



AI COMMENTARY: ENGLISH ARBITRATION ACT 1996

Prepared by Galadari Advocates & Legal Consultants with ChatGPT

Edited by Abdulla Ziad Galadari, Sergejs Dilevka, and Dimitriy Mednikov

About Galadari

Galadari is a full-service Emirati law firm dedicated to providing legal solutions at every stage of the business cycle.

Since 1983, we have supported the development of the United Arab Emirates (UAE) legal framework, while contributing to the industry and driving great commercial impact across the Emirates and supporting our clients to navigate through their challenges.

For four decades, our goal has been to deliver the highest-quality product to solve complication issues. Our team take pride in our uncompromising approach to quality and recognise everything we do, or produce is a measurement of our commitment to quality. We give 100% the first time and every time.

Our legal team consists of over 60 locally qualified Emirati and international lawyers across 3 offices in the UAE who are fluent in 18 different languages. Our Emirati advocates have full rights of audience across all UAE Courts. Our team aims to provide the highest standard of legal service and maintain the same level of quality at every point of contact.

Aligned with our core values, Galadari is committed to being a responsible business. We are actively progressing towards a diverse and inclusive workforce, using our legal capabilities to do good in the community through pro bono work, supporting communities and charities across the UAE, and reducing our environmental impact.

Galadari's International Arbitration Practice

Galadari “are a local law firm with international standards and lawyers, familiar with local UAE laws, DIFC laws, and international laws” (*The Legal 500 EMEA – UAE 2023*).

With over four decades of experience in the UAE, our team possesses extensive expertise gained from their involvement in high-profile, intricate disputes worth millions of dollars across the region. Clients rely on our broad-ranging knowledge to guide them on the most suitable strategy for their business when faced with a dispute, whether as the claimant or respondent.

We represent clients in proceedings governed by a variety of international arbitration bodies, including ICC, LCIA, SCC, SCIA, DIAC, and GCC CAC. Additionally, we also provide representation in ad-hoc arbitration cases, and arbitration-related proceedings before the courts of Dubai, the DIFC, Abu Dhabi, and the ADGM.

With one of the largest teams of Emirati advocates in the country, we offer a one-stop shop from the initiation to the conclusion of any arbitration, eliminating the need for external counsel.

Clients and legal directories continuously praise our forward-thinking approach. The team was shortlisted for Arbitration Law Firm of the Year by Thomson Reuters Asian Legal Business Middle East Law Awards 2023, and Arbitration Team of the Year in Law.com International's Middle East Legal Awards 2023.

Galadari's International Arbitration Team



Abdulla Ziad Galadari
Senior Partner
abdulla@galadarilaw.com

Abdulla is the principal driving force behind the growth strategies of many private and public organisations across the UAE, who continuously develop under his leadership. He is a key influencer across the UAE, supporting a diverse range of businesses and senior dignitaries, helping them to navigate its legal framework. Abdulla has been recognised by The Legal 500 as a “Leading Individual” in the region.



Sergejs Dilevka
Senior Counsel
s.dilevka@galadarilaw.com

Sergejs is Senior Counsel at the Dispute Resolution department of the Galadari's Dubai office. Sergejs is a dual-qualified lawyer and admitted as a Solicitor of the Senior Courts of England & Wales and as an Attorney and Counsellor of Law in the Courts of the State of New York. Sergejs has over 15 years of experience in advising and representing multinational companies and high-net-worth individuals in a wide range of complex institutional (ICC, LCIA, DIFC-LCIA, LMAA, SCC, SCIA, DIAC, GCC CAC) and *ad hoc* international and domestic arbitration proceedings, and litigation proceedings at DIFC Courts. Sergejs is a registered practitioner with DIFC Courts and ADGM Courts.



Dimitriy Mednikov
Associate
dimitriy.mednikov@galadarilaw.com

Dimitriy is an Associate at the Dispute Resolution department of Galadari's Dubai office. Dimitriy's practice focuses on complex commercial arbitration, particularly in the IT, engineering and construction, and M&A sectors, under various institutional rules (ICC, LCIA, SCC, HKIAC, and DIAC). Dimitriy has substantial experience in advising and acting for high-net-worth individuals in cross-border disputes and criminal proceedings involving allegations of money laundering. Dimitriy is a registered practitioner with DIFC Courts and ADGM Courts.

Editors' Preface

Galadari's Artificial Intelligence (AI) Commentary on arbitration rules, laws, and treaties, was composed by Abdulla Ziad Galadari, Sergejs Dilevka, and Dimitriy Mednikov.

The term 'artificial intelligence' (AI) was first suggested by John McCarthy in 1955, defining it as a challenge "*of making a machine behave in ways that would be called intelligent if a human were so behaving*".

Almost seventy years later, further to multiple waves advancing AI technologies and notwithstanding several so-called 'AI winters' (prolonged periods of time when interest and investment in AI was significantly decreasing), AI has finally arrived as an essential technology for our future development and is here to stay. Today, leading AI platforms are able to maintain logical conversations their users, thus, satisfying Mr McCarthy's problem by making a machine behave intelligently.

The benefits of AI for both individuals and businesses have transitioned from being purely theoretical to practicable and, to a great extent, quantifiable. For legal practitioners, presently, such quantifiable benefits would likely be based on the billable time saved, for example, on document review and textual analysis or production of documents based on standard templates. Further, there is a huge potential to use AI to write simple code automating mundane tasks, such as generation of exhibit lists, (re)numbering of exhibits, bulk-conversion of documents from one file format into another, updating cross-references or footnotes in a document — one can think of plenty of use cases and what is needed is a bit of knowledge on how to make basic changes to that code and run it. However, as of the date of this publication, it seems that the general consensus among legal practitioners is that AI systems cannot be reliably used for legal research and all of the results of such research would still have to be reviewed with great care by human lawyers.

Galadari's AI Commentary on arbitration rules, laws, and treaties, is an experiment focussed on using AI to ascertain the current quality of AI analysis, and to determine whether AI is able to digest large quantities of complex information and produce an accurate and logical analysis of the relevant text in respect of various arbitration rules.

In the development of this AI Commentary, we used ChatGPT (GPT-3.5), an AI-powered language model developed by OpenAI. This AI model is capable of generating human-like text based on context and past conversations. The method used, for consistency, and not due to lack of imagination, implemented the use of the following prompt template to generate commentary on each provision of the relevant text: 'analyse article/section X of arbitration law/rules/treaty'.

Overall, the general outcome of our experiment indicates that, in the majority of situations, ChatGPT was able to successfully dissect provisions, spot important nuances, and generate meaningful commentary on the relevant provisions. Specifically, once ChatGPT was presented with a provision for analysis, it would typically attempt to break down the text into separate aspects into a list or bullet point format, tackling each and summarising the provision at the end of its analysis. This approach is consistently observed by ChatGPT across all the AI Commentary publications. We found this method to be suitable and informative, allowing readers to process the analysis in a systematic manner and benefit from ChatGPT's separation of the provision into smaller bits that the reader may be specifically interested in. It was noted that ChatGPT does not overlook or miss certain aspects of a provision, which is a potential human risk factor. ChatGPT addressed every aspect of provisions without fail, for example:

Article 21.3 of the UAE Federal Law No. 6 of 2018 on Arbitration (“UAE Arbitration Law”): *“The Arbitral Tribunal may, at the request of any party or on its own motion, amend, suspend, or cancel an interim measure it has ordered, in exceptional circumstances, by prior notice to be given to the Parties.”*

ChatGPT: *“Article 21.3 of the UAE Arbitration Law grants the Arbitral Tribunal the authority to modify, suspend, or revoke interim measures it has previously ordered during the arbitration process. These changes can be made under specific conditions referred to as “exceptional circumstances”. Let us analyse this article:*

1. *Modification: The Tribunal can amend or alter the scope or conditions of an interim measure based on the evolving circumstances of the case.*
2. *Suspension: The Tribunal can suspend the enforcement of an interim measure temporarily if the circumstances warrant it.*
3. *Cancellation: The Tribunal can completely cancel or revoke an interim measure previously ordered if it deems it no longer necessary or appropriate.*
4. *Exceptional Circumstances: The Tribunal’s power to amend, suspend, or cancel interim measures is limited to exceptional circumstances, implying that such measures are not subject to routine or arbitrary alterations.*
5. *Prior Notice: The article requires the Tribunal to provide advance notice to the parties before making any changes to the interim measures. This ensures transparency and allows parties to present their positions on the proposed amendments.”*

The commentary produced using ChatGPT did display some shortcomings. For example, there were instances when ChatGPT would ‘hallucinate’, making something up, which is a well-known limitation not only for OpenAI and ChatGPT users but also for other AI systems, for example:

Extract from ChatGPT’s commentary on Article 2.4 of DIAC Arbitration Rules 2022 containing a reference to Article 32: *“This exception indicates that certain specific provisions, such as Article 32, may have limited application to agreements to arbitrate made before the effective date of the Rules. It provides flexibility for parties to agree on different rules or procedures regarding the settlement or termination of proceedings, even if the general principle of the Rules taking precedence over the parties’ agreement still applies.”*

Human lawyer: *Article 32 of DIAC Arbitration Rules 2022 does not concern ‘settlement or termination of proceedings’ but sets out provisions pertaining to expedited proceedings.*

Occasionally, ChatGPT would not appreciate the important distinction between ‘may’ or ‘should’ and the commanding ‘shall’, which can be crucial, for example:

Article 4.1(c) of DIAC Arbitration Rules 2022: *“Any party wishing to commence an arbitration under the Rules shall submit to the Centre a Request which shall include: [...] (c) a copy of any relevant agreement between the parties, which contains the agreement to arbitrate, in respect of which the claim arises; [...].”*

ChatGPT: *“Article 4.1 of the DIAC Arbitration Rules outlines the requirements for submitting a Request to commence an arbitration under the Rules. Let us analyse each component of this article: [...] Copy of relevant agreement: The Request ~~should~~ include a copy of any relevant*

agreement between the parties that contains the agreement to arbitrate, which is the basis for the claim being made.”

Parenthetically, ChatGPT sometimes would simply paraphrase a provision several times within a single answer or alter the format of the responses with a series of prompts within the same commentary. To be fair, most of these provisions were quite nominal and did not contain much substance for analysis, for example:

Definition of ‘Parties’ Article 1.1 of UAE Arbitration Law: *“Parties: The Claimant and the Respondent, whatever their number.”*

ChatGPT: *“Parties: Refers to the Claimant and the Respondent involved in the arbitration. The parties could be individuals, companies, or any legal entities engaged in a dispute.”*

It was expected that there would be such limitations, but it was pleasantly surprising that their frequency was much lower than anticipated.

Being cognisant of all the existing issues and scepticism within the legal community, we consider that this experimental AI Commentary could be of assistance to practitioners in at least two ways. First, it allows the reader an opportunity to perform a sense check on their understanding of a provision or its aspect against ChatGPT’s analysis. Second, the time required to produce 24 publications comprising the AI Commentary was significantly less than the typical duration needed to produce a single comprehensive commentary text on any of the relevant arbitration laws, rules, or treaties. Thus, should it become necessary, a similar AI commentary could be produced on any arbitration law/rules/treaty at a fraction of time and cost typically associated with such a task.

The purpose of publishing the AI Commentary is to provide arbitration practitioners and academics with a general sense of what is presently possible to achieve in the field of arbitration with the assistance of generative AI software, and encourage the arbitration community to push the boundaries of arbitration as a flexible, efficient, and effective dispute resolution method.

Notably, all commentary was generated with ChatGPT and was supported by a selective review by the Editors. Accordingly, the commentary may contain inaccurate and/or incomplete information. Readers are strongly advised to exercise caution reading the commentary with some scepticism and to keep a pencil in hand to note any inaccuracies. Needless to say, nothing in this text should be considered and/or relied upon as legal advice. For detailed information, please refer to OpenAI’s Terms & Policies.

This project would not be complete without front page illustrations, which were also generated by AI. DALL E, another OpenAI system capable of creating images based on prompts, was used for this purpose. The chosen concept is based on a watercolour painting style, primarily portraying athletic rivalries in locations that correspond to the relevant arbitration law, rules, or treaty. The hope is that the readers will find the illustrations aesthetically appealing.

Should you have any questions, comments, or observations, including any noticed errors, please do not hesitate to contact us directly via email at s.dilevka@galadarilaw.com.

Abdulla Ziad Galadari

Sergejs Dilevka

Dimitriy Mednikov

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Table of Contents

PART I — ARBITRATION PURSUANT TO AN ARBITRATION AGREEMENT	12
INTRODUCTORY	12
1 GENERAL PRINCIPLES.....	12
2 SCOPE OF APPLICATION OF PROVISIONS.....	13
3 THE SEAT OF THE ARBITRATION	18
4 MANDATORY AND NON-MANDATORY PROVISIONS	19
5 AGREEMENTS TO BE IN WRITING	21
THE ARBITRATION AGREEMENT.....	27
6 DEFINITION OF ARBITRATION AGREEMENT	27
7 SEPARABILITY OF ARBITRATION AGREEMENT	28
8 WHETHER AGREEMENT DISCHARGED BY DEATH OF A PARTY	30
STAY OF LEGAL PROCEEDINGS	32
9 STAY OF LEGAL PROCEEDINGS.....	32
10 REFERENCE OF INTERPLEADER ISSUE TO ARBITRATION	37
11 RETENTION OF SECURITY WHERE ADMIRALTY PROCEEDINGS STAYED.....	39
COMMENCEMENT OF ARBITRAL PROCEEDINGS.....	41
12 POWER OF COURT TO EXTEND TIME FOR BEGINNING ARBITRAL PROCEEDINGS, &C.....	41
13 APPLICATION OF LIMITATION ACTS.....	46
14 COMMENCEMENT OF ARBITRAL PROCEEDINGS	50
THE ARBITRAL TRIBUNAL	55
15 THE ARBITRAL TRIBUNAL	55
16 PROCEDURE FOR APPOINTMENT OF ARBITRATORS.....	57
17 POWER IN CASE OF DEFAULT TO APPOINT SOLE ARBITRATOR	64
18 FAILURE OF APPOINTMENT PROCEDURE	68
19 COURT TO HAVE REGARD TO AGREED QUALIFICATIONS	73
20 CHAIRMAN	74
21 UMPIRE	78
22 DECISION-MAKING WHERE NO CHAIRMAN OR UMPIRE	83
23 REVOCATION OF ARBITRATOR’S AUTHORITY	85
24 POWER OF COURT TO REMOVE ARBITRATOR	90

25	RESIGNATION OF ARBITRATOR.....	93
26	DEATH OF ARBITRATOR OR PERSON APPOINTING HIM	97
27	FILLING OF VACANCY, &C.	98
28	JOINT AND SEVERAL LIABILITY OF PARTIES TO ARBITRATORS FOR FEES AND EXPENSES	102
29	IMMUNITY OF ARBITRATOR.....	106
	JURISDICTION OF THE ARBITRAL TRIBUNAL.....	109
30	COMPETENCE OF TRIBUNAL TO RULE ON ITS OWN JURISDICTION.....	109
31	OBJECTION TO SUBSTANTIVE JURISDICTION OF TRIBUNAL.....	110
32	DETERMINATION OF PRELIMINARY POINT OF JURISDICTION	115
	THE ARBITRAL PROCEEDINGS.....	121
33	GENERAL DUTY OF THE TRIBUNAL.....	121
34	PROCEDURAL AND EVIDENTIAL MATTERS.....	122
35	CONSOLIDATION OF PROCEEDINGS AND CONCURRENT HEARINGS	125
36	LEGAL OR OTHER REPRESENTATION.....	126
37	POWER TO APPOINT EXPERTS, LEGAL ADVISERS OR ASSESSORS	127
38	GENERAL POWERS EXERCISABLE BY THE TRIBUNAL.....	129
39	POWER TO MAKE PROVISIONAL AWARDS.....	134
40	GENERAL DUTY OF PARTIES	138
41	POWERS OF TRIBUNAL IN CASE OF PARTY’S DEFAULT	140
	POWERS OF COURT IN RELATION TO ARBITRAL PROCEEDINGS	148
42	ENFORCEMENT OF PEREMPTORY ORDERS OF TRIBUNAL	148
43	SECURING THE ATTENDANCE OF WITNESSES.....	152
44	COURT POWERS EXERCISABLE IN SUPPORT OF ARBITRAL PROCEEDINGS	156
45	DETERMINATION OF PRELIMINARY POINT OF LAW	163
	THE AWARD.....	169
46	RULES APPLICABLE TO SUBSTANCE OF DISPUTE	169
47	AWARDS ON DIFFERENT ISSUES, &C.....	171
48	REMEDIES.....	174
49	INTEREST	179
50	EXTENSION OF TIME FOR MAKING AWARD	185
51	SETTLEMENT	189

52	FORM OF AWARD	195
53	PLACE WHERE AWARD TREATED AS MADE	199
54	DATE OF AWARD.....	200
55	NOTIFICATION OF AWARD.....	202
56	POWER TO WITHHOLD AWARD IN CASE OF NON-PAYMENT	205
57	CORRECTION OF AWARD OR ADDITIONAL AWARD.....	212
58	EFFECT OF AWARD.....	218
	COSTS OF THE ARBITRATION.....	221
59	COSTS OF THE ARBITRATION	221
60	AGREEMENT TO PAY COSTS IN ANY EVENT	222
61	AWARD OF COSTS.....	223
62	EFFECT OF AGREEMENT OR AWARD ABOUT COSTS.....	224
63	THE RECOVERABLE COSTS OF THE ARBITRATION	224
64	RECOVERABLE FEES AND EXPENSES OF ARBITRATORS.....	230
65	POWER TO LIMIT RECOVERABLE COSTS	232
	POWERS OF THE COURT IN RELATION TO AWARD	234
66	ENFORCEMENT OF THE AWARD	234
67	CHALLENGING THE AWARD: SUBSTANTIVE JURISDICTION.....	237
68	CHALLENGING THE AWARD: SERIOUS IRREGULARITY	240
69	APPEAL ON POINT OF LAW	244
70	CHALLENGE OR APPEAL: SUPPLEMENTARY PROVISIONS	251
71	CHALLENGE OR APPEAL: EFFECT OF ORDER OF COURT.....	257
	MISCELLANEOUS	261
72	SAVING FOR RIGHTS OF PERSON WHO TAKES NO PART IN PROCEEDINGS.....	261
73	LOSS OF RIGHT TO OBJECT.....	263
74	IMMUNITY OF ARBITRAL INSTITUTIONS, &C.	265
75	CHARGE TO SECURE PAYMENT OF SOLICITORS' COSTS.....	266
	SUPPLEMENTARY	268
76	SERVICE OF NOTICES, &C	268
77	POWERS OF COURT IN RELATION TO SERVICE OF DOCUMENTS.....	272
78	RECKONING PERIODS OF TIME	275
79	POWER OF COURT TO EXTEND TIME LIMITS RELATING TO ARBITRAL PROCEEDINGS ..	278

80	NOTICE AND OTHER REQUIREMENTS IN CONNECTION WITH LEGAL PROCEEDINGS....	283
81	SAVING FOR CERTAIN MATTERS GOVERNED BY COMMON LAW.....	287
82	MINOR DEFINITIONS.....	289
83	INDEX OF DEFINED EXPRESSIONS: PART I.....	291
84	TRANSITIONAL PROVISIONS.....	292
PART II — OTHER PROVISIONS RELATING TO ARBITRATION		295
DOMESTIC ARBITRATION AGREEMENTS.....		295
85	MODIFICATION OF PART I IN RELATION TO DOMESTIC ARBITRATION AGREEMENT	295
86	STAYING OF LEGAL PROCEEDINGS.....	297
87	EFFECTIVENESS OF AGREEMENT TO EXCLUDE COURT’S JURISDICTION	299
88	POWER TO REPEAL OR AMEND SECTIONS 85 TO 87	301
CONSUMER ARBITRATION AGREEMENTS		304
89	APPLICATION OF UNFAIR TERMS REGULATIONS TO CONSUMER ARBITRATION AGREEMENTS.....	304
90	PART APPLIES WHERE CONSUMER IS A LEGAL PERSON	306
91	ARBITRATION AGREEMENT UNFAIR WHERE MODEST AMOUNT SOUGHT	307
SMALL CLAIMS ARBITRATION IN THE COUNTY COURT		312
92	EXCLUSION OF PART I IN RELATION TO SMALL CLAIMS ARBITRATION IN THE COUNTY COURT.....	312
APPOINTMENT OF JUDGES AS ARBITRATORS.....		313
93	APPOINTMENT OF JUDGES AS ARBITRATORS.....	313
STATUTORY ARBITRATIONS.....		318
94	APPLICATION OF PART I TO STATUTORY ARBITRATIONS.....	318
95	GENERAL ADAPTATION OF PROVISIONS IN RELATION TO STATUTORY ARBITRATIONS	320
96	SPECIFIC ADAPTATIONS OF PROVISIONS IN RELATION TO STATUTORY ARBITRATIONS	321
97	PROVISIONS EXCLUDED FROM APPLYING TO STATUTORY ARBITRATIONS	323
98	POWER TO MAKE FURTHER PROVISION BY REGULATIONS	324
PART III — RECOGNITION AND ENFORCEMENT OF CERTAIN FOREIGN AWARDS.....		326
ENFORCEMENT OF GENEVA CONVENTION AWARDS		326
99	CONTINUATION OF PART II OF THE ARBITRATION ACT 1950	326
RECOGNITION AND ENFORCEMENT OF NEW YORK CONVENTION AWARDS		327

100	NEW YORK CONVENTION AWARDS	327
101	RECOGNITION AND ENFORCEMENT OF AWARDS	331
102	EVIDENCE TO BE PRODUCED BY PARTY SEEKING RECOGNITION OR ENFORCEMENT ...	333
103	REFUSAL OF RECOGNITION OR ENFORCEMENT	334
104	SAVING FOR OTHER BASES OF RECOGNITION OR ENFORCEMENT.....	339
PART IV — GENERAL PROVISIONS		340
105	MEANING OF “THE COURT”: JURISDICTION OF HIGH COURT AND COUNTY COURT	340
106	CROWN APPLICATION.....	346
107	CONSEQUENTIAL AMENDMENTS AND REPEALS	348
108	EXTENT	349
109	COMMENCEMENT	351
110	SHORT TITLE	352

ENGLISH ARBITRATION ACT 1996¹

PART I — ARBITRATION PURSUANT TO AN ARBITRATION AGREEMENT

INTRODUCTORY

1 GENERAL PRINCIPLES

The provisions of this Part are founded on the following principles, and shall be construed accordingly—

- (a) the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;
- (b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;
- (c) in matters governed by this Part the court should not intervene except as provided by this Part.

Section 1 of the English Arbitration Act 1996 outlines the general principles on which the provisions of the Act are based. These principles guide the interpretation and application of the Act's provisions and play a significant role in promoting the effectiveness and efficiency of the arbitration process in England.

1. Fair resolution of disputes: The first principle states that the primary objective of arbitration is to achieve a fair resolution of disputes. Arbitration provides an alternative to litigation, allowing parties to resolve their conflicts outside of the court system. It emphasises the importance of obtaining a just outcome that is equitable for all parties involved. The use of an "impartial tribunal" indicates that arbitrators should be unbiased and neutral in their decision-making.
2. Freedom of party autonomy: The second principle emphasises the autonomy of the parties involved in the arbitration process. It recognises that parties should have the freedom to decide how their disputes are resolved. This freedom extends to choosing the arbitration process itself, selecting arbitrators, defining procedural rules, and determining the applicable law. However, this freedom is subject to limited safeguards that are necessary in the public interest. These safeguards are in place to ensure that the arbitration process does not violate fundamental principles of justice or public policy.
3. Limited court intervention: The third principle asserts that, in matters governed by the Arbitration Act, the court's role should be limited. It encourages minimal interference by the courts in the arbitration process. This is because arbitration is meant to be a private and efficient means of dispute resolution, and excessive court involvement could defeat its purpose. However, the Act provides specific instances where the court may intervene, laying down clear boundaries for when judicial intervention is permissible.

¹ Source: <https://www.legislation.gov.uk/ukpga/1996/23/body>.

Overall, section 1 of the English Arbitration Act 1996 sets the foundation for a fair, efficient, and autonomous arbitration process in England. By emphasising party autonomy, impartiality, and minimal court intervention, the Act seeks to encourage parties to choose arbitration as a preferred method of resolving their disputes.

2 SCOPE OF APPLICATION OF PROVISIONS

(1) The provisions of this Part apply where the seat of the arbitration is in England and Wales or Northern Ireland.

Section 2(1) of the English Arbitration Act 1996 sets out the scope of application for the provisions within Part I of the Act. It defines the geographical limitation for the application of these provisions based on the “seat of the arbitration”. Let us analyse it in detail:

1. **Seat of the arbitration:** The term “seat of the arbitration” refers to the legal place or location where the arbitration is considered to be based or rooted. It is also known as the “legal seat” or “place of arbitration”. The seat is crucial because it determines the procedural and substantive laws that govern the arbitration process.
2. **Application of Part I provisions:** section 2(1) explicitly states that the provisions outlined in Part I of the Arbitration Act 1996 apply only when the seat of the arbitration is in England and Wales or Northern Ireland. Part I of the Act deals with the general provisions related to arbitration, including the definition of arbitration agreements, the jurisdiction of the court to intervene in arbitration matters, the appointment of arbitrators, etc.
3. **Exclusion of other jurisdictions:** By limiting the application to arbitrations with seats in England and Wales or Northern Ireland, the Act excludes cases with seats in other jurisdictions. This means that if the seat of the arbitration is located outside England and Wales or Northern Ireland, the provisions of Part I of the Act will not apply to that particular arbitration.
4. **Importance of seat selection:** The choice of the seat of arbitration is significant because it determines the legal framework under which the arbitration process operates. The laws of the chosen seat govern important aspects of the arbitration, such as the enforcement of arbitration agreements and awards, the conduct of the arbitration proceedings, and the grounds for challenging arbitration awards.
5. **International context:** The limitation to England and Wales or Northern Ireland as the seat of arbitration means that the Act applies to both domestic and international arbitrations where the chosen seat is within these jurisdictions. This provision underscores the importance of these jurisdictions as favourable venues for arbitration and promotes their use for resolving disputes.

In summary, section 2(1) of the English Arbitration Act 1996 clarifies that Part I of the Act applies only to arbitrations with seats in England and Wales or Northern Ireland. The choice of seat is a crucial consideration in arbitration, as it determines the applicable legal framework and has implications for the conduct and enforceability of the arbitration process and award.

- (2) The following sections apply even if the seat of the arbitration is outside England and Wales or Northern Ireland or no seat has been designated or determined—
- (a) sections 9 to 11 (stay of legal proceedings, &c.), and
 - (b) section 66 (enforcement of arbitral awards).

Section 2(2) of the English Arbitration Act 1996 specifies certain provisions within the Act that apply regardless of whether the seat of the arbitration is within England and Wales, Northern Ireland, or outside these jurisdictions, or even if no seat has been designated or determined. Let us analyse this in detail:

1. Application of specific sections: Section 2(2) states that two particular sections of the Arbitration Act 1996 will apply irrespective of the seat of the arbitration or the absence of a designated or determined seat.
 - a. (a) Sections 9 to 11: These sections deal with the stay of legal proceedings, i.e., the suspension of court proceedings when parties have a valid arbitration agreement. The purpose is to give effect to the agreement to arbitrate and prevent parties from litigating in court when they have agreed to resolve their disputes through arbitration. Section 9 provides for the stay of legal proceedings in cases where there is an arbitration agreement, and ~~Section 10 allows the court to grant interim measures even when arbitration has already commenced or not yet begun. Section 11 empowers the court to grant an anti-suit injunction to restrain a party from commencing or continuing foreign proceedings in breach of an arbitration agreement.~~²
 - b. (b) Section 66: This section concerns the enforcement of arbitral awards. It allows a party to apply to the court to enforce an arbitral award, regardless of whether the arbitration took place within England and Wales, Northern Ireland, or another jurisdiction.³ Section 66 is particularly important for ensuring the effective enforcement of international arbitration awards in the UK.
2. Ensuring efficacy of arbitration agreements and awards: By applying sections 9 to 11 and section 66 regardless of the seat or the absence of a seat designation, the Act seeks to uphold the integrity of arbitration agreements and awards. It ensures that parties who have agreed to arbitrate their disputes will be bound by their agreement, and any ensuing awards can be effectively enforced in the UK.
3. Facilitating international arbitration: The inclusion of section 2(2) allows parties engaged in international arbitration to seek assistance from English courts in certain critical matters, such as staying court proceedings and enforcing arbitral awards, even if the arbitration is seated in another jurisdiction.

In summary, section 2(2) of the English Arbitration Act 1996 makes it clear that sections 9 to 11 and section 66 of the Act apply regardless of the seat of the arbitration or whether no seat has been

² Incorrect guess by ChatGPT.

³ Marginally correct guess by ChatGPT.

designated or determined. These provisions are essential in ensuring the efficacy and enforceability of arbitration agreements and awards, particularly in the context of international arbitration.

- (3) The powers conferred by the following sections apply even if the seat of the arbitration is outside England and Wales or Northern Ireland or no seat has been designated or determined—**
- (a) section 43 (securing the attendance of witnesses), and**
 - (b) section 44 (court powers exercisable in support of arbitral proceedings); but the court may refuse to exercise any such power if, in the opinion of the court, the fact that the seat of the arbitration is outside England and Wales or Northern Ireland, or that when designated or determined the seat is likely to be outside England and Wales or Northern Ireland, makes it inappropriate to do so.**

Section 2(3) of the English Arbitration Act 1996 addresses the powers conferred by specific sections of the Act and their applicability in situations where the seat of the arbitration is outside England and Wales or Northern Ireland or when no seat has been designated or determined. Let us analyse this provision:

1. Application of specific sections: Section 2(3) states that two particular sections of the Arbitration Act 1996 apply regardless of the seat of the arbitration or the absence of a designated or determined seat.
 - a. (a) Section 43: This section pertains to securing the attendance of witnesses. It allows the court to compel witnesses to attend arbitration hearings and give evidence. This provision is crucial for ensuring the effectiveness of arbitration proceedings, as witness testimony can be essential in resolving disputes.
 - b. (b) Section 44: This section deals with court powers exercisable in support of arbitral proceedings. It grants the court the authority to issue various orders to support the arbitration process, such as granting interim measures, preserving evidence, and appointing arbitrators.
2. Court's discretion to refuse to exercise powers: Despite the general application of sections 43 and 44 to arbitrations with seats outside England and Wales or Northern Ireland, the court retains the discretion to refuse to exercise any such power in specific situations. The court may exercise this discretion if it believes that the fact that the seat of the arbitration is or is likely to be outside England and Wales or Northern Ireland makes it inappropriate to use these powers.
3. Balance of convenience and appropriateness: The court's discretion allows for a case-by-case assessment of the appropriateness of exercising the powers under sections 43 and 44 when the arbitration is seated outside England and Wales or Northern Ireland. The court may consider factors like the location of the evidence and witnesses, the governing law of the arbitration agreement, and the practicality of enforcing its orders in a foreign jurisdiction.

4. Encouraging effective arbitration: By providing the court with this discretionary power, the Act seeks to strike a balance between supporting effective arbitration and respecting the autonomy and laws of foreign jurisdictions. It ensures that the court can assist in matters that are reasonable and practicable while avoiding interference that may be inappropriate in certain circumstances.

In summary, section 2(3) of the English Arbitration Act 1996 specifies that the powers conferred by sections 43 and 44 apply even if the seat of the arbitration is outside England and Wales or Northern Ireland or no seat has been designated or determined. However, the court has the discretion to refuse to exercise these powers if it deems the foreign seat to make their use inappropriate. This provision helps maintain the integrity of the arbitration process while respecting the practicalities of international arbitration and the laws of foreign jurisdictions.

- (4) The court may exercise a power conferred by any provision of this Part not mentioned in subsection (2) or (3) for the purpose of supporting the arbitral process where—**
- (a) no seat of the arbitration has been designated or determined, and**
 - (b) by reason of a connection with England and Wales or Northern Ireland the court is satisfied that it is appropriate to do so.**

Section 2(4) of the English Arbitration Act 1996 addresses the court's discretionary power to exercise any power conferred by the provisions within Part I of the Act for the purpose of supporting the arbitral process. This provision applies to situations where no seat of the arbitration has been designated or determined, and there is a connection with England and Wales or Northern Ireland that justifies the court's intervention. Let us analyse this provision:

1. Broad discretionary power: section 2(4) grants the court wide discretion to exercise any power conferred by provisions within Part I of the Arbitration Act, with the exception of those mentioned in subsections (2) or (3). This allows the court to intervene in arbitration matters and provide necessary support where appropriate.
2. No designated or determined seat: This provision applies when no seat of the arbitration has been designated or determined by the parties. The seat of arbitration is an essential element in international arbitration, as it determines the applicable laws and the supervisory jurisdiction of the courts over the arbitration proceedings. In cases where the seat has not been specified, the court may step in to provide support for the arbitration process.
3. Connection with England and Wales or Northern Ireland: For the court to exercise its discretionary power under section 2(4), there must be a connection between the arbitration and England and Wales or Northern Ireland. The Act does not explicitly define what constitutes a "connection", but it is likely to be interpreted broadly to encompass various factors that link the dispute or the parties to these jurisdictions.
4. Appropriateness of court intervention: The court's exercise of power under this provision is subject to a satisfaction test. The court must be satisfied that it is appropriate to support the arbitral process in light of the absence of a designated seat and the connection with

England and Wales or Northern Ireland. This ensures that the court's intervention is justified and serves the interests of justice.

5. Supporting the arbitral process: The overarching purpose of section 2(4) is to allow the court to provide assistance and support to the arbitration process in cases where the parties have not designated a seat but there is a connection with England and Wales or Northern Ireland. By doing so, the court helps maintain the effectiveness and integrity of the arbitration proceedings.

In summary, section 2(4) of the English Arbitration Act 1996 grants the court discretionary power to exercise any provision within Part I of the Act (except those mentioned in subsections (2) or (3)) for the purpose of supporting the arbitral process. This applies when no seat of the arbitration has been designated or determined, and there is a connection with England and Wales or Northern Ireland that justifies the court's intervention. The provision ensures that the court can offer necessary assistance to the arbitration process in appropriate cases, even in the absence of a designated seat.

(5) Section 7 (separability of arbitration agreement) and section 8 (death of a party) apply where the law applicable to the arbitration agreement is the law of England and Wales or Northern Ireland even if the seat of the arbitration is outside England and Wales or Northern Ireland or has not been designated or determined.

Section 2(5) of the English Arbitration Act 1996 addresses the applicability of two specific sections, section 7 (separability of arbitration agreement) and section 8 (death of a party), in cases where the law governing the arbitration agreement is the law of England and Wales or Northern Ireland, regardless of the seat of the arbitration or whether a seat has been designated or determined. Let us analyse this provision:

1. Application of sections 7 and 8: section 2(5) states that sections 7 and 8 of the Arbitration Act 1996 apply in certain situations, irrespective of the seat of the arbitration or the absence of a designated or determined seat.
 - a. (a) Section 7: This section deals with the "separability" of the arbitration agreement from the underlying contract. It establishes that an arbitration agreement is regarded as a separate and distinct agreement from the main contract in which it is contained. This means that the validity of the arbitration agreement is not affected by the invalidity or termination of the main contract. If the arbitration agreement is valid, the parties must submit their disputes to arbitration, even if the main contract is disputed, terminated, or found to be unenforceable.
 - b. (b) Section 8: This section addresses the situation when a party to an arbitration agreement dies. It provides that the death of a party does not automatically terminate the arbitration agreement. Instead, the arbitration agreement remains valid, and the deceased party's rights and obligations under the agreement pass on to their successors, such as their legal representatives or heirs.
2. Governing law of the arbitration agreement: For sections 7 and 8 to apply, the law governing the arbitration agreement must be the law of England and Wales or Northern Ireland. The governing law is the law chosen by the parties to govern the formation,

validity, and interpretation of the arbitration agreement. If the chosen law is the law of England and Wales or Northern Ireland, sections 7 and 8 come into play.

3. **Overriding seat considerations:** This provision ensures that even if the seat of the arbitration is outside England and Wales or Northern Ireland, or if no seat has been designated or determined, sections 7 and 8 will still apply if the governing law of the arbitration agreement is English or Northern Irish law. The choice of governing law is thus prioritised over the location of the arbitration proceedings.
4. **Protecting party autonomy and agreement validity:** sections 7 and 8 are essential in preserving party autonomy and the effectiveness of the arbitration agreement. By making these sections applicable regardless of the seat, the Act upholds the parties' intentions to resolve their disputes through arbitration and ensures continuity and enforceability in case of a party's death.

In summary, section 2(5) of the English Arbitration Act 1996 stipulates that sections 7 and 8 apply when the law applicable to the arbitration agreement is the law of England and Wales or Northern Ireland, irrespective of the seat of the arbitration or whether a seat has been designated or determined. This provision ensures that the separability of the arbitration agreement and the continuity of the agreement in the event of a party's death are upheld, regardless of the location of the arbitration proceedings.

3 THE SEAT OF THE ARBITRATION

In this Part “the seat of the arbitration” means the juridical seat of the arbitration designated—

- (a) by the parties to the arbitration agreement, or**
- (b) by any arbitral or other institution or person vested by the parties with powers in that regard, or**
- (c) by the arbitral tribunal if so authorised by the parties, or determined, in the absence of any such designation, having regard to the parties' agreement and all the relevant circumstances.**

Section 3 of the English Arbitration Act 1996 defines the term “the seat of the arbitration” and outlines how the seat is determined when it has not been explicitly designated by the parties. Let us analyse this section:

1. **Definition of “the seat of the arbitration”:** Section 3 provides a clear definition of the term “the seat of the arbitration”. The seat refers to the legal place or location where the arbitration is considered to be based or rooted. The seat plays a crucial role in determining the procedural and substantive laws that govern the arbitration process.
2. **Designation of the seat:** The parties to the arbitration agreement have the autonomy to designate the seat of the arbitration. This means that they can explicitly choose the location where they wish the arbitration to take place. The designation of the seat is an important decision as it determines the applicable laws and the supervisory jurisdiction of the courts over the arbitration proceedings.

3. Seat designated by an institution or person: Apart from the parties, an arbitral or other institution or person may also be vested with powers to designate the seat of the arbitration. This could be the case if the arbitration agreement or rules chosen by the parties grant such powers to a specific institution or individual.
4. Seat determined by the arbitral tribunal: If authorised by the parties, the arbitral tribunal itself may determine the seat of the arbitration. This authority is usually given to the tribunal in the arbitration agreement or at a later stage by the parties' mutual consent.
5. Determination in the absence of designation: In cases where the parties have not explicitly designated the seat, section 3 provides a fallback mechanism for determining the seat. The determination should be based on the parties' agreement and all the relevant circumstances. This means that the court or the arbitral tribunal, as the case may be, will look into the parties' intentions, the location of key aspects of the arbitration, and other relevant factors to ascertain the most appropriate seat for the arbitration.
6. Importance of seat determination: The determination of the seat is crucial as it influences various aspects of the arbitration, such as the procedural rules, the extent of court intervention, the enforcement of arbitral awards, and the curial law that governs the arbitration.

In summary, section 3 of the English Arbitration Act 1996 provides a comprehensive definition of "the seat of the arbitration" and outlines the methods by which the seat is designated or determined. It emphasises party autonomy by allowing the parties to designate the seat themselves and provides a mechanism for determining the seat when no explicit designation has been made. The seat is a critical element in international arbitration as it affects the legal framework under which the arbitration process operates.

4 MANDATORY AND NON-MANDATORY PROVISIONS

- (1) The mandatory provisions of this Part are listed in Schedule 1 and have effect notwithstanding any agreement to the contrary.**
- (2) The other provisions of this Part (the "non-mandatory provisions") allow the parties to make their own arrangements by agreement but provide rules which apply in the absence of such agreement.**
- (3) The parties may make such arrangements by agreeing to the application of institutional rules or providing any other means by which a matter may be decided.**
- (4) It is immaterial whether or not the law applicable to the parties' agreement is the law of England and Wales or, as the case may be, Northern Ireland.**
- (5) The choice of a law other than the law of England and Wales or Northern Ireland as the applicable law in respect of a matter provided for by a non-mandatory provision of this Part is equivalent to an agreement making provision about that matter. For this purpose an applicable law determined in accordance with the parties' agreement, or which is objectively**

determined in the absence of any express or implied choice, shall be treated as chosen by the parties.

Section 4 of the English Arbitration Act 1996 deals with the distinction between mandatory and non-mandatory provisions within Part I of the Act and how parties can make their own arrangements by agreement. Let us analyse this section:

1. **Mandatory provisions:** section 4(1) states that the mandatory provisions of Part I of the Act are listed in Schedule 1. "Mandatory provisions" are rules or requirements that parties must comply with, and they have binding legal force irrespective of any agreement to the contrary. In other words, the parties cannot contractually override or waive these provisions. They are essential elements that must be followed to ensure the fairness and integrity of the arbitration process.
2. **Non-mandatory provisions:** section 4(2) refers to the other provisions within Part I of the Act as "non-mandatory provisions". These provisions allow the parties to make their own arrangements or agreements by mutual consent. In the absence of such agreements, the non-mandatory provisions provide default rules that will apply to govern the arbitration proceedings.
3. **Freedom to make arrangements:** section 4(3) emphasises the freedom of the parties to make their own arrangements regarding the conduct of the arbitration. The parties can agree to apply institutional arbitration rules, adopt specific procedural guidelines, or provide any other means by which certain matters may be decided during the arbitration process.
4. **Irrelevance of applicable law:** According to section 4(4), the choice of law governing the parties' agreement is immaterial in determining whether a provision in Part I of the Act is mandatory or non-mandatory. This means that the nature of a provision (mandatory or non-mandatory) is not affected by whether the applicable law of the arbitration agreement is English law or the law of a different jurisdiction.
5. **Equivalence of choice of law:** section 4(5) clarifies that if the parties choose a law other than the law of England and Wales or Northern Ireland to govern a matter provided for by a non-mandatory provision, that choice is treated as equivalent to an agreement about that matter. In such cases, the chosen law governs that specific aspect of the arbitration process. This provision ensures that parties are not limited to English law as the governing law for non-mandatory provisions and have the flexibility to choose an alternative applicable law.

In summary, section 4 of the English Arbitration Act 1996 distinguishes between mandatory and non-mandatory provisions within Part I of the Act. The mandatory provisions, listed in Schedule 1, are binding and cannot be contracted out by the parties. The non-mandatory provisions allow the parties to make their own arrangements by agreement, but if there is no such agreement, the non-mandatory provisions provide default rules. The choice of applicable law, whether English law or another jurisdiction's law, does not impact the nature of a provision (mandatory or non-mandatory). However, if parties choose an alternative applicable law for a non-mandatory provision, that choice is treated as an agreement between the parties on that matter.

