The Legal 500 & The In-House Lawyer
Comparative Legal Guide
United Kingdom: International Arbitration (4th edition)

This country-specific Q&A provides an overview of the legal framework and key issues surrounding international arbitration law in the United Kingdom.

This Q&A is part of the global guide to International Arbitration.

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

   The Arbitration Act 1996 (the 1996 Act) will apply if the arbitration is seated in England and Wales or Northern Ireland. The Arbitration (Scotland) Act 2010 (the 2010 Act) will apply if the arbitration is seated in Scotland. The mandatory provisions are set out in Schedule 1 of the 1996 Act and s.8 of the 2010 Act. Such provisions include those in relation to duties of the arbitral tribunal and parties,

and challenges to arbitrators and arbitral awards. Additionally, the Arbitration (International Investment Disputes) Act 1966 sets out a special regime for ICSID awards.
The responses below focus on the 1996 Act.

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

   The New York Convention entered into force in the United Kingdom on 23 December 1975, with a reciprocity reservation. The United Kingdom has submitted notifications extending the territorial application of the New York Convention to Gibraltar, Isle of Man, Bermuda, Cayman Islands, Guernsey, Jersey and the BVI.

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

   In addition to the New York Convention, the United Kingdom is also a party to (a) the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927, (b) the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 and (c) numerous other Bilateral and Multilateral Investment Treaties.

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

   The UNCITRAL Model Law has not been adopted in England and Wales but it has influenced the 1996 Act. Some significant differences relate to arbitrability, separability of arbitration clauses, competence of the arbitral tribunal to rule on its own jurisdiction and judicial intervention (including the availability of appeals on a point of law).

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

   Following consultations, the Law Commission of England and Wales issued its Thirteenth Programme of Law Reform in late 2017, in which it noted that it had decided not to pursue reform of the 1996 Act. However, the Law Commission identified the 1996 Act as an area for potential future change with the view to maintaining London’s status as a leading venue for international arbitration. These comments by the Law Commission have inspired commentators to suggest potential areas of reform; one popular suggestion has been to reverse the presumption that arbitration is a confidential process. However, these discussions have not yet given rise to any concrete reform initiatives.

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

   A number of arbitral institutions are based in the United Kingdom, including: London Court of International Arbitration (LCIA), Chartered Institute of Arbitrators (CIArb), London Maritime Arbitrators Association (LMAA) and Reinsurance Arbitration Society (ARIAS (UK)). In addition, various commodity organisations based in the United Kingdom have published arbitral rules, including the Grain & Feed Trade Association (GAFTA) and the London Metal Exchange (LME).

   The LCIA issued revised Arbitration Rules in 2014, the CIArb Arbitration Rules entered into effect on 1 December 2015, and the new LMAA terms came into effect in May 2017. Proposed updates to the LCIA Rules were put forward at the LCIA European Users' Council Symposium in May 2019; however, updated rules had not been released as of September 2019.

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

   To fall within the scope of the 1996 Act, an arbitration agreement must be in writing or be evidenced in writing. This includes an oral agreement to arbitrate by reference to "terms which are in writing" (s.5(3) of the 1996 Act).

8. **Are arbitration clauses considered separable from the main contract?**

   Unless otherwise agreed by the parties, an arbitration agreement is separable from the main contract (s.7 of the 1996 Act and Fiona Trust & Holding Corporation v. Privalov [2007] UKHL 40).

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

   The 1996 Act does not contain provisions for court-ordered consolidation. However, this matter can be addressed by either (a) the rules of arbitral institutions, which often provide a framework for consolidation or (b) the parties' agreement (s.35 of the 1996 Act).

10. **In what instances can third parties or non-signatories be bound by an arbitration agreement?**

    The possibility of binding third parties to an arbitration agreement is expressly contemplated in s.82(2) of the 1996 Act. It provides that references in Part I (Arbitration pursuant to an arbitration agreement) to a "party" to an arbitration agreement include "any person claiming under or through a party to the agreement". A non-party to a contract may be bound by that contract's arbitration agreement if: (i) a party assigns or transfers rights or causes of

action under the contract to that third party; (ii) the third party is able to enforce the terms of the contract in accordance with the Third Parties (Rights Against Insurers) Act 1930 or the Contracts (Rights of Third Parties) Act 1999; or (iii) the third party replaces one of the original parties by way of novation. It is also possible for an insurer to be subrogated to contractual rights and thus become bound by the contract's arbitration agreement.

