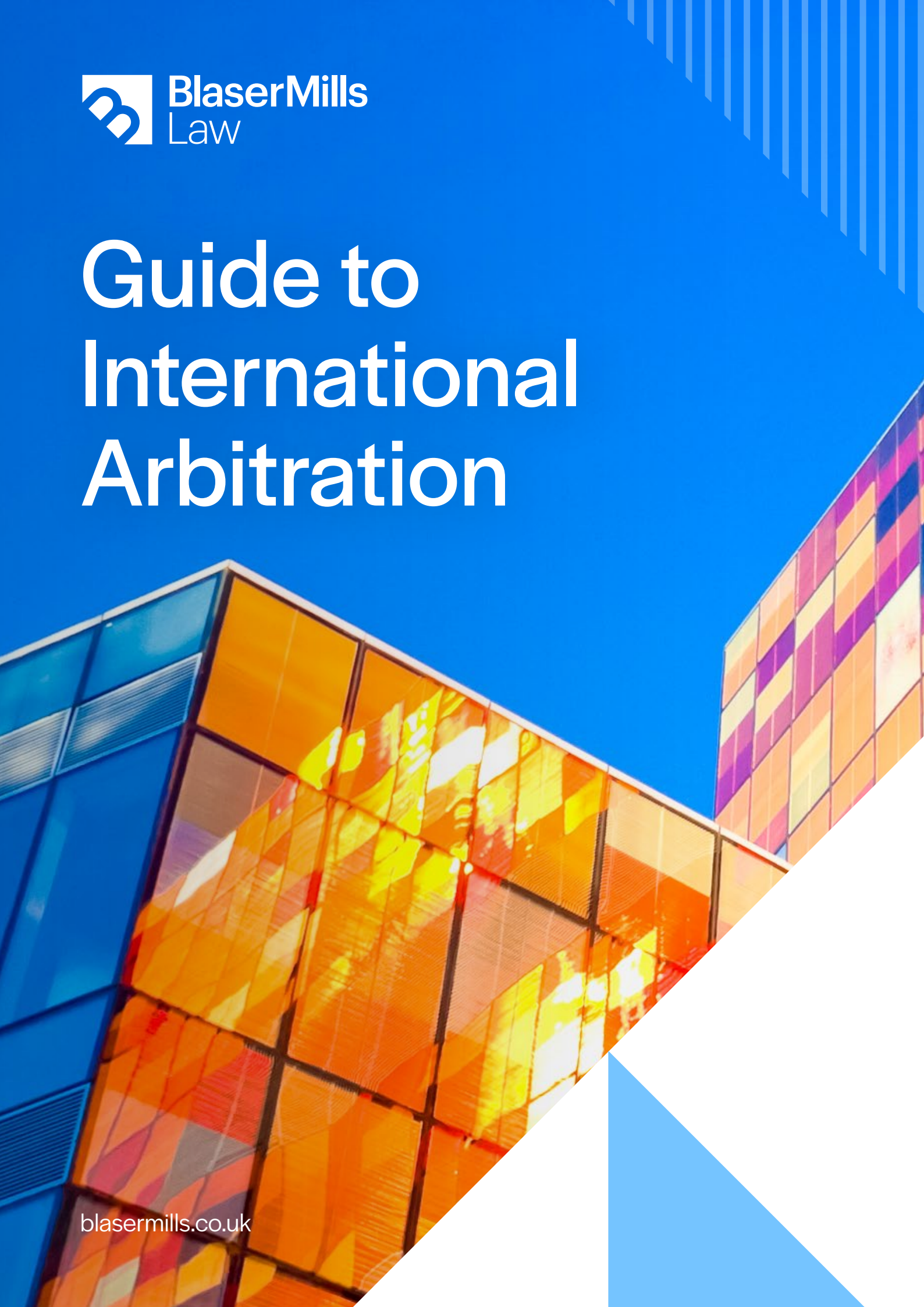
BlaserMills Law

# Guide to International Arbitration



blasermills.co.uk

# Contents


Introduction 3

What is Arbitration & Why Choose to Arbitrate? 3

Arbitration Clauses & Agreements 4

Arbitration Institutions and Rules 5

The Seat of Arbitration 5

The Tribunal 6

The Arbitration Procedure 7

Awards 7

Challenging an Award 8

Enforcement 8

# Introduction

As cross-border trade increases, more organisations are coming to recognise the benefits of international arbitration, as an alternative to litigation, principally that:

- enforcing an arbitration award is typically much easier than enforcing a Court judgment;
- the arbitration process offers parties a 'neutral forum', compared to one party's 'home Court', making it well suited to international, cross-border disputes;
- the arbitration process offers much more procedural flexibility and allows the parties to have a greater degree of autonomy; and
- arbitrators with particular experience, qualifications and knowledge can be appointed, making the arbitration process particularly helpful in technical and complex disputes.

These issues are explored in further detail below.

# What is Arbitration & Why Choose to Arbitrate?

Arbitration is a mechanism for the resolution of disputes (very often international, cross-border disputes) and offers an alternative to litigation through the Courts, whilst still providing a final and binding decision. Parties must agree to arbitrate and this is considered in further detail below.

There are a number of reasons why parties may choose to arbitrate, rather than litigate, a dispute including:

- **Enforcement:** as a result of a number of treaties, most notably the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards **(the New York Convention)** (a treaty with over 160 state signatories dealing with the enforcement of arbitral awards), arbitration awards can, in many cases, be enforced much more widely and easily than Court judgments.
- **Confidentiality & privacy:** parties to arbitration are generally subject to a duty of confidentiality, although the extent of this duty varies depending on the rules adopted. Unlike Court proceedings, there is no requirement for an 'open' public hearing and attendance at arbitration hearings is usually restricted to the tribunal, the parties and their representatives. The duty of confidentiality also extends to restrictions on the disclosure of documents produced during the course of the arbitration. Parties can select rules that deal expressly with confidentially (for example the LCIA Rules) or they can make provision for confidentiality in their arbitration agreement.
- **Flexibility:** arbitration provides a more flexible procedure for the resolution of a dispute. The parties can tailor the process to the issues in a particular dispute and it is generally more streamlined than civil litigation procedures.
- **Neutral forum:** for parties in cross-border disputes, arbitration can offer a 'neutral' alternative, as it prevents the need to litigate in one parties' local Court (with the negative perception of 'home Court' advantage) and international rules are applied in a mutually agreed forum.
- **Experience of Arbitrator:** the flexibility of the arbitration process extends to the parties having the ability to select the arbitrator. This enables parties to select an arbitrator with expertise relevant to the issues in dispute. For this reason, arbitration can be particularly helpful where disputes are technical in nature.
- **Binding:** an arbitral award is binding and in many cases it is not subject to any form of appeal. The English Arbitration Act 1996 (the Arbitration Act) does permit, in exceptional circumstances, the intervention of a Court to set aside an arbitral award. However, parties are permitted to exclude this right in their arbitration agreement, or can select rules which exclude the right of appeal for example the LCIA and ICC rules.