5 AGREEMENTS TO BE IN WRITING

- (1) The provisions of this Part apply only where the arbitration agreement is in writing, and any other agreement between the parties as to any matter is effective for the purposes of this Part only if in writing. The expressions “agreement”, “agree” and “agreed” shall be construed accordingly.**

Section 5(1) of the English Arbitration Act 1996 establishes the requirement for the arbitration agreement to be in writing and extends this writing requirement to any other agreement between the parties related to arbitration matters. Let us analyse this section:

1. **Writing requirement for the arbitration agreement:** Section 5 specifies that the provisions within Part I of the Arbitration Act 1996 apply only when the arbitration agreement is in writing. This means that for the Act’s provisions to be enforceable, there must be a written agreement between the parties to resolve their disputes through arbitration.
2. **Scope of the writing requirement:** The writing requirement is not limited to the arbitration agreement itself. Section 5 goes further to state that any other agreement between the parties pertaining to arbitration matters must also be in writing to be effective for the purposes of Part I of the Act.
3. **Enforceability of written agreements:** If the arbitration agreement and any related agreements are in writing, they are considered legally enforceable under the provisions of Part I of the Arbitration Act. This reinforces the importance of a clear and documented agreement when parties choose arbitration as the method of dispute resolution.
4. **Meaning of “agreement”, “agree”, and “agreed”:** section 5 provides a construction clause that states that the expressions “agreement”, “agree”, and “agreed” are to be interpreted in line with the writing requirement. This means that any reference to an “agreement” in Part I of the Act is limited to written agreements, and any other form of agreement, such as oral agreements or implied agreements, will not be sufficient.
5. **Importance of written agreements:** The writing requirement serves several important purposes. It helps prevent disputes about the existence and terms of the arbitration agreement by providing a clear and tangible record of the parties’ intentions. Additionally, written agreements can be more easily presented and proven in court if disputes arise over the enforcement of the arbitration agreement or the award.
6. **Exceptions and additional requirements:** It is important to note that while Section 5 establishes the writing requirement, there may be specific exceptions or additional formalities prescribed in other parts of the Arbitration Act or in international conventions if the arbitration is international in nature. Parties should be aware of any additional requirements to ensure their agreements are valid and enforceable.

In summary, section 5 of the English Arbitration Act 1996 imposes a writing requirement for the arbitration agreement and any other agreements related to arbitration matters. The provisions of Part I of the Act apply only to written agreements, ensuring that parties have a clear record of their commitment to arbitration. The construction clause clarifies that the terms “agreement”, “agree”, and “agreed” refer to written agreements, reinforcing the importance of having clear, documented agreements for effective arbitration under the Act.

(2) There is an agreement in writing—

- (a) if the agreement is made in writing (whether or not it is signed by the parties),**
- (b) if the agreement is made by exchange of communications in writing, or**
- (c) if the agreement is evidenced in writing.**

Section 5(2) of the English Arbitration Act 1996 defines what constitutes an “agreement in writing” for the purposes of the Act. It outlines three scenarios in which an arbitration agreement is considered to be in writing. Let us analyse these scenarios:

1. **Agreement made in writing:** According to Section 5(2)(a), an arbitration agreement is considered to be in writing if the agreement itself is made in writing. This means that the terms and provisions of the arbitration agreement must be recorded in written form. It does not necessarily require the agreement to be signed by the parties; a written document containing the terms of the agreement is sufficient.
2. **Agreement made by exchange of communications in writing:** section 5(2)(b) states that an arbitration agreement can be in writing when it is made by the exchange of communications in writing between the parties. This scenario covers situations where the parties reach an agreement through written correspondence, such as letters, emails, or faxes. The key is that the exchange of communications contains the essential terms of the arbitration agreement.
3. **Agreement evidenced in writing:** section 5(2)(c) refers to agreements that are evidenced in writing. In this context, “evidenced in writing” means that even if the actual agreement was not made in writing, there is a subsequent written document that provides evidence of the agreement’s existence. For example, if parties agree orally to arbitrate a dispute and later exchange emails acknowledging and confirming the agreement, then the arbitration agreement is evidenced in writing.
4. **Importance of written evidence:** section 5(2) emphasises the significance of having a written record or documentation of the arbitration agreement. This requirement ensures clarity and certainty regarding the parties’ commitment to arbitration. A written agreement helps avoid disputes about the existence or terms of the arbitration agreement and provides a reliable record that can be produced in court if needed.
5. **Flexibility in satisfying the writing requirement:** The three scenarios outlined in section 5(2) offer flexibility in meeting the writing requirement. An arbitration agreement can be in writing through a formal written document, an exchange of written communications, or through written evidence that confirms the existence of the agreement.

In summary, section 5(2) of the English Arbitration Act 1996 defines what constitutes an “agreement in writing” for the purposes of the Act. It includes scenarios where the agreement is made in writing, made through an exchange of written communications, or evidenced in writing. This section underscores the importance of having a written record of the arbitration agreement, ensuring clarity and certainty in the parties’ commitment to arbitration and facilitating enforceability in case of disputes.

(3) Where parties agree otherwise than in writing by reference to terms which are in writing, they make an agreement in writing.

Section 5(3) of the English Arbitration Act 1996 provides an additional scenario in which an agreement is considered to be in writing, even if the parties did not explicitly express their agreement in writing. Let us analyse this provision:

1. Agreement by reference to written terms: section 5(3) states that if parties agree to the terms of their agreement, but not explicitly in writing, and their agreement refers to terms that are in writing, then they still make an agreement in writing.
2. Implicit agreement in writing: This provision recognises that an agreement can be inferred as being in writing if the parties refer to written terms while reaching their agreement. For example, if the parties orally discuss the essential terms of the arbitration agreement but refer to a separate written contract or document that contains those terms, the agreement is deemed to be in writing.
3. Importance of written terms: section 5(3) ensures that parties cannot avoid the writing requirement merely by not explicitly stating their agreement in writing. If the parties rely on or refer to written terms during their discussions or negotiations, and those terms meet the requirements of an arbitration agreement, then the agreement is deemed to be in writing.
4. Ensuring clarity and enforceability: This provision aligns with the objective of promoting clarity and certainty in the arbitration process. Having a written record of the agreement and referring to written terms ensures that parties understand the terms of their agreement, reducing the potential for disputes and misunderstandings. It also facilitates enforceability in case of disagreements between the parties.

In summary, section 5(3) of the English Arbitration Act 1996 establishes that parties can create an agreement in writing even if they do not explicitly express their agreement in writing. If the parties agree by reference to terms that are in writing, their agreement is considered to be in writing for the purposes of the Act. This provision ensures that the writing requirement is met when parties rely on or refer to written terms during their negotiations or discussions, promoting clarity and enforceability in arbitration agreements.

(4) An agreement is evidenced in writing if an agreement made otherwise than in writing is recorded by one of the parties, or by a third party, with the authority of the parties to the agreement.

Section 5(4) of the English Arbitration Act 1996 provides another scenario in which an agreement can be considered to be in writing, even if it was not originally made in writing. Let us analyse this provision:

1. Agreement evidenced in writing: section 5(4) states that an agreement can be considered “evidenced in writing” if the agreement was made orally or by means other than in writing but is subsequently recorded in writing.

2. Recording of the agreement: To meet the requirements of section 5(4), one of the parties or a third party must record the agreement in writing. The recording can be done through any written medium, such as letters, emails, or official documents, and must accurately reflect the terms of the agreement as it was initially made.
3. Authority of the parties: For the written recording to be considered as evidence of the agreement, the recording party must have the authority of the parties to the agreement. This means that either one of the parties involved in the agreement or a third party acting with the explicit permission of the parties must make the written record.
4. Ensuring enforceability: section 5(4) aims to ensure that agreements made otherwise than in writing can still be enforceable if they are later recorded in writing. By having a written record of the agreement, the parties can avoid disputes about the existence and terms of the agreement and have a clear record of their commitment to arbitration.
5. Importance of accurate recording: The written record must accurately represent the agreement as it was originally made. Any discrepancies or inconsistencies between the oral agreement and the written record could potentially lead to disputes or challenges in enforcing the agreement.
6. Flexibility in meeting the writing requirement: sections 5(3) and 5(4) provide flexibility in satisfying the writing requirement for arbitration agreements. They recognise that parties may reach an agreement orally or by means other than in writing, and subsequently, through reference or recording, create a written record of the agreement to meet the requirements of the Act.

In summary, section 5(4) of the English Arbitration Act 1996 establishes that an agreement can be considered to be “evidenced in writing” if an agreement made otherwise than in writing is recorded in writing by one of the parties or by a third party with the authority of the parties. This provision ensures that agreements made through oral or other non-written means can still be enforceable if properly recorded in writing, promoting clarity and certainty in the arbitration process.

(5) An exchange of written submissions in arbitral or legal proceedings in which the existence of an agreement otherwise than in writing is alleged by one party against another party and not denied by the other party in his response constitutes as between those parties an agreement in writing to the effect alleged.

Section 5(5) of the English Arbitration Act 1996 addresses a specific scenario where the existence of an arbitration agreement that was not originally made in writing is alleged by one party against another. Let us analyse this provision:

1. Allegation of an agreement otherwise than in writing: section 5(5) applies when one party claims that there is an arbitration agreement between the parties, even though the agreement was not made in writing. This means that the party alleges the existence of an oral or non-written agreement.
2. Not denied by the other party: For section 5(5) to come into effect, the other party must not deny the existence of the alleged agreement in their response. If the responding party

does not contest or deny the allegation of the arbitration agreement, it is treated as not disputing the existence of the agreement otherwise than in writing.

3. Agreement in writing by virtue of non-denial: When one party alleges the existence of an arbitration agreement otherwise than in writing, and the other party does not deny or contest this allegation in their response, section 5(5) considers the non-denial as constituting an agreement in writing between the parties. In other words, the non-denial is treated as a form of agreement to the effect alleged by the claiming party.
4. Impact on the arbitration proceedings: The effect of section 5(5) is to make the alleged arbitration agreement legally binding and enforceable as if it were in writing. This means that the parties are bound by the terms of the arbitration agreement, and the arbitration can proceed based on the alleged agreement.
5. Ensuring clarity and avoiding disputes: section 5(5) aims to promote certainty and avoid disputes regarding the existence of an arbitration agreement. If one party claims the existence of an arbitration agreement otherwise than in writing, and the other party does not contest this claim, the Act treats their non-denial as acceptance of the agreement's existence.
6. Potential implications: Parties should exercise caution when responding to allegations of arbitration agreements otherwise than in writing. If a party has concerns about the existence of such an agreement, they should clearly and expressly deny it in their response to avoid unintended consequences under section 5(5).

In summary, section 5(5) of the English Arbitration Act 1996 establishes that if one party alleges the existence of an arbitration agreement otherwise than in writing, and the other party does not deny this allegation in their response, the non-denial is treated as an agreement in writing between the parties. This provision helps ensure clarity and enforceability of arbitration agreements and encourages parties to clearly respond to any claims regarding the existence of an arbitration agreement that was not originally made in writing.

(6) References in this Part to anything being written or in writing include its being recorded by any means.

Section 5(6) of the English Arbitration Act 1996 provides an important interpretation for references to written documents or agreements within Part I of the Act. Let us analyse this provision:

1. Broad interpretation of “written” or “in writing”: section 5(6) extends the definition of what is considered “written” or “in writing” for the purposes of Part I of the Arbitration Act. It clarifies that any references to something being written or in writing include instances where the information is recorded by any means.
2. Recording by any means: According to section 5(6), a record made through any means is equivalent to a written record. This includes traditional written documents such as letters, agreements, or contracts, as well as modern means of recording, such as electronic records (e.g., emails, digital documents) or recordings (e.g., audio or video recordings).

3. Technological advancements: By explicitly including records made by any means, section 5(6) acknowledges the impact of technological advancements in recording information. It recognises that information can now be recorded, stored, and communicated using various electronic and digital methods, all of which should be treated as equivalent to traditional written records.
4. Promoting flexibility and efficiency: section 5(6) promotes flexibility and efficiency in the arbitration process. Parties can rely on a wide range of recording methods, which can be particularly advantageous in today's digital age where electronic communications are prevalent.
5. Ensuring enforceability: This provision ensures that records made through any means are enforceable, provided they meet the requirements for an arbitration agreement under the Act. It avoids disputes over the validity or enforceability of records based on the medium used for recording.
6. Consistency in interpretation: section 5(6) ensures a consistent approach to interpreting references to written records within Part I of the Arbitration Act. Regardless of the recording medium, all records are treated as being written or in writing for the purposes of the Act.

In summary, section 5(6) of the English Arbitration Act 1996 broadens the interpretation of what is considered "written" or "in writing" for the purposes of Part I of the Act. It includes records made by any means, whether traditional or modern, as being equivalent to written records. This provision promotes flexibility, efficiency, and consistency in the arbitration process, ensuring that records made through various means are enforceable under the Act.

THE ARBITRATION AGREEMENT

6 DEFINITION OF ARBITRATION AGREEMENT

(1) In this Part an “arbitration agreement” means an agreement to submit to arbitration present or future disputes (whether they are contractual or not).

Section 6(1) of the English Arbitration Act 1996 provides a definition for the term “arbitration agreement” within the context of Part I of the Act. Here is an analysis of this provision:

1. **Definition of “Arbitration Agreement”:** The primary purpose of Section 6(1) is to define what constitutes an “arbitration agreement” for the purposes of Part I of the Arbitration Act 1996. It states that an “arbitration agreement” is an agreement between parties to submit present or future disputes to arbitration.
2. **Broad Scope:** The definition provided in Section 6(1) is intentionally broad. It encompasses a wide range of agreements, including those that relate to disputes of a contractual nature as well as those that are not necessarily contractual. This means that parties can agree to arbitrate not only disputes arising from contractual relationships but also other types of disputes, such as tort claims or statutory claims, provided they have a clear agreement to do so.
3. **Flexibility and Autonomy:** This definition reflects the principles of party autonomy and flexibility in arbitration. Parties are free to decide whether they want to resolve their disputes through arbitration, and they can include such agreements in their contracts or make separate arbitration agreements outside of contracts. Section 6(1) recognises and facilitates this freedom of choice.
4. **Future Disputes:** Importantly, Section 6(1) explicitly includes the concept of future disputes. This means that parties can agree to arbitrate disputes that may arise in the future, even if those disputes are not yet known or have not yet come into existence. This foresight allows parties to plan for arbitration as a method of dispute resolution for potential issues that may arise over time.
5. **Contractual and Non-Contractual Disputes:** Section 6(1) clarifies that an arbitration agreement can cover both contractual and non-contractual disputes. This distinction is essential because it acknowledges that not all disputes are based on contracts; some may be based on other legal relationships or duties.

In summary, Section 6(1) of the English Arbitration Act 1996 provides a broad and inclusive definition of an “arbitration agreement” that encompasses both contractual and non-contractual disputes. It emphasises the flexibility and autonomy of parties in choosing arbitration as a method of dispute resolution and allows for the inclusion of future disputes in arbitration agreements. This definition is fundamental in establishing the scope of arbitration agreements under the Act.

- (2) **The reference in an agreement to a written form of arbitration clause or to a document containing an arbitration clause constitutes an arbitration agreement if the reference is such as to make that clause part of the agreement.**

Section 6(1) of the English Arbitration Act 1996 defines an “arbitration agreement,” and Section 6(2) provides additional clarity and flexibility regarding what can be considered an arbitration agreement within the context of the Act. Let us analyse Section 6(2):

1. **Incorporation by Reference:** Section 6(2) deals with the situation where an agreement makes a reference to a written form of an arbitration clause or to a document containing an arbitration clause. In such cases, Section 6(2) stipulates that if the reference is such that it effectively incorporates the arbitration clause into the agreement, then that arbitration clause is considered a part of the overall agreement.
2. **Importance of Clarity:** This provision underscores the importance of clarity and intent in incorporating arbitration clauses by reference. It ensures that parties cannot inadvertently include arbitration provisions merely by mentioning a document or written form without the clear intention to make the arbitration clause a binding part of their agreement.
3. **Flexibility in Agreement Formation:** Section 6(2) offers flexibility in how arbitration agreements can be formed. It recognises that parties may use cross-references or incorporate arbitration clauses from other documents to create enforceable arbitration agreements. This aligns with the principle of party autonomy, allowing parties to structure their agreements in a manner that suits their needs and preferences.
4. **Avoidance of Formalities:** The provision can help parties avoid the need for extensive reiteration of arbitration terms in contracts, especially when those terms are already spelled out in detail in related documents. Instead, by referencing these documents appropriately, parties can streamline their agreements while still ensuring the enforceability of the arbitration clause.
5. **Clarity of Intent is Key:** It is important to emphasise that Section 6(2) hinges on the clarity of the reference and the intention of the parties. If the reference is vague or ambiguous, or if it does not clearly indicate the parties’ intent to incorporate the arbitration clause, it may not meet the requirements of Section 6(2).

In summary, Section 6(2) of the English Arbitration Act 1996 provides a mechanism for incorporating arbitration clauses by reference when a contract makes a reference to a written form or document containing such a clause. This provision allows parties to create arbitration agreements efficiently while maintaining the importance of clarity and intent in the incorporation process. It reflects the Act’s commitment to promoting arbitration as a flexible and efficient means of dispute resolution.

7 SEPARABILITY OF ARBITRATION AGREEMENT

Unless otherwise agreed by the parties, an arbitration agreement which forms or was intended to form part of another agreement (whether or not in writing) shall not be regarded as invalid, non-

existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and it shall for that purpose be treated as a distinct agreement.

Section 7(1) of the English Arbitration Act 1996 addresses the relationship between an arbitration agreement and the main agreement of which it forms or was intended to form a part. Let us analyse this provision:

1. **Distinctness of the arbitration agreement:** section 7 emphasises that an arbitration agreement, which is intended to form part of another agreement (whether or not in writing), should be treated as a distinct and separate agreement from the main agreement.
2. **Independence from the main agreement:** The purpose of section 7 is to establish the independence and autonomy of the arbitration agreement. It ensures that the validity, existence, or effectiveness of the main agreement does not affect the validity, existence, or effectiveness of the arbitration agreement.
3. **Invalidity, non-existence, or ineffectiveness of the main agreement:** Even if the main agreement (the contract containing the arbitration agreement) is found to be invalid, not in existence, or ineffective for any reason, the arbitration agreement remains valid and enforceable.
4. **Standalone validity:** section 7 protects the integrity of the arbitration agreement by preventing its invalidation merely because the main agreement is challenged or found to be unenforceable. This ensures that parties can still resolve their disputes through arbitration, irrespective of the outcome of the main agreement.
5. **Importance of arbitration agreement:** This provision reinforces the significance of the arbitration agreement as a separate legal instrument. It ensures that parties' intention to arbitrate their disputes is respected and enforced even if the underlying contract is invalidated or fails to come into effect.
6. **Exceptions based on parties' agreement:** section 7 includes a caveat that the parties can agree otherwise if they wish. This means that parties can explicitly provide in their agreement that the arbitration agreement's validity is dependent on the validity or effectiveness of the main agreement. Otherwise, the default rule established in Section 7 prevails.

In summary, section 7 of the English Arbitration Act 1996 establishes the independence of an arbitration agreement from the main agreement in which it is embedded or intended to be a part. It ensures that the arbitration agreement remains valid and enforceable even if the main agreement is invalid, not in existence, or ineffective. This provision preserves the parties' ability to resolve their disputes through arbitration, regardless of the fate of the main contract. However, the parties can agree otherwise if they wish to make the validity of the arbitration agreement dependent on the main agreement's status.

8 WHETHER AGREEMENT DISCHARGED BY DEATH OF A PARTY

(1) Unless otherwise agreed by the parties, an arbitration agreement is not discharged by the death of a party and may be enforced by or against the personal representatives of that party.

Section 8(1) of the English Arbitration Act 1996 addresses the impact of the death of a party to an arbitration agreement on the enforceability of that agreement. Here is an analysis of this provision:

1. **Preservation of Arbitration Agreement:** The key principle outlined in Section 8(1) is that, unless the parties have agreed otherwise, the death of a party to an arbitration agreement does not result in the discharge or termination of the arbitration agreement itself. In other words, the arbitration agreement remains valid and enforceable despite the death of one of the parties involved.
2. **Continuation of Rights and Obligations:** This provision underscores the principle of party autonomy in arbitration. It ensures that the rights and obligations stemming from the arbitration agreement continue to be in force even after the death of a party. This reflects a common feature of arbitration agreements, which is the ability to resolve disputes outside the court system.
3. **Enforcement by Personal Representatives:** Section 8(1) also specifies that the arbitration agreement may be enforced not only by the surviving party but also by or against the personal representatives of the deceased party. Personal representatives are individuals or entities appointed to handle the legal and financial affairs of a deceased person's estate. This provision allows for the continuity of the arbitration process even when a party to the dispute passes away.
4. **Requirement of Agreement to the Contrary:** The phrase "unless otherwise agreed by the parties" emphasises that parties can modify the default rule established in this section through their own agreement. If the parties wish to specify different terms regarding the impact of a party's death on the arbitration agreement, they have the flexibility to do so. This underscores the principle of party autonomy in arbitration, where the parties have significant control over the arbitration process.

In summary, Section 8(1) of the English Arbitration Act 1996 ensures that arbitration agreements remain in effect and enforceable in the event of a party's death, allowing for continuity in the resolution of disputes through arbitration. However, it also recognises the parties' freedom to agree on different terms concerning this matter if they choose to do so. This provision promotes the stability and effectiveness of arbitration as a method of dispute resolution.

(2) Subsection (1) does not affect the operation of any enactment or rule of law by virtue of which a substantive right or obligation is extinguished by death.

Section 8(1) of the English Arbitration Act 1996, as you have provided, deals with the impact of a party's death on the enforceability of an arbitration agreement. Section 8(2), which you have included here, is a follow-up provision that clarifies the relationship between Section 8(1) and other laws or rules regarding the effect of death on substantive rights or obligations. Let us analyse Section 8(2):

1. **Limitation on the Application of Section 8(1):** Section 8(2) begins with the statement that “Subsection (1) does not affect the operation of any enactment or rule of law...” This means that the provisions of Section 8(1) should not be interpreted to override or negate any existing laws or legal rules that govern the impact of a person’s death on substantive rights or obligations.
2. **Effect on Substantive Rights or Obligations:** The central purpose of Section 8(2) is to clarify that while Section 8(1) addresses the continuity of arbitration agreements after a party’s death, it does not alter or interfere with the operation of any other laws or rules that pertain to the extinguishment or modification of substantive rights or obligations upon the death of an individual.
3. **Death as a Potential Legal Event:** The provision is important because death is a significant legal event, and its consequences can vary depending on the context and the specific substantive rights and obligations involved. Certain legal rights or obligations may naturally terminate upon a person’s death, and Section 8(2) ensures that such provisions continue to apply alongside the rules established in Section 8(1).
4. **Harmonising Arbitration with Other Legal Principles:** By including Section 8(2), the Act recognises the need for a harmonious relationship between arbitration agreements and other areas of law. It ensures that the continuity of arbitration agreements is not intended to conflict with, override, or modify well-established legal principles governing the impact of death on rights and obligations in other legal contexts.

In summary, Section 8(2) of the English Arbitration Act 1996 serves to clarify that while Section 8(1) preserves the enforceability of arbitration agreements despite a party’s death, it does not alter the operation of any other laws or rules that may extinguish substantive rights or obligations upon death. This provision helps maintain consistency and coherence in the legal framework, allowing arbitration to coexist with other legal principles related to the consequences of death.

STAY OF LEGAL PROCEEDINGS

9 STAY OF LEGAL PROCEEDINGS

- (1) A party to an arbitration agreement against whom legal proceedings are brought (whether by way of claim or counterclaim) in respect of a matter which under the agreement is to be referred to arbitration may (upon notice to the other parties to the proceedings) apply to the court in which the proceedings have been brought to stay the proceedings so far as they concern that matter.**

Section 9(1) of the English Arbitration Act 1996 provides a mechanism for a party to an arbitration agreement to seek a stay of legal proceedings when the dispute falls within the scope of the arbitration agreement. Let us analyse this provision:

1. Legal proceedings brought against a party: section 9(1) applies when legal proceedings are initiated against a party to an arbitration agreement. These legal proceedings can be in the form of a claim or counterclaim in court.
2. Matter to be referred to arbitration: The legal proceedings must relate to a matter that falls within the scope of the arbitration agreement. In other words, the subject matter of the dispute should be covered by the terms of the arbitration agreement as agreed upon by the parties.
3. Right to apply for a stay: A party against whom the legal proceedings are brought has the right to seek a stay of those proceedings with respect to the matter that is subject to the arbitration agreement. The purpose of the stay is to temporarily suspend the court proceedings so that the dispute can be resolved through arbitration, as agreed upon by the parties.
4. Application to the court: The party seeking the stay must make an application to the court in which the legal proceedings have been brought. The application should be supported by notice to the other parties involved in the court proceedings, informing them of the intention to seek a stay.
5. Stay of proceedings: If the court is satisfied that the matter falls within the scope of the arbitration agreement, it has the discretion to grant a stay of the court proceedings to allow the parties to proceed with arbitration as agreed upon in their contract.
6. Efficiency and enforcement of arbitration agreement: section 9(1) aims to promote the enforcement of arbitration agreements and the efficiency of dispute resolution mechanisms. By granting a stay, the court recognises the parties' choice to resolve their disputes through arbitration and avoids duplication of proceedings in both the court and arbitration forum.

In summary, section 9(1) of the English Arbitration Act 1996 grants a party to an arbitration agreement the right to seek a stay of legal proceedings initiated against them in court if the dispute falls within the scope of the arbitration agreement. The purpose of the stay is to enforce the arbitration agreement and provide a mechanism for the parties to resolve their dispute through arbitration as agreed upon in their contract. The court has the authority to grant the stay upon being satisfied that the matter is subject to the arbitration agreement.

(2) An application may be made notwithstanding that the matter is to be referred to arbitration only after the exhaustion of other dispute resolution procedures.

Section 9(2) of the English Arbitration Act 1996 provides an important clarification regarding the timing of making an application for a stay of legal proceedings in favour of arbitration. Let us analyse this provision:

1. **Timing of the application:** section 9(2) states that a party may make an application for a stay of legal proceedings, even if the matter is to be referred to arbitration only after the exhaustion of other dispute resolution procedures.
2. **Delayed arbitration process:** In some cases, the arbitration agreement may require the parties to engage in certain preliminary dispute resolution procedures or negotiations before initiating arbitration. These procedures are sometimes known as “pre-arbitration” or “multi-tiered dispute resolution” clauses.
3. **No bar to seeking a stay:** section 9(2) ensures that even if the arbitration process is intended to be initiated only after the exhaustion of these other procedures, a party can still seek a stay of the legal proceedings in favour of arbitration. The party is not required to wait until all other dispute resolution steps are completed before seeking the stay.
4. **Encouraging early arbitration resolution:** This provision encourages parties to seek resolution through arbitration as early as possible. By allowing a party to seek a stay before the exhaustion of other dispute resolution procedures, section 9(2) promotes the use of arbitration and the timely resolution of disputes.
5. **Balancing procedural requirements:** Some arbitration agreements may include specific procedural requirements or escalation clauses that mandate preliminary steps before resorting to arbitration. Section 9(2) does not undermine the validity of such requirements but allows a party to pursue the stay in parallel with any preliminary steps.
6. **Court’s discretion in granting the stay:** Even if the arbitration agreement contemplates exhaustion of other dispute resolution procedures, the court has the discretion to grant the stay of legal proceedings if the matter is within the scope of the arbitration agreement and the circumstances warrant it.

In summary, section 9(2) of the English Arbitration Act 1996 allows a party to apply for a stay of legal proceedings in favour of arbitration, even if the arbitration process is intended to be initiated only after the exhaustion of other dispute resolution procedures. This provision encourages early resolution through arbitration and ensures that parties can seek a stay without waiting for the completion of preliminary steps if the dispute is within the scope of the arbitration agreement. The court retains the authority to grant the stay based on the circumstances of the case.

(3) An application may not be made by a person before taking the appropriate procedural step (if any) to acknowledge the legal proceedings against him or after he has taken any step in those proceedings to answer the substantive claim.

Section 9(3) of the English Arbitration Act 1996 sets limitations on when a party can make an application for a stay of legal proceedings in favour of arbitration. Let us analyse this provision:

1. **Appropriate procedural step:** section 9(3) states that a party cannot make an application for a stay of legal proceedings before taking the appropriate procedural step (if any) to acknowledge the legal proceedings brought against them.
2. **Procedural acknowledgment:** Before seeking a stay of the legal proceedings, the party must acknowledge the fact that legal proceedings have been initiated against them. This acknowledgment can take various forms, such as filing a response, defence, or other appropriate document, indicating that the party acknowledges the existence of the legal action.
3. **Answering the substantive claim:** Additionally, section 9(3) prevents a party from making an application for a stay of proceedings after taking any step in those proceedings to answer the substantive claim. In other words, once a party has engaged in the substantive aspects of the court proceedings, they cannot subsequently seek a stay in favour of arbitration.
4. **Timing limitation:** The purpose of section 9(3) is to impose a limitation on the timing of making the application for a stay. It ensures that a party cannot take advantage of the stay remedy if they have already actively participated in the court proceedings without indicating an intention to seek arbitration.
5. **Respecting the court process:** By requiring a party to acknowledge the legal proceedings and prohibiting a stay application after answering the substantive claim, section 9(3) respects the court process and encourages parties to raise the arbitration option at an appropriate stage.
6. **Encouraging timely decision-making:** This provision encourages parties to make an early and definitive decision regarding their preferred dispute resolution method. Once a party actively participates in the court proceedings, it is expected that they have opted for litigation rather than arbitration.

In summary, section 9(3) of the English Arbitration Act 1996 places limitations on when a party can make an application for a stay of legal proceedings in favour of arbitration. The party must take the appropriate procedural step to acknowledge the legal proceedings before seeking a stay, and they cannot apply for a stay after having already answered the substantive claim in the court proceedings. This provision ensures that parties must make their arbitration intentions clear at an appropriate stage and respects the court process by not allowing parties to switch to arbitration after engaging in the court proceedings.

(4) On an application under this section the court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed.

Section 9(4) of the English Arbitration Act 1996 outlines the criteria the court must consider when deciding whether to grant a stay of legal proceedings in favour of arbitration. Let us analyse this provision:

1. Purpose of the provision: section 9(4) sets the standard for the court’s decision-making process when considering an application for a stay of legal proceedings. The objective is to encourage the enforcement of valid arbitration agreements and uphold parties’ choices to resolve their disputes through arbitration.
2. Presumption in favour of arbitration: The provision creates a presumption in favour of granting the stay. The court is inclined to stay the legal proceedings and allow the dispute to be resolved through arbitration unless specific circumstances exist to warrant otherwise.
3. Grounds for denying the stay: The court may deny the stay if it is “satisfied” that the arbitration agreement falls into any of the following categories:
 - a. a. Null and void: The arbitration agreement is not legally valid or enforceable due to reasons such as lack of legal capacity of the parties, illegality, or lack of consent.
 - b. b. Inoperative: The arbitration agreement was initially valid but has become unenforceable or inoperative due to subsequent events or actions.
 - c. c. Incapable of being performed: The arbitration agreement is practically impossible to carry out or is so fundamentally flawed that it cannot serve its intended purpose.
4. Judicial review of the arbitration agreement: The court’s role in deciding whether to grant a stay under section 9(4) is limited to determining the validity and enforceability of the arbitration agreement itself. It does not involve an examination of the merits of the dispute or the arbitrability of the underlying claims.
5. Promoting arbitration as an alternative dispute resolution: section 9(4) reflects the pro-arbitration policy of the Arbitration Act by encouraging parties to adhere to their arbitration agreements. The Act supports the parties’ autonomy to choose arbitration as a preferred method of resolving disputes.
6. Clarifying the court’s role: By stating that the court shall grant a stay unless specific conditions are met, section 9(4) provides clarity on the court’s approach and reduces the risk of inconsistent decisions.

In summary, section 9(4) of the English Arbitration Act 1996 establishes a presumption in favour of granting a stay of legal proceedings when a party applies for arbitration, unless the court is “satisfied” that the arbitration agreement is null and void, inoperative, or incapable of being performed. The provision aims to uphold the validity and enforceability of arbitration agreements and respects parties’ choices to resolve their disputes through arbitration, while also providing a mechanism for the court to intervene in exceptional circumstances where the arbitration agreement cannot be enforced.

- (5) If the court refuses to stay the legal proceedings, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.**

Section 9(5) of the English Arbitration Act 1996 addresses the consequences of the court's refusal to grant a stay of legal proceedings in favour of arbitration. Let us analyse this provision:

1. Denial of the stay: section 9(5) comes into play when the court refuses to grant the requested stay of legal proceedings. In other words, the court decides not to suspend the court proceedings in favour of arbitration.
2. Nullification of award as a condition precedent: If the court denies the stay, any provision in the arbitration agreement that makes the arbitration award a condition precedent to the initiation of legal proceedings becomes ineffective in relation to those specific court proceedings.
3. Award as a condition precedent: Some arbitration agreements include a provision stating that a party must first obtain an arbitration award before they can commence any court proceedings concerning the subject matter of the dispute. This condition precedent is intended to ensure that the parties exhaust the arbitration process before seeking court intervention.
4. Effect of refusal on the condition precedent: section 9(5) nullifies the condition precedent if the court refuses to grant the stay. It means that the party seeking to bring legal proceedings in court is not required to obtain an arbitration award first before pursuing the court case. They can proceed directly with the court proceedings, bypassing the arbitration process.
5. Promoting access to justice: section 9(5) aims to prevent an arbitration agreement from potentially delaying access to justice through court proceedings. If the court finds that the case should proceed in court rather than arbitration, this provision ensures that the party is not bound by any provision that would require them to go through arbitration first.
6. Respecting court's decision: By rendering the condition precedent ineffective when the court refuses the stay, section 9(5) respects the court's determination that the dispute is better suited for resolution in a court rather than through arbitration.

In summary, section 9(5) of the English Arbitration Act 1996 addresses the impact of the court's refusal to grant a stay in favour of arbitration. If the court denies the stay, any provision in the arbitration agreement making an arbitration award a condition precedent to the initiation of legal proceedings becomes ineffective. The party seeking to bring legal proceedings in court is not bound by such a condition and can proceed with the court case directly, avoiding the need to go through arbitration first. This provision promotes access to justice and ensures that the court's decision is respected in determining the appropriate forum for dispute resolution.

10 REFERENCE OF INTERPLEADER ISSUE TO ARBITRATION

- (1) Where in legal proceedings relief by way of interpleader is granted and any issue between the claimants is one in respect of which there is an arbitration agreement between them, the court granting the relief shall direct that the issue be determined in accordance with the agreement unless the circumstances are such that proceedings brought by a claimant in respect of the matter would not be stayed.**

Section 10(1) of the English Arbitration Act 1996 addresses the situation where relief by way of interpleader is granted in legal proceedings, and there is an arbitration agreement between the claimants regarding the issue in dispute. Let us analyse this provision:

1. Relief by way of interpleader: Interpleader is a legal procedure used when two or more parties make conflicting claims to the same property or funds held by a third party. In such cases, the third party (e.g., a stakeholder or a person holding the property or funds in question) seeks court relief by way of interpleader, asking the court to determine the rightful claimant(s) and be discharged from liability.
2. Arbitration agreement between claimants: section 10(1) applies when there is an arbitration agreement between the claimants who are making conflicting claims in the interpleader proceedings. The arbitration agreement is a contract between the claimants, specifying their intention to resolve certain disputes through arbitration.
3. Direction to determine the issue in accordance with the agreement: The court granting the interpleader relief is required to direct that the issue between the claimants be determined in accordance with the arbitration agreement, provided that circumstances exist that would warrant staying the legal proceedings in favour of arbitration.
4. Exceptional circumstances for not staying the proceedings: Although the court should generally direct the issue to be determined through arbitration according to the agreement, section 10(1) acknowledges that certain exceptional circumstances may prevent the stay of the legal proceedings. In such cases, the court has the discretion not to enforce the arbitration agreement.
5. Balancing arbitration and court proceedings: section 10(1) aims to strike a balance between the parties' intention to resolve their disputes through arbitration (as reflected in the arbitration agreement) and the circumstances that may justify continuing the legal proceedings instead.
6. Encouraging respect for arbitration agreements: By directing the issue to be determined in accordance with the arbitration agreement, section 10(1) promotes the parties' autonomy and respect for their chosen method of dispute resolution.

In summary, section 10(1) of the English Arbitration Act 1996 requires the court to direct that the issue between claimants in interpleader proceedings be determined in accordance with the arbitration agreement, unless exceptional circumstances exist that warrant not staying the legal proceedings. The provision ensures that the court respects the parties' arbitration agreement and encourages the resolution of disputes through arbitration, while allowing for flexibility in specific circumstances where arbitration may not be appropriate.

- (2) Where subsection (1) applies but the court does not direct that the issue be determined in accordance with the arbitration agreement, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of any matter shall not affect the determination of that issue by the court.**

Section 10(2) of the English Arbitration Act 1996 complements the provisions of section 10(1) and addresses the consequences when the court does not direct the determination of the issue between claimants in interpleader proceedings in accordance with the arbitration agreement. Let us analyse this provision:

1. **Applicability of section 10(1):** section 10(1) applies when there is an arbitration agreement between the claimants in interpleader proceedings, and the court is required to direct that the issue be determined in accordance with that agreement, subject to certain exceptional circumstances.
2. **Failure to direct according to the arbitration agreement:** section 10(2) comes into play if, despite the existence of an arbitration agreement, the court decides not to direct that the issue be determined in accordance with the agreement. In other words, the court decides to proceed with the determination of the issue in the legal proceedings instead of enforcing the arbitration agreement.
3. **Effect on any condition precedent:** If the court does not direct the issue to be determined through arbitration, section 10(2) stipulates that any provision in the arbitration agreement that makes an arbitration award a condition precedent to the initiation of legal proceedings will not affect the determination of the issue by the court.
4. **Nullification of the condition precedent:** section 10(2) renders the condition precedent in the arbitration agreement ineffective in relation to the court proceedings. It means that the court will not require the claimants to obtain an arbitration award before pursuing the matter in court.
5. **Independence of the court's determination:** By nullifying the condition precedent in the arbitration agreement, section 10(2) ensures that the court can independently determine the issue in the legal proceedings without being constrained by any requirement to obtain an arbitration award beforehand.
6. **Promotion of court's role:** section 10(2) allows the court to proceed with the determination of the issue and exercise its jurisdiction over the dispute, even if the parties had initially agreed to resolve such disputes through arbitration.

In summary, section 10(2) of the English Arbitration Act 1996 applies when the court, despite the existence of an arbitration agreement between the claimants in interpleader proceedings, does not direct the determination of the issue in accordance with the agreement. In such cases, any provision in the arbitration agreement that makes an arbitration award a condition precedent to the initiation of legal proceedings will not affect the court's determination of the issue. This provision ensures that the court can independently determine the matter and promotes its role in resolving disputes, even if parties had initially chosen arbitration as the preferred method of resolution.

11 RETENTION OF SECURITY WHERE ADMIRALTY PROCEEDINGS STAYED

- (1) Where Admiralty proceedings are stayed on the ground that the dispute in question should be submitted to arbitration, the court granting the stay may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest—
- (a) order that the property arrested be retained as security for the satisfaction of any award given in the arbitration in respect of that dispute, or
 - (b) order that the stay of those proceedings be conditional on the provision of equivalent security for the satisfaction of any such award.

Section 11(1) of the English Arbitration Act 1996 deals with the scenario where Admiralty proceedings are stayed because the dispute in question is deemed to be subject to arbitration. Let us analyse this provision:

1. Admiralty proceedings and arbitration: Admiralty proceedings are legal actions involving maritime or shipping matters, such as claims related to maritime accidents, cargo disputes, salvage, or collision cases. Section 11(1) applies when such proceedings are stayed because the court determines that the dispute should be submitted to arbitration based on an existing arbitration agreement.
2. The court's power during the stay: While the Admiralty proceedings are stayed, the court has the authority to make certain orders concerning the property involved in the case if it has been arrested (seized) or if bail or other security has been provided to prevent or obtain the release of the arrested property.
3. Retention of arrested property as security: Under section 11(1)(a), the court may order that the property arrested during the Admiralty proceedings be retained as security for the satisfaction of any award that may be given in the arbitration concerning the same dispute. This means that the arrested property can serve as a form of security to ensure compliance with the arbitration award.
4. Equivalent security provision: Alternatively, under section 11(1)(b), the court may order that the stay of the Admiralty proceedings is conditional upon the provision of equivalent security to guarantee the satisfaction of any award issued in the arbitration.
5. Purpose of security orders: The purpose of these security orders is to safeguard the interests of the parties involved in the arbitration. By retaining the arrested property or requiring the provision of equivalent security, the court seeks to ensure that any potential award in the arbitration will be enforceable and that the parties have a means of obtaining satisfaction if the award is in their favour.
6. Protecting the arbitration process: These security orders promote the effectiveness of the arbitration process by providing assurance that the arbitration award will not be rendered meaningless due to a lack of assets or ability to enforce it.

In summary, section 11(1) of the English Arbitration Act 1996 allows the court, when staying Admiralty proceedings in favour of arbitration, to make orders regarding the security of the arrested property or the provision of equivalent security. These orders are aimed at safeguarding the interests of the parties

involved in the arbitration, ensuring that any potential award will be effectively satisfied if the dispute is resolved through arbitration.

(2) Subject to any provision made by rules of court and to any necessary modifications, the same law and practice shall apply in relation to property retained in pursuance of an order as would apply if it were held for the purposes of proceedings in the court making the order.

Section 11(2) of the English Arbitration Act 1996 provides guidance on the law and practice applicable to property that is retained by the court as security for the satisfaction of an award in Admiralty proceedings that have been stayed in favour of arbitration. Let us analyse this provision:

1. Property retained as security: section 11(1) allows the court, when staying Admiralty proceedings due to arbitration, to order that property arrested during the proceedings should be retained as security for the satisfaction of any award issued in the arbitration or require the provision of equivalent security.
2. Application of the same law and practice: section 11(2) specifies that, subject to any rules of court and necessary modifications, the same law and practice that would apply if the property were held for the purposes of proceedings in the court making the order will also apply to the property retained as security.
3. Parallels to proceedings in the court: By applying the same law and practice, section 11(2) ensures that the treatment of the retained property, as well as any issues related to it, would be comparable to how it would be handled if it were part of ongoing proceedings in the court.
4. Rules of court and necessary modifications: This provision allows for flexibility in applying the law and practice by taking into account any specific rules of court that may be in place regarding the retention of property as security. Necessary modifications may also be made to adapt the treatment of the property to suit the circumstances of arbitration.
5. Ensuring consistency and fairness: section 11(2) seeks to maintain consistency and fairness in the treatment of the property retained as security. It ensures that the parties' rights and interests related to the property are protected during the arbitration process.
6. Protection of parties' interests: The application of the same law and practice ensures that the parties have appropriate remedies and recourse in case of any issues related to the retained property, and it facilitates the enforceability of the security in line with the court's orders.