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

The arbitral tribunal will decide the dispute either (a) in accordance with the law chosen by the parties as applicable to the substance of the dispute, or (b) if the parties so agree, in accordance with such other considerations as are agreed by them or determined by the tribunal. A choice of law is understood to refer to the substantive laws of a country and not its conflict of law rules. In the absence of the parties' agreement, there is no specific set of choice of law rules that an arbitral tribunal must apply. Instead, the tribunal shall apply the law determined by the conflict of laws rules which it considers applicable (s.46 of the 1996 Act).

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

Both contractual and non-contractual disputes can be submitted to arbitration (s.6(1) of the 1996 Act, see also Fiona Trust & Holding

Corporation v. Privalov (2007) UKHL 40). Examples of non-arbitrable matters under English law include criminal matters, insolvency proceedings (which are subject to the statutory regimes set out in the Insolvency Act 1986), certain family law matters and certain instances where a statutory body has jurisdiction over particular disputes (see Clyde & Co LLP v Bates van Winkelhof [2011] EWHC 668, where an employee had statutory rights to have their case heard before an employment tribunal). Consumer disputes for sums under £5,000 are not arbitrable pursuant to the Unfair Arbitration Agreements (Specified Amount) Order 1999 (SI 2167/99).

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

Arbitrators must act fairly and impartially as between the parties (s.33 of the 1996 Act). The Arbitration Act imposes no other conditions pertaining to the qualifications and characteristics of arbitrators. In particular, it is not necessary for an arbitrator to be a national of, or licensed to practise in, England.

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

The 1996 Act contains default provisions for the appointment of arbitrators which apply in the absence of agreement between the parties (ss 16—17 of the 1996 Act), including time limits.

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

The courts can intervene where the parties have not agreed the procedure for the appointment of the arbitral tribunal. Pursuant to s.18 of the 1996 Act, any party may apply to the court (under Part 62 of the Civil Procedure Rules) to exercise its powers to (a) give directions on the appointment, (b) approve or revoke previous appointments or (c) make the appointment itself.

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

Pursuant to s.24 of the 1996 Act, any party may apply to the court (under Part 62 of the Civil Procedure Rules) to remove an arbitrator where (a) circumstances exist that give rise to justifiable doubts as to his impartiality, (b) the arbitrator lacks the requisite qualifications or capacity or (c) the arbitrator refuses or fails to properly conduct proceedings or make an award. Where another entity (whether the tribunal itself or the institution administering the arbitration) is vested with the power to effect such removal, the complaining party is required to first exhaust that avenue before approaching the court (section 24(2), 1996 Act).

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

The 1996 Act allows the parties to agree on the procedure to be adopted in instances where there is a truncated tribunal (s.27). If there is no agreement, the provisions of s.16 (procedure for appointment of arbitrators) and s.18 (failure of appointment procedure) apply in relation to the filling of the vacancy as they do in relation to the original appointment (s.27(3)).

The tribunal has the power to determine whether and if so to what extent the previous proceedings should stand (s.27(4)).

18. **Are arbitrators immune from liability?**

Under the 1996 Act, an arbitrator is not liable for any act or omission in the discharge or purported discharge of his functions as arbitrator unless the arbitrator is shown to have acted in bad faith (s.29(1)). Another exception relates to any liability incurred by the arbitrator by reason of their resignation (s.29(3)).

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

Yes, the 1996 Act recognises the principle of competence-competence (s.30(1)).

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

If a party commences court proceedings in the jurisdiction in breach of the arbitration agreement, the court has the power to grant a stay on an application by the party against whom legal proceedings are brought (s.9(1)). The courts are also empowered to issue anti-suit injunctions where a party has commenced court proceedings in another jurisdiction, except in cases where the litigation is commenced before a European court which is within the regime of the Brussels Regulation or the Lugano Convention.

21. **How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?**

The 1996 Act requires service of written notice in accordance with s.14. Further, it states that the Limitation Acts 1980 and the Foreign Limitation Periods Act 1984 apply to arbitral proceedings as they apply to legal proceedings (s.13(1)). For contractual and tortious claims, the relevant period will be six years from accrual of the cause of action.

22. **In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?**

The State Immunity Act 1978 (the 1978 Act) provides that a state may not invoke immunity in connection with the commencement of arbitration proceedings if it has agreed to submit the relevant dispute to arbitration (s.9(2)). Otherwise, it is able to claim immunity.

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

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

The 1996 Act allows the parties to agree on the powers exercisable by the tribunal for the purposes of and in relation to the proceedings (s.38(1)). If there is no agreement, sections 38 and 44 outline the various interim measures a tribunal and the court are permitted to issue, respectively.

Powers are provided to the local courts in s.44 pending the constitution of the tribunal to support the arbitration process, including the preservation of evidence or assets.

25. **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?**

The 1996 Act provides that (subject to the parties' agreement) it is for the tribunal to decide whether to apply strict rules of evidence as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion, and the time, manner and form in which such material should be exchanged and presented (s.34(2)(f)).

In support of the arbitration, the local courts may assist in the obtaining of evidence such as securing attendance before the tribunal of a witness (s.43) and exercising their power to make orders in relation to evidence (s.44).

If a witness is in the UK and the arbitration is conducted (not necessarily seated) in England & Wales, parties may rely on domestic courts to compel the attendance of witnesses before the tribunal under s.43(1) of the 1996 Act. This provision also allows courts to compel witnesses to produce documents. However, these powers may only be exercised with permission of the tribunal or by agreement of the parties.

Under s.44 of the 1996 Act, where a witness is overseas, the English Court can issue a Letter of Request to ask a foreign court to examine a witness in that court's jurisdiction. The English Court will

also enforce Letters of Request from foreign courts and can require a witness to be examined and to provide documents.

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

An arbitrator conducting an arbitration in this jurisdiction will primarily be subject to any applicable ethical codes or professional standards in their own jurisdiction. There are also a number of non-binding ethical codes for arbitrators (including the IBA Rules of Ethics for International Arbitrators and its Guidelines on Conflicts of Interest in International Arbitration).
Further, the 1996 Act states that the tribunal shall (a) act fairly and impartially and (b) adopt procedures to provide a fair means for the resolution of the matters (s.33).

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

Whilst the 1996 Act does not address confidentiality, generally, there is an implied duty in English law to maintain the confidentiality of arbitration hearings, documents generated and disclosed during the arbitral proceedings and any award generated.

In broad terms, the exceptions to this duty are: (i) the parties may

dispense with, or modify, the obligation of confidentiality by agreement or consent and (ii) where disclosure of documents is ordered or permitted by the court. Inter alia disclosure has been permitted where it is reasonably necessary for the establishment or protection of a party's legal rights and where it is necessary in the interest of justice or (possibly) in the public interest.

28. **How are the costs of arbitration proceedings estimated and allocated?**

The 1996 Act allows the parties to agree what costs in the arbitration are recoverable (s.63(1)). If there is no agreement, the tribunal may determine the recoverable costs of the arbitration on such basis as it deems appropriate (s.63(3)).

29. **Can pre- and post-award interest be included on the principal claim and costs incurred?**

Unless otherwise agreed by the parties, the 1996 Act allows the tribunal to award simple or compound interest:

(a) 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(3)(a)).

(b) Post-award interest: from the date of the award (or any later

date) until payment, at such rates that it considers just on any outstanding amount of any award, including any award as to costs (s.49(4)).

30. **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?**

The 1996 Act allows the parties to agree on the form of an award (s.52(1)). If there is no agreement, s.52 provides the conditions that need to be met. These include requirements that the award be in writing and signed by the arbitrators or all those assenting to it (s.52(3)).

Section 66 of the 1996 Act provides for a summary procedure for enforcing awards as a judgement with leave of the court. The 1996 Act also provides for the recognition and enforcement of a New York Convention award at s.100 et seq., including the requirement to submit originals of duly certified copies of the award and the arbitration agreement when seeking enforcement.

Under s.52(4) of the 1996 Act, an arbitral award must contain the reasons for the award unless it is an agreed award or the parties have agreed to dispense with reasons. This requirement has been interpreted to mean that the arbitrator(s) should set out what, on their view of the evidence, did and did not happen and why, in light

of that, they have reached their decision.

31. **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?**

Timeframes relating to the recognition and enforcement of an award can be difficult to estimate as they are subject to the complexity and circumstances of any given award.

Application for leave to enforce the award may be made on an ex parte basis. At this point the court may direct the arbitration claim form to be served or order ex parte enforcement of the award. Where leave to enforce ex parte is given, the award debtor typically has a period of 14 days to apply to set the order aside

32. **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?**

Section 66(3) of the 1996 Act provides that "[l]eave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award".

For foreign awards governed by the New York Convention, section

103 of the 1996 Act provides for the grounds for review set out in Article V of the New York Convention

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

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

Generally, the grounds for challenging a domestic or foreign award are (a) absence of substantive jurisdiction (s.67(1)); or (b) a serious irregularity affecting the tribunal, the proceedings or the award (s.68). Unless otherwise agreed, the parties can appeal to the court on a question of law arising out of an award made in the proceedings (s.69(1)). Appeals under s.69 are difficult and succeed only in rare circumstances.

The procedure for appeal and challenge is outlined in the Civil Procedure Rules.