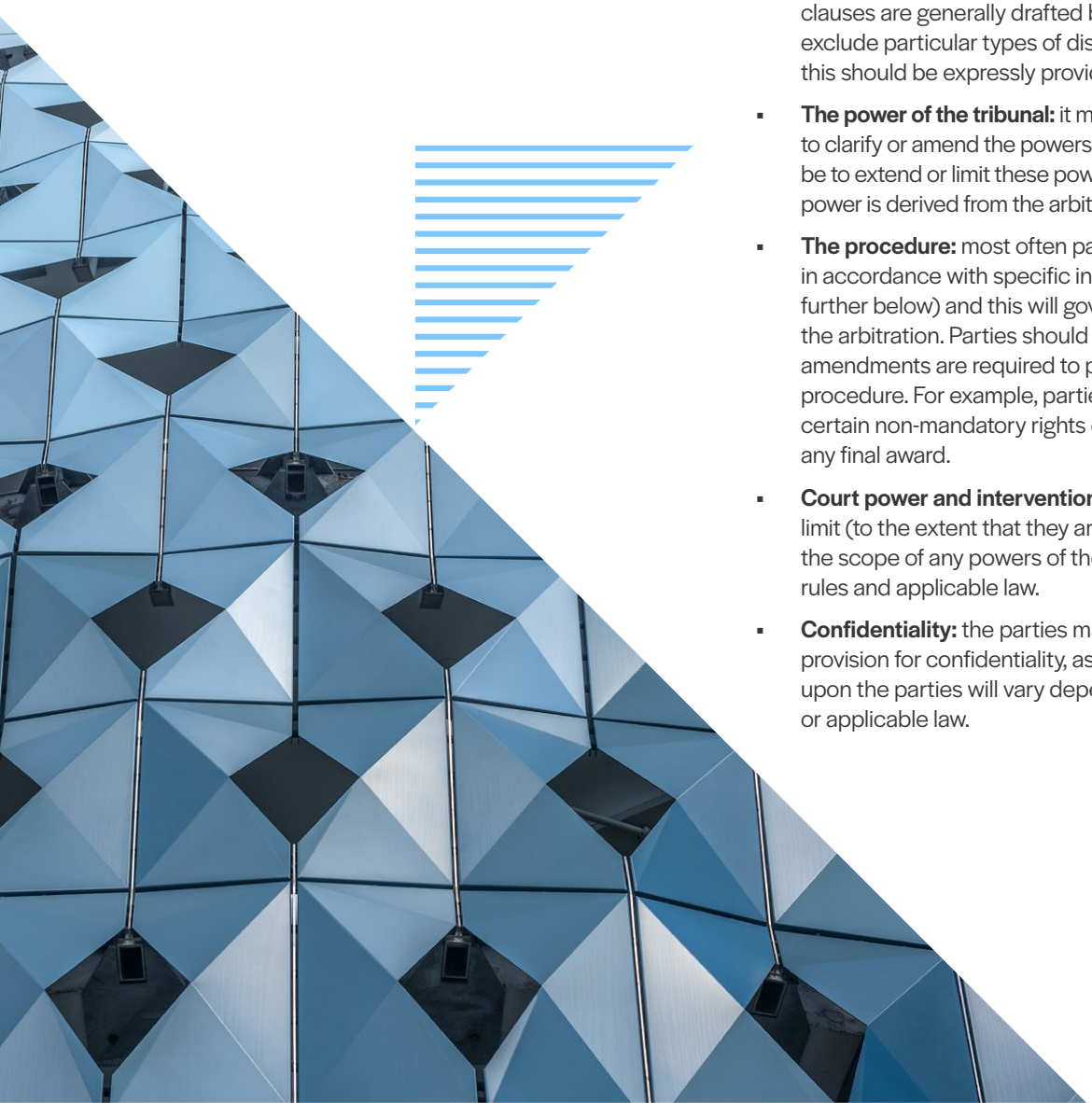
# Arbitration Clauses & Agreements

Parties must agree to arbitrate, whether that be (i) when entering into a contract, and before any dispute has arisen, by including an arbitration clause in the agreement requiring the parties to submit any dispute to arbitration; or (ii) by agreement after a dispute has arisen.

Most commonly, an arbitration agreement will be a clause included within a commercial agreement. However, a stand-alone arbitration agreement can also be entered into.

Parties should consider whether to provide for arbitration each time they enter into a contract, particularly where the parties are in different jurisdictions or where the contract concerns highly confidential matters.

The power for an arbitration tribunal to determine a dispute, is derived from the parties' agreement. The tribunal does not have jurisdiction to determine disputes outside of the scope of the arbitration agreement. For this reason, most model arbitration clauses are drafted with a wide scope, to ensure that they apply to the broadest range of disputes. Parties should consider whether these model clauses require amendment or supplementation, in the context of each specific transaction.



The following issues should be considered by the parties and will determine the extent of any required amendments:

- **Alternative dispute resolution (ADR):** in certain circumstances parties may wish to provide for a particular ADR mechanism to be undertaken as a prerequisite to arbitration (although the parties can agree to engage in ADR at any stage during the arbitration process).
- **Option clause:** one or other party may want the option to refer any dispute to arbitration or to the Courts. Clauses of this nature require careful drafting as they can, under certain legal frameworks, invalidate the provision for arbitration on the basis of there being a lack of mutual agreement to arbitrate.
- **The seat:** parties need to carefully select the seat or legal place of the arbitration, as different domestic legal systems provide greater or lesser support for the arbitration process. The Arbitration Act, for example, provides extensive Court support for the arbitration process in the form of e.g. injunctive relief.
- **Language:** particularly in cross-border disputes, if the language of the arbitration might be in dispute, this should be expressly provided for in the arbitration agreement. Generally, the language of the arbitration will be the language of the wider commercial contract.
- **Scope:** the parties need to be clear as to the disputes that they wish to refer to arbitration. Given that arbitration clauses are generally drafted broadly, if parties wish to exclude particular types of dispute from arbitration, this should be expressly provided for.
- **The power of the tribunal:** it may be prudent for the parties to clarify or amend the powers of the tribunal, whether that be to extend or limit these powers, given that the tribunal's power is derived from the arbitration agreement.
- **The procedure:** most often parties will choose to arbitrate in accordance with specific institutional rules (considered further below) and this will govern the procedure of the arbitration. Parties should consider whether any amendments are required to provide for an amended procedure. For example, parties may wish to exclude certain non-mandatory rights of appeal or challenge of any final award.
- **Court power and intervention:** the parties may wish to limit (to the extent that they are non-mandatory) or clarify the scope of any powers of the Court under the selected rules and applicable law.
- **Confidentiality:** the parties may wish to make express provision for confidentiality, as the duties of confidentiality upon the parties will vary depending on the selected rules or applicable law.

