

# Arbitration procedures and practice in the UK (England and Wales): overview

Marie Berard and Anna Kirkpatrick  
Clifford Chance LLP

[global.practicallaw.com/4-502-1378](http://global.practicallaw.com/4-502-1378)

## USE OF ARBITRATION AND RECENT TRENDS

### 1. How is commercial arbitration used and what are the recent trends?

#### Use of commercial arbitration

Parties from all over the world, often with no connection to England and Wales, select London as the seat of their arbitrations. Parties domiciled in the jurisdiction frequently select international arbitration for the resolution of cross-border disputes and choose London as the seat.

A wide range of contractual and non-contractual claims can be referred to arbitration in this jurisdiction. This includes disputes involving intellectual property rights, competition disputes and statutory claims. However, criminal and family law matters cannot be referred to arbitration.

#### Recent trends

Over the last decade, the number of international arbitration proceedings carried out in London has grown dramatically. According to the London Court of International Arbitration (LCIA), the number of arbitrations referred to the LCIA increased from 133 cases in 2006 to 290 in 2013.

Moreover, the 2010 International Arbitration Survey conducted by Queen Mary College, University of London found that the most popular seat of arbitration in the world was London. According to the survey, London continues to be a popular choice for CIS- (Commonwealth of Independent States) related and India-related disputes, and is playing a growing role in Asia Pacific-related disputes.

London's attractiveness is largely due to:

- Its continuing status as a major financial centre and world market.
- Its reputation as a neutral and impartial jurisdiction.
- The record of the courts in enforcing agreements to arbitrate and arbitral awards.

#### Advantages/disadvantages

Parties choose arbitration instead of litigation because it keeps their disputes out of national courts and refers them instead to a neutral forum in which they have confidence. Parties also choose arbitration because arbitral awards are recognised and enforceable in many more countries than English court judgments under the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, which has been ratified by 156 countries.

Some parties prefer arbitration because it is a private procedure, whereas court trials are usually held in public.

Arbitration therefore has the potential for confidentiality. However, there are many exceptions to this principle of confidentiality in arbitration in English law and if confidentiality is important to a party, it must provide for it in the arbitration agreement. Arbitration also has the potential to be more flexible than litigation. For example, parties can appoint arbitrators who are experts in a specialist field and tailor the procedure to suit the needs of their particular case. Some parties value the finality of an arbitral award. Awards are less likely to be appealed than judgments and certain rights of appeal can be excluded by agreement.

However, arbitration is not ideal in all circumstances. Unless the parties expressly agree otherwise, the tribunal cannot generally compel a third party to join an arbitration. It also cannot consolidate a number of related arbitrations in order to bring them before one tribunal. This can lead to parallel proceedings with inconsistent outcomes, despite the fact that the arbitrations arose from a similar, or the same, dispute. This position may gradually change as many institutional rules now provide some limited provisions for the consolidation of certain disputes under the institution's rules.

Delays can occur at the beginning of proceedings as a result of the procedures for appointing the tribunal. Where arbitrators are very busy, sometimes substantial delays can occur before any hearing can be accommodated. As arbitrators' powers of coercion are much more limited than the courts', there is greater opportunity for strategic (deliberate) delays and breaches of procedural deadlines.

Arbitration is sometimes said to be faster and cheaper than litigation. However, this is not always the case and depends on the behaviour of the parties and the tribunal.

An experienced tribunal and co-operative parties can work together to agree procedures to minimise costs. However, parties in dispute are frequently unco-operative and as arbitrators do not have the coercive powers of judges this can result in delay and unnecessary costs.

There is no precedent in international arbitration. So an award obtained in one arbitration cannot be relied on by the successful party in a subsequent arbitration. The award binds only the parties to that award, and the award typically remains confidential.

## Applicable legislation

### 2. What legislation applies to arbitration? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)?

The Arbitration Act 1996 (Arbitration Act) offers a coherent and modern framework for domestic and international arbitrations seated in the UK. The Arbitration Act is influenced by the UNCITRAL Model Law but differs from it in some important ways. For example, the Arbitration Act is a single legislative framework governing all arbitrations seated in England, Wales and Northern Ireland, not just international commercial arbitrations. The Arbitration Act also sets out the principles that underlie arbitration and arbitration law in the jurisdiction.

### Mandatory legislative provisions

### 3. Are there any mandatory legislative provisions? What is their effect?

In the interests of public policy, the Arbitration Act 1996 (Arbitration Act) contains a number of mandatory provisions that are listed in Schedule 1. They include:

- The court's power to stay court proceedings brought in breach of an arbitration agreement and related provisions (*sections 9 to 11, Arbitration Act*).
- The court's power to extend agreed time limits and to apply limitation acts (*sections 12 and 13, Arbitration Act*).
- Provisions dealing with the arbitrator's position, for example, the:
  - power of the court to remove the arbitrator;
  - effect of the arbitrator's death;
  - parties' liability for the fees and expenses of the arbitrator; and
  - arbitrator's immunity (*sections 24, 26(1), 28 and 29, Arbitration Act*).
- General duty of the tribunal to act fairly and impartially (*section 33, Arbitration Act*).
- The tribunal's power to withhold an award for non-payment of the arbitrator's fees and expenses (*section 56, Arbitration Act*).
- The enforcement of an award (*sections 66, Arbitration Act*).
- Grounds for challenging an award (*sections 67 and 68, Arbitration Act*).

### 4. Does the law prohibit any types of disputes from being resolved via arbitration?

A wide range of disputes are capable of arbitration under English law. The Arbitration Act 1996 (Arbitration Act) itself does not specify whether or not disputes are arbitrable (*section 81(1)(a), Arbitration Act*). Instead, the courts determine arbitrability on a case-by-case basis. Where the disputes engages "third party rights" or represents "an attempt to delegate to the arbitrators what is a matter of public interest which cannot be determined within the limitations of a private contractual process", it may not be arbitrable (*Fulham Football Club (1987) Ltd v Richards [2011] EWCA Civ 855, para 40*).