In summary, section 11(2) of the English Arbitration Act 1996 states that the same law and practice that would apply if the property were held for the purposes of ongoing proceedings in the court making the order will also apply to property retained as security for the satisfaction of an award in Admiralty proceedings that have been stayed in favour of arbitration. This provision ensures consistency and fairness in the treatment of the property during the arbitration process and protects the parties' interests related to the retained security.

COMMENCEMENT OF ARBITRAL PROCEEDINGS

12 POWER OF COURT TO EXTEND TIME FOR BEGINNING ARBITRAL PROCEEDINGS, &C.

- (1) Where an arbitration agreement to refer future disputes to arbitration provides that a claim shall be barred, or the claimant's right extinguished, unless the claimant takes within a time fixed by the agreement some step—
- (a) to begin arbitral proceedings, or
 - (b) to begin other dispute resolution procedures which must be exhausted before arbitral proceedings can be begun, the court may by order extend the time for taking that step.

Section 12(1) of the English Arbitration Act 1996 addresses situations where an arbitration agreement includes a provision that imposes a time limit or deadline within which a claimant must take certain steps to initiate arbitration or other dispute resolution procedures. Let us analyse this provision:

1. Scope of application: section 12(1) applies to arbitration agreements that pertain to future disputes, meaning disputes that arise after the agreement has been entered into.
2. Time limit provision: The arbitration agreement includes a provision that sets a time limit for the claimant to take specific steps before initiating arbitration or other dispute resolution procedures.
3. Required steps: The steps that the claimant must take within the specified time frame can be either:
 - a. To begin arbitral proceedings: This refers to initiating the formal arbitration process by filing a notice of arbitration or taking the initial procedural steps required to commence the arbitration.
 - b. To begin other dispute resolution procedures: This involves initiating alternative dispute resolution mechanisms, which must be exhausted before the formal arbitration process can be initiated.
4. Court's power to extend the time: section 12(1) grants the court the authority to extend the time within which the claimant must take the required step, as prescribed in the arbitration agreement.
5. Flexibility in time limits: By allowing the court to extend the time limit, section 12(1) provides flexibility to the claimant in adhering to the strict time frame set forth in the arbitration agreement.
6. Reasonable grounds for extension: The court has the discretion to grant an extension based on the circumstances of the case, provided there are reasonable grounds justifying the delay in initiating the arbitration or other dispute resolution procedures.
7. Ensuring fairness and access to arbitration: section 12(1) ensures fairness by preventing claimants from losing their right to pursue arbitration solely due to a failure to meet a strict time limit, which might have been impractical or impossible under certain

circumstances. The provision helps ensure that parties can access arbitration to resolve their disputes even if they miss the initial deadline.

In summary, section 12(1) of the English Arbitration Act 1996 allows the court to extend the time within which a claimant must take certain steps to initiate arbitration or other dispute resolution procedures, as specified in the arbitration agreement. The court has the discretion to grant such extensions based on reasonable grounds, providing flexibility to claimants and ensuring access to arbitration as a means of resolving disputes, even if the initial time limit set in the agreement has lapsed.

(2) Any party to the arbitration agreement may apply for such an order (upon notice to the other parties), but only after a claim has arisen and after exhausting any available arbitral process for obtaining an extension of time.

Section 12(2) of the English Arbitration Act 1996 specifies the conditions and procedure for applying for an order to extend the time to take certain steps required by an arbitration agreement. Let us analyse this provision:

1. Eligible party to apply: section 12(2) states that “any party to the arbitration agreement” may apply for an order to extend the time for taking the required steps. This means that any of the parties involved in the arbitration agreement can make the application.
2. Timing of the application: The party seeking an extension of time can only make the application “after a claim has arisen”. In other words, the application for an extension must be made after a dispute has arisen between the parties, which triggers the need for initiating the dispute resolution process.
3. Exhaustion of available arbitral process: Before applying to the court for an order to extend the time, the party must first “exhaust any available arbitral process for obtaining an extension of time”. This means that the party should utilise any mechanisms provided in the arbitration agreement or the arbitral rules to request an extension before resorting to court intervention.
4. Notice to other parties: The party making the application must provide notice to the other parties involved in the arbitration agreement. This ensures that all parties are aware of the application and have an opportunity to respond or raise any objections.
5. Context of the application: section 12(2) highlights that the application for an extension of time is relevant to the specific context of the arbitration agreement, where a time limit has been set for taking certain steps before initiating the arbitration or other dispute resolution procedures.
6. Balancing party autonomy and court intervention: By requiring the exhaustion of any available arbitral process for obtaining an extension before applying to the court, section 12(2) upholds the principle of party autonomy and encourages parties to use the mechanisms provided in the arbitration agreement first. It ensures that parties resort to court intervention only when internal avenues have been exhausted or are unavailable.

In summary, section 12(2) of the English Arbitration Act 1996 allows any party to the arbitration agreement to apply for an order to extend the time for taking certain steps required by the agreement.

The application can only be made after a claim has arisen, and the party must have exhausted any available arbitral process for obtaining an extension before seeking court intervention. This provision ensures that parties use internal mechanisms before resorting to court applications and maintains the principle of party autonomy in dispute resolution.

(3) The court shall make an order only if satisfied—

- (a) that the circumstances are such as were outside the reasonable contemplation of the parties when they agreed the provision in question, and that it would be just to extend the time, or**
- (b) that the conduct of one party makes it unjust to hold the other party to the strict terms of the provision in question.**

Section 12(3) of the English Arbitration Act 1996 lays out the criteria that the court must consider when deciding whether to make an order to extend the time for taking certain steps required by an arbitration agreement. Let us analyse this provision:

1. Grounds for making an order: section 12(3) specifies that the court can make an order to extend the time if it is satisfied with one of the following grounds:
 - a. Circumstances outside reasonable contemplation: The court may make an order if it determines that the circumstances leading to the need for an extension were not within the reasonable contemplation of the parties when they agreed to the provision in question. Moreover, the court must find that it would be just or fair to extend the time given these unforeseen circumstances.
 - b. Unjust conduct of one party: Alternatively, the court can make an order if it finds that the conduct of one party has been such that it would be unjust or inequitable to enforce the strict terms of the provision in question against the other party.
2. Reasonableness and justice: The two primary considerations for the court in deciding whether to grant the extension are reasonableness and justice. The court will assess whether the circumstances leading to the need for the extension were foreseeable by the parties at the time of agreeing to the provision. Additionally, the court will weigh the impact of enforcing the strict time limit in light of the conduct of the parties involved.
3. Protecting parties from unforeseen events: section 12(3)(a) acknowledges that parties may encounter unforeseen events or developments that make it impractical or impossible for them to comply with the original time limit set in the arbitration agreement. The provision aims to protect parties from being unfairly penalised due to events beyond their reasonable contemplation.
4. Accountability for conduct: section 12(3)(b) recognises the importance of holding parties accountable for their actions during the dispute resolution process. If one party's conduct is unjust or inequitable, the court can intervene to ensure fairness and equity.

5. Balancing interests: section 12(3) strikes a balance between enforcing the terms of the arbitration agreement and granting extensions when warranted by unforeseen circumstances or unfair conduct.

In summary, section 12(3) of the English Arbitration Act 1996 provides the grounds on which the court can make an order to extend the time for taking certain steps required by an arbitration agreement. The court can grant the extension if it finds that the circumstances leading to the need for the extension were outside the reasonable contemplation of the parties or if the conduct of one party makes it unjust to enforce the strict terms of the provision. This provision seeks to ensure fairness and justice in the application of time limits in arbitration agreements and allows the court to intervene when necessary to protect parties from unforeseen events or unfair conduct.

(4) The court may extend the time for such period and on such terms as it thinks fit, and may do so whether or not the time previously fixed (by agreement or by a previous order) has expired.

Section 12(4) of the English Arbitration Act 1996 provides the court with broad discretion to extend the time for taking certain steps required by an arbitration agreement. Let us analyse this provision:

1. Court's discretion: section 12(4) grants the court the authority to exercise its discretion in deciding whether to extend the time for taking the required steps. This means that the court has flexibility in considering the specific circumstances of the case and can make decisions based on what it deems appropriate and just.
2. Period and terms of the extension: The court has the power to determine the duration of the extension. It can extend the time for any period that it considers fit, depending on the complexity of the case and other relevant factors. Additionally, the court can impose terms or conditions on the extension if it deems it necessary to ensure fairness or compliance with the arbitration agreement.
3. Expired time limits: section 12(4) clarifies that the court can extend the time even if the previously fixed time (either through agreement between the parties or a previous court order) has already expired. This provision allows the court to consider an extension even if the original time limit has lapsed.
4. Flexibility and fairness: The flexibility provided by section 12(4) enables the court to adapt to the specific circumstances of each case. It allows the court to ensure that the parties are treated fairly and that any unforeseen or extraordinary circumstances are appropriately addressed.
5. Encouraging access to arbitration: The provision facilitates access to arbitration by providing parties with the opportunity to seek extensions when necessary, even if they have missed the initial deadline. This promotes the use of arbitration as a dispute resolution mechanism and supports the parties' intention to resolve their disputes through arbitration.

In summary, section 12(4) of the English Arbitration Act 1996 grants the court wide discretion to extend the time for taking certain steps required by an arbitration agreement. The court can determine the duration of the extension and impose terms as it deems fit. Additionally, the court's power to extend the time is not limited by whether the previous time limit has already expired. The provision ensures

flexibility and fairness in the application of time limits in arbitration agreements and supports access to arbitration as a means of resolving disputes.

(5) An order under this section does not affect the operation of the Limitation Acts (see section 13).

Section 12(5) of the English Arbitration Act 1996 clarifies that any order made by the court under section 12 to extend the time for taking certain steps required by an arbitration agreement does not impact the operation of the Limitation Acts. Let us analyse this provision:

1. Interaction with the Limitation Acts: The Limitation Acts in the United Kingdom set time limits within which certain legal claims must be brought. These acts aim to promote the finality of legal disputes by limiting the time period during which a claim can be pursued.
2. Preservation of Limitation periods: section 12(5) explicitly states that an order made under section 12 does not affect the operation of the Limitation Acts. In other words, the extension of time granted by the court under section 12 does not modify or suspend the applicable limitation period for the claim.
3. Application of Limitation Acts remains unchanged: The Limitation Acts continue to apply independently of any order made under section 12. If a claim is subject to a limitation period set by these acts, the claimant must still adhere to the time limits specified by the relevant legislation.
4. Distinct roles of section 12 and Limitation Acts: section 12 of the Arbitration Act deals with extending time limits specifically within the context of arbitration agreements. Its purpose is to allow parties the opportunity to seek an extension for taking certain steps in arbitration proceedings. On the other hand, the Limitation Acts apply to legal proceedings generally and serve to regulate the time within which legal claims can be brought.
5. Ensuring clarity and consistency: section 12(5) avoids any potential confusion or conflict between the extension of time granted under section 12 and the separate time limits established by the Limitation Acts. By explicitly stating that the operation of the Limitation Acts remains unaffected, the provision ensures clarity and consistency in the application of time limits in both arbitration and legal proceedings.

In summary, section 12(5) of the English Arbitration Act 1996 clarifies that an order made by the court under section 12 to extend the time for taking certain steps in arbitration does not impact the operation of the Limitation Acts. The limitation periods specified by the relevant legislation continue to apply independently of any order made under section 12. The provision ensures clarity and consistency in the application of time limits in both arbitration and legal proceedings and preserves the finality of legal disputes as intended by the Limitation Acts.

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

Section 12(6) of the English Arbitration Act 1996 addresses the appeal process regarding decisions made by the court under section 12 to extend the time for taking certain steps required by an arbitration agreement. Let us analyse this provision:

1. Appeal from a court decision: section 12(6) specifies that any party seeking to appeal a decision of the court made under section 12 must obtain the “leave of the court” before pursuing the appeal. This means that the party must first seek permission from the same court that made the original decision before proceeding with the appeal.
2. Limited appeal process: By requiring leave for the appeal, section 12(6) places an additional procedural hurdle in the appeal process. It ensures that appeals from the court’s decisions under section 12 are subject to a more restricted and controlled process compared to regular appeals.
3. Discretion of the court: The court has the discretion to grant or deny leave for the appeal. It will consider the merits and circumstances of the case before deciding whether to permit the appeal to proceed.
4. Promoting finality and efficiency: Requiring leave for the appeal helps promote the finality of decisions made by the court under section 12. It also ensures that the appeal process is not unduly burdensome and that parties cannot easily appeal such decisions without valid reasons.
5. Preventing frivolous appeals: The provision serves as a safeguard against frivolous or unmeritorious appeals that may delay or disrupt the arbitration process unnecessarily.
6. Focused review of important issues: The requirement for leave encourages parties to focus on significant legal or factual issues that warrant appellate review rather than appealing as a matter of course.

In summary, section 12(6) of the English Arbitration Act 1996 mandates that parties seeking to appeal a decision of the court made under section 12 to extend the time for taking certain steps required by an arbitration agreement must first obtain the “leave of the court”. This provision ensures that the appeal process is limited, controlled, and subject to the court’s discretion, promoting finality, efficiency, and focused review of important issues in the arbitration proceedings.

13 APPLICATION OF LIMITATION ACTS

(1) The Limitation Acts apply to arbitral proceedings as they apply to legal proceedings.

Section 13(1) of the English Arbitration Act 1996 states that the Limitation Acts apply to arbitral proceedings in the same manner as they apply to legal proceedings. Let us analyse this provision:

1. Application of the Limitation Acts: The Limitation Acts in the United Kingdom set time limits within which certain legal claims must be brought. These acts establish specific

timeframes during which a claimant must commence legal proceedings, failing which their claim may be time-barred.

2. Extending to arbitral proceedings: section 13(1) extends the application of the Limitation Acts to arbitral proceedings. This means that any time limits prescribed by the Limitation Acts for initiating legal proceedings also apply to initiating arbitral proceedings.
3. Consistency with legal proceedings: By applying the Limitation Acts to arbitral proceedings, section 13(1) ensures consistency between the timing requirements for bringing claims in court and those for commencing arbitration. It treats both types of proceedings on equal footing concerning time restrictions.
4. Finality and efficiency: Applying the Limitation Acts to arbitral proceedings supports the same policy goals as in legal proceedings, which include promoting finality and efficiency in the resolution of disputes.
5. Balancing party interests: The application of the Limitation Acts to arbitration helps balance the interests of claimants and respondents by setting clear and fixed timeframes for the initiation of proceedings. This clarity enables parties to manage their claims and defences accordingly.
6. Legal certainty: The extension of the Limitation Acts to arbitral proceedings enhances legal certainty by establishing a uniform framework for time limitations in both legal and arbitration contexts.

In summary, section 13(1) of the English Arbitration Act 1996 stipulates that the Limitation Acts, which set time limits for bringing legal claims, apply to arbitral proceedings in the same way they apply to legal proceedings. By ensuring consistency and legal certainty, this provision helps promote efficiency and finality in both arbitration and legal contexts. It also balances the interests of parties by providing clear timeframes for initiating claims and defences in the arbitration process.

(2) The court may order that in computing the time prescribed by the Limitation Acts for the commencement of proceedings (including arbitral proceedings) in respect of a dispute which was the subject matter—

- (a) of an award which the court orders to be set aside or declares to be of no effect, or**
- (b) of the affected part of an award which the court orders to be set aside in part, or declares to be in part of no effect, the period between the commencement of the arbitration and the date of the order referred to in paragraph (a) or (b) shall be excluded.**

Section 13(2) of the English Arbitration Act 1996 empowers the court to make an order that allows for the exclusion of a certain period when computing the time prescribed by the Limitation Acts for commencing proceedings (including arbitral proceedings) related to a dispute that was the subject matter of a specific award. Let us analyse this provision:

1. Scope of the provision: section 13(2) applies in situations where there is a dispute that was the subject matter of an award made in arbitration.

2. Grounds for exclusion of time: The court may order that the period between the commencement of the arbitration and the date of an order by the court either setting aside the award (in whole or in part) or declaring the award to be of no effect shall be excluded when calculating the time prescribed by the Limitation Acts for the commencement of proceedings.
3. Setting aside an award: In situations where the court orders the award to be set aside entirely, the time elapsed between the commencement of the arbitration and the date of the court's order will be excluded from the computation of the time limitation for commencing proceedings.
4. Partial setting aside of an award: If the court only sets aside a part of the award, the time period between the commencement of the arbitration and the date of the court's order (affecting that part of the award) will be excluded when calculating the time limitation for commencing proceedings.
5. Effect on time limitation: By excluding the relevant time period, section 13(2) gives parties additional time to commence proceedings after an award has been set aside or declared to be of no effect, as if the arbitration process never took place during that excluded period.
6. Equitable considerations: The provision recognises that when an award is set aside, parties may need additional time to assess their legal options and initiate any further proceedings related to the dispute. Excluding the time period during which the arbitration was ongoing ensures fairness in the application of the Limitation Acts in such circumstances.

In summary, section 13(2) of the English Arbitration Act 1996 allows the court to order the exclusion of the period between the commencement of the arbitration and the date of the court's order setting aside the award (in whole or in part) or declaring the award to be of no effect when calculating the time prescribed by the Limitation Acts for commencing proceedings related to the dispute. This provision considers the equitable considerations surrounding the setting aside of an award and provides parties with additional time to pursue legal remedies after an award has been invalidated or declared to be of no effect.

(3) In determining for the purposes of the Limitation Acts when a cause of action accrued, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which an arbitration agreement applies shall be disregarded.

Section 13(3) of the English Arbitration Act 1996 addresses the treatment of awards as a condition precedent to bringing legal proceedings in respect of a matter covered by an arbitration agreement when determining the accrual of a cause of action for the purposes of the Limitation Acts. Let us analyse this provision:

1. Cause of action and Limitation Acts: The term "cause of action" refers to the set of facts that give rise to a legal claim. The Limitation Acts establish time limits within which legal claims must be brought, and the accrual of the cause of action is a crucial factor in determining when the clock starts ticking for the limitation period.

2. Effect of arbitration agreement on legal proceedings: section 13(3) states that when determining the time of accrual of a cause of action for the purposes of the Limitation Acts, any provision in an arbitration agreement that makes an award a condition precedent to bringing legal proceedings in respect of a matter covered by the arbitration agreement shall be disregarded.
3. Disregarding award as a condition precedent: The provision means that the existence of an arbitration agreement, which requires the parties to obtain an award before initiating legal proceedings, will not affect the determination of when the cause of action accrued. In other words, the limitation clock will not be paused or delayed merely because an arbitration award is required before legal proceedings can be brought.
4. Time of accrual and commencement of proceedings: The Limitation Acts focus on when the cause of action arises, not when an award is obtained through arbitration. Therefore, even if an arbitration agreement mandates that parties must first seek an award before initiating legal proceedings, the limitation period will still commence when the cause of action arises, not when the award is rendered.
5. Promoting certainty and adherence to limitation periods: section 13(3) ensures that the Limitation Acts' time limits are applied consistently and that parties cannot extend the limitation period indefinitely by incorporating provisions requiring an award before legal proceedings.

In summary, section 13(3) of the English Arbitration Act 1996 clarifies that any provision in an arbitration agreement making an award a condition precedent to bringing legal proceedings in respect of a matter covered by the arbitration agreement shall be disregarded when determining the time of accrual of a cause of action for the purposes of the Limitation Acts. The provision aims to promote certainty and adherence to limitation periods and ensures that the time limits for bringing legal claims are not extended merely because parties must first seek an arbitration award.

(4) In this Part “the Limitation Acts” means—

- (a) in England and Wales, the Limitation Act 1980, the Foreign Limitation Periods Act 1984 and any other enactment (whenever passed) relating to the limitation of actions;**
- (b) in Northern Ireland, the Limitation (Northern Ireland) Order 1989, the Foreign Limitation Periods (Northern Ireland) Order 1985 and any other enactment (whenever passed) relating to the limitation of actions.**

Section 13(4) of the English Arbitration Act 1996 provides a definition of “the Limitation Acts” for the purposes of the Act. Let us analyse this provision:

1. Definition of “the Limitation Acts”: section 13(4) defines “the Limitation Acts” as follows:
 - a. In England and Wales: “The Limitation Acts” in England and Wales consist of the Limitation Act 1980, the Foreign Limitation Periods Act 1984, and any other enactment (regardless of when it was passed) related to the limitation of actions.

- b. In Northern Ireland: “The Limitation Acts” in Northern Ireland consist of the Limitation (Northern Ireland) Order 1989, the Foreign Limitation Periods (Northern Ireland) Order 1985, and any other enactment (regardless of when it was passed) related to the limitation of actions.
2. Limitation of actions: The “Limitation Acts” refer to the legislative framework that governs the time limits within which legal claims must be brought. These acts set specific time periods during which a claimant must commence legal proceedings, failing which their claim may be time-barred.
3. Applicability to arbitration: section 13(4) clarifies that the Limitation Acts apply in relation to arbitral proceedings in the same manner as they apply to legal proceedings. This means that the time limits established by the Limitation Acts for commencing legal claims also apply to commencing arbitral proceedings.
4. Consistency and uniformity: By incorporating the relevant enactments related to the limitation of actions in both England and Wales and Northern Ireland, section 13(4) ensures consistency and uniformity in the application of time limits in the arbitration context across different jurisdictions within the United Kingdom.
5. Cross-reference for interpretation: This provision serves as a cross-reference to the specific enactments that constitute “the Limitation Acts” in England and Wales and Northern Ireland. It clarifies which legislation falls under this definition and applies to the arbitration proceedings as provided in the Act.

In summary, section 13(4) of the English Arbitration Act 1996 defines “the Limitation Acts” for the purposes of the Act. It encompasses the specific enactments related to the limitation of actions in both England and Wales and Northern Ireland, and it ensures that these enactments apply in relation to arbitral proceedings as they do to legal proceedings. The provision establishes consistency and uniformity in the application of time limits for commencing claims in arbitration across different jurisdictions within the United Kingdom.

14 COMMENCEMENT OF ARBITRAL PROCEEDINGS

(1) The parties are free to agree when arbitral proceedings are to be regarded as commenced for the purposes of this Part and for the purposes of the Limitation Acts.

Section 14(1) of the English Arbitration Act 1996 provides parties with the freedom to agree on when arbitral proceedings are to be regarded as “commenced” for two specific purposes: (1) for the purposes of the Act itself (Part I of the Arbitration Act), and (2) for the purposes of the Limitation Acts. Let us analyse this provision:

1. Agreement on commencement of arbitral proceedings: section 14(1) recognises that parties to an arbitration agreement have the autonomy to determine the point in time at which arbitral proceedings are considered “commenced”. This means that parties can agree on the trigger or event that marks the official start of the arbitration process.
2. Flexibility and party autonomy: By granting parties the freedom to agree on the commencement of arbitral proceedings, the provision promotes flexibility and respects

party autonomy. It acknowledges that parties may have specific requirements or preferences regarding the initiation of the arbitration process.

3. **Clarity and certainty:** The provision encourages parties to address and agree on the precise moment when arbitral proceedings commence. This clarity can help avoid disputes or uncertainty about when time limits begin to run for various purposes, such as limitation periods for bringing claims.
4. **Purposes of the Act and the Limitation Acts:** section 14(1) highlights that the agreed-upon commencement of arbitral proceedings applies not only for the purposes of the Act itself but also for the purposes of the Limitation Acts. This means that the agreed-upon date or event for commencing the arbitration process will be considered the starting point for calculating any relevant limitation periods.
5. **Flexibility in different contexts:** The provision recognises that parties may choose different starting points for arbitral proceedings depending on the specific needs of their dispute and the requirements of the Limitation Acts. For example, parties might agree that the proceedings are “commenced” upon the appointment of the arbitral tribunal, the service of the request for arbitration, or the submission of the statement of claim.

In summary, section 14(1) of the English Arbitration Act 1996 allows parties to an arbitration agreement to agree on when arbitral proceedings are to be regarded as “commenced” for the purposes of the Act and for the purposes of the Limitation Acts. This provision respects party autonomy, promotes flexibility, and ensures clarity and certainty regarding the starting point of the arbitration process and the calculation of relevant limitation periods. It enables parties to tailor the commencement of arbitral proceedings to their specific needs and preferences while complying with applicable legal requirements.

(2) If there is no such agreement the following provisions apply.

Section 14(2) of the English Arbitration Act 1996 comes into effect when the parties to an arbitration agreement have not made any specific agreement on when arbitral proceedings are to be regarded as “commenced” for the purposes of the Act and for the purposes of the Limitation Acts. Let us analyse this provision:

1. **Absence of specific agreement:** section 14(2) addresses situations where the parties have not expressly agreed on the commencement of arbitral proceedings. In such cases, there is no predetermined trigger or event marking the official start of the arbitration process.
2. **Default provisions:** In the absence of a specific agreement, section 14(2) sets out default provisions that apply to determine when arbitral proceedings are deemed to have commenced.
3. **Certainty and uniformity:** By providing default provisions, section 14(2) ensures that there is a consistent and standardised approach to determine the commencement of arbitral proceedings when parties have not made their own agreement. This promotes clarity and certainty in the application of the Act and the Limitation Acts.

4. Relevance to Limitation Acts: The provision is also relevant in the context of the Limitation Acts. In the absence of an agreed-upon commencement date, the default provisions help establish when the limitation period starts running for the purpose of bringing legal claims.
5. Need for clear starting point: Defining a clear starting point for arbitral proceedings is essential, as it determines various procedural and substantive aspects, such as the appointment of the arbitral tribunal, the running of the limitation period, and the overall timing and conduct of the arbitration.

In summary, section 14(2) of the English Arbitration Act 1996 comes into play when the parties to an arbitration agreement have not agreed on when arbitral proceedings are to be regarded as “commenced”. In such cases, the Act provides default provisions to establish a clear and consistent starting point for the arbitration process. These default provisions ensure certainty and uniformity in the application of the Act and the Limitation Acts when the parties have not specified their own agreement.

(3) Where the arbitrator is named or designated in the arbitration agreement, arbitral proceedings are commenced in respect of a matter when one party serves on the other party or parties a notice in writing requiring him or them to submit that matter to the person so named or designated.

Section 14(3) of the English Arbitration Act 1996 specifies the circumstances under which arbitral proceedings are considered “commenced” in cases where the arbitrator is already named or designated in the arbitration agreement. Let us analyse this provision:

1. Pre-designated arbitrator: section 14(3) applies when the parties have already agreed on a specific arbitrator’s identity or designation in the arbitration agreement. This means that they have already selected the person who will act as the arbitrator to resolve potential disputes arising between them.
2. Triggering arbitral proceedings: According to section 14(3), arbitral proceedings are “commenced” in relation to a specific matter when one party serves a written notice on the other party or parties, requesting them to submit that particular matter to the person already named or designated as the arbitrator in the arbitration agreement.
3. Party-initiated commencement: This provision highlights that the initiation of arbitral proceedings in such cases is triggered by a formal written notice served by one party on the other party or parties involved in the dispute. It is the party’s unilateral action to invoke the arbitration process for the specific matter in question.
4. Choosing the named arbitrator: By serving the written notice, the party is affirming their choice of the named or designated arbitrator to resolve the dispute. This step marks the formal initiation of the arbitration process for that particular matter.
5. Finality and certainty: section 14(3) provides clarity and certainty about the moment when arbitral proceedings start in cases where an arbitrator is pre-named or designated. It ensures that the commencement of the arbitration process is clearly defined and

unambiguous, which can be crucial for adhering to procedural timelines and limitation periods.

In summary, section 14(3) of the English Arbitration Act 1996 specifies that when the arbitrator is named or designated in the arbitration agreement, arbitral proceedings are deemed to have been “commenced” concerning a specific matter when one party serves a written notice on the other party or parties, requesting them to submit that matter to the person already named or designated as the arbitrator. This provision offers a clear and definitive starting point for arbitral proceedings in cases where the parties have already pre-selected an arbitrator in their agreement.

(4) Where the arbitrator or arbitrators are to be appointed by the parties, arbitral proceedings are commenced in respect of a matter when one party serves on the other party or parties notice in writing requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator in respect of that matter.

Section 14(4) of the English Arbitration Act 1996 deals with the commencement of arbitral proceedings in cases where the appointment of the arbitrator or arbitrators is to be made by the parties themselves. Let us break down this provision:

1. Self-appointment of arbitrators: section 14(4) applies when the arbitration agreement specifies that the parties have the responsibility of appointing the arbitrator or arbitrators to adjudicate any disputes that may arise between them. In such cases, the parties must jointly decide on the person who will act as the arbitrator.
2. Triggering arbitral proceedings: According to section 14(4), arbitral proceedings are “commenced” for a specific matter when one party serves a written notice on the other party or parties, requesting them to appoint an arbitrator or agree to the appointment of an arbitrator for that particular matter.
3. Party-initiated commencement: This provision highlights that the initiation of arbitral proceedings in these situations is triggered by a formal written notice served by one party on the other party or parties involved in the dispute. The notice effectively starts the process of appointing an arbitrator for the specific matter in question.
4. Joint decision-making: The notice serves as a prompt for the parties to engage in a joint decision-making process to appoint the arbitrator or agree to the appointment of an arbitrator for the specific dispute. This cooperative step is crucial for the commencement of the arbitration process.
5. Flexibility in choosing arbitrators: By allowing the parties to appoint the arbitrator(s) themselves, section 14(4) provides them with flexibility and the opportunity to select an arbitrator who is mutually acceptable to both sides.

In summary, section 14(4) of the English Arbitration Act 1996 clarifies that when the arbitrator or arbitrators are to be appointed by the parties, arbitral proceedings are considered “commenced” in relation to a specific matter when one party serves a written notice on the other party or parties, requesting them to appoint an arbitrator or agree to the appointment of an arbitrator for that particular matter. This provision encourages cooperative decision-making and flexibility in choosing the arbitrator(s) for resolving the dispute between the parties.

- (5) Where the arbitrator or arbitrators are to be appointed by a person other than a party to the proceedings, arbitral proceedings are commenced in respect of a matter when one party gives notice in writing to that person requesting him to make the appointment in respect of that matter.**

Section 14(5) of the English Arbitration Act 1996 addresses the commencement of arbitral proceedings when the appointment of the arbitrator or arbitrators is to be made by a person or entity who is not a party to the proceedings. Let us analyse this provision:

1. Appointment by a third party: section 14(5) applies when the arbitration agreement specifies that the arbitrator or arbitrators will be appointed by a person or entity other than the parties to the dispute. This third party can be an institution, an individual, or any other entity with the authority to make the appointment.
2. Initiating the appointment process: According to section 14(5), arbitral proceedings are considered “commenced” for a specific matter when one party gives written notice to the designated third party, requesting them to make the appointment of an arbitrator for that particular matter.
3. Party-initiated commencement: Similar to section 14(4), this provision also highlights that the initiation of arbitral proceedings in these situations is triggered by a formal written notice, but this time it is served on the third party responsible for appointing the arbitrator(s).
4. Third party’s role in the appointment: The notice serves as a request to the designated third party to fulfil their role in the arbitration process by appointing an arbitrator for the specific dispute between the parties.
5. Impartiality and neutrality: By entrusting the appointment to a third party, section 14(5) aims to promote impartiality and neutrality in the selection of the arbitrator(s), as the third party is typically expected to act independently from the disputing parties.
6. Importance of timely notice: To ensure the timely commencement of arbitral proceedings, the party must provide written notice to the designated third party as soon as the dispute arises, signalling their intent to pursue arbitration and triggering the appointment process.

In summary, section 14(5) of the English Arbitration Act 1996 specifies that when the arbitrator or arbitrators are to be appointed by a person or entity other than the parties, arbitral proceedings are considered “commenced” in relation to a specific matter when one party gives written notice to that designated third party, requesting them to make the appointment of an arbitrator for that particular matter. This provision ensures the timely initiation of the arbitration process and the involvement of impartial and independent third parties in the appointment of arbitrators.

THE ARBITRAL TRIBUNAL

15 THE ARBITRAL TRIBUNAL

(1) The parties are free to agree on the number of arbitrators to form the tribunal and whether there is to be a chairman or umpire.

Section 15(1) of the English Arbitration Act 1996 empowers the parties to an arbitration agreement with the freedom to determine certain key aspects related to the constitution of the arbitral tribunal. Let us analyse this provision:

1. **Party autonomy:** section 15(1) recognises and upholds the principle of party autonomy in arbitration. It allows the parties involved in an arbitration agreement to have significant control over the arbitral process and the selection of the arbitrators.
2. **Number of arbitrators:** The provision allows the parties to agree on the number of arbitrators who will form the arbitral tribunal. The parties can choose to have a sole arbitrator, a panel of three arbitrators, or any other suitable number depending on the complexity and nature of the dispute.
3. **Chairman or umpire:** Additionally, the parties have the freedom to decide whether there will be a chairman or umpire appointed to preside over the arbitral tribunal. The chairman or umpire may have a particular role or function, depending on the parties' preferences and the rules they adopt for the arbitration.
4. **Flexibility and customisation:** By providing the parties with the freedom to determine the number of arbitrators and the presence of a chairman or umpire, section 15(1) enables them to customise the arbitration process according to their specific needs and requirements.
5. **Consideration of complexity and cost:** The parties may take into account factors such as the complexity of the dispute, the anticipated duration of the proceedings, and the costs associated with the appointment of multiple arbitrators when making their decision.
6. **Balancing expertise and efficiency:** The parties can use this flexibility to ensure that the arbitral tribunal possesses the necessary expertise to handle the dispute effectively while maintaining procedural efficiency.

In summary, section 15(1) of the English Arbitration Act 1996 grants the parties to an arbitration agreement the autonomy to agree on critical aspects of the arbitral process. They can decide on the number of arbitrators forming the tribunal and whether there will be a chairman or umpire. This provision empowers the parties to tailor the arbitration to suit the specific needs and circumstances of their dispute, ensuring a more efficient and effective resolution process.

- (2) Unless otherwise agreed by the parties, an agreement that the number of arbitrators shall be two or any other even number shall be understood as requiring the appointment of an additional arbitrator as chairman of the tribunal.**

Section 15(2) of the English Arbitration Act 1996 addresses the situation where the parties agree that the number of arbitrators shall be two or any other even number. Let us analyse this provision:

1. Additional arbitrator as chairman: section 15(2) stipulates that unless the parties have agreed otherwise, if they decide to have an even number of arbitrators (such as two), the agreement is understood to require the appointment of an additional arbitrator to serve as the chairman of the arbitral tribunal.
2. Creating an odd number of arbitrators: The provision aims to create an odd number of arbitrators in the tribunal by adding an extra arbitrator to the even number, thereby preventing potential deadlocks in decision-making during the arbitration proceedings.
3. Resolving tie votes: In arbitration, it is essential to have an odd number of arbitrators to prevent the possibility of tie votes. With an odd number of arbitrators, there will always be a majority decision, ensuring a conclusive outcome.
4. Encouraging majority decisions: By ensuring the presence of an odd number of arbitrators, section 15(2) encourages the tribunal to reach majority decisions, enhancing the efficiency and effectiveness of the arbitration process.
5. Party agreement exception: The provision acknowledges that the parties may agree otherwise, allowing them the flexibility to deviate from the default rule by specifying the number of arbitrators and the appointment process in their arbitration agreement.
6. Balancing party autonomy and procedural fairness: section 15(2) strikes a balance between party autonomy and the need for a fair and efficient arbitration process. It respects the parties' freedom to agree on the tribunal's composition while safeguarding against potential deadlock situations.

In summary, section 15(2) of the English Arbitration Act 1996 specifies that, in the absence of a specific agreement to the contrary, if the parties agree that the number of arbitrators shall be two or any other even number, an additional arbitrator will be required to serve as the chairman of the arbitral tribunal. This provision ensures an odd number of arbitrators in the tribunal, promoting procedural fairness and efficiency in the decision-making process during the arbitration proceedings.

- (3) If there is no agreement as to the number of arbitrators, the tribunal shall consist of a sole arbitrator.**

Section 15(3) of the English Arbitration Act 1996 addresses the situation where there is no agreement between the parties regarding the number of arbitrators to form the arbitral tribunal. Let us analyse this provision:

1. Default provision: section 15(3) serves as a default rule to resolve the issue when the parties have not agreed on the number of arbitrators.

2. Sole arbitrator: In the absence of an agreement on the number of arbitrators, the provision states that the arbitral tribunal shall consist of a sole arbitrator. Therefore, the default presumption is that a single arbitrator will be appointed to adjudicate the dispute.
3. Efficiency and simplicity: By providing for a sole arbitrator as the default option, section 15(3) aims to promote efficiency and simplicity in the arbitration process. A single arbitrator can lead to quicker and more straightforward proceedings compared to a larger tribunal.
4. Cost considerations: Appointing a sole arbitrator can also help control the overall cost of arbitration, as there is only one arbitrator's fee and expenses to be covered.
5. Party autonomy exception: The provision does not restrict the parties from agreeing on a different number of arbitrators, should they wish to do so. Parties are still free to negotiate and determine a different number of arbitrators through their arbitration agreement.
6. Applicability to various forms of arbitration: section 15(3) applies not only to ad hoc arbitrations but also to institutional arbitrations, unless the parties' chosen arbitral institution provides for a different default number of arbitrators.

In summary, section 15(3) of the English Arbitration Act 1996 establishes a default rule that, in the absence of an agreement between the parties regarding the number of arbitrators, the arbitral tribunal shall consist of a sole arbitrator. This provision promotes efficiency and simplicity in the arbitration process while allowing the parties the freedom to agree on a different number of arbitrators if they so choose.

16 PROCEDURE FOR APPOINTMENT OF ARBITRATORS

(1) The parties are free to agree on the procedure for appointing the arbitrator or arbitrators, including the procedure for appointing any chairman or umpire.

Section 16(1) of the English Arbitration Act 1996 grants the parties to an arbitration agreement the freedom to determine the procedure for appointing the arbitrator or arbitrators, including any chairman or umpire, if applicable. Let us analyse this provision:

1. Party autonomy: section 16(1) upholds the principle of party autonomy in arbitration. It recognises that the parties involved in an arbitration agreement should have considerable control over the process and various aspects of the arbitration, including the appointment of the arbitrator(s).
2. Flexible appointment process: The provision allows the parties to design a customised and flexible procedure for selecting the arbitrator(s) based on their needs, preferences, and the specific requirements of the dispute.
3. Tailoring the arbitration process: Parties can agree on the specific steps, timelines, and criteria for appointing the arbitrator(s). This customisation allows them to adapt the appointment process to suit the nature and complexity of the dispute.

4. Encouraging efficiency: By agreeing on the appointment procedure, parties can create a streamlined and efficient process for selecting the arbitrator(s) without the need for time-consuming disputes or delays in the appointment.
5. Incorporating institutional rules: In some cases, parties may choose to adopt the appointment procedures provided by arbitral institutions, such as those outlined in the rules of prominent arbitration bodies like the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), or the American Arbitration Association (AAA).
6. Clarity and transparency: Having a pre-agreed appointment procedure enhances the transparency and clarity of the arbitration process, giving all parties involved confidence in the fairness and legitimacy of the appointment.
7. Potential fallback provisions: In the absence of a specific agreement on the appointment procedure, the arbitration agreement may incorporate the default rules of a particular arbitral institution or the provisions set out in the applicable arbitration law.

In summary, section 16(1) of the English Arbitration Act 1996 allows the parties to an arbitration agreement the freedom to agree on the procedure for appointing the arbitrator or arbitrators, as well as any chairman or umpire if relevant. This provision reflects the importance of party autonomy and promotes flexibility in the appointment process, allowing parties to tailor the arbitration to best suit their needs and achieve an efficient and effective resolution of their dispute.

(2) If or to the extent that there is no such agreement, the following provisions apply.

Section 16(2) of the English Arbitration Act 1996 deals with the situation where the parties have not reached an agreement on the procedure for appointing the arbitrator(s) or any chairman or umpire. Let us analyse this provision:

1. Default provision: section 16(2) serves as a default rule to resolve the issue when the parties have not agreed on the appointment procedure.
2. Filling the procedural gap: In the absence of a specific agreement, the provision clarifies that certain default provisions will apply to ensure the appointment process moves forward smoothly.
3. Adopting institutional rules: In many cases, when parties have not agreed on an appointment procedure, the arbitration agreement may implicitly incorporate the rules of an arbitral institution. These institutional rules typically outline a procedure for the appointment of arbitrators.
4. Applying statutory rules: If the arbitration agreement does not refer to any institutional rules, the applicable arbitration law (in this case, the English Arbitration Act 1996) may prescribe default provisions for the appointment of arbitrators.
5. Ensuring fairness and independence: The default provisions aim to guarantee a fair and impartial appointment process, protecting the parties' interests and upholding the principles of arbitration, including the independence and neutrality of arbitrators.

6. Avoiding stalemates: Default provisions often include mechanisms to prevent potential deadlocks in the appointment process, such as appointing an appointing authority if the parties fail to agree on the arbitrator(s).
7. Balancing party autonomy: While section 16(2) provides default provisions, it does not prevent parties from agreeing on a specific appointment procedure that deviates from the default rules. Party autonomy remains a key principle, and parties can always customise the appointment process through their arbitration agreement.

In summary, section 16(2) of the English Arbitration Act 1996 addresses the situation where the parties have not agreed on the procedure for appointing the arbitrator(s) or any chairman or umpire. In such cases, the default provisions prescribed by institutional rules or statutory law will apply to ensure a fair and efficient appointment process. However, parties retain the flexibility to agree on a different procedure in their arbitration agreement, preserving the principle of party autonomy.

(3) If the tribunal is to consist of a sole arbitrator, the parties shall jointly appoint the arbitrator not later than 28 days after service of a request in writing by either party to do so.