# Arbitration Institutions and Rules

## Institutional Arbitration

More often than not, parties will incorporate into their arbitration agreement, the arbitration rules of a specific arbitral institution (e.g. LCIA), by adopting the standard arbitration clause of that institution. This gives the parties certainty as to the procedural rules that will govern their dispute. These institutional rules contain the basic provisions for commencing arbitration, establishing the tribunal and the procedure to be followed for the rest of the arbitration. These rules can be accepted in full, or they can be amended to meet the parties' requirements.

The most frequently used institutions, which each have their own set of institutional rules, are:

- The London Court of International Arbitration (LCIA), based in London; and
- The International Chamber of Commerce (ICC), based in Paris.

Other key institutions include:

- The International Centre for Dispute Resolution (ICDR), which forms part of the American Arbitration Association and is often used for arbitrations in the US, or by parties based in the US.
- The Hong Kong International Arbitration Centre (HKIAC), based in Hong Kong.
- The Singapore International Arbitration Centre (SIAC), based in Singapore.

Whilst each of these institutions is based in a specific country, all of the above rules can be used for arbitrations anywhere in the world and under various governing laws.

Each of these arbitral institutions can be appointed to administer an arbitration. However, the degree of administration that each of the institutions provides can differ quite significantly. The ICC provides the most active administration, particularly compared to the LCIA and IDCR. Each of the institutions also has its own fee structure, which is a further issue to consider.

The best choice of institutional rules will depend on the parties, the nature of the wider commercial contract and factors such as location of the parties. For example, if all parties were geographically proximate to Singapore, it might be sensible to use the SIAC rules. Whereas if all parties were more closely connected to England, it might well be more sensible to use the LCIA rules.

## Unadministered and Ad-Hoc Arbitrations

The UNCITRAL Arbitration Rules were developed by the United Nations Commission in International Trade Law. They are intended to provide a 'neutral' alternative (not tied to any particular jurisdiction) to the key institutional rules, outlined above.

In the event that the UNCITRAL rules are selected, the parties can select an arbitral institution (e.g. the LCIA or ICC) to administer the arbitration and crucially, to deal with any challenges to the tribunal. However, should the parties elect to have an 'unadministered arbitration' pursuant to the UNCITRAL rules and a dispute should arise, the rules do provide for a procedure to be followed (by application to the Secretary General of the Permanent Court of Arbitration in the Hague) to appoint an appointing authority.

However, In the event that the parties fail to select any rules, the arbitration law of the seat of arbitration will set default rules. In England and Wales for example, the Arbitration Act will apply. This is known as an 'ad hoc' arbitration. As most national arbitration laws only provide a limited procedural framework, the parties and the tribunal are required to agree, at the outset, the procedure to be followed. Invariably this can cause delay, disagreement and unnecessary costs to be incurred. Some parties elect to have an 'ad-hoc' arbitration, in the belief that it may be cheaper than institutional arbitration, as it avoids the need for fees to be paid to an institution. However, the need for Court invention is much more likely in ad-hoc arbitration and this usually has a significant adverse impact on the costs actually incurred.

# The Seat of Arbitration

The 'seat' of the arbitration, is the legal place of the arbitration and determines the procedural law that applies to the arbitration and consequently the level of support from the relevant domestic Court for the arbitration process. The seat of the arbitration does not have to be the place in which any hearing is held. For example, in choosing London as the seat, this will trigger the application of the Arbitration Act, but it does not mean the arbitration hearing must be in London; it could for example be held in Geneva.

The laws dictating the procedure of arbitrations in centres that are heavily involved in international arbitration including London, Singapore, Paris, Hong Kong and New York, often have limited mandatory provisions, which ensures continued flexibility and allows the parties to have a significant degree of control over the process. The supervisory role of the Courts is minimal in these jurisdictions and it is intended to support the arbitration process, rather than to replace or override it. These centres are, as a result, able to accommodate diverse, international disputes.

There are jurisdictions in which the laws provide a framework which is less arbitration 'friendly' and generally less flexible, for example there may be mandatory requirements to be followed in relation to the appointment of legal representatives and arbitrators. This can lead to more Court intervention and the parties generally having less control over the process.

Aside from considering the legal framework for the procedure of the arbitration, when selecting the seat parties should also consider the impact that this has upon the enforceability of any award. By selecting a seat in a state that is a party to the New York Convention, a treaty with over 160 state signatories dealing with the enforcement of arbitral awards, this will generally maximise the scope for enforcement of the parties' awards.

# The Tribunal

The tribunal will usually consist of either one or three arbitrators. The number of arbitrators to be appointed, is normally agreed in advance but sometimes only after a dispute has arisen. The parties might agree to a sole arbitrator rather than a three person tribunal, in order to save costs.

Where a panel of three arbitrators is appointed, one will usually be elected chairman. The chairman will often have power to make procedural rulings and have a casting vote/decision.

The appropriate number of arbitrators to be appointed, will largely depend on the issues in dispute and the complexity of the matter. Broadly speaking, the higher the contract value, the more proportionate a three person tribunal will be. The converse is also true.

## What if the parties can't agree?

Most arbitration rules and national laws provide a mechanism for the appointment of the tribunal, in the event that the parties cannot agree its composition. Generally, if a single arbitrator is to be appointed, they will be selected by the chosen appointing authority (or in default of agreement, the Court).
Usually, if three arbitrators are to be appointed, the parties each select an arbitrator, with the final arbitrator selected by the two appointed arbitrators or the appointing authority (or again, if ultimately necessary, the Court).

As set out above, the parties' ability to choose the tribunal means that they can appoint arbitrators with specific skills, knowledge and qualities. The parties can agree prerequisites for the appointment of any arbitrator, for example that they have a particular qualification. There is no requirement for an arbitrator to be legally trained, but usually arbitrators will be very experienced lawyers.

## The Tribunal's Obligations

For arbitrations with their seat in England, Wales or Northern Ireland the Arbitration Act, includes mandatory provisions imposing various duties on the tribunal including a duty to act fairly, impartially and independently between the parties and a duty to ensure suitable procedures are adopted to prevent unnecessary delay and expense. All institutional rules impose similar duties on arbitrators.

The choice of arbitrator is important and we can assist in advising on the selection of a suitable tribunal, based upon our experience and work with arbitrators to date.

# The Arbitration Procedure

As set out above, one of the key benefits of arbitration is the flexible nature of the process which means that the procedure of an arbitration is not as rigid as in Court proceedings. However, as a general guide, an international arbitration will usually include an amalgamation of the following steps:

- The claimant will make an initial request for arbitration, which will include, at a minimum, a summary of the claim. Where institutional rules apply (e.g. LCIA or ICC), the relevant rules will set out what information the notice of arbitration must contain. A failure to comply with the relevant requirements may prevent the valid commencement of the arbitration and/or mean that the arbitrator does not have jurisdiction to hear the dispute.
- The respondent will provide an answer to the claim and will specify whether there is a counterclaim.
- If required, the claimant will provide a reply to the counterclaim.
- The tribunal will be appointed (see above). A fee will be payable to the tribunal, usually on appointment. An additional administration charge is payable to the arbitral institution involved (if any). There are different methods for calculating fees depending on the rules and institution involved but generally they are calculated either (i) on a time spent basis or (ii) based on a percentage of the value of the dispute, including a consideration of the complexity of the dispute. Advance payments and deposits are the norm.
- A procedural hearing (sometimes called a procedural conference) will take place at which the timetable for the arbitration will be set. The parties should seek to agree the procedure to be used in advance of the procedural hearing.
- The claimant will serve its full statement of case, if not previously supplied with the initial request for arbitration.
- The respondent will file its full defence and counterclaim, if not previously supplied with the answer to the initial request.
- If required, the claimant will serve its substantive reply and defence to counterclaim.
- There will be disclosure of documents either (i) relied upon or (ii) which fall within the category of documents requested by the other party.
- There will be an exchange of witness statements and further rebuttal statements, if required.
- There will be an exchange of expert evidence and further 'rebuttal' expert reports, if required.
- The experts will typically meet to seek to narrow the issues in dispute and thereafter will produce a joint statement of the issues agreed and those that remain in dispute.
- Parties will typically exchange pre-hearing written submissions.
- A hearing will usually take place, although given the flexibility of the procedure in some instances it would be open to the parties to request that a decision be made 'on paper' and without the need for a hearing. An 'on paper' decision is relatively rare unless the sums in issue are small or one party's case is overwhelmingly strong.
- Parties may be invited to exchange post-hearing written submissions.
- An award is made by the tribunal and steps can then be taken to enforce the award.

# Awards

The arbitral award is the equivalent to a judgment in litigation and like a judgment, it is final and binding. The ability to challenge an award is limited to a number of limited statutory rights (see below).

If the parties to an arbitration reach a settlement of their dispute, the agreed terms can be incorporated into an award, this is usually referred to as an 'agreed award' or an 'award by consent'. Incorporating any settlement of the dispute, into an award, assists in facilitating enforcement of the terms agreed.

Unless the arbitration agreement or selected rules provide otherwise, an award must (i) be in writing (ii) be signed by the arbitrator (iii) contain the reasons for the award (iiii) confirm the seat of the arbitration and (iv) confirm the date the award is made.

Once the tribunal has made its final award, it has no further jurisdiction in the matter save where (i) the parties request a further award on an undecided issue in dispute (ii) the tribunal is required to correct an administrative error or any ambiguity in its award (iii) the Court requires the award to be remitted back to the tribunal.

# Challenging an Award

As set out previously in this guide, the ability to challenge an award is limited. Under English law, the grounds for challenge are contained in the Arbitration Act, which provides that a challenge may be made where:

- The award is incomplete and has not addressed all of the issues in dispute. In such circumstances, a party can apply to the tribunal and thereafter, may be permitted to apply to the Court to seek that the award be set aside on the basis of a serious irregularity.
- The award contains an administrative mistake or error, or is ambiguous. In these circumstances, a party can apply to the tribunal to seek that the error be corrected.
- The tribunal making the award lacked jurisdiction and in such circumstances, a party is permitted to apply to the Court to challenge the award.
- There is a serious irregularity affecting the tribunal, the proceedings or the award which has caused substantial injustice. This is a very high bar which will often not be met. A serious irregularity includes (i) the tribunal exceeding the scope of its powers (i) the tribunal failing to conduct proceedings in accordance with the agreed procedure (iii) a failure by the tribunal to deal with the issues in dispute (iiii) the award being uncertain or ambiguous (iv) the award having been obtained by fraud.
- The award contains a mistake of law, in which case there is a right to apply to the Court for leave to appeal.

Strict time limits apply and generally any application to challenge must be made within 28 days of the date of the award.

If an award is appealed, a party can seek a stay of enforcement of the award, via the Court, pending the determination of the appeal.

Parties are permitted to exclude rights of challenge and appeal in their arbitration agreement, or can select rules which exclude the right without the need for further provision, for example the LCIA or ICC rules.

# Enforcement

The procedure for the enforcement of an arbitral award in England is generally the same regardless of where the award was made, namely summary enforcement, with leave of the High Court as provided for in the Arbitration Act.

If an award is to be enforced in another jurisdiction, it is key to assess whether the terms of a convention, such as the New York Convention, apply. There are now over 160 signatories to the New York Convention, which operates to ensure reciprocal enforcement of arbitral awards in the states which are signatories to the Convention. There is no treaty or convention in existence, which provides anywhere near the same level of reciprocal enforcement, in relation to Court judgments. Particularly, following 'Brexit' and the UK's withdrawal from the EU, the rights of enforcement of English High Court judgments is more limited when compared to arbitration awards.

The grounds for refusal to enforce an award are very limited under the New York Convention and generally, the applicability of the New York Convention offers the best prospect of enforcement of the award. Some commentators have said that the New York Convention is the most successful treaty in private international law and it is estimated that enforcement of arbitral awards is granted in approximately 90% of cases as a result of the New York Convention (for further information see www.newyorkconvention.org/in+brief).

