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The International Comparative Legal Guide to:

International Arbitration 2008

A practical insight to cross-border International Arbitration work

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Chapter 18

England & Wales

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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of England & Wales?

Arbitration proceedings in England & Wales and Northern Ireland are governed by the Arbitration Act 1996 (the "1996 Act"). The 1996 Act applies only to arbitration agreements that are in writing (section 5(1)). An agreement is deemed to be in writing if it is: (i) made in writing (whether or not signed by the parties) (section 5(2)(a)); (ii) made by exchange of communications in writing (section 5(2)(b)); or (iii) evidenced in writing (section 5(2)(c)). An agreement is evidenced in writing pursuant to section 5(2)(c) if recorded by one of the parties or by a third party with the authority of the parties to the agreement (section 5(4)). An exchange of written submissions in arbitration proceedings in which the existence of an agreement (otherwise than in writing) is alleged by one party, and not denied by the other party, will constitute an agreement in writing as between those parties (section 5(5)). Under the 1996 Act, parties also may orally agree to arbitrate by referring to terms that are in writing (section 5(3)). Writing includes "*being recorded by any means*" (section 5(6)).

Although oral arbitration agreements are recognised at common law, the 1996 Act does not apply to wholly oral arbitration agreements (section 81(1)(b)). Such agreements will not benefit from the default procedures or various other statutory powers conferred on the tribunal under the 1996 Act. Oral arbitration agreements also fall outside the scope of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the "New York Convention").

As to content, the 1996 Act simply requires that the parties agree "*to submit to arbitration present or future disputes (whether they are contractual or not)*" (section 6(1)). Parties may agree the specific terms of a written arbitration agreement or, alternatively, refer to a document containing an arbitration clause. Such reference will constitute an arbitration agreement if the effect of it is to make that clause part of the agreement (section 6(2)).

1.2 Are there any special requirements or formalities required if an individual person is a party to a commercial transaction which includes an arbitration agreement?

Beyond the general requirement that an individual have the capacity (under the relevant law) to enter into a contract, there are no special requirements or formalities required if an individual is a party to a contract containing an arbitration agreement. In fact, section 82(2) of the 1996 Act states that "*references … to a party to an arbitration agreement include any person claiming under or through a party to the agreement*".

The 1996 Act does provide, however, for additional consumer protections. Specifically, sections 89 through 91 extend the application of the Unfair Terms in Consumer Contracts Regulations 1994 in relation to a term which constitutes an arbitration agreement. Furthermore, section 90 states that the Regulations "*apply where the consumer is a legal person as they apply where the consumer is a natural person*".

1.3 What other elements ought to be incorporated in an arbitration agreement?

English courts generally take a broad view as to what constitutes an "arbitration agreement" under the 1996 Act; it suffices for the parties to have recorded in writing nothing more than an intention to refer any disputes to arbitration. The various default provisions of the 1996 Act provide detailed procedures, designed to enable parties to use and enforce arbitration agreements in circumstances where the clauses themselves provide little or no practical assistance.

1.4 What has been the approach of the national courts to the enforcement of arbitration agreements?

The 1996 Act promotes party autonomy and the courts are expected to take a non-interventionist approach where parties have agreed to submit their disputes to arbitration. The English courts also take a fairly broad view as to what matters will be deemed arbitrable under an arbitration agreement, with a view to promoting international trade and comity.

Most recently, the Court of Appeal declared the need for a more liberal approach to the construction and enforcement of arbitration agreements (*Fiona Trust & Holding Corp v. Privalov* [2007] EWCA Civ 20).

1.5 What has been the approach of the national courts to the enforcement of ADR agreements?

Following the introduction of the English Civil Procedure Rules in 1998, there has been a definite public policy shift in favour of parties submitting to ADR in an attempt to resolve their disputes and avoid costly and timely litigation (see for example, *Dunnett v. Railtrack plc* [2002] EWCA Civ 303; *Burchell v. Bullard* [2005] EWCA Civ 358).

The English court therefore approaches the enforcement of ADR agreements in the same broad and permissive way as it does arbitration agreements and would need "*strong cause … before [it]*

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could be justified in declining to enforce such an agreement" (Cable & Wireless plc v. IBM United Kingdom Ltd [2002] EWHC 2059).

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration agreements in England & Wales?

The 1996 Act governs the enforcement of arbitration agreements in England & Wales or Northern Ireland. The 1996 Act implements the New York Convention (signed and ratified by the United Kingdom in 1975, subject to the reservation that it applies only to awards made in the territory of another contracting party), insofar as it requires that contracting States recognise agreements in writing under which the parties undertake to submit disputes to arbitration (Article II(1) and (2)).

The 1996 Act came into force with effect from 31 January 1997 and applies to arbitration proceedings commenced as of 31 January 1997. Arbitration proceedings are deemed to have been commenced when the parties have agreed that they have been commenced and, in the absence of agreement, in accordance with the default provisions set out in the 1996 Act (sections 14(3) to 14(5)).

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do the laws differ?

The 1996 Act does not distinguish between domestic and international arbitration proceedings and applies equally to both.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the governing law and the Model Law?

The 1996 Act is, in large part, based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration of 1985 (the "Model Law"). The Model Law is intended to apply only to international commercial arbitration (Article 1(1) of the Model Law). The 1996 Act, however, applies equally to all forms of arbitration and is not limited to international commercial arbitration. In that respect, and in a number of other important respects, the 1996 Act does not adopt the Model Law in its entirety. In addition to applying to all forms of arbitration, the 1996 Act differs from the Model Law in the following key ways. Under the 1996 Act:

- the document containing the parties' arbitration agreement need not be signed;
- an English court is only able to stay its own proceedings and cannot refer a matter to arbitration;
- the default provisions for the appointment of arbitrators provide for the appointment of a sole arbitrator as opposed to three arbitrators;
- a party retains the power to treat its party-nominated arbitrator as the sole arbitrator in the event that the other party fails to make an appointment (where the parties' agreement provides that each party is required to appoint an arbitrator);
- there is no time limit on a party to oppose the appointment of an arbitrator;
- parties must expressly opt out of most of the provisions of the 1996 Act which confer default powers on the arbitrators in relation to procedure; and
- there are no strict rules for the exchange of pleadings.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of England & Wales? What is the general approach used in determining whether or not a dispute is "arbitrable"?

