



Arbitration Act 1996

1996 CHAPTER 23

PART I

ARBITRATION PURSUANT TO AN ARBITRATION AGREEMENT

Powers of the court in relation to award

66 Enforcement of the award

- (1) An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.
- (2) Where leave is so given, judgment may be entered in terms of the award.
- (3) Leave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award.

The right to raise such an objection may have been lost (see section 73).

- (4) Nothing in this section affects the recognition or enforcement of an award under any other enactment or rule of law, in particular under Part II of the Arbitration Act 1950 (enforcement of awards under Geneva Convention) or the provisions of Part III of this Act relating to the recognition and enforcement of awards under the New York Convention or by an action on the award.

67 Challenging the award: substantive jurisdiction

- (1) A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court—
 - (a) challenging any award of the arbitral tribunal as to its substantive jurisdiction;or

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- (b) for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction.

A party may lose the right to object (see section 73) and the right to apply is subject to the restrictions in section 70(2) and (3).

- (2) The arbitral tribunal may continue the arbitral proceedings and make a further award while an application to the court under this section is pending in relation to an award as to jurisdiction.
- (3) On an application under this section challenging an award of the arbitral tribunal as to its substantive jurisdiction, the court may by order—
 - (a) confirm the award,
 - (b) vary the award, or
 - (c) set aside the award in whole or in part.
- (4) The leave of the court is required for any appeal from a decision of the court under this section.

68 Challenging the award: serious irregularity

- (1) A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award.

A party may lose the right to object (see section 73) and the right to apply is subject to the restrictions in section 70(2) and (3).

- (2) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant—
 - (a) failure by the tribunal to comply with section 33 (general duty of tribunal);
 - (b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction: see section 67);
 - (c) failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties;
 - (d) failure by the tribunal to deal with all the issues that were put to it;
 - (e) any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award exceeding its powers;
 - (f) uncertainty or ambiguity as to the effect of the award;
 - (g) the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy;
 - (h) failure to comply with the requirements as to the form of the award; or
 - (i) any irregularity in the conduct of the proceedings or in the award which is admitted by the tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award.
- (3) If there is shown to be serious irregularity affecting the tribunal, the proceedings or the award, the court may—
 - (a) remit the award to the tribunal, in whole or in part, for reconsideration,
 - (b) set the award aside in whole or in part, or
 - (c) declare the award to be of no effect, in whole or in part.

The court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.

- (4) The leave of the court is required for any appeal from a decision of the court under this section.

69 Appeal on point of law

- (1) Unless otherwise agreed by the parties, a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings.

An agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section.

- (2) An appeal shall not be brought under this section except—
- (a) with the agreement of all the other parties to the proceedings, or
 - (b) with the leave of the court.

The right to appeal is also subject to the restrictions in section 70(2) and (3).

- (3) Leave to appeal shall be given only if the court is satisfied—
- (a) that the determination of the question will substantially affect the rights of one or more of the parties,
 - (b) that the question is one which the tribunal was asked to determine,
 - (c) that, on the basis of the findings of fact in the award—
 - (i) the decision of the tribunal on the question is obviously wrong, or
 - (ii) the question is one of general public importance and the decision of the tribunal is at least open to serious doubt, and
 - (d) that, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.
- (4) An application for leave to appeal under this section shall identify the question of law to be determined and state the grounds on which it is alleged that leave to appeal should be granted.
- (5) The court shall determine an application for leave to appeal under this section without a hearing unless it appears to the court that a hearing is required.
- (6) The leave of the court is required for any appeal from a decision of the court under this section to grant or refuse leave to appeal.
- (7) On an appeal under this section the court may by order—
- (a) confirm the award,
 - (b) vary the award,
 - (c) remit the award to the tribunal, in whole or in part, for reconsideration in the light of the court's determination, or
 - (d) set aside the award in whole or in part.

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The court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.

- (8) The decision of the court on an appeal under this section shall be treated as a judgment of the court for the purposes of a further appeal.

But no such appeal lies without the leave of the court which shall not be given unless the court considers that the question is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

70 Challenge or appeal: supplementary provisions

- (1) The following provisions apply to an application or appeal under section 67, 68 or 69.
- (2) An application or appeal may not be brought if the applicant or appellant has not first exhausted—
- (a) any available arbitral process of appeal or review, and
 - (b) any available recourse under section 57 (correction of award or additional award).
- (3) Any application or appeal must be brought within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process.
- (4) If on an application or appeal it appears to the court that the award—
- (a) does not contain the tribunal's reasons, or
 - (b) does not set out the tribunal's reasons in sufficient detail to enable the court properly to consider the application or appeal,
- the court may order the tribunal to state the reasons for its award in sufficient detail for that purpose.
- (5) Where the court makes an order under subsection (4), it may make such further order as it thinks fit with respect to any additional costs of the arbitration resulting from its order.
- (6) The court may order the applicant or appellant to provide security for the costs of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.

The power to order security for costs shall not be exercised on the ground that the applicant or appellant is—

- (a) an individual ordinarily resident outside the United Kingdom, or
 - (b) a corporation or association incorporated or formed under the law of a country outside the United Kingdom, or whose central management and control is exercised outside the United Kingdom.
- (7) The court may order that any money payable under the award shall be brought into court or otherwise secured pending the determination of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.
- (8) The court may grant leave to appeal subject to conditions to the same or similar effect as an order under subsection (6) or (7).

This does not affect the general discretion of the court to grant leave subject to conditions.

71 Challenge or appeal: effect of order of court

- (1) The following provisions have effect where the court makes an order under section 67, 68 or 69 with respect to an award.
- (2) Where the award is varied, the variation has effect as part of the tribunal's award.
- (3) Where the award is remitted to the tribunal, in whole or in part, for reconsideration, the tribunal shall make a fresh award in respect of the matters remitted within three months of the date of the order for remission or such longer or shorter period as the court may direct.
- (4) Where the award is set aside or declared to be of no effect, in whole or in part, the court may also order that any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which the arbitration agreement applies, is of no effect as regards the subject matter of the award or, as the case may be, the relevant part of the award.