## The current signatories to the New York Convention are as follows:

Afghanistan
Albania
Algeria
Andorra
Angola
Antigua & Barbuda
Argentina
Armenia
Australia
Austria
Azerbaijan
Bahamas
Bahrain
Bangladesh
Barbados
Belarus
Belgium
Belize
Benin
Bhutan
Bolivia
Bosnia and Herzegovina
Botswana
Brazil
Brunei
Bulgaria
Burkina Faso
Burundi
Cabo Verde
Cambodia
Cameroon
Canada
Central African Republic
Chile
China
Colombia
Comoros
Cook Islands
Costa Rica
Cote D'Ivoire
Croatia
Cuba
Cyprus
Czech Republic
Democratic Republic of Congo
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Estonia
Ethiopia
Fiji
Finland
France
Gabon
Georgia
Germany
Ghana
Greece
Guatemala
Guinea
Guyana
Haiti
Holy See
Honduras
Hungary
Iceland
India
Indonesia
Iran
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kazakhstan
Kenya
Kuwait
Kyrgyzstan
Lao People's Democratic Republic
Latvia
Lebanon
Lesotho
Liberia
Liechtenstein
Lithuania
Luxemburg
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Marshall Islands
Mauritania
Mexico
Monaco
Mongolia
Montenegro
Morocco
Mozambique
Myanmar
Nepal
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
North Macedonia
Norway
Oman
Pakistan
Palau
Panama
Papa New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Republic of Korea
Republic of Moldova
Romania
Russian Federation
Rwanda
San Marino
Sao Tome and Principe
Saudi Arabia
Senegal
Seychelles
Sierra Leone
Singapore
Slovakia
South Africa
Spain
Sri Lanka
St Vincent and the Grenadines
State of Palestine
Sudan
Sweden
Switzerland
Syrian Arab Republic
Tajikistan
Thailand
Tonga
Trinidad and Tobago
Tunisia
Turkey
Uganda
Ukraine
United Arab Emirates
United Kingdom
(with additional territorial application to Hong Kong, Guernsey, Jersey, Gibraltar, Isle of Man, Bermuda, Belize and Cayman Islands, British Virgin Islands)
United Republic of Tanzania
United States of America
Uruguay
Uzbekistan
Venezuela
Vietnam
Zambia
Zimbabwe

# Contact us

**Nick Scott**
Partner

nxs@blasermills.co.uk
0207 397 3746
07514667031
linkedin.com/in/nxscott

**We advise clients throughout the arbitration lifecycle: from drafting dispute resolution clauses, through the arbitration process, to arbitration-related English High Court litigation, such as pre-arbitration injunction applications, disclosure exercises and enforcement of arbitration awards.**

International commercial arbitration is often perceived as the preserve of the largest international firms. We are city trained lawyers with the experience and ability to successfully resolve arbitrations but at more proportionate cost. We have acted on arbitrations ranging in value from $1 million to over $1 billion and in a range of sectors, including oil & gas, energy, mining, engineering, commodities, telecommunications, shipping, real estate and life sciences. We can bring to bear the skills and expertise of much larger firms at much more proportionate cost, often making it viable to pursue claims that don't add up at the big arbitration firms' fee rates.

We have significant experience of international commercial arbitrations, subject to a variety of governing substantive and procedural laws including, before the London Court of International Arbitration **(LCIA)**, the International Chamber of Commerce **(ICC)**, the Stockholm Chamber of Commerce **(SCC)**, the Singapore International Arbitration Centre **(SIAC)**, the Hong Kong International Arbitration Centre **(HKIAC)** and others.

Whether arbitration is the right choice for your commercial agreements, is an issue that needs to be considered on a case-by-case basis. We hope that this guide will assist you in deciding whether it might be the right option for your business. If you would like to discuss matters further, please contact Nick Scott, who leads our international arbitration practice at Blaser Mills Law.

## Profile

Nick leads the commercial Dispute Resolution team at Blaser Mills Law.

Nick is a highly experienced litigator recommended in the UK Legal 500 as *"outstanding", "an extremely good litigation strategist"* and who has *"tremendous knowledge and experience...always available and responds to challenges in a calm, decisive and unphased manner."*

He specialises in complex high value commercial disputes typically with a significant international element.

Nick represents clients in both High Court litigation and arbitration (LCIA, ICC, AAA, LME, WIPO) and also has extensive experience of alternative dispute resolution including mediation, early neutral evaluation and adjudication.

Nick was a key member of the Defence team awarded "Dispute Resolution Team of the Year" at the 2014 Legal Business Awards and "Litigation Team of the Year" at the 2014 Lawyer Awards.

## Career History

- **2021:** Partner, Blaser Mills Law
- **2016-21:** Partner, Greenwoods GRM LLP (previously GRM Law)
- **2005-16:** Memery Crystal LLP (partner 2011-2016)(senior associate 2005-2011)
- **2003-2005:** Assistant, tax litigation, McGrigors
- **2003:** Qualified, SJ Berwin
- **2000:** City University, Postgraduate Diploma in Law
- **1995-1999:** French and German, Cambridge

## Representative Experience

### Arbitration

$25 million investment treaty arbitration for oil and gas client against Eastern European State.