The 1996 Act does not seek to define or describe those matters that are capable of settlement by arbitration (i.e., arbitrable). The 1996 Act simply preserves the common law position in respect of arbitrability (section 81(1)(a)). However, the 1996 Act expressly applies to non-contractual as well as contractual disputes (section 6(1)).

Under English common law, a multitude of non-contractual claims (including claims in tort, disputes concerning intellectual property rights and certain statutory claims) are capable of settlement by arbitration. Arbitration is, however, limited to civil proceedings. Criminal matters are not capable of settlement by arbitration.

Most recently, the Court of Appeal drew a line under some of the older English cases on the question of arbitrability and declared the necessity for a more liberal approach to the construction of arbitration agreements (*Fiona Trust & Holding Corp v. Privalov* [2007] EWCA Civ 20. See also *Film Finance Inc v. Royal Bank of Scotland* [2007] EWHC 195 (Comm)). The aim of the Court of Appeal was to eliminate future disputes about the meaning of particular phrases (such as 'arising out of' and 'arising under').

3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?

The 1996 Act (section 30(1)) confers upon the arbitral tribunal (subject to the parties agreeing otherwise) the competence to rule on its own substantive jurisdiction as to:

- whether or not there is a valid arbitration agreement;
- whether or not the tribunal has been properly constituted; and
- what matters have been submitted to arbitration in accordance with the arbitration agreement.

3.3 What is the approach of the national courts in England & Wales towards a party who commences court proceedings in apparent breach of an arbitration agreement?

The English court is empowered to grant an anti-suit injunction against a person who has initiated proceedings in some other jurisdiction in breach of an agreement to arbitrate by virtue of section 37 of the Supreme Court Act 1981 (*Welex AG v. Rosa Maritime Ltd* [2003] 2 Lloyd's Rep 509).

However, the English court may not grant an anti-suit injunction to uphold an exclusive jurisdiction clause where the judicial proceedings complained of have been commenced in an EU or EFTA state, because the Brussels Convention 1968, Lugano Convention 1989 and Council Regulation 44/2001 confer exclusive jurisdiction on the court first seised of the action (Case C-159/02 *Turner v. Grovit* [2004] 1 Lloyd's Rep 216).

Until more recently, it was not clear whether this also applied to proceedings brought in breach of an arbitration agreement (as opposed to an exclusive jurisdiction clause). However, in *Through Transport Mutual Insurance Association (Eurasia) Ltd v. New India Assurance Co Ltd (The Hari Bhum) (No.1)* [2004] EWCA Civ 1598, the English Court of Appeal held that the exclusion of "arbitration" from both the Conventions and the Regulation meant that an anti-suit injunction to restrain a breach of an arbitration agreement was permissible. This view has been untested by the

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European Court, until very recently, when the House of Lords in *West Tankers Inc. v. RAS Riunione Adriatica di Sicurta SpA* [2007] UKHL 4 referred this matter to the ECJ, whose decision is at the date of publication still pending.

Under section 9 of the 1996 Act, the English court should also stay any proceedings before the English court which have been brought in breach of such an agreement. Under section 72 of the 1996 Act, a party who challenges: (i) the validity of an arbitration agreement; (ii) whether the arbitral tribunal has been properly constituted; or (iii) the matters that have been referred to arbitration, may seek an injunction restraining arbitration proceedings. The Court of Appeal has recently tackled the relationship between sections 9 and 72 of the 1996 Act, stating firmly that where the court is faced with applications under both section 9 and 72, the section 9 application should be determined first (along with any related issues, such as the validity of the arbitration agreement). In addition, if there is a valid arbitration agreement, proceedings cannot be launched under section 72 at all (*Fiona Trust & Holding Corp v. Privalov* [2007] EWCA Civ 20).

3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal?

Under the 1996 Act, and unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction (section 30).

However, a party to arbitral proceedings may request that the court determine questions as to the substantive jurisdiction of the tribunal (section 32(1)). Such applications must be made either with the agreement in writing of all parties to the proceedings or, alternatively, with the permission of the arbitral tribunal in circumstances where the court is satisfied that:

- the determination of the question is likely to produce substantial savings in costs;
- the application was made without delay; and
- there is good reason why the matter should be decided by the court (section 32(2)).

The arbitral proceedings may continue, and an award may be granted, at the same time that an application to the court for the determination of a preliminary point of jurisdiction is pending (section 32(4)). The right to object to the substantive jurisdiction of the court may be lost if the party takes part or continues to take part in the arbitral proceedings without objection (section 73).

3.5 Under what, if any, circumstances does the national law of England & Wales allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

English law does not afford a tribunal power to assume jurisdiction over individuals/entities not actually a party to the arbitration agreement. Arbitration is considered to be, first and foremost, a consensual process. While a tribunal may invite a non-party to submit testimony or produce documents willingly, it cannot itself compel that individual or entity to do so (although the court has powers to so order in certain circumstances in support of the arbitral process).

In various jurisdictions, a number of legal theories (e.g., agency, alter ego principles and the group of companies doctrine) have been advanced to seek to bind non-signatories to arbitration agreements. English law, however, is circumspect in embracing these legal theories. While in limited circumstances English courts have permitted the piercing of the corporate veil (*Roussel-Uclaf v. GD Searle & Co.* [1978] 1 Lloyd's Rep. 225), there has been a general refusal to accept the group of companies doctrine in the absence of consent on the part of the third party or possibly an estoppel (*Bay Hotel v. Cavalier* [2001] UKPC 34). Most recently, in *Peterson Farms Inc. v. C&M Farming Ltd* [2004] All ER (D) 50, an English court set aside an award in which that doctrine had been recognised, stating, *inter alia*, that it "*forms no part of English law*".

4 Selection of Arbitral Tribunal

4.1 Are there any limits to the parties' autonomy to select arbitrators?

English law gives parties a wide autonomy in their selection of arbitrators. The majority of the 1996 Act only operates as a fallback provision where express written agreement (section 5(1)) has not been reached. The only mandatory rules are that the death of an arbitrator brings his or her authority to an end and the court has the ability to remove arbitrators who are not performing their functions properly (section 24).

Therefore, parties are free to agree on the number of arbitrators, whether there is to be a chairman or an umpire, the arbitrators' qualifications, and the method of appointment (section 15). The consent of the arbitrators is required to ensure the validity of their appointment. Unless otherwise agreed, an agreement that the number of arbitrators shall be two (or any other even number) shall be understood to be an agreement that an additional arbitrator is to be appointed to act as chairman of the tribunal (section 15(2)).

In the absence of the parties' agreement as to the number of arbitrators, the tribunal will be made up of a sole arbitrator (section 15(3)).

As indicated above, the court has the power to remove an arbitrator on several grounds, including: (i) justifiable doubts as to his impartiality; (ii) in the event that he or she does not possess the qualifications required by the parties' arbitration agreement; (iii) physical or mental incapability; or (iv) failures in conducting the proceedings (section 24(1)(a) to (d)).

4.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

Parties are free to agree on the procedure for appointing arbitrators (including the chairman or umpire) (section 16(1)). If the parties fail to agree an appointment procedure, the 1996 Act sets out detailed provisions for the appointment of: a sole arbitrator (joint appointment by the parties within 28 days of a written request by one party, section 16(3)); a tribunal comprised of two arbitrators (each party to appoint one arbitrator within 14 days of a written request by one party to do so, section 16(4)); a tribunal comprised of three arbitrators (as with two, but the two party-appointed arbitrators shall forthwith appoint a chairman, section 16(5)); and a tribunal comprised of two arbitrators and an umpire (as with three, subject to differences as to the timing of the umpire's appointment, section 16(6)).

In the event that the parties' agreed appointment procedure fails or there is none, the 1996 Act sets out a detailed default procedure. The 1996 Act provides that, if the parties are each required to appoint one arbitrator and one party fails to do so within the specified time period, then the other party may give notice that it intends to appoint its arbitrator to act as sole arbitrator (section 17(1)).

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4.3 Can a court intervene in the selection of arbitrators? If so, how?

In the event that a sole arbitrator is appointed under section 17 of the 1996 Act, the party in default may apply to the court to set aside that appointment (section 17(3)). In all other cases where the appointment procedure has failed, unless the parties have agreed otherwise, they are entitled to apply to the court to: exercise its powers to give directions as to the making of appointments (section 18(3)(a)); direct that the tribunal be constituted by such appointments (section 18(3)(b)); revoke any previous appointments (section 18(3)(c)); or make the necessary appointments itself (section 18(3)(d)). *See Through Transport Mutual Assurance Association (Eurasia) Ltd v. New India Assurance Co Ltd* [2005] All ER (D) 351 for confirmation of the English High Court's exercise of such powers.

4.4 What are the requirements (if any) as to arbitrator independence, neutrality and/or impartiality?

The impartiality of arbitrators is central to the arbitration process. The 1996 Act states that "*the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal*" (section 1(a)). Section 24(1)(a) of the 1996 Act permits a party to apply to the court for the removal of an arbitrator on the basis that circumstances exist that give rise to justifiable doubts as to that arbitrator's "impartiality". Furthermore, section 33(1)(a) of the 1996 Act requires that the tribunal shall act fairly and impartially as between the parties.

5 Procedural Rules

5.1 Are there laws or rules governing the procedure of arbitration in England & Wales? If so, do those laws or rules apply to all arbitral proceedings sited in England & Wales?

The provisions of Part I of the 1996 Act, which govern arbitration pursuant to an arbitration agreement, apply to arbitration proceedings that have their seat in England & Wales or Northern Ireland (section 2(1)). Under the 1996 Act, the "seat of the arbitration" is the juridical seat, which is the place where the arbitration has its formal legal seat and where the arbitration award will be made. Although it is usually the case, it is not essential that the physical hearings take place at the seat of the arbitration.

The parties are free to agree the seat of the arbitration in their arbitration agreement (section 3). If the parties fail to agree the seat of the arbitration, an arbitral (or any other) institution or person vested by the parties with powers to do so may designate the seat (section 3(b)). Alternatively, if authorised to do so by the parties, the arbitral tribunal may designate the seat (section 3(c)).

Where no arbitral seat has been designated or determined, and there is a connection with England & Wales or Northern Ireland, the court may still exercise its powers under the 1996 Act for the purpose of supporting the arbitral process (section 2(4)). The provisions relating to stay of proceedings and enforcement of arbitral awards apply regardless of the location (or even designation) of the seat (section 2(2)).

5.2 In arbitration proceedings conducted in England & Wales, are there any particular procedural steps that are required by law?

Essentially, the mandate of an arbitral tribunal in England & Wales or Northern Ireland is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense. The parties are free to agree how their disputes are to be resolved, subject only to those safeguards necessary to protect the public interest. By virtue of section 33(1)(a) of the 1996 Act, the tribunal is required to act fairly and impartially as between the parties, giving each a reasonable opportunity to put its case and deal with that of its opponent (i.e., due process). The tribunal is required to adopt procedures suitable to the circumstances of a particular case (section 33(1)(b)) and must comply with that general duty in conducting the arbitral proceedings and in making all decisions relating to matters of procedure and evidence (section 33(2)).

5.3 Are there any rules that govern the conduct of an arbitration hearing?

The 1996 Act does contain a number of mandatory provisions (listed in Schedule 1 to the 1996 Act) out of which the parties may not contract and that apply to all arbitrations sited in England & Wales or Northern Ireland. The mandatory provisions relate to stay of legal proceedings, time limits (including the application of the Limitation Act 1980), matters relating to the arbitrators (including the power of the court in relation to the removal of arbitrators, the effect of the death of an arbitrator, the liability of the parties in relation to arbitrators' fees and expenses, the power to withhold an award in the event of non-payment of arbitrators' fees and the general duty of the tribunal), jurisdictional issues (including the right to object to the substantive jurisdiction of the tribunal and determination of a preliminary point of jurisdiction), the securing of witnesses, the enforcement of awards and the right to challenge an award on the basis of substantive jurisdiction and serious irregularity.