In general, commercial disputes (both contractual and non-contractual) are capable of arbitration. This includes disputes relating to fraud, unless the fraud relates specifically to the arbitration agreement (*Premium Nafta Products Ltd (20th Defendant) & Ors v Fili Shipping Company Ltd & Ors [2007] UKHL 40*). Disputes relating to intellectual property rights, employment law and consumer rights are also generally arbitrable, as well as certain competition law issues. Insolvency proceedings are subject to a statutory regime under the Insolvency Act 1996 and are therefore not capable of arbitration. Criminal matters and family law issues are also not arbitrable.

### Limitation

### 5. Does the law of limitation apply to arbitration proceedings?

Pursuant to section 13(1) of the Arbitration Act 1996 (Arbitration Act), the Limitation Act 1980 and the Foreign Limitation Periods Act 1984, as well as "any other enactment (whenever passed) relating to the limitation of actions" (*section 13(4), Arbitration Act*), apply to arbitral proceedings as they apply to legal proceedings. Therefore, a claimant in arbitration proceedings must commence arbitration within the same time periods as a claimant in litigation.

In English law a contract claim has a limitation period of six years from the date of the breach of contract, unless it is made under deed, in which case the period is 12 years. A tortious claim has a limitation period of six years from the date the damage was suffered. For latent damage, the limitation period starts to run on the date that the claimant first has both the knowledge required to bring the action and the right to bring the action.

The Arbitration Act allows the parties to agree when arbitration proceedings have commenced, and makes provision for what is to happen when there is no agreement. Failing to commence the arbitration within this time limit bars the right to commence arbitration. However, section 12 of the Arbitration Act confers on the court the discretion to extend the time available in exceptional circumstances, for example where the conduct of one party makes it unjust to hold the other party to the strict terms of the limitation provision.

If a foreign law governs the contract, the limitation period(s) of that law applies.

## ARBITRATION ORGANISATIONS

### 6. Which arbitration organisations are commonly used to resolve large commercial disputes?

Commonly used arbitration organisations with links to England include the following:

- London Court of International Arbitration ([www.lcia.org](http://www.lcia.org)).
- The Chartered Institute of Arbitrators ([www.ciarb.org](http://www.ciarb.org)).
- London Maritime Arbitrators' Association ([www.lmaa.org.uk](http://www.lmaa.org.uk)).

See box, *Main arbitration organisations*.

## JURISDICTIONAL ISSUES

### 7. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the

### concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?

Where one party denies that the tribunal has jurisdiction to determine the dispute at the outset of the proceedings, it can raise an objection (as long as it does so before it takes a substantive step in the proceedings (*section 31(1), Arbitration Act 1996* (Arbitration Act)). Alternatively, with the agreement of the parties or the tribunal, it can apply to the court to seek determination of this preliminary point (*section 32, Arbitration Act*).

Another remedy is contained in section 72 of the Arbitration Act. It states that an application to the court can be made to challenge the jurisdiction of the tribunal where a person is a party to arbitral proceedings but has taken no part in the proceedings in any way.

The principle of *kompetenz-kompetenz* is recognised under the Arbitration Act, which empowers the tribunal to rule on the question of whether it has jurisdiction (*section 30, Arbitration Act*). The tribunal can rule on the following:

- Whether there is a valid arbitration agreement.
- Whether the tribunal is properly constituted.
- What matters have been submitted to arbitration in accordance with the arbitration agreement.

If the tribunal is determining its jurisdiction, it can rule on the matter in an award on jurisdiction or in its award on the merits.

## ARBITRATION AGREEMENTS

### Validity requirements

#### 8. What are the requirements for an arbitration agreement to be enforceable?

##### Substantive/formal requirements

For an arbitration agreement to be enforceable under the Arbitration Act 1996 (Arbitration Act), it must be in writing (*section 5(1), Arbitration Act*). However, the agreement in writing need not be signed by the parties (*section 5(2)(a), Arbitration Act*) and agreement could be found in an exchange of communications in writing (*section 5(2)(b), Arbitration Act*).

The provisions in the Arbitration Act adopt a very expansive view of written form requirements. They even include an oral agreement to arbitrate recorded by one of the parties, or by a third party with the authority of the parties to the agreement (*sections 5(2)(c) and 5(4), Arbitration Act*) (see *Toyota Tsusho Sugar Trading Ltd v Prolat SRL* [2014] EWHC 3649 (Comm) and *Midgulf International Ltd v Groupe Chimique Tunisien* [2010] EWCA Civ 66 on the wide scope of written arbitration agreements and the validity of oral arbitration agreements respectively).

##### Separate arbitration agreement

English arbitration law does not require the arbitration agreement to be set out in a separate arbitration agreement because it recognises the doctrine of separability. This establishes that an arbitration agreement is separate from the contract. Therefore, the arbitration agreement can survive a breach or termination of the contract in order to deal with any disputes in respect of liabilities under the contract arising before or after termination.

##### Genuine arbitration agreement

The English courts distinguish between arbitration and "arbitration-like" proceedings that do not qualify as an

arbitration under the Arbitration Act. In *Turville Heath Inc v. Chartis Insurance UK Ltd* [2012] EWHC 3019, the High Court was presented with a clause under an insurance policy that provided that each party must select an independent appraiser who would then submit its findings on behalf of each party to the putative arbitrator. The arbitrator would then issue a decision in writing that had to be agreed to by one or both appraisers. The court held that this provision was not a genuine arbitration clause as the arbitrator would have to agree with one of the appraisers rather than make its own independent decision.

### Unilateral or optional clauses

#### 9. Are unilateral or optional clauses, where one party has the right to choose arbitration, enforceable?

The English courts have held that unilateral or optional clauses allowing only one party to submit to arbitration are valid under English law.

In, among others, *Law Debenture Trust Corporation plc v Elektrim Finance BV and others* [2005] EWHC 1412 and *NB Three Shipping Ltd v Harebell Shipping Ltd* [2005] 1 Lloyd's Rep 509 the courts upheld the unilateral option clauses. They pointed to the commercial sense of these clauses and noted that it is commonplace for contract provisions to give one party an advantage over another.

More recently, in *Mauritius Commercial Bank Ltd v Hestia Holdings Ltd and others* [2013] EWHC 1328 (Comm), the English law agreement contained a dispute resolution clause that provided for the exclusive jurisdiction of the English courts. They also stated that the claimant bank must not "be prevented from taking proceedings related to a Dispute in any other courts in any jurisdiction". The claimant sought to commence English court proceedings but the defendants challenged the validity of the above unilateral option clause on the grounds that it was incompatible with the fundamental principle of equal access to justice. However, the judge rejected the defendants' argument by underlining that "such asymmetric provisions have regularly been enforced by the court".

