctions for foreign seated arbitrations. The UK Supreme Court has recently confirmed that the English courts have the power to grant anti-suit injunctions in support of a Paris-seated arbitration proceeding where the arbitration agreement is governed by English law (*UniCredit v RusChem* [2024] UKSC 30).

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

S.34(1) grants the power to the tribunal to decide all evidential matters, except where the parties have agreed otherwise. S.34(2)(f) further provides that such matters include whether to apply strict rules of evidence as to the admissibility, relevance or weight of any material sought to be tendered, and how it should be exchanged and presented. Many international tribunals seek guidance from the IBA's Rules on the Taking of Evidence in International Arbitration.

S.43 provides that, with the permission of the tribunal or agreement of the parties, a party to arbitral proceedings may use the same court procedures as are available in relation to court proceedings to secure the attendance before the tribunal of a witness to give oral testimony or to produce documents or other material evidence. If a witness is in the UK and the arbitration is conducted in England and Wales, a party may apply to the local courts to compel their attendance before the tribunal (*DTEK Trading SA v Morozov* [2017] EWHC 94 (Comm)).

In *A v C* [2020] EWCA Civ 409, the Court of Appeal held that under Section 44(2)(a) of the 1996 Act the English courts have jurisdiction to order the deposition of a non-party witness in support of foreign arbitration proceedings. This overturned the lower court's ruling and clarified that the power to compel evidence extends to witnesses not involved in the arbitration, even when the arbitration is seated abroad. The court clarified that the term “witnesses” in the Act is not restricted to parties or individuals under a party's control.

The reform proposals contemplate an express provision allowing the courts to make orders against third parties in support of arbitral proceedings, including on matters of evidence.[2]

Footnote(s):

[2] The Draft Bill contemplates amending s.44(1) to read: "*Unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders (whether in relation to a party or any other person) about the matters listed below as it has for the purposes of and in relation to legal proceedings*."

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

Counsel and arbitrators qualified in England and Wales are subject to the SRA's Standards and Regulations 2019 (including the SRA Code of Conduct 2010) (for solicitors, registered European lawyers and registered foreign lawyers), and the Code of Conduct of the Bar of England and Wales (for barristers). Foreign counsel and arbitrators are subject to the ethical codes or professional standards of their own jurisdiction(s).

However, foreign arbitrators sitting in arbitrations seated in England and Wales are subject to the relevant provisions of the 1996 Act such as S.33(1) (the obligation to act fairly and impartially, and to adopt procedures that provide a fair means for dispute resolution).

Non-binding guidelines include the IBA Rules of Ethics for International Arbitrators and its Guidelines on Conflicts of Interest in International Arbitration (most recently updated in February 2024) and the LCIA's General Guidelines for Parties' Legal Representatives.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

The 1996 Act does not explicitly deal with confidentiality.

English common law generally imposes an implied duty to maintain the confidentiality of arbitration hearings, documents produced and awards rendered (*Michael Wilson & Partners Ltd v Emmott* [2008] EWCA Civ 184). However, the details of arbitral proceedings may become public due to a court order for disclosure, set-aside proceedings or enforcement proceedings.

32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

S.61(2) provides that, unless the parties agree otherwise, the tribunals will follow the general principle that costs should follow the event, unless not appropriate in relation to the whole or part of the cost. Under S.60, an agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event is only valid if made after the dispute in question has arisen.

S.63 allows the parties to agree on recoverable costs. Otherwise, the tribunal may determine them on such basis as it deems appropriate.

S.49(3)(a) allows the tribunal to award simple or compound *pre*-award interest from such dates as it considers just on the whole or part of any amount awarded by the tribunal, in respect of any period up to the date of the award. S.49(4) allows the tribunal to award simple or compound *post*-award interest from the date of the award (or any later date) until payment, at such rates as it considers just on any outstanding amount of any award, including any award of interest or as to costs.

33. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

S.52(1) allows the parties to decide on the form of an award. Otherwise, S.52(3) requires the award to be in writing and signed by all the arbitrators or all those assenting to it.