35. **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)?**

Under s.69(1) of the 1996 Act, the parties to arbitral proceedings can agree to waive the right to appeal to the court on a point of law.

The right to challenge the award for lack of jurisdiction or serious irregularity cannot be waived by the parties, even with mutual agreement. However, s.73 of the 1996 Act states that if a party continues to take part in the proceedings, it may lose the right to raise such an objection unless it can prove that it did not know of the grounds for objection at the time.

36. **To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?**

Under s.9(1) of the 1978 Act, if a State has agreed in writing to submit a dispute to arbitration, it waives immunity from proceedings in the English courts which relate to the arbitration, including enforcement proceedings. In accordance with s.9 of the State Immunity Act 1978, this rule applies to commercial arbitrations involving state entities as well as investor-state disputes (See Gold Reserve Inc. v The Bolivarian Republic of Venezuela [2016] EWHC 153). This waiver extends only to immunity from the jurisdiction of the courts, and not immunity from execution against the sovereign's property.

37. **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?**

An award is binding on third parties who are bound by the

arbitration agreement, as contemplated in s.82(2) of the 1996 Act.

Only a party to the arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court to challenge an award of the arbitral tribunal.

38. **Have courts in your jurisdiction considered third party funding in connection with arbitration proceedings recently?**

In Essar Oilfields Services Ltd v Norscot Rig Management PVT Ltd [2016] EWHC 2361 (Comm), the English Commercial Court confirmed that arbitrators have the power to award the costs of a third party funder. These are considered to be “other costs of the parties” under s.59(1)(c) of the 1996 Act. In early 2018, a joint task force of ICCA and the School of International Arbitration at Queen Mary University of London unveiled the final draft of its report on third-party funding.

39. **Is emergency arbitrator relief available in your country? Is this frequently used?**

Parties in LCIA arbitrations can apply to submit disputes to an emergency arbitrator for urgent relief pending the formation of the arbitral tribunal. The rules governing the appointment of an emergency arbitrator are set out in Article 9B of the LCIA 2014 Rules.

However, this type of relief does not appear to be frequently used. In 2016, the first application under Article 9B of the LCIA 2014 Rules for the appointment of an emergency arbitrator was made and was rejected. In 2018, only three application were made, two of which were granted by the LCIA Court. This may be due to the fact that Article 9A of the LCIA 2014 Rules sets out a procedure for the expedited formation of a tribunal, which can be used as an alternative route to obtaining interim measures.

There is also no clear statutory mechanism (unlike Singapore and Hong Kong) to enforce emergency orders/ awards under the 1996 Act.

Parties can apply to the English court for interim relief under s.44 of the 1996 Act; however, it is likely that the court will not intervene where an application could be made to an emergency arbitrator under the relevant institutional rules (Gerald Metals SA v The Trustees of the Timis Trust & others [2016] EWHC 2327).

40. **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 London Maritime Arbitrators Association (LMAA) Terms contain a Small Claims Procedure, designed for disputes under a value of US$50,000 (however, parties are free to agree a higher limit). A sole arbitrator acts for a fixed fee and generally assesses the case based

on written submissions and documents.

41. **Have measures been taken by arbitral institutions in your country to promote transparency in arbitration?**

    The LCIA publishes information in relation to costs and duration of cases.

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

    Many UK firms, institutions and individuals have signed the Equal Representation in Arbitration Pledge, which is intended to improve the profile of women in arbitration with a view to securing the appointment of more women as arbitrators, on an equal opportunity basis. The LCIA has also signed the Equal Representation Arbitration Pledge and publishes yearly updates with diversity statistics. Last year, 23% of arbitrators appointed were women. In 2018, the LCIA Court appointed non-British arbitrators 57% of the time, compared to the parties and the co-arbitrators, who appointed non-British arbitrators 20% and 27% of the time respectively.

43. **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?

On 27 July 2017, the English Commercial Court dismissed an application to enforce a Russian arbitral award that had been set aside by the Russian Commercial Court (Maximov v Open Joint Stock Company OJSC (Novolipetsky Metallurgichesky Kombinat) [2017] EWHC 1911 (Comm)).

44. **Is corruption an issue that is regularly raised in your jurisdiction? What standard do local courts apply for proving of corruption?**

There are no statistics available to assess the frequency with which corruption or bribery allegations are made in an arbitration context. It is worth noting, however, that in Premium Nafta v Fili Shipping [2007] UKHL 40, the House of Lords held that unless the arbitration agreement specifically (as opposed to the main contract) can be shown to be induced by bribery, the arbitration agreement will remain valid.