#### 10. In what circumstances can a third party that did not sign the contract incorporating the arbitral clause in question be compelled to arbitrate disputes relating to the contract in question?

Under English law it is not possible to compel a third party non-signatory party to arbitrate a dispute relating to a contract to which it is not party. However, there are a few situations where a third party can become party to an arbitration agreement and therefore can be compelled to arbitrate in accordance with the clause. This can occur by way of a novation or assignment of a contract to a third party, by agency or by operation of law through statute (for example, in relation to bankruptcy or insurance).

Notably, English law provides a statutory regime that requires third party beneficiaries under a contract to arbitrate disputes where they wish to enforce a term of a contract to which they have the benefit. Under section 1 of the Contracts (Rights of Third Parties) Act 1999, a third party can enforce a term of a contract to which it is not party if the contract expressly provides that he may or if it confers a benefit on the third party. If the contract contains an arbitration agreement, the third party must enforce his right by way of arbitration (see section 8(1) of the Contract (Rights of Third Parties) Act 1999). However, this provision has limited application as it only operates if and when

the third party wishes to enforce its right under the main contract. It is also fairly common for commercial contracts to exclude the applicability of the Contracts (Rights of Third Parties) Act 1999.

---

**11. In what circumstances is a third party that did not sign the contract incorporating the arbitral clause in question entitled to compel a party that did sign the contract to arbitrate disputes relating to the contract?**

---

Under English law, a non-party to a contract incorporating an arbitration agreement cannot compel a party to arbitrate disputes relating to the contract. However, there are a few situations where a third party can become party to an arbitration agreement and therefore can require a party under the arbitration agreement to arbitrate. This can occur by way of a novation or assignment of a contract to a third party, by agency or by operation of law through statute (for example, in relation to bankruptcy or insurance).

Notably, English law provides a statutory regime that allows third parties to enforce an arbitration agreement to which it is not party in certain circumstances. Section 1 of the Contracts (Rights of Third Parties) Act 1999, permits a third party to enforce a term of a contract to which it is not party if the contract expressly provides that he may or if it confers a benefit on the third party. Therefore, a third party non-signatory that has this right can enforce it by becoming party to the arbitration agreement in the contract (*section 8(2), Contract (Rights of Third Parties) Act 1999*). It can then require other parties to the arbitration agreement to resolve any disputes relating to the right through arbitration. That said, it is fairly common for commercial contracts to exclude the applicability of the Contracts (Rights of Third Parties) Act 1999.

**Separability**

---

**12. Does the applicable law recognise the separability of arbitration agreements?**

---

Section 7 of the Arbitration Act 1996 confirms that the doctrine of separability applies to arbitration agreements. It makes clear that even if the main contract never came into existence, the arbitration agreement can still be binding. Likewise, if the main contract subsequently fails or is found to be invalid, it does not follow that the arbitration agreement also automatically fails or becomes invalid.

Recently, in *Beijing Jianlong Heavy Industry Group v Golden Ocean Group and others* [2013] EWHC 1063 (Comm) the Commercial Court considered the validity of the arbitration clauses contained in guarantees that were unenforceable by reason of illegality. Mackie QC J upheld the doctrine of separability by stating that the arbitration agreement is unenforceable, but only when it is directly impeached on grounds that relate to the arbitration agreement itself. It therefore cannot be made unenforceable as a consequence of the invalidity of the underlying contract (see also *Fiona Trust & Holding Corporation and others v Privalov and others* [2010] EWHC 3199 (Comm)).

**Breach of an arbitration agreement**

---

**13. What remedies are available where a party starts court proceedings in breach of an arbitration agreement or initiates arbitration in breach of a valid jurisdiction clause?**

---

**Court proceedings in breach of an arbitration agreement**

Where litigation is commenced in breach of an arbitration agreement the other party can apply to stay the action under section 9 of the Arbitration Act 1996 (Arbitration Act).

**Arbitration in breach of a valid jurisdiction clause**

Where a party initiates arbitration in breach of a valid jurisdiction clause, various courses of action are available to the party contesting jurisdiction. It can:

- Seek a ruling from the tribunal on the question of substantive jurisdiction (*section 30, Arbitration Act*).
- Make an objection that the tribunal lacks substantive jurisdiction at the outset of the proceedings. The objection must be made no later than the time the party takes the first step in the proceedings to contest the merits of any matter in relation to which he challenges the tribunal's jurisdiction (*section 31, Arbitration Act*).
- Apply to the court to determine any questions as to the substantive jurisdiction of the tribunal (that is, determination of preliminary point of jurisdiction) (*section 32, Arbitration Act*).

---

**14. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?**

---

A party facing proceedings started overseas in breach of an arbitration agreement can apply for an anti-suit injunction to restrain the foreign proceedings under section 37 of the Supreme Court Act 1981.

In *Ust-Kamenogorsk Hydropower Plant JSC v AES Ust-Kamenogorsk Hydropower Plant LLP* [2013] UKSC 35, the Supreme Court clarified that this power is available even where there are no arbitral proceedings on foot or contemplated. The Supreme Court also made clear that this power does not derive from section 44 of the Arbitration Act that allows the court to issue an interim injunction "for the purposes of and in relation to arbitral proceedings". Rather the power to issue an injunction of this nature (whether temporary or permanent) derives from section 37 of the Senior Courts Act 1981. This serves to enforce the negative promise contained in the arbitration agreement not to bring foreign proceedings, which applies and is enforceable regardless of whether or not arbitral proceedings are on foot or proposed. This rationale has been followed in the recent case of in *Southport Success S.a. v Tsingshan Holding Group Co Ltd* [2015] EWHC 1974 (Comm) that also clarified that the correct basis for an application for an anti-suit injunction is section 37 of the Senior Courts Act 1981 and not section 44 of the Arbitration Act. This applies even where arbitral proceedings are ongoing.