S.66(1) provides for the enforcement of a domestic award, by leave of the court, in the same manner as a court judgment or order to the same effect. S.101(2) provides for the recognition and enforcement of New York Convention awards. S.102 requires originals or duly certified copies of the award and the arbitration agreement when seeking enforcement (and a certified translation if they are in a foreign language).

S.52(4) requires that the award contain reasons, unless it is an agreed award or the parties have agreed to dispense with reasons. The standard applied by the English courts regarding the extent to which the reasons must be detailed or convincing is flexible and sets a relatively low bar: "*[a]ll that is necessary is that the arbitrators should set out what, on their view of the evidence, did or did not happen and should explain succinctly why, in the light of what happened, they have reached their decision and what that decision is.*" (*Bremer Handelsgesellschaft v. Westzucker* [1981] 2 Lloyd's Rep 130, 132-133); the tribunal is not required to set out "*each step by which they reach their conclusion or deal with each point made by a party in an arbitration.*" (*Hussmann (Europe) Ltd v. Al Ameen Development & Trade Co* [2000] 2 Lloyd's Rep 83, 97.)

If the award contains no reasons, S.68(2)(h) allows the parties to challenge the award for serious irregularity, whereas S.70(4) enables the court to order the tribunal to state the reasons for its award in sufficient detail.

34. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

The timing will depend on whether the application is opposed and the complexity of the issues involved. For unopposed applications, a decision on recognition and an order entering judgment in terms of the award may take 1-2 months. For opposed applications, the process may take significantly longer than 6-12 months.

Under Ss.66(1) or 101(2), a party can apply for leave to enforce the award on an *ex parte* basis in an arbitration claim form (Rule 62.18(1) of the Civil Procedure Rules). The court may specify the parties to the arbitration on whom the arbitration claim form must be served (Rule 62.18(2)). The enforcement proceedings will then continue as adversarial proceedings (Rule 62.18(3)). Where leave is granted, the award debtor usually has 14 days to apply to set the aside order (Rule 62.18(9)).

35. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Refusal of recognition or enforcement of foreign awards is subject to S.103 (which mirrors Article V of the New York Convention). The grounds for denying recognition or enforcement include: incapacity of a party to the arbitration agreement, invalid arbitration agreement, lack of proper notice of arbitrator appointment or of the arbitration proceedings or the party's inability to present its case, the award deals with a dispute not contemplated by or not failing within the terms of submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration, violation of tribunal formation or arbitral procedure, the arbitral award has not yet become binding on the parties or has been set aside, lack of arbitrability, and violation of public policy. For example, in *Payward Inc & Ors. v Chechetkin* [2023] EWHC 1780 (Comm), the High Court refused to enforce a California arbitration award on public policy grounds, finding that the arbitral tribunal had failed to consider UK consumer laws.

These grounds are separate and distinct from the grounds for challenge or appeal of domestic awards under Ss.67-69, and s.66(3) which provides that leave to enforce an award shall not be given where the tribunal lacked substantive jurisdiction.

36. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

S.48 allows the parties to agree on the powers exercisable by the tribunal regarding remedies, subject to any rights of challenge.

However, a tribunal cannot order certain remedies that only a court can grant, such as imprisonment or payment of fines.

37. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Arbitration awards issued by an arbitral tribunal seated in England and Wales can be challenged on grounds of: (a) lack of substantive jurisdiction (S.67(1)); or (b) serious irregularity affecting the tribunal, the proceedings or the award (S.68). Unless otherwise agreed by the parties, a party can also appeal an award on a question of law arising out of the award (S.69).

In the absence of exceptional circumstances, any application to challenge an award or appeal must be brought within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process. No application or appeal under Ss.67, 68 or 69 may be brought, unless the applicant or appellant has first exhausted any available arbitration process of appeal or review and any available recourse for correction of the award under S.57.

In ***Radisson Hotels v Hayat Otel*** [2023] EWHC 892 (Comm), the High Court emphasized that a party wishing to challenge an arbitration award for serious irregularity must raise its objection as soon as it becomes, or should reasonably become, aware of the issue.