In all other respects, the parties are free to agree to the application of any other procedural rules, either by reference to an arbitral or other institution or otherwise. In particular, the parties are entitled to agree in relation to any procedural or evidential matters and, in the absence of agreement, the tribunal may decide on such matters (section 34(1)). Procedural and evidential matters include location of hearings, languages used, form of statements, document production, examination and cross-examination of witnesses and form of submissions (section 34(2)).

5.4 What powers and duties does the national law of England & Wales impose upon arbitrators?

Under the 1996 Act, the parties are free to agree on the powers exercisable by the arbitral tribunal in relation to the proceedings (section 38). Unless otherwise agreed by the parties, however, the tribunal may order a claimant to provide security for the costs of the arbitration (section 38(3)); give directions in relation to any property which is the subject of the proceedings or as to which any question arises in the proceedings, and which is owned by or is in the possession of a party to the proceedings (section 38(4)); direct that a party or witness shall be examined on oath or affirmation, and may for that purpose administer any necessary oath or take any necessary affirmation (section 38(5)); or give directions to a party for the preservation for the purposes of the proceedings of any evidence in his custody or control (section 38(6)).

In addition, the parties are free to agree that the tribunal shall have power: to order on a provisional basis any relief which it would have power to grant in a final award (section 39(1)); to dismiss any claim where there has been inordinate and inexcusable delay (section 41(3)); or to dismiss any claim where a party fails to comply with a peremptory order of the tribunal to provide security for costs (section 41(6)). Where a party fails to comply with any

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other kind of peremptory order, the tribunal may: (a) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order; (b) draw such adverse inferences from the act of non-compliance as the circumstances justify; (c) proceed to an award on the basis of such materials as have been properly provided to it; or (d) make such order as it thinks fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance (section 41(7)).

5.5 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

In principle, intervention by national courts in the arbitral process should be minimal. Nevertheless, the national courts have jurisdiction to act in support of arbitral proceedings and, in particular, may deal with procedural issues in relation to: the enforcement of peremptory orders of the tribunal (section 42); securing the attendance of witnesses (section 43); the taking and preservation of evidence, making orders relating to property, sale of goods, granting of interim injunctions or the appointment of a receiver (section 44); and the determination of a preliminary point of law (section 45).

It is worth noting that the parties may agree to exclude a large part of the national courts' powers.

5.6 Are there any special considerations for conducting multiparty arbitrations in England & Wales (including in the appointment of arbitrators)? Under what circumstances, if any, can multiple arbitrations (either arising under the same agreement or different agreements) be consolidated in one proceeding? Under what circumstances, if any, can third parties intervene in or join an arbitration proceeding?

Under the 1996 Act, parties are free to agree that arbitral proceedings shall be consolidated with other arbitral proceedings or that concurrent hearings shall be held (section 35(1)). The parties are also free to agree the terms of consolidation or concurrent hearings. Unless the parties agree to afford the tribunal this power, however, the tribunal does not have the authority to order consolidation or concurrent hearings (section 35(2)). If the parties do agree, section 18 of the 1996 Act governs the procedure for the appointment of arbitrators. In such instances, "the parties are free to agree what is to happen" (section 18(1)).

A number of institutional rules (e.g., ICC, LCIA) provide specifically for the situation where there are several parties to the same contract and allow for multiple claimants or respondents (as the case may be) jointly to nominate an arbitrator. Ostensibly, section 18 of the 1996 Act affords parties the same freedom.

The position is a little more complicated when there are a number of agreements with different parties, each of which has some connection to the issues being arbitrated. Unlike in English court proceedings, it is not possible to join a third party to arbitral proceedings, or order consolidation, without the consent of all the parties. As such, and in order to avoid conflicting decisions, the English courts have circumvented the problem in at least one instance by applying a practical solution; namely, appointing the same arbitrator in each of the connected arbitrations. (*See Abu Dhabi Gas Liquefaction Co. Ltd v. Eastern Bechtel Corp. [1982] 2 Lloyd's Rep. 425.*)

5.7 What is the approach of the national courts in England & Wales towards *ex parte* procedures in the context of international arbitration?

The court is empowered to act in support of arbitral proceedings on the application of a party or the tribunal, unless otherwise agreed by the parties (section 44). Any such application be made *ex parte* (or "without notice") if the matter is urgent (section 44(3)). Where an application is made without notice, it must be accompanied by a witness statement setting out the nature of the urgency. Otherwise, the court will act in support of arbitral proceedings only: where notice is given to the other party and the tribunal; and with the permission of the tribunal or the agreement in writing of the other party (section 44(4)).

In addition, an application seeking recognition of a New York Convention award may be made without notice, although the courts may nevertheless require that it be served on the other party (Civil Procedure Rules, Rule 62.18(2)).

6 Preliminary Relief and Interim Measures

6.1 Under the governing law, is an arbitrator permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

Unless the parties have agreed otherwise, the tribunal is permitted to make preliminary orders in certain circumstances. In particular, the tribunal may order a claimant to: provide security for costs in the arbitration (section 38(3)); give directions relating to property which is the subject matter of the proceedings or as to which any question arises in the proceedings (section 38(4)); direct a party or witness to be examined (section 38(5)); or give directions for the preservation of evidence (section 38(6)).

In addition, the parties may agree that the tribunal shall be entitled to make an order for provisional relief (section 39) (e.g., disposition of property or payment on account of the costs of the arbitration). In the absence of agreement between the parties, the tribunal shall not have such power. The tribunal is authorised to grant such interim relief without having to seek the assistance of the court to do so.

6.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

The court is empowered to act in support of arbitral proceedings, unless otherwise agreed by the parties. In particular, unless otherwise agreed by the parties, the court has power to make orders in support of arbitral proceedings in relation to: the taking of evidence (section 44(2)(a)); the preservation of evidence (section 44(2)(b)); and the making of orders relating to property relating to the proceedings (section 44(2)(c)). The court shall only act to the extent that the tribunal (or other institution) has no power to do so effectively, e.g., the tribunal is not yet constituted (section 44(5)). These powers are not mandatory and the parties are therefore entitled to agree that these provisions will not apply.

In addition, unless otherwise agreed by the parties, the court may make an order requiring a party to comply with a peremptory order made by the tribunal (section 42).

6.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

In practice, the courts do not intervene in arbitral proceedings in England & Wales or Northern Ireland, except within the relatively

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narrow confines of the 1996 Act, where it is both necessary and appropriate for them to do so.

The object of the 1996 Act is to recognise and uphold party autonomy to choose the procedure for the resolution of disputes and to prevent unnecessary intervention by the courts. To that end, the 1996 Act confers as many powers of the court as possible onto the tribunal.

Under the 1996 Act, the court has powers in relation to the enforcement of peremptory orders of the tribunal and the exercise of other court powers in support of arbitral proceedings (and in relation to securing the attendance of witnesses and the determination of a preliminary point of law).

6.4 Does the national law allow for the national court and/or arbitral tribunal to order security for costs?

If the parties agree that it is empowered to do so, the tribunal may order security for costs (section 38(1)). Furthermore, unless the parties exclude the possibility, the tribunal has a statutory power under section 38(3) to order security for costs.

It should be noted that if the parties exclude the right of the tribunal to order security for costs, the courts will also have no jurisdiction to order security for costs except in relation to specified judicial proceedings under the 1996 Act (on applications and appeals under sections 67 to 69).

7 Evidentiary Matters

7.1 What rules of evidence (if any) apply to arbitral proceedings in England & Wales?

England has an extensive body of common law that establishes the governing rules of evidence. However, in the absence of agreement by the parties, the tribunal has the power to decide whether or not to apply the strict rules of evidence under English common law (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion (section 34(2)(f)). The 1996 Act does provide that parties are entitled to agree any procedural or evidential matter (section 34) and the tribunal may determine the time, manner and form in which evidence is to be exchanged and presented (section 34(2)(f)). It is not uncommon for the parties to agree to the application of a set of 'international' evidentiary rules, such as the International Bar Association (IBA) Rules on the Taking of Evidence in International Commercial Arbitration (June 1999).

7.2 Are there limits on the scope of an arbitrator's authority to order the disclosure of documents and other disclosure of discovery (including third party disclosure)?

The tribunal has some power to order disclosure of documents but it is not unlimited. Unless otherwise agreed, the tribunal has power to order a party to produce documents (section 34(2)(d)) and the tribunal may determine whether or not documents are relevant and/or privileged (section 34(2)(f)). The tribunal has no power to order production of documents by a third party, although any party to the proceedings may use those court procedures that are available in relation to legal proceedings to secure the attendance of a witness (including a third party witness) in order to produce documents (section 43).

7.3 Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

The court may make orders requiring a party to comply with a peremptory order made by the tribunal (section 42). In addition, unless otherwise agreed by the parties, the court has powers that are exercisable in support of arbitral proceedings and these include powers in relation to the preservation of evidence and making orders for inspection, photographing, preservation, detention or sampling of property that is the subject of the proceedings (section 44(2)). Parties to the proceedings may also use the same court procedures as are available in relation to legal proceedings to secure the attendance of a witness (including a third party witness) to produce documents (section 43).

7.4 What is the general practice for disclosure/discovery in international arbitration proceedings?

The standard disclosure requirements that are automatic in commercial court proceedings in England and Wales do not strictly exist in, or apply to, arbitral proceedings. Parties are free to agree the scope of disclosure in arbitral proceedings. In the absence of agreement, the tribunal may make orders in relation to the scope and method of disclosure. In practice, disclosure decisions will be influenced by the nationality (and therefore the experience and expectations) of the members of the arbitral tribunal (as well as the parties' counsel). Additionally, the norms of English procedural law (as the law of the seat of arbitration) may influence the practices of the tribunal. Frequently, parties to international commercial arbitration proceedings agree to the application of the IBA Rules on the Taking of Evidence in International Commercial Arbitration in proceedings sited in England, thereby limiting the broader scope of disclosure under English law.

7.5 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal? Is cross-examination allowed?

Parties are free to agree whether or not witnesses will provide oral evidence in arbitral proceedings. Otherwise, the arbitral tribunal may decide whether or not a witness or party will be required to provide oral evidence and, if so, what questions should be put to, and answered by, the respective parties and the manner in which that should be done (section 34(2)(e)). Unless otherwise agreed, the tribunal also has power to direct that a particular witness or party may be examined on oath or affirmation and may administer the necessary oath or affirmation (section 38(5)). There is no strict requirement that oral evidence be provided on oath or affirmation; it is a matter for the tribunal's discretion. The tribunal does not have power to force the attendance of a witness. On the application of a party, the court may order the attendance of a witness to give oral testimony or produce documents in arbitral proceedings in accordance with the provisions in the 1996 Act (section 43).

The 1996 Act also permits the arbitral tribunal to appoint experts or legal advisors to report to it and the parties, or to appoint assessors to assist it on legal matters, unless otherwise agreed by the parties (section 37(1)).

English solicitors (or foreign lawyers registered in England) participating in arbitrations sited in England and Wales, are bound by the Rules of Professional Conduct of Solicitors compiled by the Law Society of England & Wales (Chapter 21). English qualified barristers, on the other hand, are governed by the Code of Conduct of the Bar Council.

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7.6 Under what circumstances does the law of England & Wales treat documents in an arbitral proceeding as being subject to privilege? In what circumstances is privilege deemed to have been waived?

Where the parties do not agree to dispense with the strict rules of evidence in their arbitration agreement, the arbitral tribunal may do so. This gives the tribunal the discretionary power to order a party to produce documents which it determines to be relevant. The tribunal may also determine an issue as to whether a document is protected from disclosure on the ground of legal, professional or other privilege (assuming the precondition of confidentiality exists). In such situations, the tribunal may be guided by generally applicable principles of English law. For example, privileged documents may include documents attracting Crown privilege, "without prejudice" correspondence between the parties (including settlement offers), and documents passing between lawyer and client.

Once a document has been produced by a party, it is generally required to be disclosed both to the other party and to the arbitral tribunal. This constitutes an express waiver of privilege. Implied waiver of privilege, on the other hand, is only likely to arise in arbitral proceedings involving a relationship creating that privilege in the first place, e.g., an arbitration between a client and his solicitor.

8 Making an Award

8.1 What, if any, are the legal requirements of an arbitral award?

The parties are free to agree on the form of any arbitral award (section 52(1)). In the absence of agreement, the award shall be in writing and signed by all of the arbitrators or all those assenting to the award (section 52(3)); it shall contain the reasons for the award (unless it is an agreed award or the parties have agreed to dispense with reasons) (section 52(4)); and it shall state the seat of the arbitration and the date when the award was made (section 52(5)). There is a specific requirement under the New York Convention that awards must be "duly authenticated". Therefore, an unsigned award may not be enforceable in another contracting State.

A tribunal is entitled to make a single, final award or, by virtue of section 47 of the 1996 Act, an award relating only to part of the claims submitted to it for determination. It is not uncommon for a tribunal to separate issues of liability and damages and to provide separate awards in respect of each.

The 1996 Act provides that the parties are free to agree that the tribunal shall have power to order on a provisional basis any relief that it would have power to grant in a final award (section 39(1)). This includes power to order payment of money, disposition of property, or security for costs or fees and costs. Unless agreed by the parties in writing (and subject to the court's power to extend it), there is no statutory time limit for making an award. Any time limit, however, must avoid unnecessary delay.

9 Appeal of an Award

9.1 On what bases, if any, are parties entitled to appeal an arbitral award?

There are three bases upon which a party may appeal to the court against an arbitral award made in England & Wales or Northern Ireland.

First, a party may argue that the tribunal lacked substantive jurisdiction to make the award (section 67). Secondly, a party may appeal on the grounds of serious irregularity (section 68). Under the 1996 Act, serious irregularity may arise where: the tribunal has failed to comply with its general duty under the 1996 Act (including its duty to act fairly and impartially) (section 68(2)(a)); the tribunal has exceeded its powers (section 68(2)(b)); the tribunal has failed to conduct the proceedings in accordance with the parties' agreed procedure (section 68(2)(c)); the tribunal has failed to deal with all of the issues put to it (section 68(2)(d)); there is uncertainty or ambiguity as to the effect of the award (section 68(2)(f)); the award was obtained by fraud or otherwise contrary to public policy (section 68(2)(g)); the award does not comply with requirements as to form (section 68(2)(h)); or there was irregularity in the conduct of the proceedings, and the court considers that this has caused or will cause substantial injustice to the applicant (section 68(2)(i)). An "error of law" on the part of the arbitrators will not give rise to "substantial irregularity," sufficient to uphold an appeal under section 68 (*Lesotho Highlands Development Authority v. Impregilo SpA* [2006] 1 A.C. 221 (HL)). Sections 67 and 68 are mandatory provisions of the 1996 Act (as listed in Schedule 1 to the 1996 Act); parties may not exclude their application.

Finally, unless the parties agree otherwise, a party to arbitral proceedings may (in certain circumstances) appeal to the court on a question of law arising out of an award made in the proceedings (section 69). An appeal on a point of law may not be brought without either the agreement of all the other parties to the proceedings or the leave of the court (section 69(2)).

9.2 Can parties agree to exclude any basis of appeal or challenge against an arbitral award that would otherwise apply as a matter of law?

Parties may agree to exclude the right to appeal to the court on a question of law arising out of an award made in the course of arbitral proceedings. For the purposes of section 69 of the 1996 Act, an agreement that the tribunal does not need to give reasons for its award will be deemed an agreement between the parties to exclude this base of appeal.

9.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

The 1996 Act provides that an award made by the tribunal is final and binding *unless otherwise agreed by the parties*. Therefore, the parties are free to agree to challenge the award under any procedures set out in the arbitration agreement (or otherwise agreed), in addition to the grounds for challenge set out in the 1996 Act. Equally, the parties are free to agree that an award be disregarded entirely in order that they may re-arbitrate their dispute (in which case the first award cannot be enforced).

9.4 What is the procedure for appealing an arbitral award in England & Wales?

An appeal against an arbitral award must be commenced by the issue of an arbitration claim form (in accordance with Part 62 of the English Rules of Civil Procedure, or "CPR"). The claim form must state under which section of the 1996 Act the application is brought and give details of the award being challenged, identifying which part or parts of the award are challenged and specifying the grounds for the challenge (CPR Rule 62.4(1)).

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10 Enforcement of an Award

10.1 Has England & Wales signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

The United Kingdom is a party to the New York Convention, which it signed and ratified in 1975, subject to the reservation that it applies only to awards made in the territory of another contracting party.

Part III of the 1996 Act deals with the recognition and enforcement of New York Convention awards (i.e., awards made, in pursuance of an arbitration agreement, in the territory of another state which is also a party to the New York Convention).

10.2 Has England & Wales signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

An arbitral award made under the Geneva Convention 1927 is enforceable pursuant to section 99 of the 1996 Act. Section 99 of the Arbitration Act 1996 has in practice been all but superseded by enforcement under the subsequent New York Convention. However, there remain a limited number of countries which have not yet acceded to the New York Convention that nevertheless remain party to the Geneva Convention 1927.

Other than legislation regarding the enforcement of awards in certain, former Commonwealth countries, England is not a signatory to any other Conventions regarding the recognition and enforcement of awards.

10.3 What is the approach of the national courts in England & Wales towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

Generally speaking, the English courts exhibit a strong bias in favour of enforcement. The enforcement procedure prescribed by the 1996 Act distinguishes between foreign awards and awards made in England and Wales (as opposed to international and domestic awards) for this purpose.

An award made in England may be enforced as a judgment or an order of the court (section 66) by leave of the court. The 1996 Act provides that leave will not be given where the tribunal is shown to have lacked substantive jurisdiction to make the award.

A foreign award, rendered in another New York Convention country, will be recognised and enforced in the courts of England and Wales, subject to the limited exceptions set out in Part III of the 1996 Act. The grounds for refusing to recognise or enforce foreign awards are limited to: incapacity of a party; invalidity of the arbitration agreement; lack of proper notice; lack of jurisdiction; procedural irregularity in the composition of the tribunal; the fact that the award has been set aside or not become binding in the country where it was made; the non-arbitrability of the subject matter of the arbitration; or the fact that it would be contrary to public policy to enforce the award. The English courts retain a discretion to enforce an award that otherwise satisfies one of these grounds, but this discretion is very narrowly construed (*Yukos Oil Company v. Dardana Ltd* [2002] 2 Lloyd's Rep 326). The English courts take a broad view of arbitrability and, for the most part, appear to be reluctant to refuse to enforce a foreign award on the grounds of public policy (which is deliberately not defined in the 1996 Act).

10.4 What is the effect of an arbitration award in terms of *res judicata* in England & Wales? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

In general, the English common law principles of *res judicata* and issue estoppel apply to arbitrations sited in England. A final and binding award, therefore, precludes the successful party from bringing the same claim(s) again, either in a fresh arbitration or before the national courts, and precludes both parties from contradicting the decision of the arbitral tribunal on a question of law or fact decided by the award.

In practice, the Privy Council has affirmed (in *Associated Electric and Gas Insurance Services Ltd v. European Reinsurance Co. of Zurich* [2003] 1 WLR 1041) that a prior award may be used by one of the parties to raise a defence of issue estoppel in a new arbitration between the same parties.

11 Confidentiality

11.1 Are arbitral proceedings sited in England & Wales confidential? What, if any, law governs confidentiality?

Subject to the parties' express agreement in relation to confidentiality, under English common law there is an implied duty of confidentiality in all arbitration agreements. This duty arises from the concept of the essentially private nature of international arbitration.

11.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

There are exceptions to the implied duty of confidentiality. Disclosure may be permitted outside the arbitral proceedings where the party that originally produced the material has consented to disclosure, the court has ordered or given leave for disclosure on the basis that it is reasonably necessary for the protection of the legitimate interests of an arbitrating party, or it is otherwise in the interests of justice.

11.3 In what circumstances, if any, are proceedings not protected by confidentiality?

The confidentiality of arbitral proceedings is not protected in the event that: the parties agree otherwise; matters relating to the arbitration are the subject of court proceedings (e.g., as a result of a party's application to the court for preliminary relief, enforcement proceedings or appeal); disclosure is reasonably necessary for the protection of the legitimate interests of an arbitrating party; or disclosure is otherwise in the interests of justice.

12 Remedies / Interests / Costs

12.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

The parties are free to agree the scope of the tribunal's power to grant remedies (section 48(1)). In the absence of agreement by the parties, the tribunal is permitted to order the payment of a sum of money, in any currency (section 48(4)). A tribunal in England & Wales or Northern Ireland is not permitted to award punitive

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damages for breach of contract (and only in limited tort actions). However, where the parties' agreement is sufficiently wide to encompass claims under a foreign statute, and that foreign statute provides for special damages or punitive damages (e.g., triple damages in U.S. anti-trust claims), a tribunal may be able to award such damages in an arbitration sited in England & Wales or Northern Ireland. A tribunal cannot assume sovereign powers, such as the power to order imprisonment or the payment of fines to the state, as these powers are reserved for the courts.

12.2 What, if any, interest is available?

The 1996 Act provides that parties are free to agree on the powers of the tribunal as regards the award of interest (section 49(1)). In the absence of the parties' agreement, the tribunal will be entitled to award simple or compound interest from such dates, at such rates and with such rests as it considers meets the justice of the case, on the whole or part of any amount awarded by the tribunal or claimed and outstanding at the commencement of the proceedings but paid before the date of the award (section 49(3)). Interest may be awarded from the date of the award up until payment on the amount of any award and any interest or costs (section 49(4)).

12.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

The 1996 Act provides that a party may be entitled to recover the costs of the arbitration. These include: the arbitrators' fees and expenses (section 59(1)(a)); the fees and expenses of any arbitral institution (section 59(1)(b)); and the legal or other costs of the parties (section 59(1)(c)). The general principle in English arbitration is that costs should "follow the event" (i.e., the successful party will be entitled to its costs) (section 61(2)). The parties are entitled to agree any costs formula but, in the absence of agreement, the tribunal may make an award allocating costs as between the parties in accordance with the general principle. An arbitral tribunal may depart from the general principle in relation to the whole or part of the costs, in the event that it concludes that in the circumstances it is not appropriate. In practice, a tribunal may treat interim steps or applications separately for the purpose of costs considerations, potentially resulting in an unsuccessful party recovering its costs in relation to an unnecessarily expensive and onerous interim step in the proceedings taken by the successful party.

12.4 Is an award subject to tax? If so, in what circumstances and on what basis?

An arbitral award may be subject to earnings-related tax, but the payment of tax is a personal matter for the party to whom damages are paid. Essentially, damages intended to replace lost income or profit may be taxable.

13 Investor State Arbitrations

13.1 Has England & Wales signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965)?

The United Kingdom (which incorporates England & Wales and Northern Ireland) signed and ratified the Washington Convention on 26 May 1965 and 19 December 1966, respectively. The Washington Convention ultimately entered into force in the United Kingdom on 18 January 1967.

13.2 Is your county party to a significant number of Bilateral Investment Treaties (BITs) or Multilateral Investment treaties (such as the Energy Charter Treaty) that allow for recourse to arbitration under the auspices of the International Centre for the Settlement of Investment Disputes ('ICSID')?

In the United Kingdom, BITs are described as Investment Promotion and Protection Agreements ("IPPAs"). According to the Department of Trade and Industry (www.dti.gov.uk/europeandtrade/key-trade-issues/investment/page22718.html), the United Kingdom has concluded 106 IPPAs, of which 94 are in force.