Such injunctions can only be used where proceedings to challenge an award are commenced in a country that is not party to Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast Brussels Regulation) (countries outside the EU). As a result of the Court of Justice ruling in *Allianz SpA and Generali Assicurazioni Generali SpA v West*



*Tankers Inc (Case C-185/07)*, if a party brings legal proceedings in the courts of another member state of the EU in breach of an arbitration agreement, the English courts cannot grant anti-suit injunctions to interrupt those proceedings. It is for the relevant member state to recognise and enforce arbitration agreements. This was confirmed in *Shashoua & Ors v Sharma [2009] EWHC 957 (Comm)* where Cooke J stated that the West Tankers ruling is not applicable to proceedings commenced in a non-EU member state court.

Another interesting development in recent case law is the issuance of an anti-suit injunction against a non-party to the arbitration agreement who commences vexatious and oppressive parallel proceedings. In *Joint Stock Asset Management Company Ingosstrakh Investments v BNP Paribas SA [2012] EWCA Civ 644*, the Court of Appeal ruled that a third party (Party 1) colluded with a party to the arbitration agreement (Party 2) in commencing parallel proceedings, with the intention of harassing the counter-party to the arbitration agreement. The factors considered by the court were the:

- Common control of Party 1 and Party 2.
- Importance of the underlying transaction.
- Timing of the parallel proceedings.
- Improbability of Party 1 acting alone.

#### **Joinder of third parties**

#### **15. In what circumstances can a third party be joined to an arbitration or otherwise be bound by an arbitration award?**

Non-parties can only be joined to arbitral proceedings if:

- They consent to be a party to the same arbitration agreement that gave rise to the arbitral proceedings.
- They have the consent of the parties to the arbitration to join the arbitration after proceedings have arisen.

(See Questions 10 and 11.)

Non-parties can also become parties to arbitral proceedings where proceedings are consolidated together. The Arbitration Act 1996 expressly allows the parties to agree to consolidation under section 35(1).

With the exception of third parties who agree to be bound by arbitral awards, they are generally only effective against the parties to it and persons claiming through or under them.

### **ARBITRATORS**

#### **Number and qualifications/characteristics**

#### **16. Are there any legal requirements relating to the number and qualifications/characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in, your jurisdiction in order to serve as an arbitrator there?**

The Arbitration Act 1996 (Arbitration Act) sets out a number of default provisions providing for the number of arbitrators and their roles, where the parties have not agreed them and the arbitral rules are silent.

If the parties and the arbitral rules do not give any indication of the number of arbitrators, the parties must jointly appoint a sole arbitrator (section 15(3), Arbitration Act).

If the parties agree that the number of arbitrators will be two, or any other even number, the appointment of an additional arbitrator as chairman of the tribunal is required (section 15(2), Arbitration Act).

Where parties agree to a tribunal of three arbitrators, the third acts as the chairman unless the parties agree he must act as umpire (section 15(1), Arbitration Act).

Pursuant to section 20(2) and (3) of the Arbitration Act, where there is no agreement as to what functions the chairman has, the decisions, orders and awards must be made by all or a majority of the arbitrators (including the chairman). At the same time, the view of the chairman prevails in relation to a decision, order or award in respect of which there is no unanimity or a majority (section 20(4), Arbitration Act).

Parties can specify the characteristics that their arbitrators must possess. The arbitration agreement can provide that an arbitrator must have some special qualification (for example, having considerable experience in a particular industry sector). If the court appoints an arbitrator under the Arbitration Act it must have due regard to such an agreement (section 19, Arbitration Act).

#### **Independence/impartiality**

#### **17. Are there any requirements relating to arbitrators' independence and/or impartiality?**

Section 33(1) of the Arbitration Act 1996 (Arbitration Act) imposes on the tribunal, a duty to act fairly and impartially between the parties. It must give each party a reasonable opportunity of putting his case and dealing with that of his opponent. Furthermore, the tribunal must:

- Adopt procedures suitable to the circumstances of the particular case.
- Avoid unnecessary delay or expense.
- Provide a fair means of resolving the dispute referred to them.

See Question 18, Removal of arbitrators.

#### **Appointment/removal**

#### **18. Does the law contain default provisions relating to the appointment and/or removal of arbitrators?**

##### **Appointment of arbitrators**

The Arbitration Act 1996 (Arbitration Act) provides efficient and comprehensive provisions for the appointment of arbitrators if the parties have not agreed them. These default provisions cover the appointment of:

- Sole arbitrators.
- Tribunals of two or three arbitrators.
- Chairman and umpires.

It also specifies short time limits for appointment in order to avoid delay. If all these provisions fail, any party to arbitration proceedings can (on notice to the other parties) apply to the court for assistance (sections 16(7) and 18(2), Arbitration Act).

##### **Removal of arbitrators**

The removal of arbitrators can be consensual and non-consensual (that is, by court order).

The parties are free to agree as to when the authority of an arbitrator can be revoked (*section 23, Arbitration Act*). If or to the extent that there is no such agreement, the authority of an arbitrator can be revoked by the parties acting jointly, by an arbitral institution, another institution or a person vested by the parties with powers to revoke. Section 24 of the Arbitration Act (which is a mandatory provision) empowers a party to arbitral proceedings (on notice to other parties, to the arbitrator concerned and to any other arbitrator) to apply to the court to remove an arbitrator if:

- There are justifiable doubts concerning the arbitrator's impartiality.
- The arbitrator does not possess the qualifications required by the arbitration agreement.
- The arbitrator is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so.
- The arbitrator has refused or failed to:
  - properly conduct the proceedings; or
  - use all reasonable despatch in conducting the proceedings or making an award, and that substantial injustice has been, or will be, caused to the applicant.

For example, in *Sierra Fishing Company & Ors v Farran & Ors* [2015] EWHC 140 (Comm) the Commercial Court granted the claimants' application to remove an arbitrator under section 24 of the Arbitration Act. It found that the arbitrator was a legal adviser to the bank of which the first defendant was chairman, and the arbitrator's father (and co-partner in their law firm) continued to advise both the first defendant and the bank. These circumstances gave rise to justifiable doubts about the arbitrator's impartiality and fell within the Non-Waivable and Waivable Red Lists of the International Bar Associations' Guidelines on Conflicts of Interest in International Arbitration 2014.