The reform proposals contemplate clarifying the Civil Procedure Rules Committee's power to make rules of court to limit what evidence and grounds of objection can be put before the court when the challenging party has already made a similar challenge before the tribunal (to limit instances of a full rehearing).

38. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

S.69(1) allows parties to agree to waive the right to

appeal to the court on a point of law, whereas the right to challenge the award for lack jurisdiction under S.67 or serious irregularity under S.68 cannot be waived by the parties. S.73 further provides that if a party continues to participate without raising such objection within the period allowed by the arbitration agreement, tribunal or this Act, it may lose the right to challenge the award on certain grounds, unless that party can prove that, at the time, it did not know and could not with reasonable diligence have discovered the grounds for the objection.

39. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

S.82(2) recognises the possibility of third parties or non-signatories being bound by an award ("*[r]eferences in this Part to a party to an arbitration agreement include any person claiming under or through a party to the agreement*"). The phrase "*any person claiming under or through a party to the agreement*" means that those who derive their rights from an original party (such as an assignee or an insurer exercising subrogation rights, cf. Question 12 above) would be subject to the arbitration agreement and bound by the resulting award.

Only parties to the arbitral proceedings (including those bound by the award pursuant to S.82(2)) may challenge the recognition of the award by way of application to the court.

40. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

In *Essar Oilfields Services Ltd v Norscot Rig Management PVT Ltd* [2016] EWHC 2361 (Comm), the Commercial Court held that arbitrators may award the costs of a third party funder as "other costs of the parties" under S.59(1)(c).

In *R (on the application of PACCAR Inc & Ors) v Competition Appeal Tribunal & Ors* [2023] UKSC 28, the UK Supreme Court ruled that litigation funding agreements (LFA) that remunerate the litigation funder by reference to a proportion of the damages ultimately recovered constituted damages-based agreements (DBA), which will be unenforceable in England and Wales if they did not comply with the Damages-Based Agreements Regulations 2013. In early 2024, the UK Government announced that it would reverse the impact of the PACCAR ruling, pursuant to the Litigation Funding Agreements (Enforceability) Bill. The Bill is expected to amend section 58AA of the Courts and Legal Services Act 1990, clarifying, with retroactive effect, that litigation funding agreements (LFAs) are not damages-based agreements (DBAs). The progress of this Bill was interrupted by the UK general election in July 2024. As of August 2024, the Civil Justice Council was reviewing third-party litigation funding and was expected to report back in the summer of 2025.

41. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

The 1996 Act does not currently expressly address emergency arbitrator relief. Such relief may be available under the applicable institutional rules, such as the LCIA Rules. However, it is unlikely that an emergency arbitrator's orders or awards would be enforced by the English courts.

The reform proposals contemplate a provision which would empower a court to enforce an emergency arbitrator's peremptory order(s) and for the emergency arbitrator to have the same power as a normal arbitrator to allow a party to apply to a court for an order to support arbitral proceedings.

42. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

The 1996 Act does not contain any provisions for a simplified or expedited procedure for small claims.

The LMAA offers a Small Claims Procedure which is often used for low value maritime disputes.

The LCIA Rules do not offer an expedited procedure, but parties can apply for emergency tribunal formation in cases of "exceptional urgency" (Article 9A) by setting out the necessary grounds (Article 9.2), which the LCIA Court will determine as expeditiously as possible. This procedure is used relatively rarely.

43. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

Following its introduction in 2015, the Equal Representation in Arbitration (ERA) Pledge has gained

traction in improving the representation of women in arbitration and their appointment as arbitrators on an equal opportunity basis. According to the LCIA's Annual Casework Report for 2023, women accounted for 48% of the LCIA Court's appointments, reflecting a 3% increase compared to the previous year. Non-British arbitrators were appointed on 187 occasions; 48% of those appointments were made by the LCIA Court, 40% by the parties, and 12% by co-arbitrators The IBA arbitration committee has launched a survey to examine ethnic diversity in international arbitration and its effect on the legitimacy of the process. The report is expected later this year.

44. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

In *Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan* [2010] UKSC 46, the UK Supreme Court denied enforcement of an arbitral award under s.103(2)(b), after finding (applying French law, the law of the seat of the arbitration) that there was no common intention" that the government of Pakistan would be party to the arbitration agreement on the basis. By contrast, a French court rejected Pakistan's application to set aside the same award and held that the tribunal validly extended the scope of the arbitration agreement to Pakistan.

In *Kabab-Ji v. Kout Food Group* [2021] UKSC 48, the UK Supreme Court denied recognition and enforcement of an award which had been upheld by the courts of the seat of the arbitration (French courts).

45. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

In *Nigeria v P&ID* [2023] EWHC 2638 (Comm), the High Court set aside a US$11 billion award against Nigeria under s.68 (for serious irregularity causing substantial injustice to the applicant), on the basis that the claimant engaged in "*the most severe abuses of the arbitral process*" because the award was procured through fraud and conduct that was contrary to public policy, which in this case involved bribery, false evidence, and the improper retention of privileged documents.

While the standard of proof is generally the civil standard (balance of probabilities), the courts have found that "*convincing evidence*" was required to be satisfied of dishonesty (*Nigeria v P&ID* [2023] EWHC 2638 (Comm) at [25]) and "*the cogency of the evidence relied upon must be commensurate with the seriousness of the conduct alleged*" (*JSC BTA Bank v Ablyazov & Ors* [2013] EWHC 510 (Comm) at [76]).

The party asserting the allegation of corruption bears the burden of proving such corruption exists. In a 15 August 2024 letter, Lord Ponsonby confirmed that the Arbitration Reform Bill will not include provisions relating to arbitration misuse or corruption, despite concerns arising from the *Nigeria v P&ID* case.

46. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

In 2020, the LCIA Rules were updated to provide for virtual hearings by conference call, videoconference or other communications technology, electronic communication for requests for arbitration or responses, and electronic signatures of awards.

In 2021, the LMAA introduced LMAA Terms 2021, including guidance for virtual and semi-virtual hearings and electronic signature of awards.

47. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

See response to Question 46 above. Moreover, Article 14.6 of the LCIA Rules adopted new procedural rules in October 2020 empowering tribunals to adopt technology to enhance the expeditious conduct of arbitrations. Articles 4.1 and 4.2 provide for electronic means as the default communication for the submission of requests for arbitration and responses.

48. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

As stated under Question 3 above, the UK has recently announced its withdrawal from the ECT, citing concerns over the ECT's incompatibility with climate change objectives and the need to align with modern energy and

environmental policies. There have been no other recent developments regarding arbitration proceedings and climate change or human rights.

49. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

In *Lamesa Investments v Cynergy Bank Limited* [2020] EWCA Civ 821, the Court of Appeal found that the sanctions regime (in this case, a prohibition on interest repayments under the US secondary sanctions regime) constituted a "*mandatory provision of law*" and thus the borrower was excused from making interest repayments under the loan agreement which excused a borrower's failure to repay "*in order to comply with any mandatory provision of law*".

By contrast, in *Banco San Juan Internacional Inc v Petróleos De Venezuela S.A* [2020] EWHC 2937 (Comm), the English High Court found that there was no broad principle that foreign sanctions regimes constituted mandatory provisions of law that excused failure to comply with an English-law governed contract. The court found that the suspension of repayment obligations on the basis of US sanctions imposed on Venezuela was not permitted under the contract.

In *Barclays Bank v VEB.RF* [2024] EWHC 1074 (Comm), the High Court found that international sanctions imposed on Russia's state development bank VEB did not frustrate the arbitration agreement, and granted final anti-suit and anti-enforcement injunctions in respect of Russian courts proceedings and orders.

50. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

There are currently no laws in the UK that would explicitly regulate AI in the context of international arbitration. However, new guidance on the use of artificial intelligence (AI Judicial Guidance) was issued in December 2023 for UK judicial office holders; although it does not specifically address international arbitration, it may become of relevance in arbitration proceedings in the future.

Contributors

Dr. Johannes Koepp
Partner and Section Co-Chair – International Disputes (Firmwide)
johannes.koepp@bakerbotts.com

Valeriya Kirsey
Senior Associate
valeriya.kirsey@bakerbotts.com