$12 million LCIA arbitration against major listed oil and gas company.

Arbitration relating to repudiatory breach claim against private equity owner of a number of shopping centres.

Acted for **Gulf Keystone Petroleum Limited** in obtaining a rare injunction from the English courts in respect of an ICC arbitration brought against it in New York in relation to a contract dispute over oil assets valued at more than US$1.5 billion.

LCIA Arbitration relating to ballast water treatment plant.

## Commercial Disputes

**Excalibur v Texas Keystone & Others [2013] EWHC 2767 (Comm)**

$1.65 billion Commercial Court claim for a 30% share of 4 Kurdish oilfields allegedly the subject of a joint venture between Excalibur and Gulf Keystone.

Breach of Directors' duties claim against AIM listed oil and gas company.

Representation of Labour Party in various high profile disputes and regulatory investigations.

LLP dispute for AI driven hedge fund.

Unfair prejudice claim for minority shareholders in gold trading company.

Shareholder dispute for **Edwardian Hotel Group Limited.**

## Financial Services Disputes

**Bank A v Bank B**

Confidential dispute relating to failure to execute Swiss Franc stop loss orders when Swiss Central Bank removed Euro currency peg.

**Fund Management Group v Seed Investor**

Confidential dispute between fund management group and their seed investor as to whether a revenue sharing payment hurdle has been met.

**Aim Listed Oil and Gas Company v Former Corporate Finance Advisers/CEO**

Confidential claim against former corporate finance advisers of AIM listed oil company for breach of corporate finance advisory agreement and claim against former CEO for breach of directors' duties and service agreement in relation to his part in the matter. Internal investigation carried out.

**Raiffeisen Bank v RBS [2010] EWHC 1392 Comm**

Advised Austrian bank RZB in fraudulent misrepresentation claim against RBS in relation to RBS' role as syndicate manager for a syndicated loan for Enron in which RZB participated.

Defending claims alleging misstatements in bond listing prospectus.

## Regulatory Litigation

**Market abuse and Insider Dealing investigation into share dealing in AIM companies by two individuals/FINMA Request for Information**

FCA investigation into alleged market abuse and insider trading by shadow director of AIM company. Co-ordinating strategy between London and Swiss legal teams resisting FINMA request for information and assistance on behalf of FCA.

**Market abuse and Insider Dealing investigation into share dealing in AIM companies by two individuals**

FSA investigation into alleged market abuse and insider trading by authorised person and client. Complicated fact pattern where authorised person approached AIM listed company and procured an offer of shares at a deep discount to the prevailing market price before selling short to major market participant in advance of (unknown) resignation of key non-executive director.

## Tax Litigation/Professional Negligence

£50 million dispute with HMRC in relation to recovery of unpaid capital allowances on failed bio-ethanol project.

**R (on the application of Derry) (Respondent) v Commissioners for Her Majesty's Revenue and Customs (Appellant) [2019] UKSC 19**

Supreme Court ruling in favour of the taxpayer confirming that the taxpayer had correctly included his carry-back loss relief claims in the prior year's tax return and that HMRC had failed to challenge the claim correctly, by failing to open an s.9A TMA 1970 enquiry into the return, within the statutory time limit.

**R (on the application of Cartref Care Homes Limited & Others) v HMRC [2019] EWHC 3382 (Admin)**

Judicial review into the loan charge introduced by Finance Act (No.2) Act 2017 on the grounds that it was in breach of s. 4 HRA 1998 constituting a disproportionate interference with the taxpayer's rights under Article 1 Protocol 1 to the ECHR to the peaceful enjoymnt of their possessions.

Successful multimillion pound settlement against Big Four Accountancy Firm relating to negligent tax advice on disposal of a group of properties.

**W Resources plc v HMRC [2018] UKFTT 746 (18 December 2018)**

Successful appeal against VAT deregistration and refusal of input tax recovery claim, on grounds that a holding company making, or intending to make, supplies for a consideration to its subsidiaries necessarily carried on an economic activity for the purposes of VAT.

BlaserMills Law

London | High Wycombe | Amersham | Silverstone
020 3814 2020 | blasermills.co.uk
@BlaserMillsLaw blaser-mills BlaserMillsLaw