### Commencement of arbitral proceedings

#### 19. Does the law provide default rules governing the commencement of arbitral proceedings?

The parties are free to agree when an arbitration is commenced under the Arbitration Act 1996 (Arbitration Act) (see Question 5). If there is no agreement on commencement the provisions of section 14 of the Arbitration Act apply if:

- The arbitrator(s) must be appointed by the parties. Arbitration is treated as having commenced when a notice in writing is served on the other party, requiring him to agree to the appointment of an arbitrator. If each party is to make an appointment, a notice in writing must be served on the other party requiring him to appoint an arbitrator or to agree to the appointment of an arbitrator.
- The arbitration agreement specifies the person to be appointed as arbitrator. The arbitration is treated as having commenced when a notice in writing is served on the other party requiring him to submit the dispute to that person.
- The arbitrator is to be appointed by someone other than a party to the arbitral proceedings. The arbitration is treated as having commenced when notice in writing is given to that other person requesting him to appoint the arbitrator.

### Applicable rules

#### 20. What procedural rules are arbitrators likely to follow? Can the parties determine the procedural rules that apply? Does the law provide any default rules governing procedure?

##### Applicable procedural rules

The parties can specify their own procedural rules for arbitrators to follow or they can adopt a set of procedures by specifying arbitration under a particular institution or other rules. The rules are subject to the mandatory provisions in the Arbitration Act 1996 (Arbitration Act).

##### Default rules

If the parties cannot agree the procedure (see above, Applicable procedural rules), the tribunal decides the procedure. This is subject to the general duty set out in section 33(1) of the Arbitration Act.

##### Arbitrator's powers

#### 21. What procedural powers does the arbitrator have under the applicable law? If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

The extent of a tribunal's powers is likely to be contained in the arbitration agreement between the parties under which the tribunal was appointed. These can be incorporated from the rules of an arbitration institution or contained in an express agreement. If there is no express agreement, the tribunal can, among other things:

- Order which documents (if any) must be disclosed by the parties (*section 34(2)(d), Arbitration Act 1996* (Arbitration Act)).
- Determine whether to apply strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) (*section 34(2)(f), Arbitration Act*).
- Appoint experts, legal advisers or assessors (*section 37, Arbitration Act*).
- Direct that a witness is examined on oath or affirmation (*section 38(5), Arbitration Act*).

### EVIDENCE

#### 22. What documents must the parties disclose to the other parties and/or the arbitrator? How, in practice, does the scope of disclosure in arbitrations compare with disclosure in domestic court litigation? Can the parties set the rules on disclosure by agreement?

##### Scope of disclosure

The parties can agree the scope and extent of disclosure, if any. In the absence of any agreement, the tribunal must consider "whether any, and if so which, documents or classes of documents should be disclosed between and produced by the parties and at what stage" (*section 34(2)(d), Arbitration Act 1996* (Arbitration Act)). This makes it clear that there does not have to be any disclosure at all, provided that in doing so the

tribunal does not breach its duties imposed under section 33 of the Arbitration Act. However, if a tribunal ordered disclosure of irrelevant documents, this would breach its duty to adopt appropriate procedures and avoid delay and unnecessary expense.

Disclosure in arbitrations varies according to the requirements of each case. There is no requirement to undertake an extensive disclosure exercise as there is in litigation

### Parties' choice

Parties often agree to use or direct the tribunal to follow the International Bar Association's Rules on the Taking of Evidence in International Commercial Arbitration. This restricts the tribunal's power to order wide-ranging disclosure to those documents that are "relevant and material" to the issues.

## CONFIDENTIALITY

### 23. Is arbitration confidential? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

The Arbitration Act 1996 does not deal with confidentiality. The courts imply a duty of confidentiality and require the parties to an arbitration and the tribunal to maintain the confidentiality of the following:

- Hearing.
- Documents generated and disclosed during the proceedings.
- Award.

Documents relating to the above cannot be disclosed without the consent of the other parties to the proceedings (*Ali Shipping Corp v Shipyard Trogir [1998] 2 All ER 136*).

This implied duty is subject to broad exceptions. If certain criteria are met, confidentiality can be waived with leave of the court. Such a waiver must be:

- In the interests of justice or in the public interest.
- Necessary for the protection of the legitimate interests of an arbitrating party.
- With the express or implied consent of the party that produced the document.

## COURTS AND ARBITRATION

### 24. Will the local courts intervene to assist arbitration proceedings seated in its jurisdiction?

The court can only intervene in two situations:

- When one of the provisions in Part I of the Arbitration Act 1996 (Arbitration Act) that permit court intervention is met.
- In very exceptional circumstances, to prevent a substantial injustice, even if there is no relevant provision in Part I of the Arbitration Act.

Examples of the court's powers to support arbitration include:

- Ordering a party to comply with a peremptory order made by the tribunal (*section 42, Arbitration Act*).
- Requiring the attendance of a witness in order to give oral testimony or to produce documents or other material

evidence. This can be done with the permission of the tribunal or the agreement of other parties (*section 43, Arbitration Act*).

- Granting an interim injunction with regard to the matters expressly specified in section 44(2) of the Arbitration Act.
- Determining a question of law arising in the course of proceedings that the court is satisfied substantially affects the rights of one or more of the parties (*section 45, Arbitration Act*).

The parties can agree to exclude the court's powers under sections 42, 44 and 45, but not under section 43 of the Arbitration Act. Further, where the court is able to intervene, there are restrictions on its powers. These restrictions are contained in the specific sections and should be considered before seeking the court's assistance.

### 25. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

#### Risk of court intervention

The English courts are supportive of international arbitration and are not likely to intervene to frustrate it. Cases that involve significant court intervention are largely in relation to ad hoc arbitrations where the parties have not agreed a basic procedure in the arbitration agreement, and are unwilling or unable to agree the procedure once an arbitration begins. This intervention is intended to support the proceedings.

#### Delaying proceedings

The courts are supportive of arbitration and a party is unlikely to be able to delay arbitration proceedings through frequent unfounded court applications. Where the courts consider that they are being used to frustrate and delay proceedings, they are expected to respond with adverse costs orders.

## REMEDIES

### 26. What interim remedies are available from the tribunal?

#### Interim measures

The Arbitration Act 1996 (Arbitration Act) does not explicitly refer to interim remedies. However, the parties are free to agree the powers of the tribunal in relation to the proceedings (*section 38(1), Arbitration Act*). In the absence of such agreement the tribunal has the following general powers (*sections 38(2-4) and (6), Arbitration Act*):

- Order a claimant to provide security for the costs of the arbitration.
- Give directions on any property that is the subject matter of the proceedings or as to which any question arises in the proceedings (such property must be owned by or be in the possession of a party to the proceedings). This includes:
  - any inspection, photographing, preservation, custody or detention of the property by the tribunal, an expert or a party; or
  - an order to take samples from that property, make observations or conduct experiment on the property.
- Give directions to a party for the preservation of any evidence in his custody or control.

## Ex parte

There is no provision in the Arbitration Act for the arbitral tribunal to order interim measures on an ex parte basis. In general, the tribunal must act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case forward and dealing with that of his opponent (*section 33(1)(a), Arbitration Act*).

## Other interim measures

Parties are free to agree what interim measures the tribunal can order (*section 39, Arbitration Act*). These include measures on a provisional basis and any relief it can grant in a final award. Tribunals can also issue partial awards that are binding on the parties until a final determination of the issue.

The Arbitration Act allows tribunals to issue more than one award at different times. This power can be effective in reducing time and cost by determining a key issue early on without having to determine all the issues in the case.

---

## 27. What final remedies are available from the tribunal?

---

Under the Arbitration Act 1996 (*Arbitration Act*), unless otherwise agreed by the parties, the tribunal has the following powers as regards remedies (*sections 48 and 49, Arbitration Act 1996*):

- Make a declaration as to any matter to be determined in the proceedings.
- Order a payment of a sum of money (in any currency).
- Order a party to do or refrain from doing something.
- Order specific performance of a contract (except a contract relating to land).
- Order the rectification and set aside or cancel a deed or other document.
- Award a simple or compound interest.
- Award punitive or exemplary damages.
- Allocate the arbitration costs between the parties.

## APPEALS

### 28. Can arbitration proceedings and awards be appealed or challenged in the local courts? What are the grounds and procedure? Can parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitral clause itself)?

---

#### Rights of appeal/challenge

There is a procedure for challenging or appealing arbitration awards in the local courts; however, it is generally difficult to do so. Before applying to a court, the applicant must first exhaust all available recourses from the tribunal to correct the award or make an additional award, and any available arbitral process of appeal or review.

#### Grounds and procedure

Challenges of English-seated awards must be brought either:

- Within 28 days of the date of the award.
- Within 28 days of being notified of the outcome of any arbitral appeal, review, correction to the award or an additional award.

There are only three grounds of challenge or appeal:

- Challenge to the tribunal's substantive jurisdiction (*section 67, Arbitration Act 1996 (Arbitration Act)*).
- Challenge on one or more of the grounds of serious irregularity specified in the Arbitration Act. However, in practice this ground is particularly difficult to satisfy (*section 68, Arbitration Act*). Unsuccessful petitioners under section 68 of the Arbitration Act may be liable for the responding party's costs under certain circumstances (*Commercial Court Guide*).
- An appeal on a point of law (*section 69, Arbitration Act*) that can only be brought with the agreement of all the parties to the arbitration or with the leave of the court.

#### Excluding rights of appeal

Parties can only waive the right to challenge an award on a point of law under section 69 of the Arbitration Act. This must be agreed either expressly or by the incorporation of rules containing a waiver. For example, both the London Court of International Arbitration and the International Commercial Court rules exclude such a challenge.

The other grounds are mandatory and cannot be waived. However, a party may be deemed to have waived its right to challenge by not raising an objection promptly on discovery.

---

## 29. What is the limitations period applicable to actions to vacate or challenge and international arbitration award rendered?

---

Pursuant to section 70 of the Arbitration Act 1996, a challenge to an international arbitral award under the Act must be made within 28 days of the award. If there was an arbitral process of appeal or review, a challenge must be made within 28 days of the date when the applicant or appellant was notified of the result of that process.

## COSTS

---

### 30. What legal fee structures can be used? Are fees fixed by law?

---

Fees are not fixed by law. The fee structures that can be used are:

- Hourly rates.
- Conditional fees.
- Fixed fees.
- Caps.
- Third party funding.

Since April 2013, solicitors can also enter into contingency fee arrangements with clients.

---

### 31. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?

---

#### Cost allocation

The parties can agree how the costs are borne. However, an agreement that one 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 has arisen (*section 60, Arbitration Act 1996*).



(Arbitration Act)). In the absence of any agreement, section 61 of the Arbitration Act indicates that the tribunal can make an award allocating the costs between the parties. This is done on the general principle that costs follow the event (meaning that the unsuccessful party pays the successful party's costs), except in cases where it would be inappropriate to do so.

### Cost calculation

Awarded costs usually include:

- Arbitrator's fees and expenses.
- Costs of supervision by any arbitral institution.
- Costs of the parties' counsel and their expenses such as venue, travel, translations and so on.

If there was no agreement between the parties on costs, the tribunal can determine its own costs and expenses. The tribunal must specify the basis on which it has acted and the items of recoverable costs and the amount referable to each (section 63, *Arbitration Act*). If the tribunal fails to determine the recoverable costs of the arbitration, either party can apply to the court. The tribunal also has the power to limit recoverable costs (section 65, *Arbitration Act*).

### Factors considered

If it is not appropriate that costs follow the event, the tribunal can apportion costs between the parties. It takes into account how the parties have conducted the arbitration. For example, if one party won on the merits but caused unnecessary delay and increased costs, the tribunal may not order the losing party to pay all of the winning party's costs.

## ENFORCEMENT OF AN AWARD

### Domestic awards

#### 32. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?

The English courts have a good record of enforcing arbitral awards. Section 66 of the Arbitration Act 1996 (*Arbitration Act*) contains summary procedures for the enforcement of domestic awards. A party can obtain the permission of the court to enforce the award (section 66(1), *Arbitration Act*). This gives the award creditor access to all the methods for enforcing a judgment of the court, including, an injunction, award of damages and specific performance. The award creditor can request the court to turn the award into an English court judgment on the same terms of the award (section 66(2), *Arbitration Act*). In this case, the award creditor retains its award and also receives a judgment of the English court that enjoys all the enforcement benefits of any other English court judgment. Awards can still be enforced by bringing an action on the award, for the failure to comply with the award, but this is rarely used in practice (section 66(4), *Arbitration Act*).

### Foreign awards

#### 33. Is your jurisdiction party to international treaties relating to recognition and enforcement of foreign arbitration awards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

The UK is party to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), subject to the reciprocity reservation, in

accordance with Article I, paragraph 3. This allows states to choose to recognise and enforce only those arbitral awards made in another convention territory. The UK makes it clear that it has signed the reciprocity reservation by defining "New York Convention Award" as "an award made, in pursuance of an arbitration agreement, in the territory of a state (other than the United Kingdom) which is a party to the New York Convention" (section 100(1), *Arbitration Act 1996*).

The UK is also party to the European Convention on International Commercial Arbitration 1961 (Geneva Convention), which continues to apply to some awards. The UK has also ratified the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States 1965 (International Centre for Settlement of Investment Disputes (ICSID) or Washington Convention), which applies to ICSID awards.

Where a jurisdiction is not party to any of these conventions, it can still permit the enforcement of awards rendered in the UK depending on the particular requirements for the recognition and enforcement of foreign arbitral awards in those jurisdictions.

#### 34. To what extent is a foreign arbitration award enforceable?

The English courts recognise and enforce a foreign arbitral award of the states that are parties to the conventions that the UK has ratified (New York Convention Awards). These awards are enforced in the same way as a judgment or order of the national courts.

However, the courts refuse to enforce New York Convention awards in limited circumstances. In England, Article 5 of the New York Convention (that deals with the grounds on which New York Convention Awards can be enforced) is reflected in section 103 of the Arbitration Act 1996, under which the courts can refuse to enforce and award where, among others:

- A party to the arbitration agreement was under some incapacity.
- The arbitration agreement was not valid under its substantive law.
- A party against whom it is to be enforced was not given proper notice or was unable to present its case.
- The tribunal lacked jurisdiction.
- There was a procedural irregularity.
- It would be contrary to public policy to recognise or enforce the award.

If enforcement of the foreign award is sought against sovereign assets in the UK, in the absence of an effective immunity waiver, it is subject to the State Immunity Act 1978. In *SerVaas Incorporated v Rafidain Bank and Ors* (Rev 1) [2012] UKSC 40, the UK Supreme Court interpreted the "commercial purposes" exception from immunity from execution, and, in particular when property is "in use or intended for use for commercial purposes" under section 13(4) of the State Immunity Act 1978. The UK Supreme Court confirmed that the origin of the property against which execution is sought is irrelevant; what matters is the present and future use of the property.

---

### 35. What is the limitations period applicable to actions to enforce international arbitration awards rendered outside your jurisdiction?

---

Depending on the circumstances, foreign awards can be enforced either by means of the Arbitration Act 1996 (Arbitration Act) (*sections 101 and 66, Arbitration Act*) or by bringing an action on the award.

The Limitation Act 1980 and the Foreign Limitation Periods Act 1984, as well as "any other enactment (whenever passed) relating to the limitation of actions" (*section 13(4), Arbitration Act*), apply to arbitral proceedings as they apply to legal proceedings (*section 13(1), Arbitration Act*). If the foreign award is enforced under section 66 or section 101 of the Arbitration Act, enforcement must be brought within six years from the date on which the "cause of action accrued" (or 12 years for deeds). (*Sections 7 and 8, Limitation Act 1980 and The "Amazon Reefer" [2009] EWCA Civ 1330*) apply to this principle.)

The cause of action accrues from the date on which the award should have been honoured (*Agromet Motoimport Ltd v Maulden Engineering Co (Beds) Ltd [1985] 2 All ER 436*). If enforcement is effected by bringing an action on the award, as foreign law governs the award, the limitation period(s) of that law may apply.

### Length of enforcement proceedings

---

### 36. How long do enforcement proceedings in the local court take, from the date of filing the application to the date when the first instance court makes its final order? Is there an expedited procedure?

---

Most awards are complied with voluntarily. If the party against whom the award was made fails to comply, the party seeking enforcement can apply to the court. The length of time it takes to enforce an award that complies with the requirements of the New York Convention depend on whether there are complex objections to enforcement that require the court to investigate the facts of the case. If a case raises issues of public importance it may be appealed to the Court of Appeal and then to the Supreme Court. This process can take about two years. If no objections are raised, the party seeking enforcement can apply to the court using a summary procedure that is fast and efficient.

### REFORM

---

### 37. Are any changes to the law currently under consideration or being proposed?

---

The legal framework for international arbitration in England, Wales and Northern Ireland is not likely to change in the next decade. However, the developing case law continues to shed light into different aspects of the framework and varying factual scenarios under it.

## MAIN ARBITRATION ORGANISATIONS

### Chartered Institute of Arbitrators (CI Arb)

**Main activities.** The CI Arb provides education leading to professional qualifications for arbitrators and promotes arbitration internationally through its network of practices.

W [www.ciarb.org](http://www.ciarb.org)

### The London Court of International Arbitration (LCIA)

**Main activities.** The LCIA is one of the oldest international arbitral institutions and is recognised as one of the world's leading arbitral institutions. Uniquely among arbitral institutions, the LCIA publishes its decisions on challenges to arbitrators. The LCIA hold two symposia on international arbitration in England each year, which are very well attended. The LCIA recently updated its rules of arbitration in 2014. The LCIA has established an independent subsidiary in India. LCIA India has its own arbitral rules and can also administer arbitrations under other rules, such as the United Nations Commission on International Trade Law Rules. In partnership with the Dubai International Financial Centre (DIFC) the LCIA has established the DIFC-LCIA Arbitration Centre, which has its own arbitration rules that are closely modelled on the LCIA rules. In Mauritius, the LCIA has entered into an agreement to establish and operate the LCIA-MIAC Arbitration Centre and the centre has its own arbitration rules that are also closely modelled on the LCIA Rules.