Section 16(3) of the English Arbitration Act 1996 deals with the appointment of a sole arbitrator in an arbitration proceeding. Let us analyse this provision:

1. Sole arbitrator: Section 16(3) applies when the parties have agreed or the default provisions have determined that the arbitral tribunal will consist of a sole arbitrator. This means that there will be a single arbitrator responsible for resolving the dispute.
2. Joint appointment: The provision specifies that the parties are required to jointly appoint the sole arbitrator. It emphasises the importance of cooperation and mutual agreement between the parties in selecting the arbitrator.
3. Time limit: To ensure a timely appointment, Section 16(3) sets a specific time frame for the joint appointment. The parties are given 28 days from the date of service of a written request by either party to make the appointment.
4. Cooperation and efficiency: By setting a time limit for the appointment, the provision aims to promote cooperation between the parties and encourages them to act promptly in the appointment process.
5. Failure to appoint: If the parties do not jointly appoint the arbitrator within the specified time, the arbitration agreement or applicable institutional rules may contain further provisions for resolving the deadlock. For example, the arbitration agreement might provide for the appointment of the arbitrator by a third party, an arbitral institution, or the relevant court.
6. Preserving party autonomy: While Section 16(3) prescribes a specific time frame for the joint appointment, parties can agree on a different timeline for the appointment of the sole arbitrator in their arbitration agreement. Additionally, if the parties agree to adopt institutional rules, those rules may contain their own provisions on the appointment process.

7. Ensuring a functioning tribunal: Timely appointment is crucial to ensure the smooth functioning of the arbitral tribunal and to avoid unnecessary delays in the arbitration process.

In summary, Section 16(3) of the English Arbitration Act 1996 mandates that if the arbitral tribunal is to consist of a sole arbitrator, the parties must jointly appoint the arbitrator within 28 days after the service of a written request by either party to do so. This provision encourages cooperation between the parties and seeks to ensure the timely establishment of the arbitral tribunal in cases where a sole arbitrator is required to resolve the dispute.

(4) If the tribunal is to consist of two arbitrators, each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so.

Section 16(4) of the English Arbitration Act 1996 addresses the appointment of a two-member arbitral tribunal in an arbitration proceeding. Let us analyse this provision:

1. Two-member tribunal: Section 16(4) applies when the parties have agreed or the default provisions have determined that the arbitral tribunal will consist of two arbitrators. This means there will be two individuals, one appointed by each party, who will participate in the arbitration proceedings.
2. Equal representation: The provision ensures equal representation for each party in the tribunal. Each party has the right to appoint one arbitrator to represent their interests and views during the arbitration.
3. Time limit: To ensure a timely appointment, Section 16(4) sets a specific time frame for each party to make their appointment. Each party is given 14 days from the date of service of a written request by either party to appoint their chosen arbitrator.
4. Cooperation and efficiency: By setting a time limit for the appointment, the provision aims to encourage both parties to act promptly and cooperatively in the appointment process. This helps in ensuring the smooth progress of the arbitration.
5. Ensuring a functioning tribunal: The timely appointment of both arbitrators is crucial to establish a functioning arbitral tribunal. A two-member tribunal requires the participation of both arbitrators to effectively address the issues in dispute.
6. Failure to appoint: If either party fails to appoint an arbitrator within the specified time, the arbitration agreement or applicable institutional rules may contain further provisions for resolving the deadlock. For example, the arbitration agreement might provide for the appointment of the second arbitrator by a third party, an arbitral institution, or the relevant court.
7. Preserving party autonomy: While section 16(4) prescribes a specific time frame for the appointment of the two arbitrators, parties can agree on a different timeline for the appointment in their arbitration agreement. Additionally, if the parties agree to adopt institutional rules, those rules may contain their own provisions on the appointment process.

In summary, section 16(4) of the English Arbitration Act 1996 requires that if the arbitral tribunal is to consist of two arbitrators, each party must appoint one arbitrator within 14 days after the service of a written request by either party to do so. This provision ensures equal representation for each party in the two-member tribunal and encourages timely appointments to establish a functioning arbitral panel.

(5) If the tribunal is to consist of three arbitrators—

- (a) each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so, and**
- (b) the two so appointed shall forthwith appoint a third arbitrator as the chairman of the tribunal.**

Section 16(5) of the English Arbitration Act 1996 deals with the appointment process when the arbitral tribunal is to consist of three arbitrators. Let us analyse this provision:

1. **Three-member tribunal:** Section 16(5) applies when the parties have agreed or the default provisions have determined that the arbitral tribunal will consist of three arbitrators. This means there will be three individuals, each representing a party's interests, who will collectively form the arbitral tribunal.
2. **Sequential appointment process:** The provision outlines a sequential process for the appointment of the three arbitrators. It involves two steps: (a) each party appointing one arbitrator, and (b) the two appointed arbitrators jointly selecting a third arbitrator to serve as the chairman of the tribunal.
3. **Time limit:** To ensure a timely appointment, Section 16(5) sets a specific time frame for each party to appoint their chosen arbitrator. Each party has 14 days from the date of service of a written request by either party to make their appointment.
4. **Chairman appointment:** Once the two party-appointed arbitrators have been designated, they are required to promptly select the third arbitrator to serve as the chairman of the tribunal. This ensures that the tribunal can be fully constituted and begin its work efficiently.
5. **Encouraging cooperation and efficiency:** The provision promotes cooperation between the parties and efficiency in the appointment process. By providing clear time limits for each step, it helps in the timely establishment of the arbitral tribunal.
6. **Resolving any deadlock:** In case the two party-appointed arbitrators are unable to agree on the third arbitrator to serve as chairman, the arbitration agreement or applicable institutional rules may contain further provisions for resolving the deadlock. For example, the arbitration agreement might provide for the appointment of the third arbitrator by a third party, an arbitral institution, or the relevant court.
7. **Preserving party autonomy:** While Section 16(5) prescribes a specific time frame for the appointment process, parties can agree on a different timeline for the appointment of the three arbitrators in their arbitration agreement. Additionally, if the parties agree to adopt

institutional rules, those rules may contain their own provisions on the appointment process.

In summary, Section 16(5) of the English Arbitration Act 1996 sets out the appointment process when the arbitral tribunal is to consist of three arbitrators. Each party must appoint one arbitrator within 14 days after the service of a written request by either party to do so. Once the two party-appointed arbitrators are in place, they jointly appoint the third arbitrator to serve as the chairman of the tribunal. This provision ensures equal representation of each party and fosters cooperation and efficiency in establishing the three-member arbitral tribunal.

(6) If the tribunal is to consist of two arbitrators and an umpire—

- (a) each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so, and**
- (b) the two so appointed may appoint an umpire at any time after they themselves are appointed and shall do so before any substantive hearing or forthwith if they cannot agree on a matter relating to the arbitration.**

Section 16(6) of the English Arbitration Act 1996 addresses the appointment process when the arbitral tribunal is to consist of two arbitrators and an umpire. Let us analyse this provision:

1. **Composition of the tribunal:** section 16(6) applies when the parties have agreed or the default provisions have determined that the arbitral tribunal will consist of two arbitrators and an umpire. This means there will be two arbitrators initially appointed by each party and a third individual, the umpire, who will join the tribunal later.
2. **Sequential appointment process:** Similar to section 16(5), this provision outlines a sequential process for the appointment of the two arbitrators. It involves two steps: (a) each party appointing one arbitrator, and (b) the two appointed arbitrators later selecting an umpire.
3. **Time limit for arbitrator appointment:** As with section 16(5), section 16(6)(a) sets a specific time frame for each party to appoint their chosen arbitrator. Each party has 14 days from the date of service of a written request by either party to make their appointment.
4. **Umpire appointment:** section 16(6)(b) allows the two appointed arbitrators to jointly appoint an umpire at any time after their own appointments. However, it specifies that they must do so before any substantive hearing or immediately if they encounter a disagreement relating to the arbitration.
5. **Flexibility in umpire appointment:** The provision grants flexibility in selecting the umpire, allowing the two arbitrators to take their time to identify a suitable candidate or expert for this role.
6. **Resolution of disputes:** The umpire plays a crucial role in resolving disputes that may arise between the two arbitrators during the arbitration process. Their appointment ensures a balanced and unbiased decision-making process in case of disagreements.

7. Encouraging efficiency and avoiding delays: While the appointment of the two arbitrators is subject to a specific time frame, the provision recognises that the appointment of the umpire may require more time, especially considering their specific expertise or qualifications.
8. Preserving party autonomy: As with other appointment provisions, parties can agree on a different timeline for the appointment of the arbitrators and umpire in their arbitration agreement.

In summary, section 16(6) of the English Arbitration Act 1996 outlines the appointment process when the arbitral tribunal is to consist of two arbitrators and an umpire. Each party must appoint one arbitrator within 14 days after the service of a written request by either party. Subsequently, the two appointed arbitrators can jointly appoint the umpire at any time after their own appointments, but it must be done before any substantive hearing or immediately if there are disagreements relating to the arbitration. This provision ensures the efficient establishment of the tribunal and addresses the importance of appointing an umpire to resolve disputes between the arbitrators during the arbitration process.

(7) In any other case (in particular, if there are more than two parties) section 18 applies as in the case of a failure of the agreed appointment procedure.

Section 16(7) of the Act deals with cases where the arbitral tribunal is to consist of more than two arbitrators or when there are more than two parties involved in the arbitration. In such situations, Section 18 of the Act applies as in the case of a failure of the agreed appointment procedure. Here is a breakdown of its implications:

1. Multiple parties or arbitrators: section 16(7) recognises that there may be cases where an arbitration involves more than two parties or requires the appointment of more than two arbitrators. Such situations are common in complex commercial disputes involving multiple parties or when the parties agree to have a larger panel of arbitrators.
2. Reference to section 18: section 16(7) makes a cross-reference to section 18 of the Arbitration Act 1996. Section 18 deals with the failure of the agreed appointment procedure and provides a mechanism for resolving disputes or deadlock situations that may arise during the appointment process.
3. ~~Appointing authorities: section 18 allows for the intervention of appointing authorities, which can be institutions, organisations, or individuals designated to assist in appointing arbitrators when parties are unable to agree or if a nomination process fails. These appointing authorities are responsible for making the necessary appointments to ensure the constitution of a functioning arbitral tribunal.⁴~~
4. Resolving deadlock situations: In cases involving multiple parties or arbitrators, it is possible that disagreements or stalemates may occur during the appointment process.

⁴ Incorrect guess by ChatGPT.

Section 18 provides a mechanism to overcome such impasses and proceed with the appointment of the arbitrators.

5. Ensuring a functioning tribunal: The application of Section 18 in these situations helps to ensure that the arbitral tribunal can be constituted effectively, thereby preserving the efficiency and effectiveness of the arbitration process.
6. Preserving party autonomy: While section 16(7) refers to section 18 in cases of a failure of the agreed appointment procedure, parties can still agree on their own appointment procedure, including the number of arbitrators, in their arbitration agreement. Section 16(7) only comes into play when the agreed appointment procedure fails or when the parties have not agreed on a specific appointment procedure.

In summary, section 16(7) of the English Arbitration Act 1996 refers to section 18 of the Act ~~in cases where the arbitral tribunal is to consist of more than two arbitrators or when there are more than two parties involved in the arbitration.~~⁵ Section 18 provides a mechanism for resolving disputes or deadlock situations that may arise during the appointment process, ensuring the effective constitution of a functioning arbitral tribunal in such situations.

17 POWER IN CASE OF DEFAULT TO APPOINT SOLE ARBITRATOR

- (1) Unless the parties otherwise agree, where each of two parties to an arbitration agreement is to appoint an arbitrator and one party (“the party in default”) refuses to do so, or fails to do so within the time specified, the other party, having duly appointed his arbitrator, may give notice in writing to the party in default that he proposes to appoint his arbitrator to act as sole arbitrator.**

Section 17(1) of the English Arbitration Act 1996 addresses a situation where an arbitration agreement requires each of two parties to appoint an arbitrator, but one party fails to do so or refuses to participate in the appointment process. Let us analyse this provision:

1. Two-party appointment requirement: Section 17(1) applies when the arbitration agreement specifies that each of the two parties must appoint an arbitrator to form the arbitral tribunal. This requirement is common in many arbitration agreements to ensure equal representation of both parties in the tribunal.
2. Party in default: The provision refers to the party that either refuses to appoint an arbitrator or fails to do so within the specified time frame as the “party in default”.
3. Right to notice: If one party has duly appointed their arbitrator but the other party is in default, the party that made the appointment is granted the right to take action to proceed with the arbitration process.
4. Sole arbitrator appointment: section 17(1) allows the party that has appointed its arbitrator to give written notice to the defaulting party. The notice informs the defaulting

⁵ Incorrect guess by ChatGPT.

party that, due to their failure to appoint an arbitrator, the appointing party proposes to have its appointed arbitrator act as the sole arbitrator for the arbitration proceedings.

5. Resolving the deadlock: The provision is designed to resolve a potential deadlock situation that may arise when one party refuses to cooperate or participate in the appointment of arbitrators. By allowing the party that has appointed its arbitrator to proceed with the appointment of a sole arbitrator, the arbitration process can move forward despite the default.
6. Preserving party autonomy: While section 17(1) allows the party in default to be notified of the intention to proceed with a sole arbitrator, parties can still agree on different appointment procedures or methods for resolving appointment disputes in their arbitration agreement. This provision comes into play when the parties have not agreed on an alternative procedure or when the agreed procedure has failed.
7. Fairness and efficiency: section 17(1) aims to ensure a fair and efficient arbitration process even in situations where one party fails to comply with the appointment requirements. By permitting the appointment of a sole arbitrator, the arbitration proceedings can continue without undue delay.

In summary, section 17(1) of the English Arbitration Act 1996 empowers a party to an arbitration agreement, who has duly appointed an arbitrator, to give notice to the other party in default. The notice states the intention to proceed with the appointment of the already appointed arbitrator to act as the sole arbitrator in the arbitration proceedings. This provision helps resolve deadlock situations and ensures the arbitration process can continue in an efficient and fair manner even when one party is uncooperative or defaults in appointing an arbitrator.

(2) If the party in default does not within 7 clear days of that notice being given—

- (a) make the required appointment, and**
- (b) notify the other party that he has done so,**

the other party may appoint his arbitrator as sole arbitrator whose award shall be binding on both parties as if he had been so appointed by agreement.

Section 17(2) of the English Arbitration Act 1996 complements section 17(1) and addresses the consequences when the party in default fails to respond to the notice given by the other party. Let us analyse this provision:

1. Notice to the party in default: As per section 17(1), the party that has already appointed its arbitrator gives written notice to the defaulting party. The notice informs the defaulting party of the intention to proceed with the appointment of a sole arbitrator and provides them with an opportunity to make the required appointment.
2. Time limit for response: section 17(2) sets a specific time frame of 7 clear days for the party in default to respond to the notice. Within this period, the defaulting party must take two steps: (a) make the required appointment of its arbitrator, and (b) notify the other party that the appointment has been made.

3. Consequences of non-response: If the party in default does not complete both steps (a) and (b) within the 7-day period, section 17(2) gives the other party the right to proceed with the appointment of their own arbitrator as the sole arbitrator for the arbitration proceedings.
4. Sole arbitrator's authority: The arbitrator appointed by the other party will now act as the sole arbitrator, and their award will be binding on both parties as if they had been appointed by mutual agreement.
5. Ensuring progress in the arbitration process: section 17(2) is designed to prevent undue delays in the arbitration proceedings due to the defaulting party's inaction. By allowing the other party to proceed with the appointment of a sole arbitrator, the arbitration process can move forward even if the party in default refuses or fails to participate in the appointment process.
6. Preserving the integrity of the award: The provision ensures that the award rendered by the sole arbitrator appointed by the other party will carry the same authority and enforceability as if both parties had mutually agreed to appoint that arbitrator.
7. Encouraging cooperation and adherence to timelines: The time limit provided in Section 17(2) incentivises the party in default to promptly respond to the notice and fulfil their obligations in appointing an arbitrator. By doing so, the arbitration proceedings can proceed smoothly, and the parties can receive a timely resolution to their dispute.

In summary, section 17(2) of the English Arbitration Act 1996 stipulates the consequences when the party in default fails to respond to the notice given by the other party regarding the appointment of an arbitrator. If the party in default does not complete the required appointment and notification within 7 clear days, the other party has the right to proceed with the appointment of its own arbitrator as the sole arbitrator. The award rendered by this sole arbitrator will be binding on both parties as if appointed by mutual agreement. This provision promotes timely progress in the arbitration process and encourages cooperation between the parties.

(3) Where a sole arbitrator has been appointed under subsection (2), the party in default may (upon notice to the appointing party) apply to the court which may set aside the appointment.

Section 17(3) of the English Arbitration Act 1996 provides a remedy to the party in default if a sole arbitrator has been appointed under section 17(2) and the defaulting party wishes to challenge or dispute the appointment. Let us analyse this provision:

1. Applicability: section 17(3) applies in situations where the party in default has failed to respond to the notice given by the other party, and as a consequence, the other party has proceeded to appoint their arbitrator as the sole arbitrator for the arbitration proceedings under section 17(2).
2. Right to challenge the appointment: Despite the appointment of a sole arbitrator by the other party, section 17(3) allows the party in default to challenge the appointment by making an application to the court.

3. Notice requirement: Before making the application to the court, the party in default must provide notice to the appointing party. This notice serves as an indication that the party in default intends to challenge the appointment and allows the appointing party an opportunity to respond or participate in the court proceedings.
4. Court's authority: Upon receiving the application from the party in default, the court has the power to set aside the appointment of the sole arbitrator if it finds sufficient grounds for doing so.
5. Grounds for setting aside: The court's decision to set aside the appointment will be based on the merits of the case and the arguments presented by the party in default. The court may set aside the appointment if it determines that there are valid reasons for doing so.
6. Ensuring fairness and due process: section 17(3) ensures that the party in default has an avenue to challenge the appointment of the sole arbitrator if they believe there has been an error or irregularity in the appointment process. It upholds principles of fairness and due process in the arbitration proceedings.
7. Judicial oversight: By allowing the court to intervene and set aside the appointment, section 17(3) provides a mechanism for judicial oversight to ensure that the appointment process is conducted properly and in accordance with the law.

In summary, section 17(3) of the English Arbitration Act 1996 grants the party in default the right to challenge the appointment of a sole arbitrator made under section 17(2). The defaulting party can make an application to the court to set aside the appointment. The court will consider the merits of the challenge and may set aside the appointment if it finds valid reasons for doing so. This provision ensures fairness and due process in the arbitration process and allows for judicial oversight if necessary.

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

Section 17(4) of the English Arbitration Act 1996 sets forth a requirement for obtaining leave (permission) from the court before appealing a decision made by the court under Section 17(3). Let us analyse this provision:

1. Applicability: section 17(4) applies to situations where a party seeks to appeal a decision made by the court under section 17(3). As per section 17(3), the court has the authority to set aside the appointment of a sole arbitrator if an application is made by the party in default, and the court finds sufficient grounds to do so.
2. Right to appeal: section 17(4) allows a party to appeal the court's decision under Section 17(3). However, to pursue such an appeal, the party must first seek permission (leave) from the court.
3. Leave requirement: Before lodging an appeal, the party seeking to challenge the court's decision must obtain permission from the same court that made the initial decision. The purpose of requiring leave is to ensure that only meritorious and appropriate appeals are entertained, thus avoiding frivolous or unnecessary challenges.

4. Judicial oversight: Requiring leave for an appeal ensures that the court has oversight and control over the appellate process. This mechanism serves to filter appeals and prevents a flood of appeals that might otherwise burden the court system.
5. Consideration of merits: In the leave application, the court will consider the grounds of the proposed appeal and assess whether there are sufficient grounds to warrant a full appeal hearing.
6. Protecting the arbitration process: The provision strikes a balance between the right to appeal and the need to protect the efficiency and finality of the arbitration process. It prevents unnecessary delays in the proceedings caused by appeals that lack substantial merit.
7. Preserving finality: By requiring leave for an appeal, section 17(4) reinforces the principle of finality in arbitration proceedings. It ensures that the decision of the court under section 17(3) is not easily overturned and that the parties can rely on the appointment of the sole arbitrator to proceed with the arbitration.

In summary, section 17(4) of the English Arbitration Act 1996 mandates that a party seeking to appeal a decision of the court made under section 17(3) must first obtain permission (leave) from the same court. This requirement aims to control the appellate process, ensure that only meritorious appeals are pursued, and protect the efficiency and finality of the arbitration proceedings. It provides an additional layer of scrutiny before a party can proceed with an appeal, thereby promoting fair and just resolution of disputes arising from the appointment of a sole arbitrator.

18 FAILURE OF APPOINTMENT PROCEDURE

(1) The parties are free to agree what is to happen in the event of a failure of the procedure for the appointment of the arbitral tribunal.

There is no failure if an appointment is duly made under section 17 (power in case of default to appoint sole arbitrator), unless that appointment is set aside.

Section 18(1) of the English Arbitration Act 1996 addresses the scenario where the agreed procedure for appointing the arbitral tribunal fails. Let us analyse this provision:

1. Party autonomy: section 18(1) emphasises the principle of party autonomy in arbitration. It allows the parties to agree on the procedure for appointing the arbitral tribunal in their arbitration agreement. This agreement may include provisions for addressing the failure of the appointment process.
2. Addressing failure of appointment: The provision recognises that, despite the parties' best intentions, the appointment process may encounter difficulties or challenges that lead to a failure in making the required appointments.
3. Importance of agreed procedure: The agreed procedure for appointment takes precedence. If the parties have agreed on a specific procedure and that procedure works as intended, then there is no failure in the appointment process.

4. Section 17 exception: However, an exception to this rule is made for the appointment of a sole arbitrator under section 17(2). If one party gives notice of their intention to appoint a sole arbitrator, and the other party fails to respond within the specified time, the appointment of the sole arbitrator proceeds (under section 17(2)). This appointment is not considered a failure even if the party in default later seeks to set it aside under section 17(3).
5. Agreement's role in failure: section 18(1) highlights the significance of the parties' agreement in dealing with the failure of the appointment procedure. If the parties have agreed on specific actions or remedies to address the failure, those provisions will be followed.
6. Legal consequences of failure: If the parties have not addressed the failure in their arbitration agreement or if their agreement is silent on this matter, the legal consequences of the failure will be determined in accordance with the Act.
7. Ensuring a functioning arbitration process: By allowing the parties to agree on the procedure for appointing the arbitral tribunal, section 18(1) provides flexibility and ensures a functioning arbitration process. Parties can tailor the appointment procedure to suit their specific needs and circumstances.

In summary, section 18(1) of the English Arbitration Act 1996 reaffirms the importance of party autonomy in arbitration proceedings. It grants parties the freedom to agree on the procedure for appointing the arbitral tribunal and how to handle any failure in the appointment process. If the parties have agreed on the procedure and it functions as intended, there is no failure. However, if there is no agreed procedure or if the agreed procedure fails, the Act will determine the legal consequences of the failure unless the appointment of a sole arbitrator under section 17(2) is later set aside under section 17(3). This provision promotes the effectiveness and efficiency of the arbitration process by allowing parties to tailor the appointment procedure to their needs and resolve issues related to the failure of the appointment process in a manner they have mutually agreed upon.

(2) If or to the extent that there is no such agreement any party to the arbitration agreement may (upon notice to the other parties) apply to the court to exercise its powers under this section.

Section 18(2) of the English Arbitration Act 1996 provides a mechanism for parties to address the failure of the agreed procedure for appointing the arbitral tribunal when there is no such agreement or when the agreement is insufficient to address the situation. Let us analyse this provision:

1. Absence of agreement: section 18(2) comes into play when the arbitration agreement does not contain provisions regarding what should happen in the event of a failure in the appointment process. In such cases, the parties have not predetermined how to handle the failure.
2. Party's application to court: When faced with a failure in the appointment process, any party to the arbitration agreement has the right to apply to the court to exercise its powers under this section. The application must be made by giving notice to the other parties, informing them of the intention to seek the court's intervention.

3. Court's powers: The court's powers under this section refer to its authority to take appropriate measures to address the failure of the appointment process. The court may step in to ensure the arbitral tribunal is constituted and the arbitration process can proceed smoothly.
4. Judicial intervention: section 18(2) allows for judicial intervention in the appointment process only when there is no agreement between the parties or when the existing agreement does not adequately address the situation.
5. Facilitating the arbitration process: The provision serves as a safety net to prevent a deadlock or delay in the appointment of the arbitral tribunal. By allowing a party to apply to the court, the Act ensures that the arbitration process can move forward, even in the absence of an agreed-upon procedure.
6. Balancing party autonomy and court oversight: section 18(2) strikes a balance between party autonomy and court oversight. It respects the parties' right to determine their own appointment procedure but also provides a mechanism for recourse when the procedure breaks down.
7. Flexible approach: The Act empowers the court to exercise its powers under section 18(2) flexibly, ensuring that the court can tailor its intervention to the specific circumstances of the case.

In summary, section 18(2) of the English Arbitration Act 1996 allows a party to the arbitration agreement to seek the court's intervention when there is a failure in the appointment procedure and no agreement or insufficient agreement exists to address the situation. By providing this mechanism, the Act ensures that the arbitration process can proceed smoothly, even in the absence of a specific procedure for addressing the failure. The provision strikes a balance between party autonomy and court oversight, promoting a functioning arbitration process while respecting the parties' freedom to determine their own appointment procedures.

(3) Those powers are—

- (a) to give directions as to the making of any necessary appointments;**
- (b) to direct that the tribunal shall be constituted by such appointments (or any one or more of them) as have been made;**
- (c) to revoke any appointments already made;**
- (d) to make any necessary appointments itself.**

Section 18(3) of the English Arbitration Act 1996 outlines the powers of the court when a party applies for its intervention to address the failure of the agreed procedure for appointing the arbitral tribunal. The powers of the court are as follows:

1. Giving directions: The court may give directions to the parties regarding the procedure for making any necessary appointments. These directions can include specific timelines or requirements for the appointment process.

2. Directing tribunal constitution: The court has the authority to direct that the arbitral tribunal be constituted by the appointments that have already been made (or any one or more of them). This means that if some appointments have been successfully made, the court can confirm the constitution of the tribunal based on those appointments.
3. Revoking appointments: The court may revoke any appointments that have already been made if it deems it necessary to do so. This power allows the court to address any irregularities or issues with the appointments that have taken place.
4. Making appointments: In cases where the agreed appointment procedure has failed and no valid appointments have been made, the court has the power to make the necessary appointments itself. This means that the court can directly appoint the arbitrators to form the arbitral tribunal.

These powers are intended to ensure that the arbitral tribunal can be constituted despite the failure of the agreed appointment procedure. The court's intervention aims to facilitate the arbitration process, resolve any disputes related to the appointment of arbitrators, and allow the parties to proceed with the resolution of their dispute in a timely and efficient manner.

It is worth noting that these powers are exercised by the court only when there is no agreement on how to address the failure or when the existing agreement is insufficient to resolve the matter. When there is an agreement between the parties on what should happen in the event of a failure, the agreed-upon procedure takes precedence, and the court will follow that procedure without the need for intervention. Section 18(3) is designed to serve as a backstop when the agreed procedure proves ineffective or is absent altogether.

(4) An appointment made by the court under this section has effect as if made with the agreement of the parties.

Section 18(4) of the English Arbitration Act 1996 states that an appointment made by the court under section 18(2) of the Act has the same effect as if it had been made with the agreement of the parties. Let us analyse this provision:

1. Court-appointed arbitrators: section 18(2) allows the court to step in and make necessary appointments to form the arbitral tribunal when there is a failure in the agreed procedure for appointment or no such procedure exists. In such cases, the court exercises its power to ensure the arbitration process moves forward.
2. Legal effect of court-appointed arbitrators: section 18(4) clarifies that any appointment made by the court pursuant to section 18(2) is treated as if it had been made with the agreement of the parties. This means that the court-appointed arbitrators have the same legal status and authority as if the parties had appointed them voluntarily.
3. Confirmation of validity: The provision aims to give legal validity and certainty to the court-appointed arbitrators. By equating the court-appointed appointments with the parties' agreement, section 18(4) removes any doubt about the legitimacy and authority of the tribunal thus constituted.

4. Avoiding challenges: The wording of section 18(4) seeks to prevent any challenges or disputes over the authority of the court-appointed arbitrators. By treating these appointments as if they were made by mutual agreement, the Act reinforces the arbitrators' ability to conduct the proceedings and issue an enforceable award.
5. Promoting the efficacy of arbitration: section 18(4) serves to promote the efficacy of the arbitration process. It ensures that the arbitral tribunal can be constituted without unnecessary delays or uncertainty, even when the original appointment procedure fails.
6. Facilitating the parties' intentions: The Act aims to honour the parties' intention to resolve their dispute through arbitration by allowing the court to step in and appoint arbitrators if the parties themselves cannot do so.

In summary, section 18(4) of the English Arbitration Act 1996 clarifies that any appointment made by the court under section 18(2) has the same legal effect as if it had been made with the agreement of the parties. This provision ensures that court-appointed arbitrators are recognised as having the authority to conduct the arbitration and issue an enforceable award. By treating these appointments as if they were made by mutual agreement, the Act upholds the efficacy of the arbitration process and promotes the parties' intention to resolve their dispute through arbitration, even when the agreed appointment procedure fails.

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

Section 18(5) of the English Arbitration Act 1996 states that the leave of the court is required for any appeal from a decision of the court made under section 18(2) of the Act. Let us analyse this provision:

1. Requirement for leave of the court: The provision makes it clear that a party seeking to appeal a decision of the court made under section 18(2) must obtain the leave (permission) of the court before they can proceed with the appeal. In other words, a party cannot appeal as of right but must first seek permission from the court.
2. Control of the appellate process: Requiring leave for appeal allows the court to exercise control over the appellate process. It ensures that only meritorious and significant appeals proceed, preventing frivolous or unnecessary challenges to decisions made by the court under section 18(2).
3. Ensuring efficiency and finality: By requiring leave, the Act aims to maintain efficiency in the arbitration process and promote finality in the decisions made by the court. Unrestricted appeals could lead to delays and undermine the timely resolution of disputes through arbitration.
4. Appeal on points of law: An appeal from a decision made under section 18(2) is likely to be limited to points of law rather than factual matters. Courts generally grant leave for appeals when there is a question of law that requires further consideration or clarification.
5. Balancing party rights: While the provision requires leave for appeal, it does not preclude a party from seeking redress if they believe the court has made an error in its decision.

The requirement for leave ensures that such appeals are properly considered and do not unnecessarily burden the court system.

6. Ensuring consistency: The requirement for leave helps ensure consistency in the application of section 18(2) and the appeal process. It enables the higher courts to assess whether the lower court's decision was correct and provides an opportunity to correct errors if they exist.

In summary, section 18(5) of the English Arbitration Act 1996 mandates that the leave of the court is necessary for any party seeking to appeal a decision made by the court under section 18(2). This requirement ensures the court's control over the appellate process, maintains efficiency and finality in the arbitration proceedings, and allows for the proper consideration of points of law on appeal. It strikes a balance between party rights to appeal and the need to avoid unnecessary appeals that could disrupt the arbitration process.

19 COURT TO HAVE REGARD TO AGREED QUALIFICATIONS

- (1) In deciding whether to exercise, and in considering how to exercise, any of its powers under section 16 (procedure for appointment of arbitrators) or section 18 (failure of appointment procedure), the court shall have due regard to any agreement of the parties as to the qualifications required of the arbitrators.**

Section 19(1) of the English Arbitration Act 1996 pertains to the court's exercise of powers under section 16 (procedure for appointment of arbitrators) and section 18 (failure of appointment procedure). Let us analyse this provision:

1. Consideration of parties' agreement: section 19 emphasises that when the court is deciding whether to exercise its powers under Section 16 or section 18, it must take into account any agreement made by the parties regarding the qualifications required of the arbitrators. This means that the court must respect and give due regard to the parties' preferences and requirements when appointing arbitrators.
2. Flexibility in appointment criteria: The provision acknowledges the parties' autonomy and flexibility in specifying the qualifications they desire in the arbitrators. This allows the parties to tailor the arbitration process to suit their specific needs and preferences, particularly concerning the arbitrators' expertise, experience, or industry knowledge.
3. Facilitating the parties' intentions: By considering the parties' agreement on the qualifications of the arbitrators, section 19 facilitates the parties' intentions to have a dispute resolution process conducted by arbitrators possessing specific qualifications deemed important by the parties.
4. Enhancing trust and confidence: The provision reinforces the importance of adhering to the parties' agreement on arbitrator qualifications. This can enhance the parties' trust and confidence in the arbitration process, as it ensures that arbitrators with the desired attributes are appointed to handle their dispute.
5. Balancing the court's discretion: While the court must consider the parties' agreement, Section 19 does not strip the court of its discretion in making appointments. If the parties'

agreement is unreasonable or unworkable, the court retains the authority to make a decision that best serves the interests of the arbitration process.

6. Encouraging party cooperation: By recognising the parties' agreement on arbitrator qualifications, the provision encourages parties to cooperate in the appointment process and promotes a smoother and more efficient resolution of disputes through arbitration.

In summary, section 19 of the English Arbitration Act 1996 directs the court to take into account any agreement of the parties concerning the qualifications required of the arbitrators when exercising its powers under section 16 or section 18. This provision respects the parties' autonomy, fosters their trust in the arbitration process, and promotes cooperation in the appointment of arbitrators while allowing the court to exercise its discretion in certain circumstances.

20 CHAIRMAN

(1) **Where the parties have agreed that there is to be a chairman, they are free to agree what the functions of the chairman are to be in relation to the making of decisions, orders and awards.**

Section 20(1) of the English Arbitration Act 1996 addresses the role of a chairman in arbitral proceedings when the parties have agreed to appoint one. Let us analyse this provision:

1. Agreement between parties: The provision emphasises the principle of party autonomy in arbitration. It states that when the parties have agreed to appoint a chairman, they are free to reach an agreement regarding the functions and responsibilities of the chairman concerning the making of decisions, orders, and awards.
2. Flexibility in defining the chairman's role: section 20(1) allows the parties to tailor the chairman's role to suit the specific needs of the arbitration. They can agree on the scope of the chairman's authority, the types of decisions they may make, the procedures for issuing orders, and any other relevant aspects of the arbitration process.
3. Ensuring clarity and efficiency: By enabling the parties to agree on the functions of the chairman, section 20(1) promotes clarity and efficiency in the arbitration proceedings. This agreement can avoid potential disputes or ambiguities that may arise if the role of the chairman is not clearly defined.
4. Facilitating complex arbitrations: In complex arbitrations involving multiple parties or complicated legal and factual issues, having a designated chairman with specified functions can provide an effective mechanism for managing the proceedings and ensuring a smooth resolution.
5. Chairmanship as a neutral role: The chairman typically assumes a neutral and impartial role in arbitral proceedings, overseeing the process and ensuring fair treatment of all parties. However, the parties may choose to confer additional powers or responsibilities on the chairman based on their particular needs and preferences.
6. Balancing party rights: While section 20(1) allows the parties to agree on the functions of the chairman, it does not grant the chairman unilateral decision-making powers. The

chairman's role should be consistent with the principles of fair and equitable treatment of all parties involved.

In summary, section 20(1) of the English Arbitration Act 1996 recognises the importance of party autonomy in arbitration. It allows the parties to agree on the functions of the chairman when they have decided to appoint one. This provision promotes clarity, efficiency, and effective case management in arbitral proceedings while ensuring that the chairman's role remains neutral and impartial.

(2) If or to the extent that there is no such agreement, the following provisions apply.

Section 20(2) of the English Arbitration Act 1996 comes into play when the parties have not reached an agreement regarding the functions of the chairman in arbitral proceedings. Let us analyse this provision:

1. Default provision: section 20(2) serves as a default provision in cases where the parties have not expressly agreed on the role of the chairman. It provides a set of rules that will apply in the absence of any contrary agreement.
2. Ensuring procedural fairness: When there is no agreement, the Act ensures that the chairman's functions are determined in a manner that upholds the principles of procedural fairness, impartiality, and equal treatment of the parties.
3. Preserving party rights: The default provision prevents a situation where the chairman may exercise arbitrary or excessive authority in the absence of clear guidance from the parties. It ensures that the parties' rights and interests are protected by imposing a reasonable framework for the chairman's functions.
4. Statutory guidance: section 20(2) provides a statutory framework that the chairman should follow in the absence of an agreement between the parties. This framework offers a measure of predictability and consistency in arbitration proceedings where no specific agreement exists.
5. Chairman's powers and duties: While the Act does not specify the details of the chairman's functions under section 20(2), it can be understood that the chairman would be expected to carry out the typical duties associated with a chairperson in arbitration, such as managing the proceedings, presiding over hearings, ruling on procedural matters, and assisting in the formation of the arbitral tribunal's decisions or awards.
6. Flexibility in case-specific matters: section 20(2) does not rigidly prescribe the chairman's functions, allowing some degree of flexibility to address the unique requirements of each arbitration case. The specifics of the chairman's role may still be influenced by other applicable rules, institutional guidelines, or any relevant circumstances.

In summary, section 20(2) of the English Arbitration Act 1996 serves as a default provision for cases where the parties have not agreed on the functions of the chairman in arbitral proceedings. It ensures that the chairman's role adheres to the principles of fairness and impartiality while providing a statutory framework in the absence of specific agreement. The provision strikes a balance between

establishing a baseline for the chairman's functions and allowing flexibility to address the unique needs of each arbitration case.

(3) Decisions, orders and awards shall be made by all or a majority of the arbitrators (including the chairman).

Section 20(3) of the English Arbitration Act 1996 outlines a fundamental principle governing the decision-making process in arbitral proceedings. Let us analyse this provision:

1. **Collective decision-making:** section 20(3) establishes that decisions, orders, and awards in arbitral proceedings shall be made collectively by all the arbitrators involved or by a majority of them. This means that the chairman, if appointed, is part of the decision-making body and has an equal say in reaching decisions, orders, or making awards.
2. **Ensuring fairness and impartiality:** By requiring collective decision-making, the provision promotes fairness and impartiality in the arbitral process. Decisions are not vested solely in one arbitrator, which reduces the risk of potential bias or undue influence by a single individual.
3. **Balanced and informed decisions:** Requiring decisions to be made collectively or by a majority ensures that all arbitrators, including the chairman, have the opportunity to contribute their expertise, perspectives, and opinions to the process. This can lead to more balanced, informed, and well-reasoned decisions.
4. **Chairman's role in the decision-making process:** The chairman, if appointed, holds equal weight with the other arbitrators in making decisions, orders, or awards. While the chairman may have additional procedural responsibilities or duties, their role in substantive decisions is not inherently superior to that of other arbitrators.
5. **Preventing deadlock:** By allowing decisions to be made by a majority of the arbitrators, the provision helps prevent the possibility of a deadlock when there is a disagreement among the arbitrators. If unanimity were required, the arbitration process might face unnecessary delays and complications.
6. **Adapting to the number of arbitrators:** The requirement for collective decision-making applies regardless of whether the tribunal consists of a sole arbitrator, two arbitrators, or more. It ensures consistency and a fair process, regardless of the number of arbitrators involved.

In summary, section 20(3) of the English Arbitration Act 1996 establishes the principle of collective decision-making in arbitral proceedings. Decisions, orders, and awards are to be made by all the arbitrators involved or by a majority of them, including the chairman if one is appointed. This provision safeguards fairness, impartiality, and efficiency in the arbitration process by allowing multiple perspectives to contribute to the decision-making and preventing potential deadlocks.

(4) The view of the chairman shall prevail in relation to a decision, order or award in respect of which there is neither unanimity nor a majority under subsection (3).

Section 20(4) of the English Arbitration Act 1996 addresses the situation when unanimity or a majority decision cannot be reached among the arbitrators on a particular matter. Let us analyse this provision:

1. **Role of the chairman:** section 20(4) highlights the special role of the chairman in cases where there is a lack of unanimity or a majority decision among the arbitrators. It specifies that the view of the chairman shall prevail in such instances.
2. **Resolving deadlock:** The provision serves as a mechanism to break a deadlock in the decision-making process. When the arbitrators cannot reach a unanimous or majority decision on a particular issue, the chairman's view becomes decisive, ensuring that the arbitral tribunal can proceed with the case.
3. **Promoting efficiency:** By granting the chairman the authority to make the final decision when there is no agreement among the arbitrators, section 20(4) helps to expedite the arbitration process. This prevents prolonged delays caused by an inability to reach a collective decision.
4. **Chairman's responsibility:** While the chairman's view prevails in the absence of unanimity or majority, it is essential to note that the chairman should still approach the decision-making process with impartiality and fairness. The chairman's role is not to impose their view arbitrarily but to contribute to a reasoned and balanced decision.
5. **Equitable consideration:** The provision implicitly assumes that the chairman, as a neutral and experienced party, is well-positioned to render a fair decision when the other arbitrators are in disagreement. It is expected that the chairman's view will be based on careful consideration of the facts, the law, and the arguments presented during the arbitration.
6. **Rare application:** The provision is intended for exceptional circumstances when the arbitrators cannot achieve a consensus on a particular matter. Ideally, arbitration proceedings aim to reach decisions through consensus or majority agreement, and the chairman's role as the ultimate decision-maker is a measure to address impasses when they occur.

In summary, section 20(4) of the English Arbitration Act 1996 empowers the chairman to make the final decision when unanimity or a majority decision cannot be reached among the arbitrators. It serves as a practical solution to avoid deadlock situations and promotes efficiency in the arbitration process. However, the chairman's role as the ultimate decision-maker should be exercised responsibly and with a commitment to fairness and impartiality.

21 UMPIRE

- (1) **Where the parties have agreed that there is to be an umpire, they are free to agree what the functions of the umpire are to be, and in particular—**
- (a) **whether he is to attend the proceedings, and**
 - (b) **when he is to replace the other arbitrators as the tribunal with power to make decisions, orders and awards.**

Section 21(1) of the English Arbitration Act 1996 addresses the role of an umpire in arbitral proceedings. Let us analyse this provision:

1. **Agreement of the parties:** section 21(1) emphasises that the functions of the umpire in arbitral proceedings are subject to the agreement of the parties. This means that the parties have the freedom to determine the specific role and responsibilities of the umpire through their agreement.
2. **Role of the umpire:** The provision highlights two key aspects that the parties can agree upon regarding the umpire's functions:
 - a. **Attendance at proceedings:** The parties can decide whether the umpire will attend the arbitration proceedings in person or whether their involvement will be limited to certain situations or phases of the arbitration process.
 - b. **Decision-making power:** The parties can agree on the circumstances under which the umpire will replace the other arbitrators as the tribunal with the authority to make decisions, issue orders, and render awards.
3. **Flexibility in arrangements:** section 21(1) grants parties significant flexibility in tailoring the role of the umpire according to the specific needs and requirements of their arbitration. This allows the parties to design a dispute resolution process that best suits the nature of the dispute and the parties' preferences.
4. **Clarity and certainty:** The provision encourages parties to make clear and specific agreements regarding the functions of the umpire. By doing so, the parties can avoid ambiguity and potential disputes related to the umpire's role during the arbitration proceedings.
5. **Promoting efficiency and expediency:** Parties may choose to involve the umpire only in situations where their intervention is necessary, thereby streamlining the arbitration process and ensuring that the proceedings are conducted efficiently.
6. **Equal treatment of the parties:** The provision ensures that both parties have a say in defining the umpire's role and that the agreed-upon functions are designed to promote fairness and impartiality in the arbitral process.

In summary, section 21(1) of the English Arbitration Act 1996 grants parties the freedom to agree on the functions and role of the umpire in arbitral proceedings. The provision allows parties to determine whether the umpire will attend the proceedings and when they will replace other arbitrators with decision-making power. By providing this flexibility, the Act aims to promote efficiency, certainty, and

fairness in the arbitration process by accommodating the unique needs and preferences of the parties involved.

(2) If or to the extent that there is no such agreement, the following provisions apply.

Section 21(2) of the English Arbitration Act 1996 outlines the default provisions that apply when the parties have not agreed on the functions of the umpire in arbitral proceedings. Let us analyse this provision:

1. Default provisions: section 21(2) comes into effect when the parties have not reached an agreement on the specific functions of the umpire. In the absence of such an agreement, the Act provides default rules to govern the role of the umpire.
2. No attendance at proceedings: If there is no agreement regarding the umpire's attendance at the arbitration proceedings, the default position is that the umpire does not attend the hearings. This implies that the umpire's involvement is limited to a post-hearing or post-award stage, and they may not be present during the presentation of evidence or the examination of witnesses.
3. Decision-making power: In the absence of an agreement on when the umpire will replace the other arbitrators as the tribunal with decision-making power, the default rule applies. The umpire will take on this role when the other arbitrators are unable to reach unanimity or a majority decision, similar to the provision for the chairman in section 20(4) of the Act.
4. Ensuring a functional process: section 21(2) is designed to ensure that the arbitration process can continue efficiently and effectively even when there is no agreement on the umpire's role. By providing default rules, the Act helps prevent potential delays or disputes arising from the lack of clarity regarding the umpire's functions.
5. Limited role in decision-making: The default position ensures that the umpire's decision-making authority is triggered only in specific circumstances, such as when unanimity or majority agreement among the other arbitrators cannot be achieved. This preserves the principle of collective decision-making in the arbitration process.
6. Flexibility through agreement: Parties may still agree to different functions for the umpire beyond the default provisions. Section 21(2) only comes into play when the parties have not made such an agreement.

In summary, section 21(2) of the English Arbitration Act 1996 establishes default provisions that apply when the parties have not agreed on the functions of the umpire in arbitral proceedings. The default rules state that the umpire will not attend the proceedings and will assume decision-making power when unanimity or majority agreement cannot be reached among the other arbitrators. While the Act provides these default rules, parties retain the freedom to tailor the role of the umpire through mutual agreement.

(3) The umpire shall attend the proceedings and be supplied with the same documents and other materials as are supplied to the other arbitrators.

Section 21(3) of the English Arbitration Act 1996 sets out the requirements regarding the participation and access of the umpire in the arbitral proceedings. Let us analyse this provision:

1. Attendance at proceedings: section 21(3) stipulates that the umpire shall attend the arbitration proceedings. Unlike the default position described in section 21(2), where the parties have not agreed on the umpire's attendance, this provision mandates the umpire's presence during the arbitration hearings.
2. Equal participation: By requiring the umpire's attendance, section 21(3) ensures that the umpire is an active participant in the arbitral process. This inclusion aligns with the overall principle of fairness and impartiality in arbitration, as it allows the umpire to hear the parties' arguments, examine evidence, and gain a comprehensive understanding of the dispute.
3. Access to documents and materials: The provision also mandates that the umpire be provided with the same documents and other materials that are made available to the other arbitrators. This grants the umpire access to all relevant information necessary for making informed decisions and contributing effectively to the resolution of the dispute.
4. Equitable treatment: By giving the umpire access to the same information as the other arbitrators, section 21(3) ensures that the umpire is treated equitably and is not disadvantaged in their ability to participate in the decision-making process.
5. Facilitating the umpire's role: The requirement for the umpire's attendance and access to materials is aimed at enabling the umpire to fulfil their role effectively. This helps in achieving a more balanced and well-informed decision-making process, considering the perspectives and insights of all the members of the arbitral tribunal.
6. Supporting collective decision-making: Even though the umpire is granted access to documents and materials, the provision does not alter the default rule in section 20(3) that decisions, orders, and awards shall be made by all or a majority of the arbitrators. The collective decision-making process remains intact, with the umpire contributing alongside the other arbitrators.

In summary, section 21(3) of the English Arbitration Act 1996 requires the umpire to attend the arbitration proceedings and be supplied with the same documents and other materials as the other arbitrators. This ensures that the umpire actively participates in the process and has access to all relevant information, promoting fairness, and supporting collective decision-making within the arbitral tribunal.

- (4) Decisions, orders and awards shall be made by the other arbitrators unless and until they cannot agree on a matter relating to the arbitration.**

In that event they shall forthwith give notice in writing to the parties and the umpire, whereupon the umpire shall replace them as the tribunal with power to make decisions, orders and awards as if he were sole arbitrator.

Section 21(4) of the English Arbitration Act 1996 outlines the procedure for decision-making within the arbitral tribunal when an umpire is appointed and becomes involved in the process. Let us analyse this provision:

1. Decision-making by the other arbitrators: The default rule under section 21(4) is that decisions, orders, and awards shall be made by the other arbitrators comprising the tribunal. In the initial stages of the arbitral proceedings, the other arbitrators hold the authority to decide on matters relating to the arbitration.
2. Umpire replacing the other arbitrators: If the other arbitrators cannot reach an agreement on a matter relevant to the arbitration, they must promptly give written notice to both the parties and the umpire. This indicates that the other arbitrators have exhausted their ability to collectively reach a decision on the specific issue.
3. Umpire acting as sole arbitrator: After receiving the notice from the other arbitrators, the umpire assumes the role of the sole arbitrator, effectively replacing the other arbitrators. As the sole arbitrator, the umpire gains the authority to make decisions, issue orders, and render awards pertaining to the arbitration.
4. Ensuring progress in the proceedings: section 21(4) is designed to ensure that the arbitration process can move forward even when the other arbitrators are unable to reach an agreement. By allowing the umpire to step in as the sole arbitrator in such situations, the Act aims to prevent any delays in the proceedings.
5. Umpire's role in deadlock situations: The provision empowers the umpire to break any impasse that arises among the other arbitrators. When they are unable to agree, the umpire becomes the ultimate decision-maker, thereby facilitating a resolution in cases where unanimity or majority decision is not attainable.
6. Promoting efficiency and effectiveness: section 21(4) aims to promote efficiency and effectiveness in the arbitral process by allowing the umpire to take charge in deadlock situations. This provision helps ensure that the arbitration can proceed smoothly without being hindered by disagreements among the arbitrators.
7. Protection of party rights: By enabling the umpire to take over as the sole arbitrator, section 21(4) helps safeguard the parties' rights to have their dispute resolved within a reasonable timeframe and in a fair and impartial manner.

In summary, section 21(4) of the English Arbitration Act 1996 outlines the process for decision-making within the arbitral tribunal when the umpire is involved. It establishes that decisions, orders, and awards shall be made by the other arbitrators, but if they reach an impasse, the umpire will replace them as the sole arbitrator with the power to make decisions and render awards. This provision ensures that the arbitral proceedings can continue effectively even in situations where the other arbitrators cannot agree on a matter related to the arbitration.

- (5) If the arbitrators cannot agree but fail to give notice of that fact, or if any of them fails to join in the giving of notice, any party to the arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court which may order that the umpire shall replace the other arbitrators as the tribunal with power to make decisions, orders and awards as if he were sole arbitrator.**

Section 21(5) of the English Arbitration Act 1996 addresses a scenario where the arbitrators cannot agree on a matter relating to the arbitration, but they either fail to give notice of their inability to agree or one or more of them do not participate in giving such notice. Let us analyse this provision:

1. Requirement for notice: section 21(5) requires that if the arbitrators cannot agree on a matter, they must give notice of that fact to the parties and the umpire. This notice serves as a declaration of their inability to reach a collective decision.
2. Consequences of failure to give notice: If the arbitrators fail to give the required notice, or if any of them does not participate in the giving of such notice, this provision allows any party to the arbitral proceedings to take action.
3. Party's application to the court: If the arbitrators fail to give notice or any of them does not join in providing notice, any party to the arbitration may apply to the court. This application is made by giving notice to the other parties and the arbitral tribunal.
4. Court order for the umpire's intervention: Upon receiving the application, the court may issue an order directing that the umpire shall replace the other arbitrators as the tribunal. This means that the umpire assumes the role of the sole arbitrator, taking over the authority to make decisions, issue orders, and render awards, as if they were acting alone.
5. Ensuring progress in the arbitration: section 21(5) is designed to ensure that the arbitration process can move forward even when the arbitrators cannot agree and fail to give the necessary notice. By empowering the court to order the umpire's intervention, the Act aims to prevent any undue delay in the proceedings.
6. Umpire as the final decision-maker: The provision grants the umpire the authority to act as the sole arbitrator in situations where the original arbitrators are unable to agree and comply with the notice requirements. This ensures that the arbitration can proceed effectively and that parties' disputes are resolved in a timely and fair manner.
7. Protection of party rights: By allowing any party to the arbitration to apply to the court and seek the umpire's intervention, section 21(5) ensures that parties' rights to a resolution of their disputes are protected, and that the process is not stalled due to disagreements among the arbitrators.

In summary, section 21(5) of the English Arbitration Act 1996 deals with the situation where the arbitrators cannot agree on a matter, but they fail to give notice of their inability to agree or one or more of them do not participate in giving the required notice. In such cases, any party to the arbitration can apply to the court, and the court may order the umpire to replace the other arbitrators as the sole decision-maker, effectively moving the arbitration process forward and ensuring a timely and fair resolution of the dispute.

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

Section 21(6) of the English Arbitration Act 1996 stipulates that if a party wishes to appeal a decision of the court made under section 21 (which deals with the role of the umpire in arbitral proceedings), they must seek the leave of the court before doing so. Let us analyse this provision:

1. Requirement for leave to appeal: The provision establishes a prerequisite for parties seeking to appeal a decision made by the court under section 21. Specifically, they must obtain “leave” from the court before they can proceed with the appeal.
2. Limiting appeals: By requiring parties to seek leave before appealing, section 21(6) imposes an additional procedural step, which serves as a restriction on the ability to appeal. This is intended to control and limit the number of appeals and avoid unnecessary delays in the arbitral process.
3. Discretion of the court: The court has the authority to grant or deny the leave to appeal under this section. The court will consider various factors before making its decision, such as the relevance and merit of the proposed appeal, the potential impact on the arbitration process, and the interests of justice.
4. Ensuring judicial efficiency: Requiring leave to appeal ensures that only appropriate and significant issues are brought before the court on appeal. This helps to streamline the appeal process, prevent frivolous appeals, and promote judicial efficiency.
5. Finality of decisions: The provision contributes to the finality of decisions made by the court under section 21. By imposing the leave requirement, parties are encouraged to carefully consider the basis of their appeal before taking further legal action.
6. Protecting the arbitration process: section 21(6) supports the underlying principles of arbitration, which include expediency, flexibility, and the enforceability of awards. The requirement for leave to appeal helps safeguard the effectiveness of arbitration as a dispute resolution mechanism.

In summary, section 21(6) of the English Arbitration Act 1996 mandates that parties seeking to appeal a decision of the court under section 21 (relating to the role of the umpire in arbitral proceedings) must obtain the leave of the court before proceeding with the appeal. This requirement serves to control and limit the number of appeals, promote judicial efficiency, and protect the arbitration process’s fundamental principles.

22 DECISION-MAKING WHERE NO CHAIRMAN OR UMPIRE

(1) Where the parties agree that there shall be two or more arbitrators with no chairman or umpire, the parties are free to agree how the tribunal is to make decisions, orders and awards.

Section 22(1) of the English Arbitration Act 1996 addresses situations where the parties to an arbitration agreement agree that there shall be two or more arbitrators without the appointment of a

chairman or umpire. In such cases, the provision grants the parties the freedom to agree on how the arbitral tribunal is to make decisions, issue orders, and render awards. Let us analyse this provision:

1. Discretion of the parties: section 22(1) recognises that the parties have the autonomy and freedom to shape the arbitration process according to their preferences and needs. This includes the ability to determine the procedural rules and mechanisms for decision-making by the arbitral tribunal.
2. Decision-making process: The provision allows the parties to agree on the specific procedures for the arbitral tribunal's decision-making, including how they will reach decisions, issue orders, and render awards. This flexibility can accommodate various types of disputes and ensure that the arbitration process aligns with the parties' intentions.
3. Tailoring the process: By providing the parties with the option to customise the decision-making process, section 22(1) recognises that different disputes may benefit from distinct approaches. Parties can tailor the procedure to suit the complexity, size, and nature of their dispute.
4. Promoting efficiency: Allowing the parties to agree on the decision-making process empowers them to design a mechanism that promotes efficiency and ensures timely resolution of the dispute. This is consistent with the overarching principles of arbitration, which include expediency and cost-effectiveness.
5. Enhancing party participation: Parties' agreement on the decision-making process enables them to have a say in how their dispute is resolved. By actively participating in this aspect of the arbitration, parties may feel more invested in the process and have a greater sense of control over the outcome.
6. Enforceability of awards: While parties have the freedom to agree on the decision-making process, any decisions, orders, or awards rendered by the arbitral tribunal must still comply with the requirements of the Arbitration Act and be enforceable according to applicable law.

In summary, section 22(1) of the English Arbitration Act 1996 allows parties to an arbitration agreement to agree that there will be two or more arbitrators without the appointment of a chairman or umpire. In such cases, the provision grants parties the freedom to agree on how the arbitral tribunal is to make decisions, issue orders, and render awards. This flexibility enables parties to tailor the arbitration process to suit their specific needs and promote an efficient and effective resolution of their dispute.

(2) If there is no such agreement, decisions, orders and awards shall be made by all or a majority of the arbitrators.

Section 22(2) of the English Arbitration Act 1996 deals with the situation where the parties have not reached an agreement on the decision-making process for an arbitral tribunal comprising two or more arbitrators without a chairman or umpire. Let us analyse this provision:

1. Default decision-making rule: section 22(2) establishes a default rule for decision-making in cases where the parties have not agreed otherwise. According to this default rule, decisions, orders, and awards are to be made by all or a majority of the arbitrators.
2. Avoiding deadlocks: By defaulting to the decision of all or a majority of the arbitrators, the provision aims to prevent deadlocks in the arbitral process. In cases where unanimity cannot be achieved, a majority decision allows for progress to be made in the dispute resolution process.
3. Encouraging collaboration: The provision fosters a collaborative approach among the arbitrators, encouraging them to work together to reach a decision that represents the collective view of the tribunal. This approach may enhance the quality and legitimacy of the decisions rendered.
4. Facilitating efficient resolution: Opting for a majority decision can contribute to a more efficient resolution of the dispute compared to requiring unanimity. In complex cases, unanimity could lead to prolonged discussions, resulting in delays in reaching a resolution.
5. Preserving fairness: While the default rule allows for a majority decision, it ensures that all members of the arbitral tribunal have the opportunity to participate in the decision-making process. Their views and perspectives are considered, and the decision reflects the input of the majority.
6. Consistency with arbitration principles: The default rule aligns with the fundamental principles of arbitration, such as flexibility, party autonomy, and efficiency. It offers a practical approach for decision-making when the parties have not specified an alternative procedure.
7. Compliance with the Arbitration Act: Decisions, orders, and awards rendered by the arbitral tribunal, whether made unanimously or by a majority, must adhere to the requirements and principles set forth in the Arbitration Act to be enforceable.

In summary, section 22(2) of the English Arbitration Act 1996 establishes the default rule for decision-making when there is no agreement among the parties on the process for an arbitral tribunal consisting of two or more arbitrators without a chairman or umpire. In the absence of an agreement, decisions, orders, and awards are made by all or a majority of the arbitrators, ensuring efficient dispute resolution while allowing for collective input and consideration of various perspectives.

23 REVOCATION OF ARBITRATOR'S AUTHORITY

(1) The parties are free to agree in what circumstances the authority of an arbitrator may be revoked.

Section 23(1) of the English Arbitration Act 1996 deals with the circumstances under which the authority of an arbitrator may be revoked. Let us analyse this provision:

1. Parties' autonomy: section 23(1) recognises and upholds the principle of party autonomy in arbitration. It grants the parties the freedom to agree on the circumstances under which the authority of an arbitrator may be revoked. This means that the parties have the

ability to determine the conditions or events that would lead to the removal of an arbitrator from the arbitral proceedings.

2. Tailoring arbitration agreements: By allowing parties to customise the circumstances for revoking an arbitrator's authority, the provision acknowledges that different disputes may require different considerations. Parties can include specific provisions in their arbitration agreement that reflect the unique needs and requirements of their particular case.
3. Flexibility in dispute resolution: The provision contributes to the flexibility of arbitration as a dispute resolution mechanism. It enables the parties to adapt the process to suit their specific preferences, the nature of the dispute, and the desired outcome.
4. Clarity and predictability: The agreement on the circumstances for revoking an arbitrator's authority can provide clarity and predictability for all parties involved in the arbitration. It ensures that everyone is aware of the conditions under which an arbitrator may be removed, reducing potential disputes or uncertainties in the process.
5. Preserving party trust: The provision allows parties to have more control over the composition of the arbitral tribunal and the appointment of arbitrators. By agreeing on the circumstances for revoking an arbitrator's authority, parties may feel more confident in the arbitration process, promoting trust in the system.
6. Potential grounds for revocation: While section 23(1) grants the parties the freedom to agree on the circumstances for revoking an arbitrator's authority, it does not prescribe specific grounds for revocation. Parties may consider various factors, such as bias, misconduct, or a lack of qualification, when negotiating the terms of their arbitration agreement.

In summary, section 23(1) of the English Arbitration Act 1996 empowers parties to agree on the circumstances under which the authority of an arbitrator may be revoked. The provision enhances the flexibility and effectiveness of the arbitration process by allowing parties to tailor the terms of their arbitration agreement to suit the specific needs of their dispute. This provision reflects the fundamental principle of party autonomy in arbitration, enabling parties to have greater control over the resolution of their disputes.

(2) If or to the extent that there is no such agreement the following provisions apply.

Section 23(2) of the English Arbitration Act 1996 comes into play when the parties have not reached an agreement on the circumstances under which an arbitrator's authority may be revoked. In such cases, the Act provides default provisions for the revocation of an arbitrator's authority. Let us analyse this provision:

1. Default rules: section 23(2) establishes default rules to be followed when the parties have not agreed on the circumstances for revoking an arbitrator's authority. These default rules ensure that there is a clear and consistent framework for handling situations where revocation becomes necessary.
2. Certainty and predictability: The default rules provide certainty and predictability in the arbitration process, especially in cases where the parties have not addressed the issue of

revocation in their arbitration agreement. Parties can rely on these default provisions to understand the circumstances under which an arbitrator’s authority may be revoked.

3. Fair and objective grounds: The default provisions are designed to ensure that any revocation of an arbitrator’s authority is based on fair and objective grounds. The Act aims to maintain the integrity and credibility of the arbitration process by setting clear standards for revocation.
4. Section 24 application: section 23(2) is closely linked to section 24 of the Act. Section 24 deals with the termination of an arbitrator’s mandate and sets out specific grounds for termination, including incapacity or failure to act without undue delay. These grounds come into play when there is no agreement on revocation in the arbitration agreement.
5. Safeguarding the arbitration process: By providing default provisions, the Act ensures that the arbitration process can continue smoothly even when the circumstances leading to an arbitrator’s revocation are not defined in the arbitration agreement.
6. Potential consequences: The default provisions set out in section 23(2) may have implications for the composition of the arbitral tribunal and the overall timeline of the arbitration. Revocation of an arbitrator may lead to the appointment of a replacement arbitrator, which could affect the proceedings.

In summary, section 23(2) of the English Arbitration Act 1996 applies in situations where the parties have not agreed on the circumstances for revoking an arbitrator’s authority. It provides default provisions to address revocation when there is no specific agreement in the arbitration agreement. These default rules ensure that the arbitration process remains fair, consistent, and predictable even in the absence of explicit provisions in the parties’ agreement.

(3) The authority of an arbitrator may not be revoked except—

- (a) by the parties acting jointly, or**
- (b) by an arbitral or other institution or person vested by the parties with powers in that regard.**

Section 23(3) of the English Arbitration Act 1996 governs the revocation of an arbitrator’s authority and sets out the specific circumstances under which an arbitrator’s authority may be revoked. Let us analyse this provision:

1. Joint action of the parties: section 23(3)(a) states that an arbitrator’s authority can be revoked only by the parties acting jointly. This means that all parties to the arbitration agreement must agree to the revocation for it to take effect. The provision ensures that the decision to revoke an arbitrator’s authority is a consensual one and cannot be unilaterally taken by any single party.
2. Institution or person vested with powers: section 23(3)(b) allows the authority of an arbitrator to be revoked by an arbitral institution or any other person or body to whom the parties have vested powers in that regard. This provision grants the parties the

flexibility to designate a third party, such as an arbitral institution or an appointing authority, to handle the revocation process if they wish to delegate this responsibility.

3. Protecting the integrity of the process: By requiring joint action of the parties or involvement of a designated institution or person, section 23(3) aims to safeguard the integrity and fairness of the arbitration process. It prevents unilateral revocation by any party and ensures that any decision to revoke an arbitrator's authority is made through an agreed-upon and transparent mechanism.
4. Preventing abuse of the revocation process: The provision prevents potential abuse of the revocation power. Parties cannot unilaterally remove an arbitrator without the consent of others, which helps maintain the impartiality and independence of the arbitration proceedings.
5. Preserving the finality of the arbitral tribunal: Revocation of an arbitrator can have significant consequences for the composition of the arbitral tribunal. By requiring joint action or intervention by a designated body, section 23(3) ensures that the revocation process is well-considered and cannot be used as a tactic to delay or disrupt the arbitration.

In summary, section 23(3) of the English Arbitration Act 1996 sets out the conditions under which an arbitrator's authority may be revoked. It requires joint action of the parties or intervention by a designated institution or person vested with powers in that regard. This provision ensures that any decision to revoke an arbitrator's authority is taken with the necessary consensus and protection of the arbitration process's integrity.

(4) Revocation of the authority of an arbitrator by the parties acting jointly must be agreed in writing unless the parties also agree (whether or not in writing) to terminate the arbitration agreement.

Section 23(4) of the English Arbitration Act 1996 deals with the revocation of an arbitrator's authority by the parties acting jointly and sets out specific requirements for this process. Let us analyse this provision:

1. Revocation by joint agreement: Section 23(4) states that the authority of an arbitrator can be revoked by the parties acting jointly. This means that all parties to the arbitration agreement must unanimously agree to revoke the arbitrator's authority.
2. Written agreement: The provision requires that the joint agreement to revoke the arbitrator's authority must be in writing. This ensures clarity and evidentiary support for the decision to revoke the arbitrator. The written agreement provides a formal record of the parties' decision and helps prevent disputes about whether the revocation was duly agreed upon.
3. Exception for termination of the arbitration agreement: Section 23(4) introduces an exception to the requirement for a written agreement in cases where the parties also agree, whether in writing or not, to terminate the arbitration agreement. In other words, if the parties decide to terminate the arbitration agreement altogether, the revocation of the arbitrator's authority does not need to be in writing.

4. Protecting the revocation process: Requiring the joint agreement to be in writing serves as a safeguard against potential misunderstandings or disputes regarding the revocation of the arbitrator's authority. The provision emphasises the importance of a clear and consensual decision by all parties involved.
5. Relationship with the termination of the arbitration agreement: The provision recognises that revoking the authority of an arbitrator can have significant implications for the arbitration proceedings. By including an exception for cases where the parties agree to terminate the arbitration agreement, it acknowledges that parties may wish to end the arbitration process entirely if they no longer wish to proceed with the current tribunal.

In summary, Section 23(4) of the English Arbitration Act 1996 requires that the revocation of an arbitrator's authority by the parties acting jointly must be agreed in writing. However, there is an exception to this requirement if the parties also agree, whether in writing or not, to terminate the arbitration agreement. The provision aims to ensure clarity and consensus in the revocation process while recognising the possibility of terminating the arbitration proceedings altogether.

(5) Nothing in this section affects the power of the court—

- (a) to revoke an appointment under section 18 (powers exercisable in case of failure of appointment procedure), or**
- (b) to remove an arbitrator on the grounds specified in section 24.**

Section 23(5) of the English Arbitration Act 1996 clarifies that the powers provided in section 23(3) for the revocation of an arbitrator's authority by the parties acting jointly do not impact the separate powers of the court. Specifically, it addresses the court's authority to:

1. Revoke an appointment under section 18: section 18 deals with the powers exercisable in case of a failure of the appointment procedure. It allows the court to intervene and exercise its powers to ensure that a proper appointment of arbitrators takes place when there is a failure in the agreed appointment procedure. This can occur, for example, when the parties cannot agree on the appointment of arbitrators, or the appointment procedure becomes impractical or fails to be carried out properly.
2. Remove an arbitrator under section 24: section 24 of the Arbitration Act 1996 deals with the removal of arbitrators by the court. The court may remove an arbitrator in certain specified circumstances, such as if there are justifiable doubts about the arbitrator's impartiality or independence, or if the arbitrator fails to act without undue delay.

The purpose of section 23(5) is to make it clear that while the parties have the power to revoke an arbitrator's authority by joint agreement under section 23(3), the court retains its separate and distinct powers to intervene and revoke an appointment under section 18 or remove an arbitrator on specific grounds under section 24.

In essence, section 23(5) emphasises that the court's authority to intervene and ensure the integrity and effectiveness of the arbitration process is not affected by the parties' power to revoke an arbitrator's authority by joint agreement. This ensures that the court retains its oversight and jurisdiction to address any issues related to arbitrator appointments and removals when necessary.

24 POWER OF COURT TO REMOVE ARBITRATOR

(1) A party to arbitral proceedings may (upon notice to the other parties, to the arbitrator concerned and to any other arbitrator) apply to the court to remove an arbitrator on any of the following grounds—

- (a) that circumstances exist that give rise to justifiable doubts as to his impartiality;
- (b) that he does not possess the qualifications required by the arbitration agreement;
- (c) that he is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so;
- (d) that he has refused or failed—
 - (i) properly to conduct the proceedings, or
 - (ii) to use all reasonable despatch in conducting the proceedings or making an award,

and that substantial injustice has been or will be caused to the applicant.

Section 24(1) of the English Arbitration Act 1996 provides a party to arbitral proceedings with the right to apply to the court for the removal of an arbitrator on certain specified grounds. The party seeking removal must provide notice to the other parties involved in the arbitration, the arbitrator in question, and any other arbitrator who may be part of the proceedings. The grounds on which an arbitrator can be removed are as follows:

1. Justifiable doubts as to impartiality: If circumstances exist that raise reasonable doubts about the arbitrator’s impartiality, a party can apply for their removal. Impartiality is crucial for maintaining the fairness and integrity of the arbitration process.
2. Lack of required qualifications: If the arbitrator does not possess the qualifications required by the arbitration agreement, a party can seek their removal. The agreement between the parties may specify certain qualifications or expertise that an arbitrator should possess.
3. Physical or mental incapacity: If the arbitrator is physically or mentally incapable of conducting the proceedings, or there are justifiable doubts about their capacity to do so, a party can request their removal. An arbitrator’s ability to conduct the proceedings effectively is essential for a fair and efficient arbitration.
4. Refusal or failure to conduct proceedings properly or promptly: If the arbitrator has refused or failed to properly conduct the proceedings or use reasonable diligence in making an award, and this has caused or will cause substantial injustice to the applicant, the party can apply for their removal. The arbitrator’s competence and efficiency in handling the proceedings are crucial for a successful and timely resolution of disputes.

The purpose of section 24(1) is to provide a mechanism for parties to seek the removal of an arbitrator in cases where there are valid concerns or issues related to the arbitrator’s performance, qualifications,

impartiality, or capacity to carry out their duties effectively. The provision helps ensure the overall fairness, efficiency, and integrity of the arbitration process by allowing parties to address any legitimate concerns regarding the arbitrator's suitability for the role.

(2) If there is an arbitral or other institution or person vested by the parties with power to remove an arbitrator, the court shall not exercise its power of removal unless satisfied that the applicant has first exhausted any available recourse to that institution or person.

Section 24(2) of the English Arbitration Act 1996 establishes a limitation on the court's power to remove an arbitrator. If the parties have designated an arbitral institution or any other person with the authority to remove an arbitrator in the arbitration agreement, the court will not exercise its own power to remove the arbitrator unless the applicant has first exhausted any available recourse to that designated institution or person.

In other words, if the parties have agreed to vest a specific entity or individual with the power to remove an arbitrator, the court will refrain from intervening in the removal process unless the applicant has already attempted to seek the arbitrator's removal through the designated means. This requirement encourages parties to utilise the internal mechanisms or procedures established by the institution or person designated for this purpose before resorting to court intervention.

By including this provision, the Act seeks to promote the autonomy of arbitration and respect the parties' agreement in choosing an appropriate mechanism for resolving disputes related to arbitrator removal. It aims to streamline the removal process by encouraging parties to address any concerns about an arbitrator's qualifications or conduct through the designated institution or person before approaching the court for redress.

(3) The arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.

Section 24(3) of the English Arbitration Act 1996 addresses the effect of an application made to the court for the removal of an arbitrator under section 24(1). According to this provision, even if a party has applied to the court to remove an arbitrator, the arbitral tribunal is not automatically halted or suspended. The tribunal retains the authority to continue with the arbitral proceedings and render an award while the application is pending before the court.

This provision ensures that the arbitral process can continue without unnecessary delays caused by disputes related to the arbitrator's removal. It allows the parties to move forward with the arbitration and reach a resolution while the court decides on the application for removal.

However, it is important to note that this provision does not prevent the court from ultimately deciding to remove the arbitrator if the grounds for removal are established and justified. If the court determines that the arbitrator should be removed, the award rendered by the tribunal during the pendency of the removal application may be affected, depending on the circumstances. In such cases, the court may make appropriate orders or take necessary actions to address any potential impact on the award or the arbitral proceedings.

(4) Where the court removes an arbitrator, it may make such order as it thinks fit with respect to his entitlement (if any) to fees or expenses, or the repayment of any fees or expenses already paid.

Section 24(4) of the English Arbitration Act 1996 addresses the consequences of the court's decision to remove an arbitrator on the issue of fees and expenses. When the court exercises its power to remove an arbitrator under section 24(1), it also has the authority to make any necessary order concerning the arbitrator's entitlement to fees or expenses, as well as the repayment of any fees or expenses that may have already been paid to the arbitrator.

The purpose of this provision is to ensure fairness and equity in the financial arrangements involving the arbitrator in the event of their removal. The court may consider various factors when making such orders, including the arbitrator's performance, the reason for their removal, and whether they are entitled to any compensation for work already performed up to the time of their removal.

By having this provision in place, the Act aims to provide clarity and a legal basis for the court to deal with the financial implications arising from the removal of an arbitrator, thereby promoting a fair and effective arbitration process for all parties involved.

(5) The arbitrator concerned is entitled to appear and be heard by the court before it makes any order under this section.

Section 24(5) of the English Arbitration Act 1996 grants the arbitrator, who is subject to an application for removal under section 24(1), the right to appear and be heard by the court before the court makes any order regarding the arbitrator's removal or any associated financial matters.

This provision ensures that the arbitrator is given an opportunity to present their case, provide explanations, or offer any necessary evidence to defend themselves against the grounds on which the removal application is based. By allowing the arbitrator to be heard, the Act upholds the principles of natural justice and due process, ensuring a fair and impartial decision-making process by the court.

The purpose of this provision is to protect the arbitrator's rights and interests during the removal proceedings, promoting transparency and fairness in the arbitration process. It also gives the court access to relevant information from the arbitrator directly, assisting in making an informed decision on whether to remove the arbitrator and any associated financial orders.

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

Section 24(6) of the English Arbitration Act 1996 states that if a party wishes to appeal a decision made by the court under section 24(1) regarding the removal of an arbitrator, they must obtain leave (permission) from the court to do so. This means that the party seeking to appeal cannot proceed with the appeal without first obtaining the court's permission.

This provision imposes an additional requirement before parties can appeal a court decision related to the removal of an arbitrator. The purpose of requiring leave for an appeal is to prevent frivolous or

unmeritorious appeals and to ensure that only valid and significant issues are brought before the higher courts.

By seeking leave, the appellant must demonstrate to the court that there are valid grounds for the appeal and that there is a reasonable chance that the appeal will succeed. The court will assess the merits of the appeal and consider whether it is appropriate to grant leave before allowing the appeal to proceed.

Overall, section 24(6) helps to streamline the appeal process, ensure the efficient administration of justice, and promote the finality of decisions made by the court regarding the removal of arbitrators in arbitral proceedings.

25 RESIGNATION OF ARBITRATOR

(1) The parties are free to agree with an arbitrator as to the consequences of his resignation as regards—

- (a) his entitlement (if any) to fees or expenses, and**
- (b) any liability thereby incurred by him.**

Section 25(1) of the English Arbitration Act 1996 provides that the parties to an arbitration are free to reach an agreement with an arbitrator regarding the consequences of the arbitrator's resignation. This agreement can cover two important aspects:

1. Entitlement to fees or expenses: The parties can agree on whether the arbitrator is entitled to receive any fees or expenses for the work already performed up to the point of resignation. This agreement can specify the amount of compensation the arbitrator will receive for the services rendered before resigning.
2. Liability incurred by the arbitrator: The parties can also agree on any potential liability that the arbitrator might incur as a result of their resignation. For example, if the arbitrator's resignation causes delays or additional expenses for the parties, the agreement can address whether the arbitrator will be responsible for any resulting costs or damages.

By allowing the parties to agree on these matters, section 25(1) aims to provide flexibility and clarity in the event of an arbitrator's resignation. It allows the parties to tailor the terms of the arbitrator's departure to their specific needs and circumstances, potentially avoiding disputes and uncertainties that might otherwise arise.

It is important to note that this provision operates based on the parties' agreement with the arbitrator. If there is no agreement in this regard, the consequences of the arbitrator's resignation will be determined according to other provisions of the arbitration agreement or relevant laws and regulations.

(2) If or to the extent that there is no such agreement the following provisions apply.

Section 25(2) of the English Arbitration Act 1996 sets out the default provisions that apply when the parties have not reached an agreement regarding the consequences of an arbitrator’s resignation. In the absence of an agreement, the following provisions come into play:

1. Entitlement to fees or expenses: If there is no agreement on the entitlement of the arbitrator to fees or expenses, the default position is that the arbitrator will be entitled to such fees or expenses as are reasonable in the circumstances. This means that the arbitrator can claim remuneration for the work done based on what is considered reasonable in light of the work performed and the stage of the arbitration process at the time of resignation.
2. Liability incurred by the arbitrator: In the absence of an agreement, the arbitrator will not incur any liability as a result of their resignation. This means that the arbitrator will not be held responsible for any potential delays or additional expenses that may arise due to their departure.

Section 25(2) provides a fallback position when the parties have not made specific arrangements regarding the consequences of an arbitrator’s resignation. By defaulting to “reasonable fees or expenses” and no additional liability, it ensures a level of protection for both parties and the departing arbitrator.

It is worth noting that the default provisions under Section 25(2) only come into effect when there is no express agreement between the parties and the arbitrator. However, the Act encourages parties to address these matters through written agreements to avoid any uncertainty or disputes in case an arbitrator resigns during the arbitration process. Parties may also consider referring to relevant institutional rules or industry practices to establish the consequences of an arbitrator’s resignation if no specific agreement is reached.

(3) An arbitrator who resigns his appointment may (upon notice to the parties) apply to the court—

- (a) to grant him relief from any liability thereby incurred by him, and
- (b) to make such order as it thinks fit with respect to his entitlement (if any) to fees or expenses or the repayment of any fees or expenses already paid.

Section 25(3) of the English Arbitration Act 1996 provides a mechanism for an arbitrator who resigns from their appointment to seek relief and address issues related to their liability, entitlement to fees or expenses, and the repayment of any fees or expenses already paid. Here is an explanation of the provisions:

1. Liability Relief: An arbitrator who resigns their appointment may apply to the court to seek relief from any liability that might have arisen due to their resignation. This provision acknowledges that there could be potential liabilities or consequences arising from an arbitrator’s resignation and allows them to seek protection or relief from such liabilities. The court has the authority to consider the circumstances surrounding the resignation and determine whether any relief from liability is appropriate.

2. Entitlement to Fees and Expenses: Additionally, the resigning arbitrator may request the court to make an appropriate order concerning their entitlement to fees or expenses related to their arbitration services. This could include determining the amount of compensation the arbitrator is entitled to receive for the work they have done up to the point of resignation.
3. Repayment of Fees and Expenses: In some cases, an arbitrator may have received fees or expenses in advance for their services, and if they resign, there might be a question of whether any portion of these fees should be repaid. The provision allows the court to make an order regarding the repayment of any fees or expenses already paid to the resigning arbitrator.

It is important to note that the arbitrator's application for relief and the court's consideration of the matter will be subject to proper notice being given to all parties involved in the arbitration. The court's decision will be based on the specific circumstances of the case and the equitable principles applicable to the situation.

Overall, Section 25(3) of the English Arbitration Act 1996 provides a process for an arbitrator who resigns to seek relief and address financial aspects related to their resignation, ensuring fairness and clarity in the resolution of any issues arising from the resignation.

(4) If the court is satisfied that in all the circumstances it was reasonable for the arbitrator to resign, it may grant such relief as is mentioned in subsection (3)(a) on such terms as it thinks fit.

Section 25(4) of the English Arbitration Act 1996 addresses the court's discretion when considering an application from a resigning arbitrator for relief from liability. This subsection establishes a criterion that the court must assess to determine whether the arbitrator is entitled to the requested relief. Here is a breakdown of the provisions:

1. Reasonableness of Resignation: The key criterion for the court to consider is whether, in all the circumstances, it was reasonable for the arbitrator to resign from their appointment. The court will evaluate the circumstances leading to the arbitrator's resignation and assess whether the resignation was justified or whether there were valid reasons that led the arbitrator to make such a decision.
2. Discretion of the Court: If the court determines that the arbitrator's resignation was reasonable, it has the discretion to grant relief to the resigning arbitrator. The relief may include the protection from any liability incurred due to the resignation, as mentioned in subsection (3)(a) of the Act.
3. Terms of Relief: The court has the authority to decide the terms and conditions under which the relief will be granted. This means that the court can tailor the relief order based on the specific circumstances of the case and the interests of justice.
4. The purpose of this provision is to strike a balance between protecting the interests of the arbitrator and ensuring fairness in the arbitration process. It acknowledges that there may be instances where an arbitrator may have valid reasons to resign from their appointment, and in such cases, they should be entitled to seek relief from any associated

liabilities. The court's evaluation and discretion ensure that relief is granted only when it is reasonable and justifiable in light of the circumstances surrounding the arbitrator's resignation.

Overall, section 25(4) serves to safeguard the interests of arbitrators while maintaining the integrity of the arbitration process by allowing the court to make informed decisions based on the reasonableness of the resignation and the equitable principles applicable to the situation.

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

Section 25(5) of the English Arbitration Act 1996 sets out a specific procedural requirement for appealing a decision of the court made under Section 25(3) and (4) regarding the relief sought by a resigning arbitrator. This subsection deals with the appeal process and introduces an additional step that must be followed. Here is the explanation of the provision:

1. **Leave of the Court:** If a resigning arbitrator is dissatisfied with the decision of the court regarding the relief sought under Section 25(3) and (4), they must obtain the "leave" (permission) of the court before initiating an appeal. This means that the arbitrator must make a formal application to the court seeking permission to appeal the decision.
2. **Discretion of the Court:** The court has the discretion to grant or deny leave for the appeal. The court will consider various factors, including the merits of the appeal, the reasons for the resigning arbitrator's dissatisfaction with the decision, and the interests of justice.
3. **Appeal from Court Decision:** If the court grants leave, the resigning arbitrator can proceed with the appeal and challenge the court's decision on the relief. If leave is denied, the arbitrator may not appeal the decision, and the court's initial ruling on the relief sought will stand.
4. **The purpose of requiring leave for the appeal** is to ensure that appeals are pursued only in cases where there are reasonable grounds and strong reasons for challenging the court's decision. It prevents frivolous or unnecessary appeals and encourages parties to seek resolution through the proper judicial process. The court's discretion to grant or deny leave acts as a gatekeeping mechanism to ensure that only meritorious appeals proceed to higher courts.

In summary, Section 25(5) introduces an important procedural step for appealing a court decision related to the relief sought by a resigning arbitrator. The requirement of obtaining leave from the court aims to promote efficient and just dispute resolution while maintaining the integrity of the arbitration process.

26 DEATH OF ARBITRATOR OR PERSON APPOINTING HIM

(1) The authority of an arbitrator is personal and ceases on his death.

Section 26(1) of the English Arbitration Act 1996 establishes a fundamental principle regarding the authority of an arbitrator and its termination. Here is the explanation of the provision:

1. **Personal Authority:** This section emphasises that an arbitrator’s authority to act in an arbitration is personal to that individual. It means that an arbitrator is appointed based on their expertise, qualifications, and personal judgment. The arbitrator’s authority is not transferable to another individual or entity, and it cannot be delegated to someone else during the course of the arbitration.
2. **Ceasing on Death:** The provision clearly states that the authority of an arbitrator comes to an end upon the arbitrator’s death. If an appointed arbitrator dies before the completion of the arbitration proceedings, they can no longer serve as the arbitrator, and their powers to decide on the dispute are extinguished.
3. **Implications:** The death of an arbitrator may have significant implications for the ongoing arbitration process. In such a situation, the parties to the arbitration will need to address the vacancy left by the deceased arbitrator. Depending on the arbitration agreement or applicable rules, the parties may need to follow specific procedures to appoint a new arbitrator, or they might proceed with the remaining arbitrators (if there were multiple arbitrators appointed) to continue the proceedings.
4. **Replacement of the Arbitrator:** To address the vacancy caused by the arbitrator’s death, parties may refer to the arbitration agreement or applicable rules to determine the procedure for appointing a substitute arbitrator. Alternatively, they may have agreed on a specific process to follow in the event of an arbitrator’s death.

In summary, section 26(1) of the English Arbitration Act 1996 emphasises that the authority of an arbitrator is personal and will cease upon the arbitrator’s death. This provision highlights the importance of proper planning and procedures in the event that an appointed arbitrator becomes unavailable to complete the arbitration process.

(2) Unless otherwise agreed by the parties, the death of the person by whom an arbitrator was appointed does not revoke the arbitrator’s authority.

Section 26(2) of the English Arbitration Act 1996 addresses the specific situation where an arbitrator has been appointed by a particular person and that person dies. Here is the explanation of this provision:

1. **Appointing Authority’s Death:** In some cases, an arbitrator may be appointed by a specific person, such as one of the parties to the arbitration or an external entity. This could be based on the terms of the arbitration agreement or the rules governing the arbitration.
2. **Continuation of Authority:** section 26(2) clarifies that the death of the person who appointed the arbitrator does not automatically revoke or invalidate the arbitrator’s authority to act in the arbitration. Even if the appointing authority passes away, the

arbitrator’s appointment remains valid, and they can continue to carry out their duties in the arbitration proceedings.

3. **Parties’ Agreement:** The provision specifies that this rule applies “unless otherwise agreed by the parties”. This means that the parties to the arbitration agreement have the freedom to agree on different terms regarding the impact of the appointing authority’s death on the arbitrator’s authority. If the parties agree that the arbitrator’s authority should be revoked upon the appointing authority’s death, they can include such a provision in their arbitration agreement.
4. **Stability of the Process:** section 26(2) aims to provide stability to the arbitration process in the event of the appointing authority’s death. It ensures that the appointed arbitrator can continue to fulfil their role and decide the dispute without interruption, even if the person who appointed them is no longer alive.
5. **Possible Implications:** The death of the appointing authority may not affect the arbitrator’s authority, but it could lead to other practical considerations. For example, if the appointing authority was also acting as a party to the arbitration, their death might impact their party’s position and representation.

In summary, section 26(2) of the English Arbitration Act 1996 clarifies that the death of the person by whom an arbitrator was appointed does not automatically revoke the arbitrator’s authority, unless the parties agree otherwise. This provision ensures continuity in the arbitration process while also recognising the parties’ freedom to agree on different terms related to the impact of the appointing authority’s death.

27 FILLING OF VACANCY, &C.

(1) Where an arbitrator ceases to hold office, the parties are free to agree—

- (a) whether and if so how the vacancy is to be filled,**
- (b) whether and if so to what extent the previous proceedings should stand, and**
- (c) what effect (if any) his ceasing to hold office has on any appointment made by him (alone or jointly).**

Section 27(1) of the English Arbitration Act 1996 addresses the situation where an arbitrator ceases to hold office during the course of arbitral proceedings. Here is the explanation of this provision:

1. **Vacancy Filling:** When an arbitrator ceases to hold office, it creates a vacancy in the arbitral tribunal. Section 27(1)(a) allows the parties to agree on whether or not they wish to fill this vacancy. If they decide to fill it, they can also agree on the process for appointing a replacement arbitrator.
2. **Continuation of Proceedings:** section 27(1)(b) enables the parties to decide whether the previous proceedings before the arbitrator who ceased to hold office should stand or whether they need to be redone or modified in any way. This provision gives the parties

the freedom to determine the impact of the arbitrator's departure on the overall progress of the arbitration.

3. **Effect on Appointments:** Under section 27(1)(c), the parties can agree on the consequences of the arbitrator's ceasing to hold office concerning any appointment made by that arbitrator alone or jointly with other arbitrators. This allows the parties to decide if any appointments made by the departing arbitrator should remain valid or if they need to be reconsidered following the vacancy.
4. **Flexibility and Autonomy:** section 27(1) reflects the principle of party autonomy in arbitration, emphasising that the parties have significant control over the arbitral process. They are free to agree on how to address the vacancy, the continuation of proceedings, and the impact on any prior appointments, as long as their agreement is not contrary to the law or public policy.
5. **Absence of Agreement:** If the parties do not reach an agreement on these matters, other provisions in the Arbitration Act or institutional rules that govern the arbitration may come into play to address the vacancy and related issues.

In summary, section 27(1) of the English Arbitration Act 1996 empowers the parties to agree on how to address a vacancy in the arbitral tribunal when an arbitrator ceases to hold office. This provision demonstrates the importance of party autonomy in arbitration and provides the parties with the flexibility to determine the best course of action to fill the vacancy, decide the impact on previous proceedings, and address any prior appointments made by the departing arbitrator.

(2) If or to the extent that there is no such agreement, the following provisions apply.

Section 27(2) of the English Arbitration Act 1996 states that if the parties do not have an agreement on how to address a vacancy in the arbitral tribunal when an arbitrator ceases to hold office, the following provisions will apply:

1. **Vacancy Filling:** In the absence of an agreement, the Act does not prescribe a specific procedure for filling the vacancy left by the departing arbitrator. It may be necessary to refer to institutional rules, if applicable, or seek guidance from the court or any appointing authority designated in the arbitration agreement.
2. **Continuation of Proceedings:** Similarly, without an agreement, the Act does not set out the consequences for the previous proceedings before the departing arbitrator. The parties may need to determine how to proceed with the existing record, whether to redo any part of the proceedings, or whether to hear certain aspects of the case anew before the remaining arbitrators.
3. **Effect on Appointments:** In the absence of an agreement, it may not be clear how the departing arbitrator's ceasing to hold office affects any appointments made by that arbitrator alone or jointly with other arbitrators. The parties may need to resolve whether such appointments remain valid or need to be reconsidered.

4. Role of Courts or Appointing Authorities: Without an agreement, the parties may need to seek guidance or assistance from the court or an appointing authority (if designated in the arbitration agreement) to address the vacancy and related issues.
5. Discretion of the Tribunal: The remaining arbitrators may have some discretion to determine how to address the vacancy and its impact on the arbitration process, subject to any applicable procedural rules and the principles of fairness and due process.

It is important to note that section 27(2) highlights the significance of party autonomy in arbitration. If the parties have not agreed on these matters, they may need to negotiate and cooperate to address the vacancy and decide on the best way forward. If disagreements arise, the Act provides mechanisms, such as recourse to the court or appointing authority, to resolve these issues and ensure the arbitration can proceed fairly and efficiently.

Overall, section 27(2) emphasises the importance of parties having clear and comprehensive agreements in their arbitration clauses to address potential scenarios, including the resignation or removal of an arbitrator, to avoid uncertainties and potential delays in the arbitration process.

(3) The provisions of sections 16 (procedure for appointment of arbitrators) and 18 (failure of appointment procedure) apply in relation to the filling of the vacancy as in relation to an original appointment.

Section 27(3) of the English Arbitration Act 1996 establishes that the provisions of sections 16 and 18 of the Act, which deal with the procedure for the appointment of arbitrators and the failure of the appointment procedure, respectively, apply to the filling of a vacancy in the arbitral tribunal in the same manner as they apply to the original appointment of arbitrators. This section is relevant when a vacancy arises due to an arbitrator ceasing to hold office for any reason, such as resignation, death, or removal. Let us analyse the implications of this provision:

1. Procedure for Appointment: section 16 of the Act deals with the procedure for appointing arbitrators. It sets out the process for appointing a sole arbitrator or multiple arbitrators based on the number agreed upon by the parties. When a vacancy arises, the parties are required to follow the same procedure as outlined in section 16 to fill that vacancy.
2. Failure of Appointment Procedure: section 18 of the Act provides powers to the court to step in and make appointments if there is a failure of the agreed appointment procedure. This may occur when the parties cannot agree on the appointment of an arbitrator or fail to follow the agreed appointment process. section 27(3) extends the application of section 18 to the filling of a vacancy as well. If there is no agreement on filling the vacancy, the court may exercise its powers under section 18 to make the necessary appointment.
3. Applicability to Vacancies: sections 16 and 18 apply specifically to vacancies in the arbitral tribunal due to the resignation or removal of an arbitrator, ensuring that the process of appointing a replacement is fair and consistent with the original appointment process.

Overall, section 27(3) underscores the importance of having a clear and agreed-upon procedure in the arbitration agreement to address vacancies in the arbitral tribunal. By incorporating the provisions of sections 16 and 18, the Act provides a structured and reliable process to fill such vacancies, ensuring the smooth continuation of the arbitration proceedings and maintaining the integrity of the arbitration

process. It also emphasises the significance of parties' agreement in determining the mechanism for appointing arbitrators, both at the outset of the arbitration and when addressing any vacancies that may occur during the course of the proceedings.

(4) The tribunal (when reconstituted) shall determine whether and if so to what extent the previous proceedings should stand.

This does not affect any right of a party to challenge those proceedings on any ground which had arisen before the arbitrator ceased to hold office.

Section 27(4) of the English Arbitration Act 1996 addresses the situation when an arbitrator ceases to hold office, and the parties must determine how to fill the vacancy in the arbitral tribunal. This section establishes the authority of the reconstituted tribunal to decide on the extent to which the previous proceedings should stand. Importantly, it clarifies that a party's right to challenge previous proceedings on grounds that existed before the arbitrator ceased to hold office remains unaffected. Let us break down the key points of this provision:

1. **Reconstitution of the Tribunal:** When a vacancy arises in the arbitral tribunal due to an arbitrator ceasing to hold office, the tribunal needs to be reconstituted to continue the arbitration proceedings. The reconstitution involves filling the vacancy by appointing a new arbitrator or following the agreed-upon procedure, as discussed in section 27(1) and (2) of the Act.
2. **Determination of Previous Proceedings:** After the tribunal is reconstituted, it has the authority to decide on the status of the previous proceedings that occurred before the arbitrator ceased to hold office. This means that the reconstituted tribunal will assess whether the previous proceedings remain valid and unaffected or whether some aspects need to be revisited or re-examined.
3. **Right to Challenge Previous Proceedings:** section 27(4) clarifies that a party retains its right to challenge the previous proceedings on any grounds that had arisen before the arbitrator ceased to hold office. In other words, any objections or challenges that were present when the original arbitrator was involved in the proceedings can still be raised before the reconstituted tribunal. This ensures that parties do not lose any valid grounds for challenging the previous proceedings due to a change in the tribunal.

Overall, section 27(4) aims to strike a balance between maintaining the continuity of the arbitration proceedings by reconstituting the tribunal and preserving parties' rights to raise any valid challenges or objections that existed before the change in the tribunal. By allowing the reconstituted tribunal to determine the extent to which the previous proceedings should stand, the Act ensures that the arbitration process remains fair and efficient while protecting parties' rights to seek redress for any pre-existing issues.

(5) His ceasing to hold office does not affect any appointment by him (alone or jointly) of another arbitrator, in particular any appointment of a chairman or umpire.

Section 27(5) of the English Arbitration Act 1996 clarifies that an arbitrator’s cessation of holding office does not invalidate or affect any appointment made by that arbitrator, whether the appointment was made solely by the arbitrator or jointly with other arbitrators. This provision specifically applies to appointments of another arbitrator, a chairman, or an umpire. Let us break down the key points of this provision:

1. **Appointments Made by the Arbitrator:** The provision focuses on appointments made by the arbitrator who has ceased to hold office. It emphasises that the cessation of office does not render the arbitrator’s prior appointments null and void. If the arbitrator had already made any appointments, those appointments remain valid and in effect.
2. **Sole or Joint Appointments:** The section covers both sole appointments made solely by the arbitrator and joint appointments made by the arbitrator in conjunction with other arbitrators. In either case, the appointment remains unaffected.
3. **Appointments of Chairman or Umpire:** The provision explicitly mentions that it applies to appointments of a chairman or an umpire. This means that if the arbitrator who has ceased to hold office had previously appointed a chairman or an umpire, that appointment stands, and the chairman or umpire will continue to serve as part of the reconstituted tribunal.

Overall, section 27(5) ensures that the appointments made by an arbitrator, whether made solely or jointly with other arbitrators, are not affected by the arbitrator’s cessation of office. This provision promotes procedural efficiency and continuity in arbitration proceedings, allowing the reconstituted tribunal to continue with the appointments made by the original arbitrator, thus avoiding unnecessary disruptions in the arbitration process.

28 JOINT AND SEVERAL LIABILITY OF PARTIES TO ARBITRATORS FOR FEES AND EXPENSES

(1) The parties are jointly and severally liable to pay to the arbitrators such reasonable fees and expenses (if any) as are appropriate in the circumstances.

Section 28(1) of the English Arbitration Act 1996 addresses the issue of the payment of fees and expenses to the arbitrators. Let us analyse the key points of this provision:

1. **Joint and Several Liability:** The provision states that the parties to the arbitration are jointly and severally liable for the payment of reasonable fees and expenses to the arbitrators. “Joint and several liability” means that each party is individually responsible for the entire amount owed to the arbitrators. If one party fails to pay its share, the other party or parties may be held responsible for the full amount.
2. **Reasonable Fees and Expenses:** The parties are obligated to pay “reasonable fees and expenses” to the arbitrators. The determination of what is “reasonable” can depend on various factors, including the complexity of the dispute, the time spent by the arbitrators, and the prevailing market rates for arbitrator services.

3. Discretionary Nature: The use of the term “appropriate in the circumstances” implies that the amount of fees and expenses is not fixed or predefined. Instead, it allows for some flexibility and discretion in determining the appropriate amount based on the specific circumstances of each case.

In summary, section 28(1) ensures that the parties have a clear responsibility to pay the arbitrators for their services. The provision emphasises that the payment should be for reasonable fees and expenses, and it holds all parties jointly and severally liable for fulfilling this obligation. This financial responsibility helps ensure that arbitrators are fairly compensated for their work and helps maintain the integrity and efficiency of the arbitration process.

(2) Any party may apply to the court (upon notice to the other parties and to the arbitrators) which may order that the amount of the arbitrators’ fees and expenses shall be considered and adjusted by such means and upon such terms as it may direct.

Section 28(2) of the English Arbitration Act 1996 provides a mechanism for any party involved in the arbitration to seek court intervention regarding the arbitrators’ fees and expenses. Let us analyse the key points of this provision:

1. Application to the Court: Any party to the arbitration has the right to apply to the court for a review of the arbitrators’ fees and expenses. This application is made by submitting a request to the court.
2. Notice to Other Parties and Arbitrators: Before making the application to the court, the party seeking the review must give notice to the other parties involved in the arbitration and to the arbitrators. This ensures transparency and provides an opportunity for all concerned parties to be aware of the application.
3. Court’s Power to Order Review: Upon receiving the application, the court has the authority to order that the amount of the arbitrators’ fees and expenses be considered and adjusted. This means the court can review the fees and expenses charged by the arbitrators and determine if any adjustments are necessary.
4. Means and Terms of Adjustment: The court has the discretion to decide how the review and adjustment should be conducted. It may use any appropriate means and set specific terms for the process. This could involve hearing submissions from the parties and the arbitrators or obtaining expert opinions on the reasonableness of the fees and expenses.

In summary, section 28(2) allows any party involved in the arbitration to seek a court review of the arbitrators’ fees and expenses. By providing this mechanism, the Act aims to ensure fairness and transparency in determining the fees and expenses charged by the arbitrators. It also allows for a potential remedy if the court finds that adjustments are necessary to ensure that the fees and expenses are reasonable and appropriate in the circumstances of the case.

(3) If the application is made after any amount has been paid to the arbitrators by way of fees or expenses, the court may order the repayment of such amount (if any) as is shown to be

excessive, but shall not do so unless it is shown that it is reasonable in the circumstances to order repayment.

Section 28(3) of the English Arbitration Act 1996 addresses the situation when an application is made to the court for a review of arbitrators' fees and expenses after some payments have already been made to the arbitrators. Let us analyse the key points of this provision:

1. **Timing of the Application:** The application to the court for a review of arbitrators' fees and expenses can be made after any amount has been paid to the arbitrators by way of fees or expenses.
2. **Court's Discretion:** The court has the authority to order the repayment of any excessive amount that has been paid to the arbitrators. However, it is not mandatory for the court to do so. The decision to order repayment is at the court's discretion.
3. **Reasonableness Requirement:** Before ordering repayment, the court must be satisfied that it is reasonable to do so in the circumstances. This means that the court will consider various factors to determine if the amount charged by the arbitrators was indeed excessive and whether ordering repayment is fair and appropriate.

In summary, section 28(3) allows the court to order the repayment of an excessive amount of fees or expenses paid to the arbitrators if such an amount is shown to be unreasonable in the circumstances. However, the court is not obligated to order repayment, and the decision will be based on the specific facts and context of each case. This provision aims to strike a balance between protecting parties from excessive charges while also considering the reasonableness of the fees and expenses incurred by the arbitrators.

(4) The above provisions have effect subject to any order of the court under section 24(4) or 25(3)(b) (order as to entitlement to fees or expenses in case of removal or resignation of arbitrator).

Section 28(4) of the English Arbitration Act 1996 provides an important caveat to the provisions regarding the payment of arbitrators' fees and expenses, specifically in relation to any orders made by the court under section 24(4) or section 25(3)(b). Let us examine its significance:

1. **Subject to Court Orders:** The provisions in section 28(1) and section 28(2) that establish the joint and several liability of the parties to pay arbitrators' fees and expenses and allow for applications to the court for adjustments of such fees are subject to any orders made by the court under section 24(4) or section 25(3)(b).
2. **Orders Regarding Entitlement to Fees or Expenses:** section 24(4) deals with the removal of an arbitrator by the court and empowers the court to make orders concerning the entitlement of the arbitrator to fees or expenses. Section 25(3)(b) addresses the situation when an arbitrator resigns and allows the arbitrator to apply to the court for relief from any liability incurred and for an order concerning fees or expenses.
3. **Impact on Payment of Fees:** The court may have already made an order under section 24(4) or section 25(3)(b) specifying the entitlement of an arbitrator to fees or expenses, or the court may do so in the future. In such cases, the determination made by the court

regarding the arbitrator's fees and expenses will prevail over the general provisions in section 28(1) and section 28(2).

In summary, section 28(4) clarifies that the general provisions concerning the payment of arbitrators' fees and expenses are subject to any specific orders issued by the court under section 24(4) or section 25(3)(b) regarding the entitlement or adjustment of such fees and expenses. This ensures that any court decisions regarding arbitrators' remuneration take precedence over the default rules laid out in the Act.

(5) Nothing in this section affects any liability of a party to any other party to pay all or any of the costs of the arbitration (see sections 59 to 65) or any contractual right of an arbitrator to payment of his fees and expenses.

Section 28(5) of the English Arbitration Act 1996 provides important clarifications about the scope and limitations of the section's applicability. Let us analyse its key points:

1. **Costs of the Arbitration:** Section 28(5) explicitly states that nothing in section 28 affects any liability of a party to any other party to pay all or any of the costs of the arbitration. The Act deals with the issue of costs separately in sections 59 to 65. These sections establish the general principles governing the allocation and recovery of costs incurred during the arbitration process.
2. **Distinction from Arbitrator's Fees and Expenses:** It is important to differentiate between the arbitrators' fees and expenses (which are the subject of section 28) and the costs of the arbitration (which are addressed in sections 59 to 65). The arbitrators' fees and expenses pertain to the remuneration of the arbitrators themselves for their work, whereas the costs of the arbitration encompass various other expenses incurred during the arbitration, such as legal fees, administrative costs, and other related expenses.
3. **Arbitrator's Contractual Right to Payment:** Section 28(5) also clarifies that the section does not affect any contractual right of an arbitrator to payment of his or her fees and expenses. This means that if there is an express agreement between the arbitrator and the parties regarding the arbitrator's remuneration, such an agreement will prevail, and the arbitrator may enforce their right to receive payment according to that agreement.

In summary, section 28(5) ensures that the section's provisions regarding the payment of arbitrators' fees and expenses do not impact the broader issue of costs incurred during the arbitration, which are separately addressed in sections 59 to 65. Additionally, the section recognises and preserves the contractual rights of arbitrators to receive payment according to any agreements they may have entered into with the parties.

(6) In this section references to arbitrators include an arbitrator who has ceased to act and an umpire who has not replaced the other arbitrators.

Section 28(6) of the English Arbitration Act 1996 provides an important definition to clarify the scope of the term "arbitrators" as used in section 28. Let us analyse its key points:

1. **Inclusion of Arbitrators Who Have Ceased to Act:** Section 28(6) includes references to arbitrators who have ceased to act. This means that even if an arbitrator has resigned or otherwise ceased to hold office during the course of the arbitration, they are still considered as part of the category of “arbitrators” for the purposes of section 28. The section acknowledges that the issue of payment of arbitrators’ fees and expenses may still arise even if an arbitrator has resigned or ceased to act, and it extends the provisions of section 28 to cover such cases.
2. **Inclusion of Umpire Who Has Not Replaced Other Arbitrators:** Additionally, section 28(6) includes an umpire who has not replaced the other arbitrators. In certain arbitration arrangements, there may be a provision for an umpire to be appointed to take over the proceedings in the event of disagreement among the arbitrators. If the umpire has not yet assumed this role and the arbitration is still being conducted by the original arbitrators, the section clarifies that the term “arbitrators” encompasses the umpire as well.

In summary, section 28(6) expands the definition of “arbitrators” under section 28 to include arbitrators who have ceased to act and umpires who have not yet replaced the other arbitrators. This ensures that the payment of fees and expenses is still addressed in cases where arbitrators resign, and it also recognises the potential involvement of an umpire in certain arbitration arrangements.

29 IMMUNITY OF ARBITRATOR

(1) **An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of his functions as arbitrator unless the act or omission is shown to have been in bad faith.**

Section 29(1) of the English Arbitration Act 1996 provides a provision that shields arbitrators from personal liability for their actions or omissions in the discharge or purported discharge of their duties. Let us break down the key points of this section:

1. **Immunity from Liability:** The provision establishes that an arbitrator is generally not liable for anything done or omitted in the course of carrying out their functions as an arbitrator. This immunity extends to actions taken or decisions made during the arbitration process, including the making of awards, issuing of orders, conducting the proceedings, and any other functions related to the arbitration.
2. **Exception:** The immunity granted to arbitrators under this section is not absolute. It is subject to a specific condition, which is that the act or omission of the arbitrator must not be shown to have been in bad faith. This means that if an arbitrator’s actions were carried out with a dishonest or malicious intent (i.e., acting in bad faith), they may be held personally liable for any resulting damages or harm.
3. **Protection of Arbitrators:** The purpose of this provision is to provide protection to arbitrators, encouraging them to act impartially and fearlessly when presiding over arbitration proceedings. It seeks to prevent arbitrators from being hesitant in their decision-making due to concerns about potential personal liability, while ensuring that they are accountable if they act dishonestly or maliciously.

In summary, section 29(1) of the English Arbitration Act 1996 grants arbitrators a degree of immunity from personal liability for their actions or omissions during the arbitration process, as long as they act in good faith. This encourages arbitrators to perform their duties impartially and without fear of legal repercussions, while still holding them accountable if they engage in dishonest or malicious behaviour.

(2) Subsection (1) applies to an employee or agent of an arbitrator as it applies to the arbitrator himself.

Section 29(2) of the English Arbitration Act 1996 extends the same immunity from personal liability provided to arbitrators under subsection (1) to employees or agents of the arbitrator. Here is a breakdown of the key points of this subsection:

1. **Scope of Immunity:** Subsection (1) provides immunity to arbitrators from personal liability for their actions or omissions during the discharge or purported discharge of their functions. Subsection (2) states that this same immunity also applies to individuals who are employees or agents of the arbitrator.
2. **Employee or Agent of the Arbitrator:** An “employee” in this context refers to someone who works under the direct control and supervision of the arbitrator in the capacity of assisting the arbitrator in the arbitration process. An “agent” refers to someone who acts on behalf of the arbitrator in the course of the arbitration, representing the arbitrator’s interests or authority.
3. **Equal Protection:** By extending the immunity to employees or agents of the arbitrator, this subsection aims to provide equal protection to those who are acting on the arbitrator’s behalf or under their authority during the arbitration process. It ensures that individuals working in this capacity are not held personally liable for actions or omissions in line with the principle of immunity established in subsection (1).

In summary, section 29(2) of the English Arbitration Act 1996 extends the same immunity from personal liability provided to arbitrators under subsection (1) to employees or agents of the arbitrator who act on behalf of or under the authority of the arbitrator during the arbitration process. This ensures that these individuals are equally protected from personal liability for their actions or omissions in the course of the arbitration.

(3) This section does not affect any liability incurred by an arbitrator by reason of his resigning (but see section 25).

Section 29(3) of the English Arbitration Act 1996 clarifies that the immunity from personal liability provided to arbitrators under section 29(1) does not affect any liability that an arbitrator may have incurred by reason of his resignation. Here is an analysis of this subsection:

1. **Resignation and Liability:** Section 29(1) of the Act grants arbitrators immunity from personal liability for anything done or omitted in the discharge or purported discharge of their functions as arbitrator, except in cases of bad faith. However, this immunity is not applicable to any liability that may arise due to the arbitrator’s resignation.

2. Effect on Liability from Resignation: When an arbitrator resigns, there may be specific contractual or statutory obligations or liabilities associated with that resignation, which could arise from the terms of the arbitration agreement or the applicable law. Section 29(3) clarifies that the immunity granted to arbitrators under section 29(1) does not cover or extend to any liability that arises as a result of the arbitrator's resignation.
3. Interaction with section 25: Section 25 of the Arbitration Act deals with the consequences of an arbitrator's resignation and allows an arbitrator who has resigned to apply to the court for relief from any liability incurred by him as a result of the resignation. Therefore, Section 29(3) should be read in conjunction with Section 25 when considering the issue of liability arising from an arbitrator's resignation.

In summary, Section 29(3) of the English Arbitration Act 1996 clarifies that the immunity provided to arbitrators under Section 29(1) does not affect any liability that may arise due to the arbitrator's resignation. The arbitrator may still be subject to specific liabilities resulting from the act of resignation, and if such liability is an issue, the arbitrator can seek relief under Section 25 of the Act.

JURISDICTION OF THE ARBITRAL TRIBUNAL

30 COMPETENCE OF TRIBUNAL TO RULE ON ITS OWN JURISDICTION

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to—
- (a) whether there is a valid arbitration agreement,
 - (b) whether the tribunal is properly constituted, and
 - (c) what matters have been submitted to arbitration in accordance with the arbitration agreement.

Section 30(1) of the English Arbitration Act 1996 grants the arbitral tribunal the authority to rule on its own substantive jurisdiction, subject to certain conditions. Here is an analysis of this subsection:

1. **Substantive Jurisdiction:** The term “substantive jurisdiction” refers to the authority or power of the arbitral tribunal to decide whether it has the legal right to hear and decide the dispute between the parties. It involves determining whether there is a valid arbitration agreement, whether the tribunal is properly constituted, and what matters have been properly submitted to arbitration based on the terms of the arbitration agreement.
2. **Scope of Ruling:** Section 30(1) allows the arbitral tribunal to make determinations on the matters mentioned in points (a), (b), and (c) without requiring recourse to the court. This provision reflects the principle of “kompetenz-kompetenz”, which means the arbitral tribunal has the competence to decide its own jurisdiction.
3. **Agreement of the Parties:** The authority of the arbitral tribunal to rule on its own substantive jurisdiction depends on the agreement of the parties. If the parties have agreed that the tribunal may decide these matters, then the tribunal can proceed to do so. The Act allows parties to exclude or limit this power if they wish.
4. **Non-Exclusion Principle:** The Act includes a non-exclusion principle that allows the arbitral tribunal to rule on its own substantive jurisdiction even if the parties have not expressly agreed to grant such authority. In the absence of an express agreement to the contrary, the tribunal retains the competence to decide these issues.
5. **Limits on Ruling:** It is essential to note that Section 30(1) pertains to the arbitral tribunal’s jurisdiction to decide its own substantive jurisdiction. It does not empower the tribunal to determine the merits of the underlying dispute. That is, it does not allow the tribunal to decide the actual rights and obligations of the parties in the dispute.

In summary, Section 30(1) of the English Arbitration Act 1996 empowers the arbitral tribunal to make determinations on its own substantive jurisdiction, specifically regarding the validity of the arbitration agreement, the proper constitution of the tribunal, and the matters submitted to arbitration. This power is subject to the parties’ agreement, but the Act allows the tribunal to make these determinations even in the absence of an express agreement to that effect.

(2) Any such ruling may be challenged by any available arbitral process of appeal or review or in accordance with the provisions of this Part.

Section 30(2) of the English Arbitration Act 1996 establishes the process for challenging the ruling of the arbitral tribunal on its own substantive jurisdiction. Here is an analysis of this subsection:

1. **Challenge Mechanisms:** According to Section 30(2), any ruling made by the arbitral tribunal on its own substantive jurisdiction can be challenged through two possible mechanisms:
 - a. **Arbitral Process of Appeal or Review:** If the arbitration agreement or the rules of the chosen arbitral institution provide for an appeal or review process, the challenging party may use such mechanisms to challenge the tribunal's ruling. These processes vary depending on the rules and practices of the specific arbitral institution chosen by the parties.
 - b. **Provisions of this Part:** If there is no applicable arbitral process of appeal or review, the challenging party may seek recourse under the provisions of Part I of the English Arbitration Act 1996 to challenge the tribunal's ruling.
2. **Procedural Flexibility:** Section 30(2) recognises the importance of procedural flexibility in arbitration. It allows parties to choose their preferred method of challenging a tribunal's ruling on its own substantive jurisdiction, provided it is available and agreed upon beforehand.
3. **Limit on Scope of Challenge:** It is important to note that Section 30(2) only applies to challenges to the tribunal's ruling on its own substantive jurisdiction. This section does not deal with challenges to the tribunal's final decision on the merits of the dispute; such challenges are addressed separately under other provisions of the Arbitration Act.
4. **Preservation of Finality:** While the Act allows challenges to the tribunal's ruling on jurisdiction, it also aims to preserve the finality of arbitral proceedings. Therefore, the Act strikes a balance between providing avenues for recourse and ensuring that arbitral decisions are generally enforceable and final.

In summary, Section 30(2) of the English Arbitration Act 1996 provides the mechanisms for challenging the arbitral tribunal's ruling on its own substantive jurisdiction. A party may use any available arbitral process of appeal or review, if provided for in the arbitration agreement or applicable rules, or may challenge the ruling in accordance with the provisions of Part I of the Arbitration Act if there is no specific process for appeal or review. This section ensures that parties have avenues for recourse while also maintaining the finality of arbitral decisions.

31 OBJECTION TO SUBSTANTIVE JURISDICTION OF TRIBUNAL

(1) An objection that the arbitral tribunal lacks substantive jurisdiction at the outset of the proceedings must be raised by a party not later than the time he takes the first step in the

proceedings to contest the merits of any matter in relation to which he challenges the tribunal's jurisdiction.

A party is not precluded from raising such an objection by the fact that he has appointed or participated in the appointment of an arbitrator.

Section 31(1) of the English Arbitration Act 1996 addresses the issue of objections regarding the substantive jurisdiction of the arbitral tribunal and establishes rules for the timing of raising such objections. Here is an analysis of this subsection:

1. **Timing of Objection:** According to section 31(1), any objection regarding the arbitral tribunal's substantive jurisdiction must be raised by a party at the outset of the arbitral proceedings. Specifically, the objection must be raised "not later than the time he takes the first step in the proceedings to contest the merits of any matter in relation to which he challenges the tribunal's jurisdiction".
2. **Preclusion of Objection:** The subsection makes it clear that a party is not precluded from raising an objection to the tribunal's jurisdiction simply because they have appointed or participated in the appointment of an arbitrator. This provision prevents parties from being deemed to have waived their right to challenge the tribunal's jurisdiction merely by their involvement in the appointment process.
3. **Purpose of Timely Objection:** The requirement to raise objections at the outset of the proceedings serves the purpose of promoting procedural efficiency and avoiding unnecessary delays. It ensures that any jurisdictional issues are addressed early on in the arbitration process, allowing the tribunal and the parties to focus on the substantive merits of the dispute.
4. **Contesting the Merits:** The subsection specifies that the objection must be raised at the time a party takes the first step in the proceedings to contest the merits of any matter. In other words, if a party engages in substantive arguments on the merits of the dispute, they must also raise any jurisdictional objections they may have at that time.
5. **Consequences of Not Timely Raising Objection:** Failure to raise a jurisdictional objection at the appropriate time may result in the party being deemed to have accepted the tribunal's jurisdiction. By not raising the objection promptly, the party may waive their right to challenge the tribunal's jurisdiction at a later stage.

In summary, section 31(1) of the English Arbitration Act 1996 mandates that any objection regarding the arbitral tribunal's substantive jurisdiction must be raised at the outset of the proceedings, not later than the time a party takes the first step to contest the merits of any matter. The provision also clarifies that a party is not precluded from raising such an objection by their involvement in the appointment of an arbitrator. Timely raising of objections ensures procedural efficiency and avoids unnecessary delays in the arbitration process.

(2) Any objection during the course of the arbitral proceedings that the arbitral tribunal is exceeding its substantive jurisdiction must be made as soon as possible after the matter alleged to be beyond its jurisdiction is raised.

Section 31(2) of the English Arbitration Act 1996 addresses objections that arise during the course of arbitral proceedings when a party believes that the arbitral tribunal is exceeding its substantive jurisdiction. Here is an analysis of this subsection:

1. **Timing of Objection:** According to Section 31(2), any objection regarding the arbitral tribunal exceeding its substantive jurisdiction must be raised “as soon as possible after the matter alleged to be beyond its jurisdiction is raised”. In other words, if a party believes that the tribunal is dealing with issues that go beyond its authority, they should promptly raise this objection when the alleged jurisdictional problem arises.
2. **Promptness:** The subsection emphasises the need for promptness in raising objections related to the tribunal’s jurisdiction. This requirement is in line with the overarching goal of maintaining procedural efficiency and avoiding unnecessary delays in the arbitration process.
3. **Consequences of Not Timely Raising Objection:** Failure to raise a jurisdictional objection as soon as possible after the matter is raised may result in the party being deemed to have accepted the tribunal’s jurisdiction over the disputed issue. By not objecting promptly, the party may waive their right to challenge the tribunal’s jurisdiction at a later stage.
4. **Continuous Assessment:** The provision encourages parties to continuously assess the tribunal’s actions during the arbitration to ensure that it does not exceed its jurisdiction. If a party becomes aware of any potential jurisdictional issues, they should not delay in raising their objections.
5. **Fairness and Due Process:** The requirement for timely objections is also aligned with principles of fairness and due process. It ensures that parties have a fair opportunity to challenge any actions or decisions by the tribunal that they believe are beyond the scope of its authority.

In summary, section 31(2) of the English Arbitration Act 1996 stipulates that any objection regarding the arbitral tribunal exceeding its substantive jurisdiction must be raised promptly and “as soon as possible” after the matter in question is raised during the course of the arbitral proceedings. Promptly raising objections ensures that parties can protect their rights, promotes procedural efficiency, and upholds principles of fairness and due process in the arbitration process.

(3) The arbitral tribunal may admit an objection later than the time specified in subsection (1) or (2) if it considers the delay justified.

Section 31(3) of the English Arbitration Act 1996 provides the arbitral tribunal with the discretion to admit a jurisdictional objection even if it is raised later than the time specified in subsection (1) or (2) (which relate to objections raised at the outset or during the course of the arbitral proceedings, respectively) if the tribunal considers the delay to be justified. Here is an analysis of this subsection:

1. **Flexibility:** By allowing the arbitral tribunal to admit a jurisdictional objection raised after the specified time, Section 31(3) provides the tribunal with some flexibility in considering exceptional circumstances that may have led to the delay in raising the objection. This provision acknowledges that there might be valid reasons, such as a change in circumstances or new evidence, that could justify the late objection.
2. **Discretion of the Tribunal:** The subsection grants the arbitral tribunal the authority to evaluate the reasons for the delay and determine whether they are reasonable and sufficient to warrant accepting the jurisdictional objection. The tribunal's discretion allows it to take into account the specific circumstances of each case.
3. **Balancing Interests:** This provision balances the need for procedural efficiency with the fundamental principle of ensuring parties have an opportunity to challenge the tribunal's jurisdiction. While timeliness is essential in arbitration to prevent unnecessary delays, there might be instances where a late objection is allowed to avoid a party being unfairly deprived of its right to raise valid jurisdictional concerns.
4. **Preserving Due Process:** Allowing the tribunal to admit late objections in justified cases contributes to upholding due process and fairness. Parties should not be unduly penalised for a delay in raising a jurisdictional objection if valid reasons exist that were beyond their control.
5. **Cautionary Note:** While the provision gives the tribunal discretion, parties should not interpret this as a license to delay raising jurisdictional objections without valid reasons. It is generally advisable for parties to promptly raise any jurisdictional concerns to avoid potential procedural complications.

In summary, Section 31(3) of the English Arbitration Act 1996 permits the arbitral tribunal to exercise its discretion and admit a jurisdictional objection, even if raised later than the specified time, if the tribunal deems the delay to be justified. This provision balances the need for procedural efficiency with ensuring parties have a fair opportunity to challenge the tribunal's jurisdiction, thus upholding due process and fairness in the arbitration proceedings. However, parties should exercise caution and raise objections promptly unless there are compelling reasons for a justified delay.

(4) Where an objection is duly taken to the tribunal's substantive jurisdiction and the tribunal has power to rule on its own jurisdiction, it may—

- (a) rule on the matter in an award as to jurisdiction, or**
- (b) deal with the objection in its award on the merits.**

If the parties agree which of these courses the tribunal should take, the tribunal shall proceed accordingly.

Section 31(4) of the English Arbitration Act 1996 addresses the procedural options available to the arbitral tribunal when an objection is duly raised concerning its substantive jurisdiction. This section outlines how the tribunal may rule on such objections, and it provides flexibility based on the preferences of the parties. Let us analyse this subsection:

1. **Ruling on Jurisdiction:** The arbitral tribunal has the authority to rule on its own substantive jurisdiction when a valid objection is raised. This means that the tribunal can determine whether it has the power and authority to hear and decide the dispute presented by the parties. The ruling will address the scope of the tribunal’s jurisdiction and whether there is a valid arbitration agreement covering the dispute.
2. **Options for the Tribunal:** Section 31(4) offers the tribunal two options for addressing the jurisdictional objection in its award:
 - a. **Ruling on Jurisdiction:** The tribunal may choose to make a separate award solely on the matter of jurisdiction. This means that the tribunal’s award will focus specifically on whether it has the authority to hear and decide the dispute.
 - b. **Dealing with Jurisdiction in Merits Award:** Alternatively, the tribunal may decide to include its ruling on jurisdiction within the award on the merits of the case. In this scenario, the tribunal will address the jurisdictional objection while also deciding the substantive issues of the dispute.
3. **Party Agreement:** The subsection allows the parties to agree on which course of action the tribunal should take when ruling on the jurisdictional objection. If the parties reach a mutual agreement on whether the tribunal should issue a separate jurisdictional award or address the objection in the merits award, the tribunal is required to follow their agreed-upon direction.
4. **Procedural Efficiency:** Allowing the tribunal to address jurisdictional issues either through a separate jurisdictional award or as part of the merits award enhances procedural efficiency. If parties are agreeable, the tribunal can incorporate its ruling on jurisdiction into the overall resolution of the dispute, streamlining the arbitration process.
5. **Flexibility and Cooperation:** Section 31(4) encourages flexibility and cooperation between the parties and the arbitral tribunal in resolving jurisdictional issues. The parties’ agreement on how the tribunal should handle the jurisdictional objection reflects the principle of party autonomy in arbitration.

In summary, section 31(4) of the English Arbitration Act 1996 provides the arbitral tribunal with two options for addressing jurisdictional objections: issuing a separate award on jurisdiction or incorporating the ruling on jurisdiction into the merits award. The subsection emphasises the importance of party agreement, enabling the tribunal to follow the direction agreed upon by the parties. This approach enhances procedural efficiency and underscores the principle of party autonomy in the arbitration process.

(5) The tribunal may in any case, and shall if the parties so agree, stay proceedings whilst an application is made to the court under section 32 (determination of preliminary point of jurisdiction).

Section 31(5) of the English Arbitration Act 1996 grants the arbitral tribunal the discretionary power to stay arbitral proceedings if an application is made to the court under Section 32 for the determination of a preliminary point of jurisdiction. The subsection also mandates that if the parties

agree, the tribunal must stay the proceedings in such circumstances. Let us delve into the key aspects of this subsection:

1. **Stay of Proceedings:** If an issue arises during the arbitral proceedings concerning the tribunal's substantive jurisdiction, any party to the arbitration can apply to the court for the determination of a preliminary point of jurisdiction. This means that the court will decide whether the tribunal has the authority to hear and decide the dispute. While this application is pending before the court, the arbitral tribunal is given the discretion to decide whether to stay the ongoing arbitration proceedings.
2. **Discretion of the Tribunal:** Section 31(5) empowers the arbitral tribunal to decide whether it is appropriate to pause the arbitration proceedings while the jurisdictional issue is being resolved in court. The tribunal will consider the specific circumstances of the case and exercise its judgment in deciding whether a stay is necessary or conducive to a fair and efficient resolution of the dispute.
3. **Mandatory Stay on Agreement:** If all parties to the arbitration agree that the proceedings should be stayed pending the court's determination on the preliminary point of jurisdiction, the arbitral tribunal is obligated to grant the stay. This mandatory provision ensures that the parties' consent prevails in determining whether the arbitration proceedings should be paused temporarily.
4. **Efficient Resolution:** Allowing the tribunal to stay the proceedings while the court determines the preliminary jurisdictional point promotes efficiency in the overall arbitration process. By suspending the arbitration temporarily, the tribunal avoids potentially rendering an award that might later be invalidated by the court due to a lack of jurisdiction.
5. **Parties' Autonomy:** Section 31(5) respects the principle of party autonomy, allowing the parties to decide whether the arbitration should be paused pending the court's decision on the jurisdictional issue. This reflects the general emphasis on party autonomy in arbitration.

In summary, section 31(5) of the English Arbitration Act 1996 grants the arbitral tribunal the discretionary power to stay arbitration proceedings during the pendency of an application before the court for the determination of a preliminary point of jurisdiction. However, if all parties agree to a stay, the tribunal is obliged to grant the stay. This provision aims to ensure that the arbitration process is efficient and that parties' autonomy is respected in determining the appropriate course of action regarding the impact of a jurisdictional challenge on the ongoing proceedings.

32 DETERMINATION OF PRELIMINARY POINT OF JURISDICTION

- (1) The court may, on the application of a party to arbitral proceedings (upon notice to the other parties), determine any question as to the substantive jurisdiction of the tribunal.**

A party may lose the right to object (see section 73).

Section 32(1) of the English Arbitration Act 1996 empowers the court to decide questions relating to the substantive jurisdiction of the arbitral tribunal. Let us break down the key points of this section:

1. **Court Application:** Any party involved in arbitral proceedings has the right to apply to the court seeking a determination on a question regarding the substantive jurisdiction of the arbitral tribunal. The application must be made by a party and must be served upon all the other parties involved in the arbitration.
2. **Jurisdictional Challenge:** This provision allows a party to challenge the tribunal's authority to hear and decide the dispute on substantive grounds. It is crucial to note that the jurisdictional challenge focuses on whether the tribunal has the legal authority to hear the dispute, and not on the merits of the case itself.
3. **Notice to Other Parties:** The party making the application to the court must provide notice to all the other parties involved in the arbitration. This ensures that all relevant parties are informed about the challenge to the tribunal's jurisdiction and have an opportunity to respond to the court application.
4. **Substantive Jurisdiction:** The court's determination under Section 32(1) pertains specifically to questions of substantive jurisdiction. This means the court will decide whether the tribunal has the legal authority to decide the particular dispute, including issues such as whether a valid arbitration agreement exists or whether the dispute falls within the scope of the arbitration clause.
5. **Right to Object:** Section 32(1) acknowledges that a party may lose the right to challenge the tribunal's jurisdiction under Section 73 of the Arbitration Act. Section 73 sets out the principle of "waiver" or "estoppel" in relation to objections to jurisdiction. It states that if a party proceeds with the arbitration without promptly raising an objection to the tribunal's jurisdiction, that party may be deemed to have waived its right to challenge the tribunal's jurisdiction at a later stage.

In summary, Section 32(1) of the English Arbitration Act 1996 grants parties to arbitral proceedings the right to seek a court determination on questions relating to the substantive jurisdiction of the arbitral tribunal. The court will decide whether the tribunal has the legal authority to hear the dispute. However, it is important for parties to raise any jurisdictional objections promptly, as delay or participation in the arbitration may lead to a potential loss of the right to challenge the tribunal's jurisdiction later on.

- (2) An application under this section shall not be considered unless—
- (a) it is made with the agreement in writing of all the other parties to the proceedings, or
 - (b) it is made with the permission of the tribunal and the court is satisfied—
 - (i) that the determination of the question is likely to produce substantial savings in costs,
 - (ii) that the application was made without delay, and
 - (iii) that there is good reason why the matter should be decided by the court.

Section 32(2) of the English Arbitration Act 1996 sets out the conditions that must be met for an application to be considered by the court when seeking a determination on a question of substantive jurisdiction. Let us break down the key requirements:

1. **Agreement of All Parties:** The first condition under Section 32(2) is that the application must be made with the agreement in writing of all the other parties involved in the arbitral proceedings. In other words, if all parties consent to having the question of substantive jurisdiction determined by the court, the application can proceed.
2. **Permission of the Tribunal:** If all parties do not agree to the court application, the second condition comes into play. In this case, the application may still be considered if the party seeking the court's determination obtains permission from the arbitral tribunal. This means the tribunal must permit the party to apply to the court for a decision on the question of substantive jurisdiction.
3. **Conditions for Court Permission:** To obtain the tribunal's permission and proceed with the court application, the following three conditions must be met:
 - a. **Substantial Cost Savings:** The court must be satisfied that the determination of the jurisdictional question is likely to produce substantial savings in costs. This requirement emphasises the importance of cost-effectiveness in deciding whether the court's involvement is necessary.
 - b. **No Delay:** The application must be made without delay. Parties are expected to raise the jurisdictional challenge promptly, and any delay in doing so may affect the court's decision to permit the application.
 - c. **Good Reason:** The court must be convinced that there is a good reason why the question of substantive jurisdiction should be decided by the court. This could involve issues that require legal clarification or significant legal complexity that merits judicial intervention.

In summary, Section 32(2) of the English Arbitration Act 1996 outlines the conditions that must be satisfied for a court application seeking a determination on a question of substantive jurisdiction. Either all parties must agree to the court application in writing, or the party seeking the court's determination must obtain permission from the tribunal while meeting specific criteria, including substantial cost savings, promptness in application, and a compelling reason for court involvement.

- (3) An application under this section, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the matter should be decided by the court.**

Section 32(3) of the English Arbitration Act 1996 specifies a requirement for applications seeking a court determination on a question of substantive jurisdiction when not made with the agreement of all parties involved in the arbitral proceedings. Let us break down this provision:

1. **Grounds for the Application:** If a party wishes to apply to the court for a determination on the question of substantive jurisdiction and does not have the agreement of all the other parties to the arbitration, the application must clearly state the grounds on which it is being made. In other words, the applicant must provide reasons or arguments explaining why they believe the matter should be decided by the court.
2. The provision emphasises the need for transparency and clarity in court applications related to jurisdictional issues. By stating the grounds, the party seeking the court's determination is required to present a coherent case as to why the matter should be resolved by the judicial system rather than through the arbitral process.
3. This requirement aims to ensure that the court can assess the merits of the application properly, understand the basis of the party's request for court intervention, and determine whether the conditions under Section 32(2)(b) are met.

In summary, Section 32(3) of the English Arbitration Act 1996 mandates that if an application is made seeking a court determination on substantive jurisdiction without the agreement of all parties to the arbitration, the application must specify the grounds or reasons why the party believes the matter should be decided by the court. This requirement fosters transparency and facilitates a comprehensive evaluation of the application by the court.

- (4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.**

Section 32(4) of the English Arbitration Act 1996 deals with the conduct of arbitral proceedings when an application is made to the court for a determination on a question of substantive jurisdiction. Let us analyse this provision:

1. **General Principle:** The provision states that unless the parties have agreed otherwise, the arbitral tribunal is allowed to continue with the arbitral proceedings and even make an award while an application seeking the court's determination on a question of substantive jurisdiction is pending.
2. **Continuation of Arbitral Proceedings:** This means that the arbitral tribunal can proceed with hearing the case, taking evidence, considering arguments, and making substantive decisions on the merits of the dispute, even if one of the parties has raised an application challenging the tribunal's jurisdiction before a court.

3. **Parallel Proceedings:** As a result of this provision, there may be parallel proceedings occurring simultaneously—the ongoing arbitral proceedings and the separate court application regarding jurisdiction. The arbitral tribunal will continue with its work while the court is considering the jurisdictional question.
4. **Parties' Agreement:** The provision highlights that if the parties have a specific agreement that the arbitral proceedings must be stayed or suspended during the pendency of the court application on jurisdiction, this general rule will not apply. Parties are free to agree on different arrangements regarding the continuation or suspension of the arbitral process in such situations.

In summary, Section 32(4) of the English Arbitration Act 1996 allows the arbitral tribunal to continue with the arbitral proceedings and make an award while a court application seeking a determination on a question of substantive jurisdiction is pending, unless the parties have agreed otherwise. This provision aims to ensure that the arbitral process can move forward without unnecessary delays, subject to any contrary agreement between the parties.

(5) Unless the court gives leave, no appeal lies from a decision of the court whether the conditions specified in subsection (2) are met.

Section 32(5) of the English Arbitration Act 1996 deals with the appealability of decisions made by the court in relation to applications for a determination of substantive jurisdiction. Here is the analysis:

1. **General Rule:** The provision states that, as a general rule, no appeal lies from a decision of the court concerning whether the conditions specified in subsection (2) are met. Subsection (2) sets out the circumstances under which the court may entertain an application for a determination of substantive jurisdiction.
2. **Appeal Restriction:** This means that the parties, or any interested party, cannot automatically appeal to a higher court if they are dissatisfied with the court's ruling on whether the application meets the conditions in subsection (2).
3. **Leave Requirement:** However, the section introduces an exception to the general rule. If a party wishes to appeal a court decision on jurisdiction, they must first seek leave (permission) from the court before initiating the appeal. The court will consider whether there are valid reasons to allow the appeal, such as important points of law or other compelling factors.
4. **Purpose of the Provision:** The provision aims to promote efficiency and finality in arbitral proceedings. By restricting automatic appeals and requiring leave, it discourages unnecessary challenges to jurisdictional decisions, which could potentially prolong the resolution of the dispute.

In summary, section 32(5) of the English Arbitration Act 1996 prohibits an automatic appeal from a decision of the court on whether the conditions specified in subsection (2) are met. To appeal such a decision, a party must first obtain leave from the court, demonstrating that there are valid grounds for the appeal. This provision contributes to the overall goal of facilitating the smooth and timely resolution of arbitral disputes.

- (6) **The decision of the court on the question of jurisdiction shall be treated as a judgment of the court for the purposes of an appeal.**

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

Section 32(5) of the English Arbitration Act 1996 actually pertains to the appealability of the court's decision on jurisdiction, and it introduces certain conditions for granting leave to appeal. Here is the correct analysis:

1. **Jurisdictional Decision as Judgment:** The provision establishes that the court's decision on the question of jurisdiction in arbitral proceedings is treated as a judgment of the court. This means that the court's determination on jurisdiction carries the same weight and importance as any other court judgment.
2. **Appeal with Leave:** While the decision on jurisdiction is considered a judgment, the right to appeal is not automatic. An appeal against the court's decision on jurisdiction requires the leave (permission) of the court.
3. **Grounds for Granting Leave:** The court may grant leave to appeal the jurisdictional decision if it involves a "point of law which is one of general importance" or "is one which for some other special reason should be considered by the Court of Appeal". In other words, the court will only permit an appeal if there are compelling reasons that the case raises significant legal issues or has broader implications for other cases.
4. **Ensuring Efficiency and Finality:** By requiring leave for appeals on jurisdictional decisions, the provision aims to ensure efficiency and finality in arbitral proceedings. It discourages unnecessary challenges to jurisdictional decisions, which could otherwise delay the arbitration process.

In summary, section 32(5) of the English Arbitration Act 1996 states that the court's decision on the question of jurisdiction is treated as a judgment of the court. However, no appeal lies without the leave of the court, and such leave will only be granted if the appeal involves a point of law of general importance or some other special reason that justifies consideration by the Court of Appeal. This provision aims to strike a balance between ensuring fairness in arbitration and promoting efficiency and finality in the resolution of disputes.

THE ARBITRAL PROCEEDINGS

33 GENERAL DUTY OF THE TRIBUNAL

(1) The tribunal shall—

- (a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent, and
- (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.

Section 33(1) of the English Arbitration Act 1996 sets out the general duties and obligations of the arbitral tribunal in conducting arbitral proceedings. The section emphasises the importance of fairness, impartiality, and efficiency in the arbitration process. Let us break down the key points:

1. **Duty to Act Fairly and Impartially:** The arbitral tribunal is required to act fairly and impartially between the parties. This means that the tribunal should not favour one party over the other and should maintain an objective and unbiased approach throughout the proceedings.
2. **Giving Each Party a Reasonable Opportunity:** The tribunal must provide each party with a reasonable opportunity to present its case and respond to the arguments and evidence of the opposing party. This ensures that both parties have a fair chance to be heard and present their respective positions.
3. **Adopting Suitable Procedures:** The tribunal is empowered to adopt procedures that are appropriate and suitable for the circumstances of the particular case. This allows flexibility in the conduct of the arbitration, considering the complexity, nature, and specific needs of each dispute.
4. **Avoiding Unnecessary Delay or Expense:** The tribunal is required to be proactive in managing the arbitration process and should strive to avoid any unnecessary delay or expense. Efficient case management helps to expedite the resolution of disputes and minimise costs for the parties involved.
5. **Providing a Fair Means of Resolution:** Ultimately, the tribunal's main objective is to provide a fair and just means for resolving the matters that are subject to arbitration. The section emphasises the importance of achieving a fair outcome based on the merits of the case.

In summary, section 33(1) of the English Arbitration Act 1996 outlines the fundamental principles that govern the conduct of the arbitral tribunal. The section emphasises fairness, impartiality, and efficiency, ensuring that both parties have an adequate opportunity to present their case and that the arbitration process is conducted in a manner that promotes a fair resolution of the disputes at hand.

- (2) The tribunal shall comply with that general duty in conducting the arbitral proceedings, in its decisions on matters of procedure and evidence and in the exercise of all other powers conferred on it.**

Section 33(2) of the English Arbitration Act 1996 reinforces the scope and application of the general duty imposed on the arbitral tribunal, as outlined in section 33(1). This subsection emphasises that the tribunal's duty to act fairly and impartially, giving each party a reasonable opportunity, and adopting suitable procedures extends to various aspects of the arbitral process. Let us explore the key points of section 33(2):

1. **Conduct of Arbitral Proceedings:** The arbitral tribunal is required to comply with its general duty of fairness and impartiality throughout the entire course of the arbitral proceedings. This means that from the commencement to the conclusion of the arbitration, the tribunal must act fairly and maintain an impartial stance in its interactions with the parties and consideration of their arguments.
2. **Decisions on Matters of Procedure and Evidence:** The tribunal's decisions on procedural matters and the admissibility of evidence must also be in line with the general duty. It should ensure that the procedures adopted are appropriate for the case and that both parties are treated fairly when it comes to evidentiary matters.
3. **Exercise of All Other Powers Conferred:** The general duty applies to all other powers and functions conferred on the arbitral tribunal by the arbitration agreement or the applicable arbitration rules. This includes the tribunal's power to make interim orders, determine jurisdictional issues, and ultimately render an award.

In summary, section 33(2) of the English Arbitration Act 1996 reinforces that the general duty of fairness and impartiality imposed on the arbitral tribunal is comprehensive in scope. It applies not only to the tribunal's decisions on substantive matters but also to its handling of procedural and evidentiary issues. The section emphasises the importance of maintaining a consistent and equitable approach throughout the arbitration process.

34 PROCEDURAL AND EVIDENTIAL MATTERS

- (1) It shall be for the tribunal to decide all procedural and evidential matters, subject to the right of the parties to agree any matter.**

Section 34(1) of the English Arbitration Act 1996 addresses the autonomy and authority of the arbitral tribunal in determining procedural and evidential matters during the arbitration proceedings. Let us break down the key points of this section:

1. **Procedural and Evidential Matters:** Section 34(1) establishes that the arbitral tribunal has the primary responsibility to decide all procedural and evidential matters in the arbitration. This includes issues related to the conduct of hearings, submission of evidence, examination of witnesses, and the general procedural framework governing the arbitration.
2. **Subject to Party Agreement:** While the tribunal holds the authority to decide on procedural and evidential matters, the Act recognises the right of the parties to agree on

any matter within the scope of the arbitral process. This means that if the parties reach an agreement on specific procedural aspects, such as the format of hearings or the admission of certain evidence, the tribunal must respect and follow that agreement.

In essence, section 34(1) upholds the principle of party autonomy in arbitration. It grants the arbitral tribunal broad discretion in determining procedural and evidential matters, allowing it to tailor the arbitration proceedings to suit the specific circumstances of the case. However, this discretion is not absolute, as it is subject to any prior agreement between the parties. The section strikes a balance between granting the tribunal sufficient authority to manage the arbitration effectively while respecting the parties' freedom to tailor the process to their preferences within the boundaries of the law.

(2) Procedural and evidential matters include—

- (a) when and where any part of the proceedings is to be held;**
- (b) the language or languages to be used in the proceedings and whether translations of any relevant documents are to be supplied;**
- (c) whether any and if so what form of written statements of claim and defence are to be used, when these should be supplied and the extent to which such statements can be later amended;**
- (d) whether any and if so which documents or classes of documents should be disclosed between and produced by the parties and at what stage;**
- (e) whether any and if so what questions should be put to and answered by the respective parties and when and in what form this should be done;**
- (f) whether to apply strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion, and the time, manner and form in which such material should be exchanged and presented;**
- (g) whether and to what extent the tribunal should itself take the initiative in ascertaining the facts and the law;**
- (h) whether and to what extent there should be oral or written evidence or submissions.**

Section 34(2) of the English Arbitration Act 1996 further elaborates on the scope of procedural and evidential matters that fall within the jurisdiction of the arbitral tribunal. This section outlines various specific issues that the tribunal is empowered to decide on, including:

1. **When and Where Proceedings are Held:** The tribunal can determine the timing and location of any part of the arbitration proceedings.
2. **Language and Translation:** The tribunal can decide on the language or languages to be used in the proceedings and whether translations of relevant documents should be provided.

3. **Written Statements of Claim and Defence:** The tribunal can decide whether written statements of claim and defence should be used, when they need to be submitted, and the extent to which they can be amended later.
4. **Disclosure of Documents:** The tribunal can determine which documents or classes of documents should be disclosed between the parties and at what stage of the proceedings.
5. **Questions and Answers:** The tribunal can decide what questions should be put to and answered by the parties, as well as the format and timing for such questioning.
6. **Rules of Evidence:** The tribunal can decide whether to apply strict rules of evidence or any other rules regarding the admissibility, relevance, or weight of material presented during the proceedings, and the manner and form in which such material should be exchanged and presented.
7. **Fact-Finding Initiative:** The tribunal can decide to what extent it should take the initiative in ascertaining the facts and the law relevant to the dispute.
8. **Oral or Written Evidence or Submissions:** The tribunal can determine whether the proceedings should rely more on oral or written evidence or submissions.

Overall, Section 34(2) emphasises the broad discretion given to the arbitral tribunal to decide the procedural and evidential aspects of the arbitration. It allows the tribunal to adapt the process according to the specific needs and complexities of each case, ensuring a flexible and efficient resolution of the dispute. However, this discretion is subject to any agreement reached by the parties regarding these procedural matters.

(3) The tribunal may fix the time within which any directions given by it are to be complied with, and may if it thinks fit extend the time so fixed (whether or not it has expired).

Section 34(3) of the English Arbitration Act 1996 grants the arbitral tribunal the authority to set time limits for compliance with the directions it issues during the arbitration proceedings. These directions pertain to various procedural matters, as discussed in Section 34(2). The tribunal has the discretion to determine reasonable timeframes for the parties to adhere to these directions. Key points regarding Section 34(3):

1. **Fixing Time for Compliance:** The tribunal has the power to specify the time within which the parties must comply with the directions issued. These directions may relate to matters such as submitting written statements, producing documents, providing evidence, or any other procedural requirements deemed necessary for the fair conduct of the arbitration.
2. **Extension of Time:** The tribunal may choose to extend the time initially fixed for compliance, even after the specified time has already passed. This means that the tribunal has the flexibility to accommodate any reasonable request for an extension of time if it deems fit.

By enabling the tribunal to set and modify time limits, Section 34(3) ensures that the arbitration process remains efficient and expeditious while allowing the tribunal to consider the complexity and

particular circumstances of the case. The flexibility in time management helps strike a balance between ensuring that parties have sufficient time to comply with procedural requirements and avoiding unnecessary delays in the arbitration proceedings.

35 CONSOLIDATION OF PROCEEDINGS AND CONCURRENT HEARINGS

(1) The parties are free to agree—

(a) that the arbitral proceedings shall be consolidated with other arbitral proceedings, or

(b) that concurrent hearings shall be held,

on such terms as may be agreed.

Section 35(1) of the English Arbitration Act 1996 grants the parties the freedom to agree on two specific matters relating to the arbitration proceedings:

1. Consolidation of Arbitral Proceedings: The parties have the option to agree that the ongoing arbitral proceedings should be consolidated with other arbitral proceedings. Consolidation refers to combining two or more separate arbitration cases into a single proceeding, allowing the issues to be addressed jointly. This can be beneficial when there are related disputes between the same parties or arising out of the same circumstances, as it can lead to efficiency and consistency in resolving such disputes.
2. Concurrent Hearings: The parties may also agree to hold concurrent hearings, which means conducting multiple hearings simultaneously, typically for different aspects or issues of the arbitration. Concurrent hearings can be helpful when there are related but distinct issues that can be addressed separately, possibly saving time and resources.

It is essential to note that these agreements can be reached on terms as determined by the parties involved. Therefore, parties can tailor the consolidation or concurrent hearing arrangements to suit the specific circumstances of their arbitration case.

The purpose of this provision is to promote flexibility in the arbitration process and to provide parties with the autonomy to design the proceedings in a manner that best suits their needs, subject to mutual agreement. By allowing parties to agree on these matters, the statute emphasises the importance of party autonomy in the arbitration process, fostering an arbitration system that is adaptable and responsive to the parties' preferences and requirements.

(2) Unless the parties agree to confer such power on the tribunal, the tribunal has no power to order consolidation of proceedings or concurrent hearings.

Section 35(2) of the English Arbitration Act 1996 clarifies that the arbitral tribunal does not possess the inherent power to order the consolidation of arbitral proceedings or to conduct concurrent hearings unless the parties have explicitly agreed to confer such power on the tribunal.

In other words, if the parties have not reached an agreement to grant the tribunal the authority to consolidate multiple arbitral proceedings or to conduct concurrent hearings, the tribunal is not empowered to do so on its own initiative. The tribunal's authority is limited to the powers explicitly granted by the parties in the arbitration agreement or any subsequent agreement.

This provision emphasises the significance of party consent in arbitration proceedings. Arbitration is a creature of contract, and the powers of the arbitral tribunal are derived from the arbitration agreement between the parties. Therefore, the parties have the freedom to define the scope of the tribunal's authority and to specify the procedures to be followed during the arbitration.

By requiring explicit agreement on consolidation and concurrent hearings, section 35(2) ensures that parties have the opportunity to consider and deliberate on whether they want to empower the tribunal with such decision-making authority. This provision helps maintain the principle of party autonomy in arbitration, enabling the parties to determine the structure and conduct of the proceedings according to their preferences and needs.

36 LEGAL OR OTHER REPRESENTATION

(1) Unless otherwise agreed by the parties, a party to arbitral proceedings may be represented in the proceedings by a lawyer or other person chosen by him.

Section 36(1) of the English Arbitration Act 1996 addresses the representation of parties in arbitral proceedings. It states that unless the parties have agreed otherwise, a party to the arbitration has the right to be represented by a lawyer or any other person of their choice during the arbitral proceedings. Key points to note about Section 36:

1. **Representation Rights:** The provision recognises the right of a party to have legal representation or representation by any other person of their choosing. This ensures that parties can be adequately represented and assisted by professionals or individuals with expertise in the relevant legal or technical fields.
2. **Freedom of Choice:** The section emphasises the principle of party autonomy in arbitration. It gives parties the freedom to decide how they wish to be represented during the proceedings. They may choose legal counsel or any other person they deem appropriate to represent their interests effectively.
3. **Express Agreement:** If the parties want to impose any restrictions or conditions on representation rights, they need to explicitly agree to it. Otherwise, the default position is that parties have the freedom to select their representatives without any specific limitations.
4. **Impartiality and Fairness:** While parties have the right to choose their representatives, the arbitral tribunal is still responsible for ensuring that the proceedings are conducted fairly and impartially. The tribunal may intervene if there are any concerns about the conduct of representatives that could undermine the fairness of the proceedings.
5. **Professional Conduct:** The representatives chosen by the parties are expected to adhere to the professional standards and ethical conduct applicable to their profession. They

should conduct themselves in a manner that upholds the integrity and fairness of the arbitration process.

Overall, Section 36(1) promotes the principle of party autonomy and recognises the importance of allowing parties to have a say in how they are represented during arbitral proceedings. It ensures that parties can exercise their rights to representation and have a meaningful opportunity to present their case effectively before the arbitral tribunal.

37 POWER TO APPOINT EXPERTS, LEGAL ADVISERS OR ASSESSORS

(1) Unless otherwise agreed by the parties—

(a) the tribunal may—

- (i) appoint experts or legal advisers to report to it and the parties, or**
- (ii) appoint assessors to assist it on technical matters,**

and may allow any such expert, legal adviser or assessor to attend the proceedings; and

(b) the parties shall be given a reasonable opportunity to comment on any information, opinion or advice offered by any such person.

Section 37(1) of the English Arbitration Act 1996 deals with the appointment of experts, legal advisers, and assessors in arbitral proceedings. It outlines the tribunal's powers to seek expert assistance and the rights of the parties in such circumstances. Key points to note about Section 37(1):

1. **Expert or Legal Adviser Appointment:** The arbitral tribunal has the authority to appoint experts or legal advisers to provide reports or opinions on specific technical or legal matters relevant to the dispute. The appointment can be made at the tribunal's discretion, without requiring explicit consent from the parties.
2. **Assessor Appointment:** The tribunal also has the power to appoint assessors to assist it in understanding technical aspects of the dispute. Assessors are individuals with expertise in specific technical fields relevant to the arbitration, and their role is to provide specialised knowledge to the tribunal.
3. **Attendance at Proceedings:** The section allows any appointed expert, legal adviser, or assessor to attend the arbitral proceedings. Their presence can be beneficial for the tribunal to have direct access to their expertise and to ensure a thorough understanding of the relevant technical or legal issues.
4. **Parties' Right to Comment:** Even though the tribunal has the authority to appoint experts or assessors, the parties have the right to be given a reasonable opportunity to comment on any information, opinions, or advice provided by these individuals. This provision safeguards the parties' right to be heard and to challenge any expert evidence or advice presented during the proceedings.

5. Agreement to the Contrary: The section provides for an “unless otherwise agreed” provision, meaning that the parties can deviate from the default position if they mutually agree on different arrangements regarding the appointment of experts, legal advisers, or assessors.

In summary, Section 37(1) promotes efficiency and fairness in arbitral proceedings by allowing the tribunal to seek expert assistance when required. At the same time, it ensures that the parties have a meaningful opportunity to provide input and respond to any expert evidence or advice offered during the arbitration process.

(2) The fees and expenses of an expert, legal adviser or assessor appointed by the tribunal for which the arbitrators are liable are expenses of the arbitrators for the purposes of this Part.

Section 37(2) of the English Arbitration Act 1996 deals with the allocation of fees and expenses incurred in connection with the appointment of experts, legal advisers, or assessors by the arbitral tribunal. Key points to note about section 37(2):

1. Expenses of the Arbitrators: This provision states that the fees and expenses incurred for appointing an expert, legal adviser, or assessor by the tribunal are treated as expenses of the arbitrators. In other words, these costs are considered as part of the overall expenses associated with the conduct of the arbitral proceedings.
2. Liability of the Arbitrators: The section establishes that the arbitrators are liable for the fees and expenses of the appointed expert, legal adviser, or assessor. The expenses are to be borne by the arbitrators collectively, rather than being allocated individually to the parties.
3. Relationship to Other Provisions: Section 37(2) falls under Part I of the English Arbitration Act 1996, which contains general provisions applicable to all arbitrations. The allocation of expenses is significant as it determines who ultimately bears the cost of engaging these experts, legal advisers, or assessors during the arbitration process.
4. Agreement of the Parties: The section does not specify whether the parties have the option to agree otherwise regarding the allocation of these expenses. However, it is common for the parties to make specific agreements on cost allocation, including any fees and expenses related to expert or assessor appointments.

In summary, section 37(2) clarifies that the expenses incurred for appointing experts, legal advisers, or assessors by the arbitral tribunal are considered as part of the arbitrators’ expenses. The provision ensures transparency in the allocation of costs and helps maintain a fair and efficient arbitration process.

38 GENERAL POWERS EXERCISABLE BY THE TRIBUNAL

(1) The parties are free to agree on the powers exercisable by the arbitral tribunal for the purposes of and in relation to the proceedings.

Section 38(1) of the English Arbitration Act 1996 addresses the powers of the arbitral tribunal and emphasises the principle of party autonomy in arbitration proceedings. Key points to note about Section 38(1):

1. **Party Autonomy:** The provision highlights the fundamental principle of party autonomy in arbitration. It states that the parties are free to agree on the powers that the arbitral tribunal can exercise during the proceedings. This means that the parties have the flexibility to define the scope and extent of the tribunal’s authority according to their specific needs and requirements.
2. **Scope of Powers:** The agreement between the parties can cover various aspects of the arbitral tribunal’s powers. This may include, but is not limited to, the ability to issue orders for the production of documents, the power to conduct site visits, the authority to grant interim measures, and any other procedural or substantive matters relevant to the arbitration.
3. **Limits to Party Autonomy:** While the parties have considerable freedom in shaping the powers of the arbitral tribunal, there are some inherent limits. The agreed powers must be consistent with the principles of due process and must not be in violation of the fundamental principles of the law or public policy.
4. **Default Provisions:** In the absence of an agreement between the parties regarding the tribunal’s powers, the default provisions of the English Arbitration Act 1996 and the applicable institutional rules will apply.
5. **Enhancing Efficiency and Flexibility:** Allowing the parties to agree on the tribunal’s powers enhances the efficiency and flexibility of the arbitration process. It enables the parties to tailor the proceedings to their specific needs and preferences, potentially leading to a more effective and customised dispute resolution mechanism.

In summary, Section 38(1) emphasises the importance of party autonomy in arbitration by allowing the parties to freely agree on the powers that the arbitral tribunal can exercise in relation to the proceedings. This provision promotes a more tailored and efficient arbitration process, as the parties can determine the extent of the tribunal’s authority according to their specific dispute and preferences.

(2) Unless otherwise agreed by the parties the tribunal has the following powers.

Section 38(2) of the English Arbitration Act 1996 lists the default powers of the arbitral tribunal in the absence of an agreement between the parties on the tribunal’s powers. These default powers ensure that the arbitration process operates smoothly even when the parties have not explicitly defined the scope of the tribunal’s authority. Key points to note about Section 38(2):

1. **Default Powers:** This subsection outlines the powers that the arbitral tribunal automatically possesses in the absence of any specific agreement between the parties. These powers serve as a baseline, ensuring that the tribunal can effectively conduct the arbitration and make necessary decisions.
2. **General and Broad Powers:** The default powers are intentionally drafted in general terms to grant the arbitral tribunal flexibility in managing the proceedings. The language used in this subsection is broad, enabling the tribunal to address various procedural and substantive issues that may arise during the arbitration.
3. **Specific Default Powers:** Section 38(2) does not provide an exhaustive list of the tribunal's default powers but rather outlines the general nature of these powers. Some common powers include the ability to determine the admissibility of evidence, issue procedural orders, conduct hearings, and make awards.
4. **Compliance with Due Process:** While the tribunal possesses these default powers, it must exercise them in accordance with the principles of due process, fairness, and impartiality. The tribunal must also adhere to the mandatory provisions of the law and the arbitration agreement.
5. **Supplementation by Institutional Rules:** In practice, many arbitrations are governed by institutional arbitration rules that supplement and complement the default powers provided by Section 38(2). These rules often detail the procedures to be followed, the powers of the tribunal, and other important aspects of the arbitration process.
6. **Limitations and Legal Framework:** The arbitral tribunal's powers under Section 38(2) are subject to any limitations imposed by the law or the arbitration agreement. For instance, the tribunal must respect any applicable legal requirements and cannot exceed its jurisdiction as defined by the parties' agreement.

In summary, Section 38(2) outlines the default powers of the arbitral tribunal in the absence of an agreement between the parties on the scope of these powers. These general powers grant the tribunal flexibility to manage the proceedings effectively, subject to compliance with due process and any limitations set by the law or the arbitration agreement. The parties may also refer to institutional rules to supplement and clarify the tribunal's powers in practice.

(3) The tribunal may order a claimant to provide security for the costs of the arbitration.

This power shall not be exercised on the ground that the claimant 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.**

Section 38(3) of the English Arbitration Act 1996 grants the arbitral tribunal the power to order a claimant to provide security for the costs of the arbitration. This provision allows the tribunal to protect

the respondent against the risk of costs if the claimant’s claim is unsuccessful. Key points to note about Section 38(3):

1. Security for Costs: “Security for costs” refers to a financial guarantee or deposit that the tribunal may require from the claimant to cover the respondent’s potential legal costs and expenses in the arbitration. It is a measure to ensure that the respondent is not burdened with the costs of the arbitration if the claimant fails to pay these expenses after an unfavourable outcome.
2. Discretionary Power: The tribunal’s power to order security for costs is discretionary, meaning that it is up to the tribunal to decide whether to exercise this power or not. The tribunal will consider the circumstances of the case and the parties’ submissions before making a determination.
3. Limitations on Exercising the Power: Section 38(3) provides specific limitations on when the tribunal can exercise its power to order security for costs. The tribunal cannot use this power solely based on the claimant’s residency or incorporation outside the United Kingdom. In other words, being a foreign individual or entity does not automatically trigger the tribunal’s power to demand security for costs.
4. Purpose of the Limitations: The limitations in Section 38(3) aim to strike a balance between protecting the respondent’s financial interests and ensuring that legitimate claims are not unduly hindered by excessive financial requirements. By excluding certain situations from the scope of the tribunal’s power, the provision aims to prevent the abuse of this remedy against foreign claimants.
5. Policy Considerations: The limitation on ordering security for costs in cases involving foreign claimants is in line with the principles of promoting international arbitration and providing an equal and neutral platform for parties from different jurisdictions. It encourages a level playing field and avoids discouraging foreign parties from participating in English-seated arbitrations.

In summary, Section 38(3) of the English Arbitration Act 1996 grants the arbitral tribunal the discretionary power to order a claimant to provide security for the costs of the arbitration. However, the tribunal cannot exercise this power solely based on the claimant’s foreign residency or incorporation. The provision aims to balance the protection of respondents’ financial interests while ensuring fairness and accessibility for foreign parties engaging in arbitration in the United Kingdom.

- (4) The tribunal may 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—
- (a) for the inspection, photographing, preservation, custody or detention of the property by the tribunal, an expert or a party, or
 - (b) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property.

Section 38(4) of the English Arbitration Act 1996 empowers the arbitral tribunal to issue directions concerning the treatment and handling of any property that is the subject of the arbitration proceedings or is relevant to any issue in the proceedings. This provision allows the tribunal to manage and regulate the physical property related to the dispute effectively. Key points to note about Section 38(4):

1. **Scope of Property:** The term “property” in this context refers to any tangible or intangible item that is relevant to the arbitration proceedings. It could include physical objects, documents, records, or other forms of evidence.
2. **Preservation and Inspection:** The tribunal may issue directions for the inspection, photographing, preservation, custody, or detention of the property. This means that the tribunal can determine how the property should be handled, secured, and protected during the arbitration process.
3. **Samples and Observations:** The tribunal can also order that samples be taken from the property or that any observation or experiment be conducted on the property. This allows the tribunal to gather evidence or seek expert opinions on specific aspects of the property.
4. **Involvement of Experts or Parties:** The directions provided by the tribunal may involve experts, parties, or the tribunal itself in carrying out the actions related to the property. The tribunal has the authority to decide who should handle specific tasks concerning the property.
5. **Purpose of the Provision:** Section 38(4) aims to facilitate a fair and efficient arbitration process by allowing the tribunal to manage the relevant property in a manner that is conducive to fact-finding and evidence presentation. It ensures that the property is adequately preserved and that necessary actions can be taken to assess its significance to the proceedings.
6. **Tribunal’s Discretion:** The power granted to the tribunal under section 38(4) is discretionary, meaning the tribunal has the flexibility to tailor its directions to the unique circumstances of each case.

In summary, section 38(4) of the English Arbitration Act 1996 gives the arbitral tribunal the authority to issue directions concerning the handling and treatment of property that is the subject of the arbitration proceedings or relevant to the issues in the proceedings. The tribunal can provide instructions for inspection, preservation, custody, and other actions necessary to ensure the proper management of the property during the arbitration process. This provision helps ensure a fair and efficient resolution of disputes through proper handling and assessment of relevant evidence.

(5) The tribunal may 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) of the English Arbitration Act 1996 grants the arbitral tribunal the power to direct that a party or witness involved in the arbitration proceedings be examined on oath or affirmation. This provision enables the tribunal to gather evidence effectively and ensures that witnesses provide truthful and accurate information during the proceedings. Key points to note about Section 38(5):

1. **Examination on Oath or Affirmation:** The provision allows the tribunal to require a party or witness to provide testimony under oath or affirmation. Oaths and affirmations serve as solemn declarations by individuals to tell the truth, and they hold legal significance.
2. **Compelling Witness Cooperation:** By having the power to administer oaths or affirmations, the tribunal can compel witnesses to cooperate and provide truthful statements during their examination. This is crucial for ensuring that the evidence presented is reliable and credible.
3. **Similar to Court Proceedings:** The power granted to the tribunal under Section 38(5) is akin to the authority exercised by courts in civil proceedings to administer oaths to witnesses during testimony.
4. **Fairness and Reliability:** Swearing witnesses under oath or allowing them to affirm provides an added level of solemnity and may encourage witnesses to take their testimony seriously. This enhances the reliability and trustworthiness of the evidence presented during the arbitration.
5. **Tribunal's Discretion:** The provision gives the arbitral tribunal discretion to decide when it is appropriate to direct a witness or party to be examined on oath or affirmation. The tribunal may make such a direction based on the particular circumstances of the case.
6. **Adherence to Legal Formalities:** By empowering the tribunal to administer oaths or affirmations, the arbitration process aligns with some of the procedural formalities commonly associated with court proceedings.

In summary, section 38(5) of the English Arbitration Act 1996 empowers the arbitral tribunal to direct that a party or witness involved in the arbitration proceedings be examined on oath or affirmation. This provision ensures that witnesses provide reliable and credible testimony, as they are bound by the solemnity of an oath or affirmation. The tribunal's discretion to use this power allows it to enhance the fairness and effectiveness of the arbitration process by gathering reliable evidence from witnesses.

(6) The tribunal may 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) of the English Arbitration Act 1996 grants the arbitral tribunal the power to issue directions to a party involved in the arbitration proceedings. These directions pertain to the preservation of evidence that is within the party's custody or control. This provision is crucial for

ensuring the integrity and availability of relevant evidence during the course of the arbitration. Key points to note about Section 38(6):

1. **Preservation of Evidence:** The provision emphasises the importance of preserving evidence that may be relevant to the arbitration proceedings. Preserving evidence helps prevent the loss, destruction, or alteration of information that could be crucial in resolving the dispute.
2. **Tribunal's Directive:** The arbitral tribunal has the authority to issue directions to a party regarding the preservation of evidence. This empowers the tribunal to ensure that relevant evidence is retained and not compromised during the proceedings.
3. **Custody or Control:** The tribunal's directions apply specifically to evidence that is within the custody or control of the party. This includes documents, records, data, or any other material that the party has access to or is responsible for maintaining.
4. **Timely Preservation:** The provision allows the tribunal to issue directions for evidence preservation at any appropriate stage of the arbitration. Timely preservation is vital to maintaining the integrity of evidence and ensuring that it remains available for examination and consideration.
5. **Procedural Flexibility:** Section 38(6) provides the tribunal with flexibility in devising appropriate directions tailored to the circumstances of the case. The tribunal can take into account the nature of the evidence, the parties' cooperation, and the potential impact on the proceedings.
6. **Compliance with Tribunal's Directions:** It is incumbent upon the party receiving the directions to comply with the tribunal's instructions regarding evidence preservation. This ensures that parties cooperate in the arbitration process and facilitate the fair resolution of the dispute.

In summary, section 38(6) of the English Arbitration Act 1996 authorises the arbitral tribunal to issue directions to a party involved in the arbitration proceedings. The directions pertain to the preservation of evidence within the party's custody or control. This provision enhances the integrity and effectiveness of the arbitration process by ensuring that relevant evidence is retained and available for consideration during the proceedings.

39 POWER TO MAKE PROVISIONAL AWARDS

(1) 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) of the English Arbitration Act 1996 provides parties with the freedom to agree that the arbitral tribunal shall have the power to order provisional measures or relief during the course of the arbitration proceedings. This provisional relief may include any remedies that the tribunal would have the authority to grant in a final award. Key points to note about section 39(1):

1. **Provisional Relief:** "Provisional relief" refers to interim measures or temporary orders that the tribunal can issue to preserve the status quo, protect assets, or prevent irreparable

harm pending the final resolution of the dispute. These measures are intended to maintain the effectiveness of the arbitration process and safeguard the interests of the parties during the proceedings.

2. **Freedom to Agree:** The provision emphasises the principle of party autonomy in arbitration. Parties are allowed to negotiate and include specific provisions in their arbitration agreement to confer the power of ordering provisional relief upon the arbitral tribunal.
3. **Nature of Relief:** The provisional relief that the tribunal can order is not limited; it can encompass any relief that the tribunal would be empowered to grant in a final award. This includes, but is not restricted to, injunctive relief, specific performance, preservation of evidence, asset freezing, and interim payments.
4. **Flexibility:** Section 39(1) provides flexibility in terms of the nature and scope of the provisional relief that can be ordered. It allows the tribunal to adapt its orders to the specific circumstances of the case and the needs of the parties.
5. **Finality of Relief:** It is important to note that provisional relief is not a final determination of the dispute. The tribunal's orders for provisional relief are designed to be temporary and will remain in effect only until the issuance of the final award.
6. **Need for Agreement:** While parties have the freedom to agree to grant the tribunal the power to order provisional relief, such authority is not automatically conferred in the absence of an explicit agreement in the arbitration agreement or subsequent mutual consent.

In summary, section 39(1) of the English Arbitration Act 1996 recognises party autonomy by allowing parties to agree that the arbitral tribunal shall have the power to order provisional measures or relief during the arbitration proceedings. This provision enhances the flexibility and effectiveness of the arbitration process by enabling the tribunal to take prompt action to protect the parties' rights and interests pending the final resolution of the dispute.

(2) This includes, for instance, making—

- (a) a provisional order for the payment of money or the disposition of property as between the parties, or**
- (b) an order to make an interim payment on account of the costs of the arbitration.**

Section 39(2) of the English Arbitration Act 1996 elaborates on the types of provisional measures or relief that the arbitral tribunal may order under Section 39(1). It provides examples of the specific actions that the tribunal can take when exercising its power to grant provisional relief. Key points to note about Section 39(2):

1. **Specific Examples:** The provision lists two specific examples of the types of provisional measures that the arbitral tribunal can order:

- a. **Provisional Order for Payment or Property Disposition:** The tribunal may issue a provisional order requiring one party to pay a certain amount of money to the other party or to carry out a specific disposition of property. This may be relevant, for example, in cases involving claims for damages or where property ownership is in dispute.
 - b. **Order for Interim Payment of Arbitration Costs:** The tribunal can also order a party to make an interim payment on account of the costs of the arbitration. This allows the tribunal to ensure that the costs associated with conducting the arbitration are met during the proceedings, without waiting for the final determination of the costs at the conclusion of the case.
2. **Non-Exhaustive List:** The examples provided in section 39(2) are not exhaustive. The phrase “for instance” indicates that the list is not intended to limit the tribunal’s power to only the specified examples. The tribunal’s authority to order provisional relief extends beyond the specific instances mentioned in this subsection.
 3. **Broad Authority:** By providing specific examples, section 39(2) reinforces the tribunal’s broad discretionary power to grant various forms of provisional relief, depending on the particular circumstances of the case. The tribunal’s authority to order provisional measures is intended to be practical and flexible, promoting the effective resolution of the dispute and safeguarding the interests of the parties during the arbitration process.
 4. **Consistency with Party Autonomy:** The examples outlined in section 39(2) align with the overarching principle of party autonomy in arbitration. Parties have the freedom to agree on the types of provisional relief that the tribunal may order or may agree on a broader scope of authority, as long as it does not conflict with any mandatory laws or public policy considerations.

In conclusion, section 39(2) of the English Arbitration Act 1996 provides illustrative examples of the provisional measures or relief that the arbitral tribunal may order under section 39(1). These examples highlight the tribunal’s authority to issue orders relating to the payment of money, disposition of property, and interim payments for arbitration costs. However, the list is not exhaustive, and the tribunal’s power to grant provisional relief extends to other suitable measures as appropriate for the specific circumstances of each case.

(3) Any such order shall be subject to the tribunal’s final adjudication; and the tribunal’s final award, on the merits or as to costs, shall take account of any such order.

Section 39(3) of the English Arbitration Act 1996 addresses the effect and status of any provisional measures or orders issued by the arbitral tribunal under Section 39(1). This subsection clarifies that any provisional order made by the tribunal is subject to the tribunal’s final adjudication, and the tribunal’s final award on the merits or costs must take into account any such provisional order. Key points to note about Section 39(3):

1. **Provisional Nature of Orders:** The term “provisional” in this context means that the orders issued by the tribunal under Section 39(1) are intended to be temporary and are subject to further consideration and determination in the tribunal’s final award. The tribunal may

issue these orders to provide immediate relief or protection during the course of the arbitration proceedings before reaching a final decision on the merits of the case.

2. **Subordination to Final Adjudication:** Section 39(3) emphasises that any provisional order made by the tribunal does not have the same finality and conclusiveness as the tribunal's ultimate decision in its final award. The provisional order remains subordinate to the tribunal's final adjudication, which means that the parties are not bound by the provisional order beyond the tribunal's final award.
3. **Final Award's Consideration:** The tribunal's final award, whether it relates to the merits of the dispute or costs, must take into account any provisional order previously issued. This means that the tribunal will consider the provisional measures taken and any relief granted when rendering its final decision on the substantive issues of the case or the allocation of costs. The provisional order may influence the tribunal's final determination on the matter to ensure consistency and fairness.
4. **Flexibility and Case-by-Case Basis:** Section 39(3) underscores the flexibility of the arbitral process. The tribunal has the discretion to issue provisional orders tailored to the specific needs of each case, and it can adapt the relief granted based on the evolving circumstances of the proceedings.
5. **Parties' Compliance:** While provisional orders are not binding beyond the final award, parties are expected to comply with such orders unless and until they are modified or reversed by the tribunal. The respect for provisional orders helps maintain the efficiency and effectiveness of the arbitral process and ensures that the relief granted by the tribunal is not undermined during the proceedings.

In conclusion, Section 39(3) of the English Arbitration Act 1996 highlights that any provisional orders issued by the arbitral tribunal are temporary and subject to the tribunal's final adjudication. The final award must consider the provisional orders, and parties are expected to comply with such orders until the tribunal's final decision. This provision enhances the effectiveness of provisional measures in arbitration and ensures that the final award considers any relief granted by the tribunal during the proceedings.

(4) Unless the parties agree to confer such power on the tribunal, the tribunal has no such power.

This does not affect its powers under section 47 (awards on different issues, &c.).

Section 39(4) of the English Arbitration Act 1996 addresses the scope of the tribunal's power to issue provisional orders. It clarifies that unless the parties agree to confer such power on the tribunal, the tribunal does not have the authority to issue provisional orders under Section 39(1) for interim relief. However, this limitation on the tribunal's power to issue provisional orders does not affect its powers under Section 47, which pertains to making awards on different issues. Key points to note about Section 39(4):

1. **Limited Power:** Section 39(4) specifies that the tribunal's authority to issue provisional orders is not automatic or inherent. It is contingent upon the parties' agreement. In other words, the parties must expressly confer such power on the tribunal to order provisional

measures during the arbitration proceedings. If the parties have not agreed to grant this power, the tribunal cannot issue provisional orders.

2. **Party Autonomy:** The principle of party autonomy is a fundamental aspect of arbitration. It allows the parties to tailor the arbitration process to their specific needs and preferences. By requiring the parties' agreement to empower the tribunal with the authority to issue provisional orders, section 39(4) respects party autonomy and ensures that the tribunal's scope of power is determined by the parties' consent.
3. **Section 47 Powers Unaffected:** Section 39(4) explicitly states that the tribunal's lack of power to issue provisional orders does not impact its powers under section 47 of the Act. Section 47 deals with making awards on different issues, including separate awards on different claims or counterclaims and partial awards on certain matters. The tribunal's authority under section 47 remains unaffected by the absence of power to issue provisional orders.
4. **Context of Interim Relief:** The reference to section 47 implies that, even without the power to issue provisional orders, the tribunal can still render awards on the substantive issues in dispute. The tribunal's role in rendering final awards on the merits of the case is not compromised by the absence of the power to grant interim relief under section 39(1).
5. **Flexibility and Agreement:** Section 39(4) reflects the flexible nature of arbitration and emphasises the importance of the parties' agreement in shaping the arbitral process. By requiring parties' agreement to confer the power to issue provisional orders, the Act accommodates various approaches to the handling of interim relief based on the parties' preferences and needs.

In conclusion, section 39(4) of the English Arbitration Act 1996 stipulates that the tribunal can issue provisional orders for interim relief only if the parties agree to confer such power. Without the parties' agreement, the tribunal does not possess the authority to order interim relief. However, this limitation does not affect the tribunal's powers under section 47, which relate to making awards on different issues during the arbitration proceedings. The provision respects party autonomy and reinforces the significance of the parties' agreement in defining the scope of the tribunal's authority.

40 GENERAL DUTY OF PARTIES

(1) **The parties shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.**

Section 40(1) of the English Arbitration Act 1996 emphasises the duty and responsibility of the parties to cooperate and actively participate in the arbitration process to ensure that the proceedings are conducted efficiently and effectively. The language used is broad, and it encompasses various aspects of conduct during the arbitration, including but not limited to:

1. **Cooperation:** The parties are expected to cooperate with each other and the tribunal, exchanging relevant information and documents to enable a fair and informed resolution of the dispute.

2. **Compliance:** The parties must comply with the rules and procedures agreed upon or set by the arbitral tribunal, such as providing submissions within specified timelines, attending hearings, and adhering to the tribunal's orders and directions.
3. **Attendance:** The parties should attend hearings, proceedings, and meetings as required, unless there are reasonable grounds for their absence.
4. **Active Participation:** The parties are encouraged to actively participate in the arbitration by presenting their case, responding to the arguments of the other party, and assisting the tribunal in reaching a just decision.
5. **Honesty and Candour:** The parties are expected to act honestly and with candour throughout the arbitration process, disclosing relevant information and not attempting to mislead or delay the proceedings.

By imposing this duty on the parties, section 40(1) aims to promote a fair, efficient, and successful arbitration process. It reinforces the principle that arbitration is a consensual and collaborative method of dispute resolution, and parties should act in good faith to facilitate its smooth progress and resolution of the dispute. Failure to comply with this duty may result in the tribunal taking appropriate measures, including awarding costs or considering such conduct in making the final award.

(2) This includes—

- (a) complying without delay with any determination of the tribunal as to procedural or evidential matters, or with any order or directions of the tribunal, and**
- (b) where appropriate, taking without delay any necessary steps to obtain a decision of the court on a preliminary question of jurisdiction or law (see sections 32 and 45).**

Section 40(1) of the English Arbitration Act 1996 emphasises the parties' duty to ensure the proper and expeditious conduct of the arbitral proceedings. It includes two specific obligations:

1. **Complying with Tribunal Determinations and Orders:** The parties are required to promptly and without delay comply with any determination of the arbitral tribunal concerning procedural or evidential matters. This means that if the tribunal makes a ruling or provides directions on how the arbitration should proceed, the parties must follow these instructions. These determinations may include matters like the conduct of hearings, the admission of evidence, the presentation of submissions, or any other procedural aspect of the arbitration.
2. **Seeking Court Decisions on Preliminary Questions:** When necessary and appropriate, the parties are obligated to take swift action to obtain a decision from the court on a preliminary question of jurisdiction or law. This refers to issues related to the tribunal's jurisdiction to hear the case or to interpret the applicable law. If there is a dispute on such matters, a party may apply to the court for a determination. Sections 32 and 45 of the Arbitration Act outline the procedures for seeking court decisions on questions of jurisdiction or law.

The purpose of including these specific obligations in section 40(1) is to stress the importance of timely and effective participation by the parties in the arbitration process. By complying with tribunal determinations and court orders and promptly seeking court decisions on relevant preliminary questions, the parties contribute to the efficient and fair resolution of their dispute through arbitration.

Failure to meet these obligations may lead to consequences such as cost awards or other measures by the tribunal, and it could potentially impact the overall efficiency and success of the arbitration proceedings. As such, parties should approach their responsibilities with due diligence and in good faith to ensure the arbitration process is conducted smoothly and with respect for the established procedures and rules.

41 POWERS OF TRIBUNAL IN CASE OF PARTY'S DEFAULT

(1) The parties are free to agree on the powers of the tribunal in case of a party's failure to do something necessary for the proper and expeditious conduct of the arbitration.

Section 41(1) of the English Arbitration Act 1996 provides parties with the freedom to agree on the powers of the arbitral tribunal in situations where one party fails to perform an action necessary for the proper and expeditious conduct of the arbitration. This section emphasises the importance of the parties' autonomy in shaping the arbitration process according to their needs and preferences.

The powers of the arbitral tribunal referred to in this section typically pertain to how the tribunal can respond to a party's failure to comply with its procedural or evidential obligations during the course of the arbitration. These obligations may include, but are not limited to:

1. Providing documents or evidence as required.
2. Meeting deadlines for submissions.
3. Attending hearings or responding to communications promptly.
4. Complying with procedural orders or directions issued by the tribunal.

By giving parties the freedom to agree on the tribunal's powers in such situations, the law promotes party autonomy and facilitates the efficiency and effectiveness of the arbitration process. When the parties establish these powers in their arbitration agreement, it can help maintain order, ensure fairness, and prevent undue delays caused by non-compliance.

Typically, parties will define these powers in the arbitration clause of their contract or in a separate agreement, known as the "arbitration agreement". The agreed-upon powers may cover matters such as:

1. The ability of the tribunal to issue procedural orders or directions for compliance.
2. The imposition of sanctions or penalties for non-compliance.
3. The authority to draw adverse inferences or make adverse findings due to non-compliance.

4. The power to allocate costs associated with the failure to comply.

It is essential for parties to carefully consider and clearly define these powers to ensure that the arbitral process is conducted smoothly and effectively. This can help avoid disputes arising from non-compliance and facilitate the expeditious resolution of the main substantive issues in the arbitration. However, if parties do not agree on the tribunal's powers in case of non-compliance, the default provisions of the Arbitration Act will apply.

(2) Unless otherwise agreed by the parties, the following provisions apply.

Section 41(2) of the English Arbitration Act 1996 sets out default provisions that apply in the absence of an agreement between the parties regarding the powers of the arbitral tribunal in case of a party's failure to do something necessary for the proper and expeditious conduct of the arbitration. These default provisions ensure that there is a standard framework in place to address non-compliance issues when the parties have not specified their own rules in the arbitration agreement. The default provisions include the following:

1. **Procedural Orders or Directions:** The arbitral tribunal has the authority to issue procedural orders or directions to a party in response to its failure to comply with its obligations during the arbitral proceedings. These orders or directions may be necessary to rectify the non-compliance and to ensure that the arbitration proceeds properly.
2. **Sanctions or Measures:** The tribunal may impose sanctions or measures as it deems appropriate in response to a party's failure to comply. These sanctions could include warnings, cost orders, or adverse inferences. The objective is to incentivise parties to comply with their obligations and maintain the integrity of the arbitral process.
3. **Time Limits:** The tribunal can set time limits for a party to comply with any orders or directions issued. This helps ensure that parties take prompt action to rectify their non-compliance.
4. **Adverse Findings or Inferences:** The tribunal may draw adverse findings or inferences against a party that fails to comply with its obligations. These findings may be relevant when making substantive determinations in the arbitration.
5. **Cost Allocation:** The tribunal can allocate the costs associated with a party's failure to comply. For instance, the tribunal may order the non-compliant party to bear the costs resulting from the non-compliance.

It is important to note that these default provisions are subject to the overall objectives of the arbitration, which include conducting the proceedings fairly and expeditiously. The tribunal must exercise its powers judiciously, ensuring that any measures or sanctions imposed are proportionate to the non-compliance and are necessary to protect the integrity of the arbitration process.

In conclusion, section 41(2) provides a standard set of powers for the arbitral tribunal when dealing with a party's failure to comply with its obligations during the arbitration. However, parties are free to agree on their own set of rules for addressing non-compliance, and it is generally advisable for parties to include specific provisions in their arbitration agreement to tailor the process to their specific needs and requirements.

- (3) If the tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim and that the delay—**
- (a) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim, or**
 - (b) has caused, or is likely to cause, serious prejudice to the respondent,**
- the tribunal may make an award dismissing the claim.**

Section 41(3) of the English Arbitration Act 1996 addresses the issue of inordinate and inexcusable delay by the claimant in pursuing their claim in an arbitration. This provision grants the arbitral tribunal the power to dismiss the claim if certain conditions are met. Here is a breakdown of the key elements:

1. **Inordinate and Inexcusable Delay:** For this provision to be applicable, the claimant’s delay in pursuing their claim must be both inordinate and inexcusable. “Inordinate” refers to a significant and unreasonable delay that goes beyond what would be considered acceptable or normal in the circumstances. “Inexcusable” means that the reasons for the delay are not justified or reasonable.
2. **Substantial Risk of Unfair Resolution or Serious Prejudice:** The delay must give rise to a substantial risk that it is not possible to have a fair resolution of the issues in the claim, or it must have caused serious prejudice to the respondent (the party defending against the claim).
3. **Power to Dismiss the Claim:** If the tribunal is satisfied that the conditions mentioned above are met, it has the authority to make an award dismissing the claim. This means that the claimant’s case will be dismissed, and they will not be able to pursue their claim further in the arbitration.

The purpose of this provision is to prevent abusive or unjustified delays in the arbitration process that could prejudice the respondent or compromise the fairness of the proceedings. It aims to ensure that parties participate in the arbitration in a timely and efficient manner, promoting the principle of resolving disputes without undue delay.

It is important to note that the power to dismiss the claim is discretionary and should be exercised with care. The tribunal should consider all relevant circumstances, including the reasons for the delay, any attempts to justify or excuse it, and the potential impact on both parties’ rights. Additionally, the tribunal must comply with the principles of natural justice and provide the parties with a reasonable opportunity to present their arguments on the issue of delay before making a final decision.

Overall, section 41(3) empowers the arbitral tribunal to address and remedy situations where the claimant’s inordinate and inexcusable delay poses a risk to the fairness and efficiency of the arbitration process.

(4) If without showing sufficient cause a party—

- (a) fails to attend or be represented at an oral hearing of which due notice was given, or**
- (b) where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions,**

the tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on his behalf, and may make an award on the basis of the evidence before it.

Section 41(4) of the English Arbitration Act 1996 deals with the consequences of a party's failure to attend an oral hearing or submit written evidence/submissions without sufficient cause. The provision allows the arbitral tribunal to proceed with the arbitration in the absence of that party and make an award based on the available evidence before it. Here is a breakdown of the key elements:

1. Failure to Attend or Submit Evidence/Submissions: Section 41(4) applies in two situations:
 - a. A party fails to attend or be represented at an oral hearing for which due notice was given.
 - b. In cases where matters are to be dealt with in writing, a party fails to submit written evidence or make written submissions after due notice.
2. Continuation of Proceedings in Absence: If a party's absence is without sufficient cause (i.e., no valid reason is provided for the failure to attend or submit evidence/submissions), the arbitral tribunal has the authority to proceed with the arbitration despite the absence of that party.
3. Award Based on Available Evidence: In the absence of the party and any written evidence/submissions from them, the tribunal may make an award based on the evidence that is before it. This means that the tribunal will consider the evidence and submissions provided by the other parties and make its decision based on that information.

The purpose of this provision is to prevent unnecessary delays in the arbitration process caused by a party's failure to participate actively and responsibly. By giving the tribunal the power to continue with the proceedings and make an award based on available evidence, the Act ensures that the arbitration can move forward efficiently even if one party is non-compliant or uncooperative.

However, it is important to note that the tribunal's decision to proceed in the party's absence and make an award should be exercised with caution. The tribunal must carefully consider whether the party had a genuine reason for not attending or submitting evidence/submissions. If there is a valid explanation for the absence, the tribunal should not proceed in the party's absence, and the Act ensures that parties are given a fair opportunity to present their case.

Overall, section 41(4) empowers the arbitral tribunal to maintain the efficiency and fairness of the arbitration process by addressing the issue of a party's non-participation without sufficient cause.

(5) If without showing sufficient cause a party fails to comply with any order or directions of the tribunal, the tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the tribunal considers appropriate.

Section 41(5) of the English Arbitration Act 1996 addresses the situation when a party fails to comply with an order or directions issued by the arbitral tribunal without sufficient cause. The provision grants the tribunal the authority to issue a peremptory order to the same effect as the original order, specifying a time frame for the party to comply. Here is an analysis of the key elements of this section:

1. **Failure to Comply with Tribunal's Order or Directions:** Section 41(5) applies when a party fails to comply with any order or directions issued by the arbitral tribunal. These orders and directions may relate to procedural or substantive matters within the arbitration proceedings.
2. **Sufficient Cause Requirement:** The failure to comply must be without "sufficient cause". In other words, the party must not have a valid reason or excuse for its non-compliance. If the party has a legitimate explanation for its failure to comply, the tribunal will not invoke this provision.
3. **Peremptory Order by the Tribunal:** If the tribunal determines that the party's failure to comply was without sufficient cause, it can issue a peremptory order to the same effect as the original order or direction. A peremptory order is a stronger and more forceful command from the tribunal, intended to compel the party to comply promptly and effectively.
4. **Prescribing Time for Compliance:** The tribunal has the discretion to specify a time frame within which the party must comply with the peremptory order. The time prescribed by the tribunal is expected to be reasonable and appropriate under the circumstances.

The purpose of section 41(5) is to ensure compliance with the tribunal's orders and directions and to maintain the efficiency and effectiveness of the arbitration process. It gives the tribunal the power to enforce its orders and ensures that parties take their obligations seriously. By issuing a peremptory order, the tribunal emphasises the importance of complying with its decisions and establishes consequences for non-compliance.

It is worth noting that if a party still fails to comply with the peremptory order, the tribunal may take further measures as allowed by the Act, such as considering the non-compliance as an element of the proceedings or potentially drawing adverse inferences from the non-compliance when rendering its award.

Overall, section 41(5) reinforces the tribunal's authority and ability to maintain control over the arbitration proceedings, ensuring that all parties adhere to the tribunal's orders and directions in a timely and responsible manner.

(6) If a claimant fails to comply with a peremptory order of the tribunal to provide security for costs, the tribunal may make an award dismissing his claim.

Section 41(6) of the English Arbitration Act 1996 addresses a specific situation where the claimant fails to comply with a peremptory order of the arbitral tribunal to provide security for costs. This provision

grants the tribunal the authority to dismiss the claimant's claim as a consequence of their non-compliance. Here is an analysis of the key elements of this section:

1. **Peremptory Order to Provide Security for Costs:** In some cases, especially when the respondent is concerned about the claimant's ability to pay costs, the tribunal may issue a peremptory order to the claimant, directing them to provide security for costs. Security for costs is a measure that ensures the respondent's costs will be covered in case the claimant's claim fails, and the claimant is unable to pay the costs incurred by the respondent.
2. **Failure to Comply with the Peremptory Order:** Section 41(6) comes into play if the claimant fails to comply with the peremptory order to provide security for costs. The failure to comply must be without sufficient cause, meaning the claimant does not have a valid reason for not providing the required security.
3. **Consequence: Dismissal of Claim:** If the tribunal determines that the claimant's failure to provide security for costs was without sufficient cause, it may make an award dismissing the claimant's claim. In other words, the claimant's case will be dismissed, and the arbitration proceedings will not proceed any further.

The purpose of section 41(6) is to encourage claimants to comply with the tribunal's peremptory orders promptly and to provide the necessary security for costs when required. By dismissing the claimant's claim for non-compliance, the tribunal emphasises the importance of adhering to its orders and decisions, ensuring that the arbitration process is conducted efficiently and effectively.

It is important to note that providing security for costs is not a universal requirement in all arbitrations, and the need for it may depend on the circumstances of each case. Additionally, the tribunal must follow a fair and impartial approach when issuing a peremptory order or considering dismissal, and the claimant should have a reasonable opportunity to present their case before any such drastic consequences are applied.

Overall, section 41(6) gives the tribunal an important tool to enforce its orders and maintain the integrity of the arbitration process. By dismissing a claim for non-compliance with a peremptory order to provide security for costs, the Act aims to ensure a fair balance between the parties and promote the proper conduct of the arbitration proceedings.

- (7) If a party fails to comply with any other kind of peremptory order, then, without prejudice to section 42 (enforcement by court of tribunal's peremptory orders), the tribunal may do any of the following—
- (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;
 - (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) of the English Arbitration Act 1996 addresses the consequences when a party fails to comply with any other kind of peremptory order issued by the arbitral tribunal. The provision grants the tribunal the authority to take certain actions in response to the non-compliance. Here is an analysis of the key elements of this section:

1. **Peremptory Orders other than Security for Costs:** Section 41(7) deals with situations where the tribunal issues peremptory orders other than those related to the provision of security for costs. Peremptory orders are orders that must be complied with promptly and are usually issued when a party fails to comply with procedural or evidentiary directions.
2. **Consequences of Non-Compliance:** If a party fails to comply with a peremptory order, section 41(7) lists several actions the tribunal may take in response to the non-compliance. These actions are aimed at ensuring the proper and expeditious conduct of the arbitration proceedings and maintaining fairness between the parties.
3. **Actions Available to the Tribunal:** The four possible actions the tribunal may take are as follows:
 - a. **Exclude Allegations or Material:** The tribunal may direct that the party in default shall not be entitled to rely upon any allegation or material that was the subject matter of the order. This means that the non-complying party may be prevented from using certain evidence or making certain claims during the proceedings.
 - b. **Draw Adverse Inferences:** The tribunal may draw adverse inferences from the act of non-compliance. This means that the tribunal may consider the non-compliance as a factor when making decisions on the merits of the case and may draw conclusions unfavourable to the party that failed to comply.
 - c. **Proceed to an Award with Available Materials:** If the non-complying party fails to provide certain materials or evidence, the tribunal may proceed to issue an award based on the materials that have been properly provided to it. This ensures that the arbitration process continues even in the absence of full compliance with the order.

- d. **Make Order Regarding Costs:** The tribunal may make an order as it thinks fit regarding the payment of costs of the arbitration incurred in consequence of the non-compliance. This allows the tribunal to assign the costs related to the non-compliance to the defaulting party.

Overall, section 41(7) provides the arbitral tribunal with a range of tools to respond to non-compliance with peremptory orders, ensuring that the arbitration proceeds efficiently and fairly. These actions aim to encourage parties to adhere to the tribunal's orders and directions, thereby promoting the proper conduct of the arbitral proceedings.

POWERS OF COURT IN RELATION TO ARBITRAL PROCEEDINGS

42 ENFORCEMENT OF PEREMPTORY ORDERS OF TRIBUNAL

- (1) 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(1) of the English Arbitration Act 1996 deals with the court's power to enforce peremptory orders made by the arbitral tribunal. Here is an analysis of this provision:

1. **Enforcement of Peremptory Orders:** Section 42(1) grants the court the authority to enforce peremptory orders issued by the arbitral tribunal. Peremptory orders are orders that must be complied with promptly, and they are usually issued by the tribunal when a party fails to comply with procedural or evidentiary directions.
2. **Scope of Court's Power:** The court's power to enforce the tribunal's peremptory order is subject to the agreement of the parties. If the parties have agreed to confer such enforcement power on the court, the court may make an order requiring the non-complying party to comply with the peremptory order issued by the tribunal.
3. **Enforcement Mechanism:** The court's enforcement order may be in the form of a court order or judgment that compels the defaulting party to fulfil its obligations under the tribunal's peremptory order.
4. **Purpose of Enforcement:** The purpose of granting the court the power to enforce the tribunal's peremptory orders is to ensure the proper conduct of the arbitration proceedings. By having recourse to the court for enforcement, the tribunal's authority is strengthened, and parties are incentivised to comply with the orders issued during the arbitration.
5. **Non-Compliance Remedies:** If a party fails to comply with a peremptory order despite the court's enforcement order, the tribunal has several options available under Section 41(7) (as analysed earlier). The tribunal may exclude allegations or material, draw adverse inferences, proceed to an award with available materials, or make orders regarding the payment of costs incurred due to non-compliance.

Overall, section 42(1) reinforces the effectiveness of peremptory orders issued by the arbitral tribunal by providing the court with the power to enforce such orders when necessary. It contributes to the efficiency and fairness of the arbitration process by ensuring parties' compliance with the tribunal's directives and maintaining the integrity of the arbitration proceedings.

- (2) **An application for an order under this section may be made—**
- (a) **by the tribunal (upon notice to the parties),**
 - (b) **by a party to the arbitral proceedings with the permission of the tribunal (and upon notice to the other parties), or**
 - (c) **where the parties have agreed that the powers of the court under this section shall be available.**

Section 42(2) of the English Arbitration Act 1996 outlines the parties and entities that can make an application for an order to enforce a peremptory order issued by the arbitral tribunal. Here is an analysis of this provision:

1. **Application Parties:** There are three categories of parties or entities that can apply for an order under this section:
 - a. **By the Tribunal:** The arbitral tribunal itself can initiate the application for an enforcement order. This means that if the tribunal finds that one of its peremptory orders has not been complied with, it can request the court to enforce it. The tribunal must give notice to the parties before making such an application.
 - b. **By a Party with Tribunal's Permission:** A party to the arbitral proceedings may apply for an enforcement order with the permission of the tribunal. Before making such an application, the party must seek the tribunal's approval. Furthermore, the applicant party must also give notice of the application to the other parties involved in the arbitration.
 - c. **Parties' Agreement:** If the parties have agreed in advance that the court's powers under this section are available for enforcing the tribunal's peremptory orders, any party may apply for such an enforcement order without the need for permission from the tribunal. This could be achieved through an arbitration agreement or an express provision in the contract referring to the application of section 42(2).
2. **Application Process:** The process for applying for an enforcement order under this section varies depending on who is making the application. The tribunal itself can make an application without permission. If a party wishes to make an application, they must obtain the tribunal's permission and notify the other parties accordingly. If the parties have agreed to the court's powers for enforcement, any party can apply directly to the court without seeking the tribunal's permission.
3. **Purpose of the Provision:** This provision aims to provide a clear mechanism for enforcing the tribunal's peremptory orders when necessary. By allowing the tribunal and parties to seek the court's assistance, the Act ensures the efficacy of the arbitration process and maintains the authority of the tribunal's orders.
4. **Enforcement of Tribunal's Authority:** By granting these enforcement powers, the Act reinforces the authority of the arbitral tribunal and encourages parties to comply with the tribunal's orders. It promotes an effective and fair arbitration process by ensuring that the tribunal's decisions are respected and followed by the parties.

In summary, section 42(2) outlines who can apply for an enforcement order to ensure compliance with the arbitral tribunal's peremptory orders. The provision offers multiple avenues for seeking enforcement, allowing the tribunal, parties with permission, or parties with prior agreement to approach the court for assistance when necessary.

(3) The court shall not act unless it is satisfied that the applicant has exhausted any available arbitral process in respect of failure to comply with the tribunal's order.

Section 42(3) of the English Arbitration Act 1996 sets a condition that the court must consider before taking action on an application for enforcement of a peremptory order made by the arbitral tribunal. Here is an analysis of this provision:

1. **Exhaustion of Arbitral Process:** The provision stipulates that the court shall not act on the application for enforcement unless it is satisfied that the applicant has exhausted any available arbitral process in relation to the non-compliance with the tribunal's order. This means that the applicant must have attempted all available means within the arbitral process to address the non-compliance issue before seeking the court's intervention.
2. **Encouraging Exhaustion of Arbitral Remedies:** The requirement for exhaustion of arbitral process emphasises the importance of resolving disputes within the arbitration proceedings themselves. Parties are encouraged to utilise the mechanisms provided within the arbitral process to seek remedies for non-compliance before resorting to court intervention.
3. **Promoting the Principle of Party Autonomy:** The provision respects the principle of party autonomy, which is one of the fundamental principles of arbitration. By requiring the exhaustion of arbitral remedies, the Act allows the parties to resolve their disputes within the chosen arbitral forum before seeking assistance from the court.
4. **Efficiency and Finality:** Encouraging the exhaustion of arbitral remedies also promotes the efficiency and finality of the arbitral proceedings. It ensures that parties address disputes promptly within the arbitration process, reducing the need for unnecessary court involvement and potential delays.
5. **Exceptions:** In exceptional circumstances, the court may still act even if the arbitral process has not been exhausted. For instance, if the arbitration process becomes unduly delayed or if there are other compelling reasons, the court may exercise its discretion and intervene despite the lack of exhaustion.

In summary, section 42(3) of the English Arbitration Act 1996 sets a prerequisite for court action on an application for enforcement of a tribunal's peremptory order. The court must be satisfied that the applicant has exhausted any available arbitral process in relation to the non-compliance issue before considering the application. This requirement upholds party autonomy and encourages efficient resolution of disputes within the arbitration proceedings. However, the court retains the discretion to act in exceptional circumstances.

- (4) No order shall be made under this section unless the court is satisfied that the person to whom the tribunal’s order was directed has failed to comply with it within the time prescribed in the order or, if no time was prescribed, within a reasonable time.**

Section 42(4) of the English Arbitration Act 1996 lays down the conditions that must be satisfied before the court can make an order under this section for the enforcement of a peremptory order made by the arbitral tribunal. Here is an analysis of this provision:

1. **Non-Compliance Requirement:** The provision states that no order shall be made by the court under this section unless the person to whom the tribunal’s order was directed has failed to comply with it. In other words, the court will not intervene unless there is clear evidence of non-compliance with the tribunal’s peremptory order.
2. **Timing of Non-Compliance:** The court must be satisfied that the non-compliance occurred within the time prescribed in the tribunal’s order or, if no time was prescribed, within a reasonable time. This requirement ensures that the person subject to the tribunal’s order had sufficient time to comply, and it prevents the court from making an order prematurely.
3. **Balancing Fairness and Enforcement:** The provision strikes a balance between ensuring fairness and enforcing compliance. It allows a reasonable period for the person to comply with the tribunal’s order, taking into account the specific circumstances of the case. This approach prevents the court from imposing penalties without giving the party a reasonable opportunity to meet the tribunal’s requirements.
4. **Objective Determination:** The requirement of “reasonable time” introduces an objective standard to determine compliance. What constitutes a reasonable time will depend on the facts and complexities of each case, and the court will make a judgment based on reasonableness.
5. **Avoiding Premature Court Intervention:** By setting conditions for non-compliance, the provision discourages premature court involvement in the arbitral process. The Act aims to uphold the parties’ choice to resolve disputes through arbitration and to limit court intervention to exceptional situations.

In summary, section 42(4) of the English Arbitration Act 1996 establishes the prerequisites for the court to issue an order enforcing a tribunal’s peremptory order. The court must be satisfied that the person subject to the tribunal’s order has failed to comply within the prescribed time or within a reasonable time. This approach ensures that parties are treated fairly, that there is an objective assessment of non-compliance, and that the court intervenes only when necessary to uphold the arbitral process.

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

Section 42(5) of the English Arbitration Act 1996 addresses the procedure for appealing a decision made by the court under section 42(2), which deals with orders requiring compliance with a peremptory order made by the arbitral tribunal. Here is an analysis of this provision:

1. **Appeal Requirement:** The provision states that if a party seeks to appeal the decision made by the court under section 42(2), they must obtain the “leave” (permission) of the court before proceeding with the appeal. This means that an appeal from the court’s decision under section 42(2) is not automatic, and the party seeking to appeal must first seek the court’s permission.
2. **Controlled Access to Appeals:** Requiring leave for an appeal is a common legal mechanism used to control the number of appeals and prevent frivolous or unnecessary appeals. It ensures that appeals are only pursued in cases where there are significant issues of law or procedural fairness.
3. **Limiting Court Intervention:** By imposing the requirement for leave, the Act encourages parties to resolve issues related to the enforcement of preemptory orders primarily through the arbitral process. This provision reinforces the general pro-arbitration policy of the Act, which favours limited court intervention.
4. **Exceptional Nature of Appeals:** The requirement for leave suggests that appeals from decisions under section 42(2) are not routine and should be considered exceptional. The court will carefully assess whether there are substantial grounds to justify allowing the appeal to proceed.
5. **Judicial Discretion:** The court has discretion in granting or denying leave for an appeal. It will consider factors such as the importance and complexity of the issue raised by the appeal, the effect of the appeal on the arbitration proceedings, and the interests of justice.
6. **Timely Resolution of Disputes:** The provision is also aimed at facilitating the timely resolution of disputes. By requiring leave, the Act prevents unnecessary delays caused by multiple appeals, thereby promoting the efficient resolution of arbitration cases.

In summary, section 42(5) of the English Arbitration Act 1996 establishes that parties must obtain the leave of the court before appealing a decision made by the court under section 42(2) concerning orders to comply with a preemptory order of the arbitral tribunal. The provision promotes the pro-arbitration policy of the Act, limits court intervention, and ensures that appeals are pursued only in cases with substantial grounds and are in the interests of justice.

43 SECURING THE ATTENDANCE OF WITNESSES

- (1) A party to arbitral proceedings may use the same court procedures as are available in relation to legal proceedings to secure the attendance before the tribunal of a witness in order to give oral testimony or to produce documents or other material evidence.**

Section 43(1) of the English Arbitration Act 1996 grants parties to arbitral proceedings the ability to use court procedures to secure the attendance of a witness before the arbitral tribunal for the purpose of giving oral testimony or producing documents or other material evidence. Here is an analysis of this provision:

1. **Access to Court Procedures:** The provision acknowledges that parties in arbitration should have access to court procedures typically available in legal proceedings. It allows parties

to seek the assistance of the court to ensure the attendance of a witness who may be essential to the resolution of the dispute.

2. **Witness Testimony and Document Production:** The section applies to two significant aspects of witness evidence: (a) oral testimony, where a witness is required to appear before the arbitral tribunal to provide their account verbally, and (b) production of documents or other material evidence, where a party needs to compel the presentation of specific documents or evidence relevant to the case.
3. **Adapting Court Procedures to Arbitration:** The Act recognises that arbitral proceedings can benefit from certain court procedures when dealing with witness evidence. It bridges the gap between the more formal court processes and the flexible nature of arbitration, allowing parties to avail themselves of court assistance while still adhering to the principles of arbitration.
4. **Enhancing the Evidentiary Process:** By allowing parties to utilise court procedures, section 43(1) provides a means to ensure the availability and integrity of witness evidence. This can enhance the fairness and efficacy of the arbitral process, ensuring that both parties have an opportunity to present their case fully.
5. **Balancing Efficiency and Control:** Although the provision allows access to court procedures, it does not mandate the involvement of the court. Parties have the discretion to choose whether to use court assistance to secure witness attendance or document production. This balance between efficiency and control gives parties the flexibility to tailor the process to their specific needs.
6. **Harmonising Arbitration and Court Processes:** Section 43(1) aligns the procedures for securing witness attendance and document production in arbitration with the corresponding court procedures. This helps create a coherent framework for dispute resolution and allows parties to navigate the arbitration process more confidently.

In summary, section 43(1) of the English Arbitration Act 1996 provides parties to arbitral proceedings with the option to use court procedures to secure witness attendance for oral testimony or to compel the production of documents and other material evidence. This provision enhances the evidentiary process in arbitration and harmonises the use of court and arbitration procedures to achieve a fair and effective dispute resolution mechanism.

(2) This may only be done with the permission of the tribunal or the agreement of the other parties.

Section 43(2) of the English Arbitration Act 1996 places limitations on a party's ability to use court procedures to secure the attendance of a witness or the production of documents or other material evidence. Here is an analysis of this provision:

1. **Consent Requirement:** Section 43(2) mandates that a party can use court procedures to secure witness attendance or document production only with either the permission of the arbitral tribunal or the agreement of the other parties involved in the arbitration. This requirement ensures that all parties have a say in whether court assistance should be sought for witness evidence.

2. **Protecting the Arbitration Process:** The provision aims to preserve the autonomy of the arbitral proceedings. By requiring permission from the tribunal or consent from the other parties, it prevents one party from unilaterally seeking court assistance, which could potentially disrupt or delay the arbitration process.
3. **Balancing Interests:** The consent requirement strikes a balance between the need to access court procedures for witness evidence and the principle of party autonomy in arbitration. It ensures that any party seeking court assistance does so with the understanding and cooperation of the other parties.
4. **Promoting Efficiency:** The provision encourages parties to resolve disputes efficiently within the framework of the arbitration process. Obtaining permission or agreement before seeking court assistance may prompt parties to explore alternative means of obtaining the necessary evidence or narrowing the scope of the application.
5. **Ensuring Equitable Proceedings:** Requiring consent from the other parties ensures that all parties have an equal opportunity to present their case and respond to evidence. This fosters an environment of fairness and equity in the arbitration process.
6. **Flexibility for the Tribunal:** The requirement for tribunal permission provides the arbitral tribunal with the discretion to decide on the appropriateness of using court procedures based on the specific circumstances of the case. This allows the tribunal to manage the proceedings effectively and tailor the process to the needs of the parties.

In summary, section 43(2) of the English Arbitration Act 1996 establishes a consent requirement for using court procedures to secure witness attendance or document production in arbitration. This provision aims to strike a balance between accessing court assistance and preserving the autonomy and efficiency of the arbitral proceedings. It ensures that parties obtain consent or permission from the arbitral tribunal before seeking court assistance, thereby promoting fairness and equitable proceedings.

(3) The court procedures may only be used if—

- (a) the witness is in the United Kingdom, and**
- (b) the arbitral proceedings are being conducted in England and Wales or, as the case may be, Northern Ireland.**

Section 43(3) of the English Arbitration Act 1996 sets specific conditions under which court procedures may be used to secure the attendance of a witness for oral testimony or document production. Here is an analysis of this provision:

1. **Geographical Limitation:** The provision limits the use of court procedures to secure a witness's attendance to cases where the witness is physically present in the United Kingdom. This means that court assistance is only available when the witness is within the jurisdiction of the UK.
2. **Jurisdictional Requirement:** In addition to the witness's presence in the UK, the provision further requires that the arbitral proceedings be conducted in either England and Wales

or Northern Ireland. This means that court assistance under this section is available only if the arbitration is taking place in these specific jurisdictions.

3. **Legal Certainty:** The geographical and jurisdictional limitations in Section 43(3) provide legal certainty by defining the scope of when court procedures can be invoked for witness attendance. This helps avoid ambiguity and ensures that parties are aware of the circumstances under which court assistance may be sought.
4. **Efficiency and Convenience:** The provision's focus on cases where the witness is already in the UK can promote efficiency and convenience. It may be easier and quicker to secure the attendance of a witness who is geographically closer, reducing the time and cost associated with witness examination.
5. **Promoting Local Proceedings:** By limiting the use of court procedures to situations where the arbitration is conducted in specific UK jurisdictions, the provision supports local dispute resolution mechanisms. It encourages parties to engage in arbitration within the UK and seek local remedies for their disputes.
6. **Preserving Autonomy:** The provision reinforces the principle of party autonomy in arbitration by placing restrictions on the use of court procedures. It encourages parties to resolve disputes within the framework of arbitration, emphasising the preference for private dispute resolution.

In summary, section 43(3) of the English Arbitration Act 1996 specifies the conditions under which court procedures may be used to secure a witness's attendance or document production. These conditions include the witness's presence in the UK and the arbitration being conducted in either England and Wales or Northern Ireland. The provision aims to ensure legal clarity, efficiency, and the promotion of local dispute resolution while preserving party autonomy in arbitration.

(4) A person shall not be compelled by virtue of this section to produce any document or other material evidence which he could not be compelled to produce in legal proceedings.

Section 43(4) of the English Arbitration Act 1996 provides an important protection for witnesses or individuals who may be required to produce documents or other material evidence during arbitral proceedings. Here is an analysis of this provision:

1. **Protection of Privileged Information:** The provision safeguards individuals from being compelled to produce documents or materials that are protected by legal privilege. Legal privilege refers to the right of parties to withhold certain information or documents from disclosure in legal proceedings to maintain confidentiality and promote candid communication with legal advisors. Section 43(4) ensures that this protection extends to arbitral proceedings as well.
2. **Consistency with Legal Proceedings:** By stating that a person shall not be compelled to produce documents or evidence that they could not be compelled to produce in legal proceedings, the provision maintains consistency between court procedures and arbitral proceedings. It ensures that the rules governing evidence and disclosure in arbitration mirror those applied in legal proceedings.

3. **Preserving Fairness and Equity:** The provision promotes fairness and equity by treating arbitral proceedings on par with court proceedings when it comes to compelling the production of documents or evidence. It prevents one party from having an unfair advantage by requiring the other party to produce privileged or confidential materials.
4. **Encouraging Cooperation:** Section 43(4) encourages cooperation between parties during arbitration. It assures parties that they will not be forced to disclose sensitive or protected information beyond what is required in legal proceedings, thereby potentially fostering a more collaborative atmosphere.
5. **Protecting Third Parties:** The provision also safeguards third parties who may be called upon to produce documents or materials during arbitral proceedings. It ensures that third parties are not compelled to disclose information that they would be protected from disclosing in court proceedings.
6. **Promoting Arbitration as a Preferred Method:** By preserving the confidentiality and protection of privileged information in arbitration, section 43(4) promotes arbitration as a preferred method for dispute resolution, as it offers parties a level of confidentiality and flexibility that may not be available in court proceedings.

In summary, section 43(4) of the English Arbitration Act 1996 ensures that individuals cannot be compelled to produce documents or other material evidence in arbitral proceedings if they are protected by legal privilege or if they would not be required to produce them in legal proceedings. The provision protects confidentiality, promotes fairness, and encourages cooperation during arbitration while maintaining consistency with legal proceedings.

44 COURT POWERS EXERCISABLE IN SUPPORT OF ARBITRAL PROCEEDINGS

(1) Unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders about the matters listed below as it has for the purposes of and in relation to legal proceedings.

Section 44(1) of the English Arbitration Act 1996 confers powers upon the court in relation to arbitral proceedings, granting it the same authority it has in legal proceedings for the matters listed below. Here is an analysis of this provision:

1. **Scope of Court Powers:** Section 44(1) extends the court's jurisdiction to arbitral proceedings, enabling the court to make orders related to specific matters concerning the arbitration process.
2. **Similarity to Legal Proceedings:** By providing the court with powers equivalent to those in legal proceedings, this section ensures consistency between arbitration and court proceedings. This is particularly important in maintaining the efficacy and predictability of the arbitration process.
3. **Inherent Court Powers:** The matters over which the court has power include various procedural and substantive aspects that may arise during arbitral proceedings. This includes, but is not limited to, case management, disclosure of documents, preservation of evidence, and interim relief.

4. Preserving Fairness and Equity: By giving the court the same powers it has in legal proceedings, parties to arbitration are assured that their rights and interests are protected under a familiar legal framework. This promotes fairness and equity in the arbitration process.
5. