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England & Wales: Law and Practice

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Slaughter and May

ENGLAND & WALES

Law and Practice

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Slaughter and May is a leading international law firm advising on high-profile and ground-breaking transactions and disputes around the world. The international arbitration practice acts for leading global companies and financial institutions on their most complex, high-value and strategically significant disputes, across a broad range of sectors, from energy and infrastructure to healthcare to financial services. Partners are leaders in their field, delivering innovative solutions in disputes under the rules of every major arbitral institution, including the ICC, LCIA and UNCITRAL, in addition to having significant experience in acting for clients in arbitration-related court proceedings in the English and overseas courts. The practice is global, acting on arbitrations in all the major arbitral seats, under English and foreign law, working with the world's leading independent advisers.

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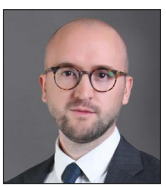

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1. General

1.1 Prevalence of Arbitration

London is consistently ranked among the leading arbitral seats in the world. A 2025 survey by Queen Mary University of London, which involved over 2,400 respondents across the world, found that London was the most preferred seat globally. The Law Commission of England and Wales (the "Law Commission") estimates that at least 5,000 domestic and international arbitrations take place in England each year, potentially worth at least GBP2.5 billion to the economy, although the actual figures may be much higher.

The London Court of International Arbitration (LCIA) has seen steady growth in the last decade, registering 362 referrals in 2024 (318 arbitrations under LCIA Rules), 95% of its cases being international in nature with parties from 101 jurisdictions. The 2025 Queen Mary University survey ranks the LCIA rules fourth in the topmost preferred sets of arbitration rules globally.

1.2 Key Industries

Taking the LCIA's data on sectors as a guide, the following sectors dominate the LCIA's caseload year-on-year, representing 63% of the LCIA's caseload for 2024:

- transport and commodities (29%);
- banking and finance (17%);
- energy and resources (10%); and
- construction and infrastructure (8%).

A broad range of other sectors make up not-insignificant proportions of the LCIA's caseload, including the following in 2024, for example:

- technology (6%);
- professional services (5%);
- healthcare and pharmaceuticals (5%); and
- telecommunications (4%).

1.3 Arbitration Institutions

The International Chamber of Commerce (ICC) and the LCIA are probably the most used arbitral institutions for international commercial arbitration in England.

1.4 National Courts

Civil Procedure Rule (CPR) Part 62 and its Practice Direction and the High Court and County Courts (Allocation of Arbitration Proceedings) Order 1996 (the "1996 Order") contain rules on the courts in which arbitration-related claims may be issued.

The Commercial Court is the principal court for arbitration-related claims, which comprise approximately 20% of all claims issued in that court. Arbitration claims can also be issued in other parts of the High Court and, for the enforcement of awards, in the County Court.

In deciding where to issue an arbitration claim, claimants should have regard to the criteria set out in the 1996 Order, which include, for example, the financial value, nature and importance of the dispute (including for any third parties).

2. Governing Legislation

2.1 Governing Law

International arbitration in England and Wales is primarily regulated by the Arbitration Act 1996 (the "1996 Act"), which applies to all domestic and international arbitrations where the seat of the arbitration is England and Wales or Northern Ireland (unless otherwise stated, references to "Sections" are to the 1996 Act).

Certain provisions in the 1996 Act – such as stays of legal proceedings, enforcement of awards and the English courts' powers exercisable in support of arbitration – apply even if the seat of arbitration is outside England and Wales or Northern Ireland, or if no seat has been designated or determined. In addition, certain areas of arbitration law (eg, confidentiality in arbitration) are not codified in legislation and are instead found in case law.

The 1996 Act is strongly influenced by the UNCITRAL Model Law, but England has not adopted the Model Law wholesale. Examples of divergences between them include the following:

- by default, the 1996 Act specifies that the tribunal shall comprise a sole arbitrator (Section 15 (3)), whereas the Model Law specifies three arbitrators (Article 10 (1));
- absent agreement, the Model Law contains rules for the exchange of pleadings (Article 23), whereas the 1996 Act does not;
- the Model Law does not include a mechanism for summary enforcement of domestic awards, whereas the 1996 Act does (Section 66); and
- the 1996 Act applies to all forms of arbitration, whereas the Model Law applies only to international commercial arbitration.

The 1996 Act has been amended by the Arbitration Act 2025 (the "2025 Act") (see **2.2 Changes to National Law**).

2.2 Changes to National Law

The 2025 Act received royal assent in February 2025 and its substantive provisions came into force on 1 August 2025. The 2025 Act amends the 1996 Act by making changes that largely reflect recommendations by the Law Commission, and aim to ensure that English arbitration law remains fit for purpose and that London remains a leading destination for international arbitration. Following its consultation, the Law Commission concluded that the existing legislation works well and that "root and branch reform is not needed or wanted". As such, the 2025 Act reforms are limited to a few important amendments summarised elsewhere in this Practice Guide.

The changes apply to all arbitration agreements whenever made, but not to arbitrations commenced before the reforms entered into force on 1 August 2025 nor to court proceedings in relation to such arbitrations (Section 17 (4) of the 2025 Act).

3. The Arbitration Agreement

3.1 Enforceability

To be enforceable, an arbitration agreement must be made in accordance with general English contract law principles, including, for example, that the agreement to arbitrate is sufficiently certain.

Part 1 of the 1996 Act only applies where the arbitration agreement is in writing (Section 5). For these purposes, "in writing" is broadly defined and can include, for example, an arbitration agreement being "evidenced in writing". Oral arbitration agreements are valid under English common law but are rare in the commercial context.

The 1996 Act does not impose any strict requirements on the content of an arbitration agreement – only that the parties must agree "to submit to arbitration present or future disputes (whether they are contractual or not)" (Section 6 (1)).

3.2 Arbitrability

The 1996 Act does not define the meaning of arbitrability but, consistent with the New York Convention, it recognises the right of the court to refuse the recognition or enforcement of an award where the matter is not capable of settlement by arbitration (Section 103 (3)).

Contractual and non-contractual disputes may be submitted to arbitration (Section 6 (1)). Beyond this, the 1996 Act does not define nor describe the matters that are capable of resolution by arbitration. Instead, Section 81 (1)(a) of the 1996 Act provides that common law governs whether matters are capable of settlement by arbitration.

The 1996 Act is founded on the principle that parties should be free to agree how their disputes are resolved, subject only to public policy safeguards (Section 1 (b)). In addition, English courts emphasise the importance of upholding party autonomy to agree to arbitration to resolve their disputes. Consistent with this:

- English courts have held that a broad range of non-contractual disputes (including tort, competition, intellectual property and certain statutory claims) are capable of resolution by arbitration; and
- there is a strong assumption when construing an arbitration clause under English law that the parties intended to have disputes arising out of their relationship decided in the same forum (*Fiona Trust & Holding Corporation v Privalov* [2007] UKHL 40).

In practice, albeit more a question of scope than arbitrability, the English courts generally interpret arbitration agreements broadly to encompass non-contractual as well as contractual disputes.

In recent years, there has been an apparent trend towards widening the range of disputes that may be capable of resolution by arbitration. However, a dispute will not generally be arbitrable under English law if it involves matters of public policy or public rights, for example. Consistent with this, disputes that are generally not capable of being resolved by arbitration under English law include:

- criminal, planning and certain family law matters;
- certain insolvency-related claims, including disputes arising from the exercise of statutory powers by a liquidator under the Insolvency Act 1986; and
- certain employment disputes, in which an employee has a statutory right to be heard by an employment tribunal.

See also **13.1 Class Action or Group Arbitration**.

3.3 National Courts' Approach

Courts' Approach to Determining the Governing Law of the Arbitration Agreement

Prior to the 2025 Act reforms taking effect on 1 August 2025, the English courts determined the governing law of the arbitration agreement according to the test in *Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb* [2020] UKSC 38, as follows.

- The law applicable to the arbitration agreement will be the law chosen by the parties to govern it or, in the absence of such a choice, the system of law with which the arbitration agreement is most closely connected.
- Whether the parties have agreed on a choice of law to govern the arbitration agreement will be ascertained by construing the arbitration agreement and its matrix contract as a whole, applying English law rules on contractual interpretation.
- Where the law applicable to the arbitration agreement is not specified, a choice of governing law for the matrix contract will generally apply to the arbitration agreement, as an implied choice.
- However, additional factors may negate such an inference and instead imply that the arbitration agreement was intended to be governed by the law of the seat. Such factors include:
  - (a) any provision of the law of the seat which indicates that, where an arbitration is subject to that law, the arbitration agreement will also be treated as being governed by that country's law; or
  - (b) the existence of a serious risk that the arbitration agreement would be ineffective if it was governed by the same law as the matrix contract.
- In the absence of any choice of law, the arbitration agreement is governed by the law with which it is most closely connected. Where the parties have chosen a seat of arbitration, the closest connection will generally be to the law of the seat, even if this differs from the law applicable to the matrix contract.

Since 1 August 2025, the 2025 Act simplifies the approach to determining the governing law of the arbi-

tration agreement by creating a new statutory rule at Section 6A of the 1996 Act. This rule will provide that, unless the parties expressly agree otherwise, the law applicable to the arbitration agreement will be the law of the seat of the arbitration. This will be the case even though the matrix contract may be governed by a different law. These changes will not apply to investor-state arbitration.

Enforcement of Arbitration Agreements

The English courts adopt a broadly pro-enforcement approach to arbitration agreements, and generally aim to construe contracts to give effect to the parties' agreement to arbitrate. Where there are competing jurisdiction and arbitration clauses, the English courts will ultimately construe the provisions applying English contract law principles to determine if the clauses are reconcilable and/or which clause prevails. However, in this situation, the courts will typically strive to give effect to the arbitration clause where it is possible to do so (*Surrey County Council v Suez Recycling and Recovery Surrey Limited* [2021] EWHC 2015 (TCC)).

See also **5.5 Breach of Arbitration Agreement**.

3.4 Validity

The rule of separability applies in English law (Section 7). Unless the parties agree otherwise, an arbitration agreement is separable from the main contract in which it is incorporated, such that it generally survives the invalidity, inexistence or ineffectiveness of the main agreement.

However, there are certain limits to the doctrine of separability – eg, where the arbitration agreement itself is directly impeached (*Fiona Trust & Holding Corporation v Privalov* [2007] UKHL 40) or where there is a question concerning the formation of the contract (eg, mistake) that may invalidate the arbitration agreement (*DHL Project and Chartering Ltd v Gemini Ocean Shipping Co Ltd* [2022] EWCA Civ 1555).

4. The Arbitral Tribunal

4.1 Limits on Selection

Parties have broad discretion to agree on arbitrators and the procedure for their appointment, but the court retains the power to remove arbitrators in certain circumstances; see **4.4 Challenge and Removal of Arbitrators**.

There are no requirements regarding religion, gender or ethnicity, for example, that may limit who can be selected as an arbitrator. In *Jivraj v Hashwani* [2011] UKSC 40, the Supreme Court found that anti-discrimination legislation then in force (the Employment Equality (Religion or Belief) Regulations 2003) did not apply to the appointment of arbitrators because arbitrators are not employees of the parties.

4.2 Default Procedures

Section 16 of the 1996 Act contains the following default mechanisms for the appointment of arbitrators:

- a sole arbitrator – by joint appointment of the parties no later than 28 days after service by one of the parties of a request to do so;
- a tribunal comprising two arbitrators – by each party appointing one arbitrator within 14 days of a written request by one of the parties to do so;
- a tribunal comprising three arbitrators – by each party appointing one arbitrator within 14 days of a written request by one of the parties to do so, and the two party-appointed arbitrators then appointing a chairperson; and
- a tribunal comprising two arbitrators and an umpire – this follows the same approach as a tribunal comprising three arbitrators, subject to differences regarding the timing of the umpire's appointment.

Unless the parties agree otherwise, the default position is that the tribunal will consist of a sole arbitrator (Section 15 (3)).

Where parties have agreed a tribunal appointment mechanism but that mechanism fails, the 1996 Act grants the English courts powers exercisable on application by either party, including the power to:

- give directions when making appointments, including delegating its power to make the necessary appointment to an arbitral institution if it thinks fit (Section 18 (3)(a); *Chalbury McCouat International Ltd v PG Foils Ltd* [2010] EWHC 2050 (TCC));

- direct that the tribunal be constituted by the appointments made (Section 18 (3)(b));
- revoke any previous appointments (Section 18 (3)(c)); and
- make the necessary appointments itself (Section 18 (3)(d)).

Furthermore, unless the parties agree otherwise, where each of the two parties is required to appoint an arbitrator and one party refuses to do so (either at all or within the agreed time period), the other party may give notice in writing to the party in default that it proposes to appoint its arbitrator to act as sole arbitrator (Section 17 (1)).

4.3 Court Intervention

The English courts can exercise certain powers to appoint under the default procedure, or can intervene where the parties have agreed an appointment mechanism but it has failed (see **4.2 Default Procedures**).

4.4 Challenge and Removal of Arbitrators

A party may apply to the English courts to remove an arbitrator and the court has the power to remove an arbitrator on the grounds that:

- there are justifiable doubts about their impartiality;
- an arbitrator does not possess the qualifications required by the parties' arbitration agreement;
- an arbitrator is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to their capacity to do so; or
- an arbitrator fails to conduct the proceedings properly or to use all reasonable dispatch in conducting the proceedings (Section 24).

While the challenge is pending, the tribunal may continue the arbitral proceedings and make an award (Section 24 (3)). Arbitrators who are subject to a Section 24 challenge may be heard before the court makes an order (Section 24 (5)).

In *H1 v W* [2024] EWHC 382 (Comm), the court removed an arbitrator for apparent bias after the arbitrator remarked during a procedural hearing that he knew one of the parties' expert witnesses well and that there would be no need for him to be called to an evidential hearing, suggesting that the arbitrator had already decided to accept the expert's evidence rather than assessing it objectively following cross-examination.

4.5 Arbitrator Requirements

Section 33 of the 1996 Act provides for the general mandatory duties of arbitrators, which include a requirement that arbitrators act fairly and impartially between the parties.

The English courts apply an objective test to the issue of impartiality. The court will ask whether a fair-minded and informed observer would conclude that there was a real possibility of bias (*Halliburton Company v Chubb Bermuda Insurance Ltd* [2020] UKSC 48).

The 2025 Act has codified the general duty of disclosure recognised in *Halliburton* in a new Section 23A of the 1996 Act, which provides that an individual approached in connection with their possible appointment as an arbitrator, or once appointed, must disclose any relevant circumstances of which they are, or become, aware that "might reasonably give rise to justifiable doubts as to the individual's impartiality in the proceedings".

In *Halliburton*, the UK Supreme Court confirmed that an arbitrator has a legal duty to disclose matters that would or might give rise to justifiable doubts as to their impartiality. The Supreme Court held that there may be circumstances where the acceptance of multiple appointments involving a common party and the same or overlapping subject matter gives rise to an appearance of bias; whether it does so will depend on the facts of the case and, in particular, the customs and practice in the relevant field of arbitration. In that case, the Supreme Court concluded that the arbitrator had a legal duty to disclose the appointments in related disputes. However, the failure to disclose did not ultimately give rise to apparent bias for several reasons, including the fact that there was no prospect of the appointing party gaining any advantage by reason of overlapping references. In contrast, in *Aiteo Eastern E&P Co Ltd v Shell Western Supply and Trading Ltd* [2024] EWHC 1993 (Comm), the High Court applying the *Halliburton* test held that there was apparent bias in circumstances where an arbitrator had provided an

expert opinion on an unrelated matter to several of the claimant's legal representatives.

When considering the basis for such disclosures, the English courts are not bound by the International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration, but they will be considered by the English courts as persuasive authority (*Halliburton*, *Aiteo*). Accordingly, the "non-waivable red", "waivable red", "orange" and "green" issues are an important guide to arbitrators sitting in English-seated arbitrations.

A failure to disclose may give rise to a ground to challenge the arbitrator, by applying either to the relevant arbitral institution (eg, LCIA Rules 2020, Article 10.1) or to the court (see **4.4 Challenge and Removal of Arbitrators**).

5. Jurisdiction

5.1 Challenges to Jurisdiction

Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, including:

- whether there is a valid arbitration agreement;
- whether the tribunal is properly constituted; and
- what matters have been submitted to arbitration in accordance with the arbitration agreement (Section 30 (1)).

5.2 Circumstances for Court Intervention

There are three circumstances in which a court can address issues of jurisdiction of an arbitral tribunal (apart from at the enforcement stage – see **12.2 Enforcement Procedure**).

First, a party may apply to the court for determination of a preliminary point of jurisdiction. Such an application can only be made with:

- the agreement in writing of all the other parties to the proceedings; or
- the permission of the tribunal and if the court is satisfied that:
  - (a) the determination is likely to result in substantial savings in costs;
  - (b) the application was made without delay; and
  - (c) there is good reason why the matter should be decided by the court (Section 32).

These criteria will be met only in exceptional circumstances (*VTB Commodities Trading Dac v JSC Antipinsky Refinery* [2019] EWHC 3292 (Comm)). While the court is considering a preliminary question of jurisdiction, the arbitration may continue and an award may be granted (Section 32 (4)).

The 2025 Act has introduced a further restriction to Section 32 by preventing the English courts from making a determination of a preliminary point of jurisdiction where the tribunal has already ruled on the question.

Second, a party can challenge an arbitral award on grounds of lack of substantive jurisdiction (Section 67); see **11.1 Grounds for Appeal**.

Third, a party that has not participated in the arbitration proceedings may apply to the court for a declaration or injunction to restrain the arbitration proceedings by challenging:

- the validity of an arbitration agreement;
- whether the arbitral tribunal has been properly constituted; or
- what matters have been referred to arbitration in accordance with the arbitration agreement (Section 72).

The right to object to the substantive jurisdiction of the tribunal can be lost if a party takes part or continues to take part in proceedings without raising an objection (Section 73).

5.3 Timing of Challenge

A party can challenge the jurisdiction of the tribunal at any time before the English courts; see **5.2 Circumstances for Court Intervention**.

5.4 Standard of Judicial Review for Jurisdiction/Admissibility

Where the substantive jurisdiction of the tribunal is challenged under Section 67, the standard of review is currently de novo and will take place via a full rehearing (*Dallah Real Estate & Tourism v Government of Pakistan* [2010] UKSC 46).

However, the 2025 Act provides for court procedure rules for Section 67 applications to be amended to the effect that, unless the court considers otherwise in the interests of justice, where the tribunal has already ruled on its own jurisdiction and the Section 67 application is made by a party who took part in the arbitral proceedings:

- evidence heard by the tribunal must not be reheard by the court; and
- no new grounds of objection nor evidence may be put before the court, unless the applicant did not, and could not, with reasonable diligence have done so before the tribunal.

The Ministry of Justice is considering the extent to which changes need to be made to the court procedure rules to reflect these amendments and the timescales in which any changes should be made. Questions of admissibility are separate from questions of jurisdiction. A dispute as to the jurisdiction of the tribunal concerns whether a tribunal has the power to determine the dispute in question at all, whereas questions of admissibility concern whether the tribunal will exercise its power in relation to a particular claim submitted to it where there is an alleged defect in the way the claim has been brought. For example, the English High Court has held that the question of whether a party had complied with a multi-tier dispute resolution clause raised questions of admissibility rather than jurisdiction, and that it therefore did not have the power to review the tribunal's decision (*Republic of Sierra Leone v SL Mining Ltd* [2021] EWHC 286 (Comm);*NWA v NVF* [2021] EWHC 2666 (Comm)).

5.5 Breach of Arbitration Agreement

A court shall stay court proceedings in respect of a matter that under an arbitration agreement is to be referred to arbitration unless the agreement is null and void, inoperative or incapable of being performed (Section 9 (1)). The burden of proof is on the applicant to establish the existence of an arbitration agreement and that it covers the matter in dispute.

In *Mozambique v Privinvest Shipbuilding SAL (Holding)* [2023] UKSC 32, the Supreme Court confirmed the relevant test to be as follows:

- the court must identify the matters that have been or will foreseeably be raised in the court proceedings, and determine if each matter falls within the scope of the arbitration agreement;
- a matter need not cover the whole of the dispute;
- a matter is a substantial issue, not an issue that is peripheral or tangential to the subject of the proceedings;
- a common-sense approach to evaluating the substance and relevance of a matter should be taken; and
- the true nature of the matter must be considered, as well as the relevant context.

A party must challenge the court's jurisdiction within the time limit for acknowledging service of the claim form. The right of a stay may be lost where the applicant has taken steps in court proceedings to answer the substantive claim. This can include participating in a case management conference and inviting the court to make related orders (*Nokia Corp v HTC Corp* [2012] EWHC 3199 (Pat)).

The court has an inherent jurisdiction to stay proceedings even where Section 9 of the 1996 Act is not satisfied. The court has exercised this discretion where there is a dispute regarding the validity or scope of the arbitration agreement (*Golden Ocean Group v Humpuss Intermoda Transportasi* [2013] EWHC 1240 (Comm)).

If a party commences litigation in another jurisdiction, the party against whom proceedings are commenced can apply to the English courts for an anti-suit injunction. The English courts may grant an anti-suit injunction where foreign court proceedings are brought in breach of an arbitration agreement, due to its equitable jurisdiction under the Senior Courts Act 1981. This includes proceedings in breach of foreign-seated

arbitration agreements, provided that the court is satisfied that it has jurisdiction, such as pursuant to an English law governed arbitration agreement and the English court is the proper forum to grant such relief (*UniCredit Bank v RusChemAlliance* [2024] UKSC 30).

5.6 Jurisdiction Over Third Parties

English law does not permit a tribunal to assume jurisdiction over non-parties (*Kabab-Ji SAL v Kout Food Group* [2021] UKSC 48). The tribunal does not have the power to compel a non-party to produce documents, for example, but it may invite non-parties to do so.

Parties may seek to bind a non-signatory to the arbitration agreement in certain circumstances, such as via the doctrine of agency (*Filatona Trading Ltd v Navigator Equities Ltd* [2020] EWCA Civ 109).

The English courts have emphasised that the group of companies doctrine "forms no part of English law" (*Peterson Farms Inc v C & M Farming Ltd* [2004] EWHC 121 (Comm)). Furthermore, the Supreme Court has held that the circumstances in which English law will be willing to pierce the corporate veil are extremely rare (*VTB Capital Plc v Nutritek International Corp* [2013] UKSC 5).

See also **13.5 Binding of Third Parties**.

6. Preliminary and Interim Relief

6.1 Types of Relief

Sections 38–39 of the 1996 Act list a tribunal's powers to grant preliminary or interim relief. Parties are free to agree on the powers of the tribunal (Section 38 (1)).

Subject to contrary agreement, the tribunal has the power to:

- order a claimant to provide security for costs in the arbitration (Section 38 (3));
- give directions relating to property that is the subject matter of the proceedings or about which any question arises in the proceedings (Section 38 (4));
- direct a party or witness to be examined (Section 38 (5)); and
- give directions for the preservation of evidence (Section 38 (6)).

Parties may agree that the tribunal will have the power to order, on a provisional basis, any relief it would have the power to grant in a final award (Section 39).

Unless otherwise agreed, the 1996 Act does not confer on the tribunal the power to grant an interim injunction to secure the sum in dispute. However, it is possible to seek a freezing injunction from the English courts in support of arbitral proceedings (Section 44 (2)(e)).

6.2 Role of Courts

Unless the parties agree otherwise, the English courts have the power to make orders in respect of:

- taking witness evidence;
- the preservation of evidence;
- the preservation, detention, inspection or sampling of the disputed property;
- the sale of any goods the subject of the proceeding; and
- granting an interim injunction (Section 44 (2)).

Where urgent, the court may (on the application of a party or proposed party to arbitral proceedings) make such orders as it thinks necessary to preserve evidence or assets (Section 44 (3)).

However, if the application is not urgent, the court will only make interim orders with the permission of the tribunal or with the agreement of the parties (Section 44 (4)). The court will only act to the extent that the tribunal has no power or is unable at the time to act effectively (Section 44 (5)). The 2025 Act expands this slightly by including express reference to emergency arbitrators in addition to the tribunal in Sections 44 (4) and (5).

Despite some uncertainty in case law, it was generally considered that the English courts could make orders against non-parties under Section 44 – eg, by ordering the taking of evidence from a non-party witness for the purpose of aiding foreign arbitral proceedings (*A & B v C, D & E* [2020] EWCA Civ 409). The 2025 Act has now confirmed the position by amending the 1996 Act

to clarify that the court can make such orders against non-parties (Section 44 (1)).

Emergency Arbitrators

Previously, the 1996 Act did not contain any provisions expressly addressing emergency arbitrators. However, this has changed with the 2025 Act coming into force. In particular, the 1996 Act has been amended to give an emergency arbitrator the power to make a peremptory order in circumstances where one party fails to comply with the emergency arbitrator's order or directions without sufficient cause (Section 41A(2)). Such an order would be enforceable by the court in the usual way.