W [www.lcia.org](http://www.lcia.org)

W [www.lcia-india.org](http://www.lcia-india.org)

W [www.difcarbitration.com](http://www.difcarbitration.com)

W [www.lcia-miac.org](http://www.lcia-miac.org)

### London Maritime Arbitrators Association (LMAA)

**Main activities.** The LMAA is the world's leading institution for the resolution of maritime disputes. It does not administer or supervise arbitrations, but is an association of members practicing in the field of maritime arbitration. It has its own procedural rules, the LMAA Terms, the most recent version of which took effect from 1 January 2012.

W [www.lmaa.org.uk](http://www.lmaa.org.uk)

---

## ONLINE RESOURCES

### **Legislation.gov.uk**

W [www.legislation.gov.uk](http://www.legislation.gov.uk)

**Description.** Text and annexes of the 1996 Arbitration Act, including amendments. Maintained by the National Archives of the Government.

### **Judiciary of England and Wales**

W [www.judiciary.gov.uk/media/judgments](http://www.judiciary.gov.uk/media/judgments)

**Description.** Judgments of the English higher courts. Maintained by the Judiciary of England and Wales.

### **British and Irish Legal Information Institute (BAILII)**

W [www.bailii.org](http://www.bailii.org)

**Description.** Many reports of cases in the English courts can be found on this website, which covers cases back to around 1997, but with older cases progressively being added. BAILII makes its website available on a subscription-free basis for the benefit of the public.

---

# Practical Law Contributor profiles

---





### Marie Berard, Partner

Clifford Chance LLP

**T** +44 20 7006 2435  
**F** +44 20 7006 5555  
**E** marie.berard@cliffordchance.com  
**W** www.cliffordchance.com

**Professional qualifications.** England and Wales, 2002

**Areas of practice.** International commercial arbitration.

#### Recent transactions

- Counsel for Europe's largest banking group in LCIA Arbitration (London) against a Russian oligarch's company in respect of a guarantee for a USD1 billion loan.
- Counsel for a French contractor in ICC arbitration (Zurich) with an Italian subcontractor in relation to the construction of a power process plant in Saudi Arabia.
- Counsel for a consortium of French, Moroccan and Japanese power companies in an ICC arbitration (London) against a French multinational conglomerate relating to a coal-fired independent power plant construction project in North Africa.
- Counsel for a listed power generation company in two ICC arbitrations (London) relating to the purchase of wind farms.
- Counsel for an international consortium in three ad-hoc UNCITRAL arbitrations (London and Geneva) against a subcontractor in respect of the construction of a liquefied natural gas (LNG) plant in the Arabian Peninsula.
- Counsel for a UK satellite operator in three fast-track LCIA arbitrations (London) against its major distributors in connection with disputes under their distribution arrangements.
- Pro bono representation for Intervener (His Highness Prince Aga Khan Shia Imami Ismaili, International Conciliation and Arbitration Board) in *Jivraj v Hashwani* [2011] UKSC 40.

**Professional associations/memberships.** Member and co-Rapporteur on ICC Taskforce on ICC Task Force on Financial Institutions and International Arbitration; Editorial Board of International Arbitration Law Review; Editorial Board of Kluwer's Journal of International Arbitration; Member of LCIA, ICC UK, International Arbitration Institute; Advocate before the Special Educational Needs and Disability Tribunal.

#### Publications

- "Other Costs' in International Arbitration: a Review of the Recoverability of Internal and Third-Party Funding Costs" to be published in *CIArb Liber Amicorum* 2015.
- "The Limits to the Parties' Free Choice of Jurisdiction" in *Jurisdictional choices in times of trouble, Dossier XII of the ICC Institute of World Business Law, ICC Publication No. 755E, 2015 Edition.*
- "Privy Council confirms pro-enforcement approach under New York Convention", commentary on *Çukurova Holding AS v Sonera Holding BV* [2014] UKPC 15 in 32 ASA BULLETIN 4/2014 (with K Lewis).
- "Unilateral option clauses in arbitration: an international overview", *Practical Law Company (PLC)* (with J Dingley).
- "Jivraj v Hashwani: Faith in English arbitration is restored" in *Les Cahiers de l'Arbitrage*, 2011, vol. 4 at 1079 (with A Sheppard).
- Various case notes for *International Law Organisation (ILO) Arbitration Newsletter, UK, 2013 to 2015.*



### Anna Kirkpatrick, Senior Knowledge Lawyer

Clifford Chance LLP

**T** +44 20 7006 2069  
**F** +44 20 7006 5555  
**E** anna.kirkpatrick@cliffordchance.com  
**W** www.cliffordchance.com

**Professional qualifications.** England and Wales, 2006

**Areas of practice.** International commercial arbitration; investment treaty arbitration.

#### Recent transactions

- Acting for a Central Asian State in respect of an Energy Charter Treaty Arbitration under the auspices of the Stockholm Chamber of Commerce.
- Acting for a Middle Eastern company in relation to an ICC arbitration regarding a contractor's claim for an extension of time relating to the construction of a desalination plant.
- Acting for the claimant in a potential procurement challenge in relation to a government contract in the transport industry.
- Securing a freezing injunction in relation to a claim for breach of guarantee in relation to an option agreement for shares in an energy concern.
- Acting for a Liechtenstein construction company to enforce an EUR18 million ICC award against the assets of a West African state.

**Professional associations/memberships.** Law Society; Young ICCA; International Bar Association; YIAG (LCIA); A4iD.

#### Publications

- *LCIA 2014 Rules Finalised, 2014 Int. A.L.R. Issue 5.*
- *Summary of Arbitration in England 2014 and 2015, The European, Middle Eastern and African Review, Global Arbitration Review (with A Sheppard).*
- *Draft LCIA 2014 Rules Released, Practical Law Company.*
- *Security for Costs in International Arbitration, Practical Law Company (with S Abraham).*
- *ICC Rules of Arbitration (Guide to the ICC Rules of Arbitration (Derains & Schwartz, third edition forthcoming), Editor, (J Fry).*
- *English Arbitration Act (Chapter 23), Concise International Arbitration (ed. Mistelis, second edition forthcoming), Editor, (A Sheppard).*
- *The Emergency Arbitrator, Flawed Fashion or Sensible Solution, 7 Disp. Resol. Int'l 179 (2013), Editor, (J Fry and A Contans).*
- *Clifford Chance publications and articles for journals including Kluwer, Arbitration International, ILO Arbitration Newsletter, IBA Newsletter, Legal Week, and Legal Business.*