The Foreign & Commonwealth Office Economic Department leads the negotiation of new IPPAs and IPPA policy in general.

The United Kingdom is also a signatory to the Energy Charter Treaty, having deposited its instruments of accession and ratification on 16 December 1997.

13.3 Does England & Wales have standard terms or model language that it uses in its investment treaties and, if so, what is the intended significance of that language?

The United Kingdom has a model BIT. Key elements of United Kingdom BITs include provisions for equal and non-discriminatory treatment of investors and their investments, compensation for expropriation, transfer of capital and returns and access to independent settlement of disputes.

The main objective of the United Kingdom's model BIT was to provide legal protection for British foreign property in a rapidly developing international context. It is similar to the model BITs of other European countries. Its language tends to emphasise investment protection rather than the liberalisation of the investment policies of developing countries.

13.4 In practice, have disputes involving England & Wales been resolved by means of ICSID arbitration and, if so, what has the approach of national courts in England & Wales been to the enforcement of ICSID awards?

To date, there have been no concluded ICSID arbitrations involving the United Kingdom as a party. Nor are there any pending arbitrations in which the United Kingdom is a party. Generally speaking, there has also been very little treatment of ICSID awards by the English courts. In the circumstances, therefore, it is difficult to generalise about the approach English courts might take to the enforcement of ICSID awards.

Nevertheless, in *AIG Capital Partners Inc and another v. Republic of Kazakhstan* (*National Bank of Kazakhstan intervening*) [2005] EWHC 2239 (Comm), the English Commercial Court considered issues relating to the enforcement of an ICSID award, even though the dispute had been submitted to ICSID arbitration pursuant to a BIT between the United States and the Republic of Kazakhstan. In that case, the Commercial Court found that, under certain circumstances (e.g., enforcing an ICSID award against the property of a central bank), section 14(4) of the State Immunity Act 1978 may apply in order to conclude that the property of a state's central bank shall not be regarded as "in use or intended for use for commercial purposes". Accordingly, in the context of an ICSID award, certain assets can enjoy immunity from the enforcement jurisdiction of the English courts. (*See also Alcom Ltd v. Republic of Colombia and others* [1984] AC 580.)

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13.5 What is the approach of the national courts in England & Wales towards the defence of state immunity regarding jurisdiction and execution?

Under section 9 of the State Immunity Act 1978, where a state has agreed in writing to submit disputes to arbitration it will be deemed to have waived its right to jurisdictional immunity. This will be relevant in respect of signatories to the Washington Convention and IPPA signatories.

A state may nonetheless claim immunity from execution in order to prevent enforcement of an arbitral award. Under section 13(2)(b) of the State Immunity Act 1978, this immunity from execution may be waived by written consent but not by merely submitting to the jurisdiction of the courts.

As discussed in question 13.4 above in the context of ICSID awards, there is no immunity in respect of property which is for the time being in use or intended for use for commercial purposes. However, English and international courts historically have been reluctant to deem state assets to be used for exclusively commercial purposes (*Alcom Ltd v. Republic of Colombia and others* [1984] AC 580).

14 General

14.1 Are there noteworthy trends in the use of arbitration or arbitration institutions in England & Wales? Are certain disputes commonly being referred to arbitration?

England (and, more precisely, London) continues to be a popular choice as an arbitral situs given the relative non-interventionist conduct of the English courts and the respect afforded to the finality of an award. The reputable international arbitral institutions represented in England and Wales continue to explore methods of ensuring the speed, low cost and efficacy of international arbitration. A broad range of international commercial contracts are being referred to arbitration, including in the areas of construction, insurance, energy, telecommunications, aviation and investment.

According to information released by the London Court of International Arbitration (LCIA) in 2008, 137 cases were referred to it in 2007, up from 130 cases in 2006 and 118 cases in 2005. Arguably, England's growing popularity as an arbitral venue can be attributed, in large part, to the success of the 1996 Act. The fact that the 1996 Act allows parties to determine the path of the arbitral process, while simultaneously limiting the intervention of the English courts, represents a significant incentive for individuals or entities contemplating arbitrating in England.

14.2 Are there any other noteworthy current issues affecting the use of arbitration in England & Wales?

The referral by the House of Lords (*West Tankers Inc. v. RAS Riunione Adriatica di Sicurta SpA* [2007] UKHL 4) to the ECJ of the question whether anti-suit injunctions are available to enforce arbitration agreements in favour of litigation commenced in another EU Member State remains undetermined. The endorsement by Lord Hoffman of the view that anti-suit injunctions should be available was clear, and is to be welcomed.

In another decision relating to the grant of anti-suit injunctions (*Noble Assurance Co v. Gerling-Konzen General Insurance Co* [2007] All ER (D) 289), the English High Court determined that it would also have jurisdiction to grant an anti-suit injunction against a party who sought to have an arbitral award (rendered in an arbitration sited in London) set aside in circumstances where the set aside proceedings (brought in Vermont) were vexatious, oppressive and an abuse of process and where at least one of the claims being advanced in the set aside proceedings could have been brought in the arbitration but were not. However, in the exercise of its discretion as to whether it ought to grant the injunction, the court was conscious of the need for respect for the Vermont court and concluded that the ends of justice would be equally well served by making a declaration as to the validity and scope of the award, which could then be relied on in an application to stay the Vermont proceedings on the grounds of *res judicata* and collateral estoppel.

Finally, the English High Court in *Mobil Cerro Negro Ltd v. Petroleas de Venezuela SA* ([2008] EWHC 532 (Comm)) has confirmed that a worldwide freezing order in support of arbitration in a foreign jurisdiction should generally only be granted where there is a sufficient connection with England, or where there are other exceptional circumstances such as fraud. In this case, the court set aside a freezing order over $12 billion of assets which had been granted in an application without notice, to support an ICC arbitration seated in New York.

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Professional Activities

Ms. Davies is a member of the Young International Arbitrators Group of the LCIA, the International Bar Association and the Law Society of England and Wales.

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