The agreement of emergency arbitrator provisions (whether in institutional rules or otherwise) does not prevent a party from applying to the court under Section 44, provided the usual requirements in Sections 44 (3) to (5) have been met (*Gerald Metals SA v Timis* [2016] EWHC 2327 (Ch)). In *Gerald Metals*, the High Court refused to grant a freezing order against a defendant to arbitration proceedings, because the defendant had given undertakings in the arbitration which satisfied the arbitral institution that the matter was not sufficiently urgent to require an emergency arbitrator and could await the formation of the tribunal.

There has been uncertainty among the arbitration community about the effects of the decision in *Gerald Metals* – namely, a concern that the existence of emergency arbitrator provisions (which are now found in most of the leading institutional rules) preclude parties from obtaining relief from the English courts under Section 44. The Law Commission considered the issue in its review of the 1996 Act and concluded that this was an incorrect reading of *Gerald Metals*.

6.3 Security for Costs

Under the 1996 Act, unless the parties agree otherwise, the tribunal has the power to order the claimant to provide security for costs (Section 38). Costs for which security can be ordered include the arbitrator's and the defendant's costs (Section 39).

The court has no power to order security for costs during arbitration proceedings. It can order security in respect of challenges to an award under Sections 67–69 (Section 70 (6)) (see **11.1 Grounds for Appeal**).

7. Procedure

7.1 Governing Rules

Parties are free to agree procedural and evidential matters. In the absence of an agreement by the parties, the tribunal will determine all procedural and evidential matters (Section 34).

7.2 Procedural Steps

No mandatory procedural steps are required by law. Instead, the parties can agree their own procedural rules (see **7.1 Governing Rules**).

7.3 Powers and Duties of Arbitrators

Section 33 of the 1996 Act imposes a "general duty" on the tribunal to:

- act fairly and impartially, so that each party is given a reasonable opportunity to put its case and deal with that of its opponent; and
- adopt procedures that avoid unnecessary delay and expense, to provide a fair means for the resolution of the dispute.

Section 33 is a mandatory provision that cannot be excluded by agreement of the parties.

Arbitrators are also under a duty to render an enforceable award.

In addition to the general powers granted to a tribunal under Section 38 (see **6.1 Types of Relief**), a tribunal has the power under Section 56 (1) to withhold an award for non-payment of its fees.

7.4 Legal Representatives

There are no specific qualifications or other requirements for legal representatives appearing in English-seated arbitrations. Unless the parties agree otherwise, a party may be represented in proceedings "by a lawyer or other person chosen by [the party]" (Section 36). Accordingly, foreign lawyers are free to appear without restriction, as are non-lawyers.

8. Evidence

8.1 Collection and Submission of Evidence

Parties have broad discretion to agree evidential matters, including:

- the extent of disclosure and at what stage this should occur; and
- whether evidence should be presented at an oral hearing.

In the absence of agreement between the parties, the tribunal has broad powers to determine all procedural and evidential matters (Section 34 (2)).

8.2 Rules of Evidence

Unless the parties agree otherwise, the tribunal has broad powers to decide all evidential matters, including about the disclosure of documents, witness evidence and whether to apply rules of evidence (Section 34).

In practice, the IBA Rules on the Taking of Evidence in International Arbitration are often adopted in English-seated arbitrations.

Unless the parties agree otherwise, the tribunal may appoint experts, legal advisers or assessors to report to it and the parties, and allow them to attend hearings (Section 37).

8.3 Powers of Compulsion

The tribunal may order the disclosure of specific documents from parties under its general power to determine all procedural and evidential matters (Section 34 (2)(d)).

Tribunals do not have the power to order disclosure from a non-party, nor the attendance of a witness. Accordingly, if a party wishes to compel a witness to attend a hearing and provide evidence, or requires a non-party to produce documents, they will need to apply to the court.

For witnesses located inside the UK, a party to arbitral proceedings may apply to the court to "secure the attendance before the tribunal of a witness in order to give oral testimony or to produce documents or other material evidence" (Section 43). This provision is mandatory. However, before applying to the court, the applicant must first obtain either the agreement of the other party/ies to the arbitration or the permission of the tribunal.

For witnesses located outside the UK, a party to an arbitration must rely on Section 44, which allows it to apply to the court for an order in relation to "the taking of evidence of witnesses" (Section 44 2 (a)) and "the preservation of evidence" (Section 44 2 (b)) for the purposes of arbitral proceedings. Unless the case is one of urgency, the applicant must obtain either the agreement of the other party/ies to the arbitration or the permission of the tribunal. See also **5.6 Jurisdiction Over Third Parties** and **6.2 Role of Courts**.

9. Confidentiality

9.1 Extent of Confidentiality

The 1996 Act does not contain provisions on confidentiality. However, under English law, in the absence of explicit agreement to the contrary, an arbitration agreement contains an implied term obliging the parties to maintain confidentiality (*Emmott v Michael Wilson & Partners Ltd* [2008] EWCA Civ 184). This reflects the prevailing view that arbitration is private in nature, and that confidentiality is a key perceived advantage of arbitration as opposed to litigation. This duty of confidentiality applies to all aspects of the arbitral proceedings, including the award, the pleadings and all documents disclosed or produced.

Confidentiality may also arise in equity (*Halliburton Co v Chubb Bermuda Insurance Ltd* [2020] UKSC 48) or the tort of misuse of private information (*Campbell v MGN Ltd* [2004] UKHL 22), for example. Furthermore, some institutional rules contain express confidentiality provisions, including Article 30 of the LCIA Rules 2020.

However, there are certain exceptions to confidentiality in English law, including:

- where parties agree to dispense with the obligation;

- where the disclosure of documents is ordered or permitted by the court;
- where disclosure is reasonably required to establish or protect a party's legal rights; and
- where disclosure is necessary in the interests of justice.

Unless the court orders otherwise, arbitration-related claims before the English High Court are heard in private, except for applications to determine a preliminary point of law (Section 45) and appeals on a point of law arising out of an award (Section 69) (CPR 62.10). In general, English court judgments on arbitration claims are published, even if the relevant hearing was private, although judgments may be anonymised (ie, the parties are not identifiable) and certain commercially sensitive information may be redacted. In *Manchester City Football Club Ltd v The Football Association Premier League Ltd and others* [2021] EWCA Civ 1110, the Court of Appeal upheld a decision permitting the publication of a judgment dismissing challenges to an award under the 1996 Act, as the public interest in publication of the judgment outweighed any duty of confidentiality, and publication would not lead to the disclosure of significant confidential information.

10. The Award

10.1 Legal Requirements

Unless the parties agree otherwise, a majority of the tribunal must agree to an award (Section 20 (3)).

The parties are free to agree on the form of an award (Section 52 (1)). Otherwise, the award must:

- be in writing and signed by all the arbitrators or all those assenting to the award (Section 52 (3));
- contain reasons for the award, unless it is an agreed award or the parties have agreed to dispense with reasons (Section 52 (4)); and
- state the seat of the arbitration and the date when the award was made (Section 52 (5)).

The term "in writing" means recorded by any means, including as an electronic document (Section 5 (6)).

The 1996 Act does not specify a time limit in which an award must be delivered, except that:

- where an award is remitted by the court to the tribunal, the tribunal shall make its award within three months of the date of the order for remission, unless the court orders otherwise (Section 71 (3));
- any correction of the award must be made within 28 days from when the application was received by the tribunal or, if the correction is made at the initiative of the tribunal, within 28 days of the award (Section 57 (5)); and
- any additional award must be made within 56 days of the original award (Section 57 (6)).

Time limits for corrections and additional awards can be extended by agreement of the parties (Sections 57 (5)–(6)).

10.2 Types of Remedies

Unless the parties agree otherwise, the tribunal has the power to grant the following remedies:

- make a declaration about any matter to be determined in the proceedings (Section 48 (3));
- order the payment of a sum of money in any currency (Section 48 (4));
- order a party to do or refrain from doing anything (Section 48 (5)(a));
- order specific performance of a contract (other than a contract relating to land) (Section 48 (5)(b)); and
- order the rectification, setting aside or cancellation of a deed or other document (Section 48 (5)).

In addition, the parties can agree that the tribunal will have the power to order on an interim basis any relief it would have the power to grant in a final award (Section 39).

Under English law, punitive (exemplary) damages are not recoverable for breach of contract (*Addis v Gramophone Company Limited* [1909] A.C. 488) but may be recoverable in certain tort claims. However, it may be possible for the parties to agree in writing that the tribunal has the power to award punitive damages (Section 48).

The English courts have enforced foreign arbitral awards for punitive damages, despite arguments that this would be contrary to English public policy (*Pencil Hill Ltd v US Citta di Palermo Spa* [2016] EWHC 71 (QB)).

10.3 Recovering Interest and Legal Costs

The parties can agree how costs are allocated, but an agreement that one party is to pay part or the whole of the costs of the arbitration is valid only if that agreement is made after the dispute has arisen (Section 60).

In the absence of agreement between the parties, the tribunal can allocate the costs of the arbitration between the parties (Section 61 (1)). This is done on the general principle that "costs should follow the event" (ie, the losing party pays the successful party's legal costs), unless this is inappropriate in the circumstances (Section 61 (2)).

"Costs" include the arbitrators' fees and expenses, the fees and expenses of any arbitral institution, and the legal and other costs of the parties (Section 59).

If the parties do not agree costs, the tribunal can determine the recoverable costs (Section 63 (3)). If it does so, the tribunal must specify the basis on which it has acted and the items of recoverable costs and the amount referable to each. If the tribunal does not determine the recoverable costs, either party can apply to the court (Section 63 (4)).

The tribunal can direct that the recoverable costs of the whole or part of the arbitration are limited to a specified amount (Section 65 (1)).

Where contingency fee arrangements apply, Section 58 (A)(6) of the Courts and Legal Services Act 1990 provides that a costs order made in proceedings (including arbitral proceedings) "may not include provision requiring the payment by one party of all or part of a success fee payable by another party under a conditional fee agreement".

Unless the parties agree otherwise (including in a contractual term), the tribunal has broad discretion to award pre-award and post-award interest on a simple or compound basis, at such rates and with such rests as the tribunal considers meet the justice of the case (Section 49).

11. Review of an Award

11.1 Grounds for Appeal

There are three grounds upon which to challenge an arbitral award:

- lack of substantive jurisdiction (Section 67);
- serious irregularity that has or will cause substantial injustice (Section 68); and
- appeal on a point of law (Section 69).

Section 67: Challenge to the Tribunal's Substantive Jurisdiction

A challenge to the tribunal's substantive jurisdiction is usually based on one of the following three grounds:

- the existence or validity of the arbitration agreement;
- the constitution of the tribunal; or
- the scope of the arbitration agreement.

A challenge can be made to a final award on the merits, or to a preliminary award on the tribunal's jurisdiction. If the challenge is against a preliminary award on jurisdiction, the tribunal may continue with the arbitration proceedings and make a further award while the challenge is pending (Section 67 (2)).

Following a successful challenge under Section 67, the court may confirm the award, vary the award, remit or set aside the award or declare the award to be of no effect, in whole or in part (Section 67 (3)). The powers to remit or declare the award to be of no effect, in whole or in part, were introduced by the 2025 Act to ensure consistency with the remedies available for Section 68 and Section 69 challenges (described below).

Section 68: Challenge on the Grounds of Serious Irregularity

The applicant must show both that:

- there has been a "serious irregularity"; and

- "substantial injustice" has resulted or will result from this irregularity.

Section 68 is intended to remedy procedural irregularities, not to correct errors of fact or law. The following exhaustive list of circumstances amounting to a serious irregularity is contained in Section 68 (2):

- the tribunal has failed to comply with its general duties under the 1996 Act – eg, the duty to give each party a reasonable opportunity to present its case under Section 33;
- the tribunal has exceeded its powers;
- the tribunal has failed to conduct the proceedings in accordance with the parties' agreed procedure;
- the tribunal has failed to deal with all the issues put to it;
- an arbitral or other institution or person has exceeded the powers vested in it by the parties in relation to the proceedings or the award;
- there is uncertainty or ambiguity as to the effect of the award;
- the award was obtained by fraud or is otherwise contrary to public policy;
- the award does not comply with requirements as to form; or
- there was irregularity in the conduct of the proceedings or in the award that is admitted by the arbitral tribunal or other institution or person vested by the parties with powers relating to the proceedings or the award.

A "high threshold" must be met to make a successful challenge under Section 68 (*K v A* [2019] EWHC 1118 (Comm)).

An applicant may lose its right to bring a Section 68 challenge if it did not act promptly as soon as it thought it had a reason to object and continued to take part in the proceedings (Section 73;*Radisson Hotels APS Denmark v Hayat Otel Işletmeciliği Turizm Yatırım Ve Ticaret Anonim Şirketi* [2023] EWHC 892 (Comm)).

Following a successful challenge, the court may remit the award to the tribunal for reconsideration, set aside the award or declare the award to be of no effect, in whole or in part (Section 68 (3)).

An appeal on a point of law can be brought with the agreement of all other parties to the arbitration or with the permission of the court (Section 69 (2)). An application for permission to appeal under Section 69 will usually be dealt with on the papers, unless the court considers it necessary to hold a hearing (*Osler v Osler and others* [2024] EWCA Civ 516).

An applicant must show that:

- the appeal relates to a question of law and not fact;
- the question arises out of the award;
- a determination of the question will "substantially affect its rights";
- the question of law is one that the tribunal was asked to determine;
- based on the findings of fact, the tribunal's decision is "obviously wrong" or, where the question is one of "general public importance", at least "open to serious doubt"; and
- it is just and proper for the court to determine the question.

To be open to challenge, a point of law must have been put "fairly and squarely before the arbitration tribunal for determination" (*Sharp Corp Ltd v Viterra BV* [2024] UKSC 14).

It is not sufficient for an applicant to demonstrate that the tribunal may have come to a different conclusion had it applied the law correctly: the applicant must show that a tribunal that had correctly applied the law could not have reached the conclusion that was reached (*John Sisk & Son Ltd v Carmel Building Services Ltd (In Administration)* [2016] EWHC 806).

Following a successful appeal, the court may vary the award, remit the award to the tribunal in whole or in part, for reconsideration in light of the court's determination, or set aside the award in whole or in part (Section 69 (7)).

Procedure

A challenge or appeal is started by filing an arbitration claim form under CPR Part 62.

Before making a challenge or appeal, the applicant must first exhaust any available recourse in the arbi-

tral process and any available recourse under Section 57 to correct or obtain an additional award (Section 70 (2)). The 2025 Act has clarified that the relevant "recourse" is that available under the parties' arbitration agreement (eg, in the chosen institutional rules) (Section 70 (9)).

A challenge or appeal must be brought within 28 days of the date of the award or of being notified of the outcome of any appeal or review in the arbitral process (Section 70 (3)). Where a request for correction of an award is first made under Section 57, the 2025 Act has inserted a new Section 70 (3A) into the 1996 Act to clarify that the date of an award for the purposes of the 28-day period for challenge or appeal runs from the date of any material correction or additional award under Section 57 or, where the Section 57 application is unsuccessful, from the date the applicant/appellant was notified of that decision. For these purposes, "material" means any matter that is material to the challenge or appeal (Section 70 (3B)).

The changes brought in by the 2025 Act largely codify the existing case law position – eg, *Daewoo Shipbuilding and Marine Engineering v Songa Offshore Equinox* [2018] EWHC 538 (Comm).

11.2 Excluding/Expanding the Scope of Appeal

Section 69 is not mandatory and can be excluded by party agreement. It is often disapplied by the parties agreeing certain institutional rules, such as the ICC rules (Article 28.6) and LCIA rules (Article 26.8).

Sections 67 and 68 are mandatory, so the right to challenge an arbitral award for lack of jurisdiction or a serious irregularity cannot be excluded by party agreement.

11.3 Standard of Judicial Review

The standard of review adopted by the court for an appeal on a point of law under Section 69 is intended to be deferential rather than meticulous (*Zermalt Holdings SA v Nu-Life Upholstery Repairs Limited* [1985] 275 EG 1134).

12. Enforcement of an Award

12.1 New York Convention

The UK (England, Wales, Northern Ireland and Scotland) is party to the New York Convention, so foreign awards made in the territory of another state that is party to the New York Convention are binding in the UK. Sections 101 to 104 of the 1996 Act provide for the enforcement of awards under the New York Convention.

The UK is also party to the Geneva Convention on the Execution of Foreign Arbitral Awards 1927, and an arbitral award that is made in the territory of a contracting party can be enforced under the 1996 Act (Section 99). The Geneva Convention 1927 has largely been superseded by the New York Convention.

The UK has also enacted:

- the Foreign Judgments (Reciprocal Enforcement) Act 1933, which provides for the reciprocal recognition and enforcement of arbitral awards in former Commonwealth countries, although this statute has largely been superseded by the New York Convention; and
- the Arbitration (International Investment Disputes) Act 1966, which provides for the recognition and enforcement of arbitral awards from the International Centre for Settlement of Investment Disputes.

12.2 Enforcement Procedure

Section 66 of the 1996 Act sets out a summary procedure for the enforcement of English-seated awards. First, an arbitral award may "by leave of the court, be enforced in the same manner as a judgment or order of the court" (Section 66 (1)). Alternatively, an award can be converted into a court judgment (Section 66 (2)). In practice, the Section 66 (2) mechanism is rarely used.

An award can also be enforced by action on the award for failure to comply with the award (Section 66 (4)). Again, this method is rarely used in practice.

The enforcing party will need to apply to the court for permission following the procedure in CPR 62. This

involves submitting an arbitration claim form, attaching a witness statement, the award and the arbitration agreement. This is generally done without giving notice to the other party. If permission to enforce is granted, a judgment will be entered in the terms of the award, and the same powers that are available to enforce an ordinary court judgment will be available. Where a party can show that a tribunal lacks substantive jurisdiction to make an award, leave to enforce will be refused (Section 66 (3)).

To enforce a foreign award under the New York Convention, a party should follow the procedure under Section 102 of the 1996 Act. This requires the enforcing party to produce the duly authenticated award or a duly certified copy of the award and the original arbitration agreement or a duly certified copy of it. If an award is in a foreign language, a certified translation of it should also be produced.

Section 103 (2) of the 1996 Act mirrors Article V of the New York Convention, providing the following six grounds under which the enforcement of an award may be resisted in the UK:

- that a party to the arbitration agreement was (under the law applicable to them) under some incapacity;
- that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made;
- that a party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present their case;
- that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration;
- that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country in which the arbitration took place; and
- that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

In addition, the English courts have discretion to refuse to enforce a foreign award in the UK on the grounds of public policy (Section 103 (3)).

The court may adjourn its decision whether to enforce an award if an application to set aside or suspend an award has been made to the courts of the seat of the arbitration and is pending (Section 103 (5)).

Although the 1996 Act and the New York Convention are silent on the point, a party, such as a sovereign state, may be immune from enforcement proceedings. Where a state has agreed in writing for a dispute to be resolved by arbitration, the state is not immune from court proceedings "which relate to the arbitration" (Section 9 of the State Immunity Act 1978, or SIA). This includes proceedings to recognise and enforce awards (*Svenska Petroleum Exploration AB v Government of the Republic of Lithuania and AB Geonafta* [2006] EWCA Civ 1529). However, a party may not execute against the property of a state unless the state has separately expressly waived its immunity from execution (Section 13 (2)(b) of the SIA) or unless execution is sought against property that is in use or intended for use for commercial purposes (Section 13 (4) of the SIA). In this context, state immunity against enforcement is not waived solely by reason of ratification of the New York Convention (*CC/Devas et al v The Republic of India* [2025] EWHC 964 (Comm)).

12.3 Approach of the Courts

The English courts adopt a strongly pro-enforcement attitude to arbitration awards and, for this reason, have been reticent to refuse to enforce arbitral awards. For example, whilst Section 103 (3) grants the English courts the discretion to refuse to enforce an award in the UK on the grounds of public policy, the courts have emphasised that this is to be approached with "extreme caution" (*IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation* [2017] UKSC 16).

In certain cases, however, such as where the arbitration agreement is between a consumer and a business, the English courts have been willing to refuse

enforcement on public policy grounds (*Chechetkin v Payward Ltd and others* [2022] EWHC 3057 (Ch)).

13. Miscellaneous

13.1 Class Action or Group Arbitration

Aside from consolidation (see **13.4 Consolidation**), the 1996 Act is silent on the availability of class or group arbitration. In contrast to jurisdictions like the United States, group arbitration remains uncommon in England and Wales, and faces similar challenges to those that arise in multiparty or multicontract arbitration (eg, consent). However, the rise in group litigation claims before the English courts (and elsewhere) and examples of group claims in investment treaty arbitration (eg, *Abaclat v Argentina and others*, ICSID Case No ARB/07/5 and *Theodoros Adamakopoulos and others v Republic of Cyprus*, ICSID Case No ARB/15/49) indicate that there is potential for group arbitration to become more prevalent in future.

13.2 Ethical Codes

The Bar Standards Board's BSB Handbook regulates English barristers participating in arbitrations in England and Wales. Similarly, the Solicitors Regulation Authority (SRA) Standards and Regulations, including the Code of Conduct for Solicitors, RELs and RFLs, regulate the activities of solicitors acting in arbitrations in England and Wales. There are no separate rules that apply to counsel from foreign jurisdictions participating in English arbitrations.

Several arbitral institutions incorporate mandatory ethical standards into their arbitration rules – eg, the LCIA Rules give the tribunal the power to order sanctions for non-compliance (Articles 18.4 and 18.5).

13.3 Third-Party Funding

Third-party funding for arbitration is now well established in England and Wales. It is a rapidly growing sector, serviced by increasingly sophisticated financing arrangements and specialist litigation financing providers.

In general, English law permits funding agreements between claimants and third-party funders that provide for funders to receive payment in the event of success. However, such agreements need to comply with relevant case law and, in some cases, relevant provisions of the Courts and Legal Services Act 1990.

In *R (on the application of PACCAR Inc) v Competition Appeal Tribunal* [2023] UKSC 28, the Supreme Court held that litigation funding agreements that provide for a funder's success fee to be calculated as a percentage of damages recovered are damages-based agreements for the purposes of Section 58AA of the Courts and Legal Services Act 1990. Such agreements must therefore meet the requirements of the Damages-Based Agreements Regulations 2013 or are otherwise unenforceable.

The UK government announced in March 2024 that it would fast-track legislation that would reverse the decision in *PACCAR*. However, the proposed bill did not come into force before the new Labour government came into power. The Labour government did not resurrect the bill and confirmed that it would await the outcome of a review of the English funding market by the Civil Justice Council (CJC) before reaching a view on any legislative changes in this area.

In June 2025, the CJC published its Final Report in its Review of Litigation Funding. The report recommends that the effect of the Supreme Court's decision in *PACCAR* be reversed by legislation and the current system of self-regulation for litigation funding be replaced by a mandatory light-touch regime. Importantly, the CJC recommended that the funding of arbitration proceedings should not be subject to formal regulation and should remain a matter for arbitral centres to determine. It remains to be seen whether the CJC's recommendations will be adopted.

13.4 Consolidation

A tribunal may order the consolidation of arbitration proceedings with the consent of the parties to the arbitration (Section 35 (1)). In the absence of such agreement, however, the 1996 Act provides no default power for the tribunal to consolidate proceedings (Section 35 (2)).

Some institutional rules give the tribunal the power to order consolidation in certain circumstances – eg, the LCIA Rules 2020 (Articles 22.1 and 23).

13.5 Binding of Third Parties

Under English law, a non-signatory third party may be bound by an arbitration agreement in limited circumstances. Circumstances in which this may occur include the following.

- Where an agent has executed an arbitration agreement on behalf of its principal.
- Where contractual rights or causes of action are assigned or transferred to a third party. Where those rights or causes of action were originally subject to an arbitration agreement, the third party may also be bound by it (*West Tankers Inc v Ras Riunione Adriatica Di Sicurta SpA* [2005] EWHC 454 (Comm)).
- The Contracts (Rights of Third Parties) Act 1999 (C(RTP)A 1999) provides that, in certain circumstances, a third party may enforce rights arising under a contract. If those rights are subject to an arbitration agreement, the third party may be bound by that arbitration agreement (*Nisshin Shipping v Cleaves & Co* [2003] EWHC 2602 (Comm)). It is relatively common for contracts to exclude the application of C(RTP)A 1999.
- An insurer may be subrogated to contractual rights that are themselves subject to an obligation to arbitrate.
- Where, in limited circumstances, the corporate veil is pierced to extend an arbitration agreement to a group company because the corporate entity is simply a "façade to conceal the true facts" (*VTB Capital plc v Nutritek International Corp and others* [2013] UKSC 5).

An arbitral award will not bind third parties, including parent companies of parties to an arbitration. For example, the English courts have held that a prior award that rescinded a joint venture agreement had no binding effect on a subsequent proprietary claim made against third parties who were not parties to the arbitration (*Vale SA v Steinmetz* [2021] EWCA Civ 1087).

See also **5.2 Circumstances for Court Intervention**.

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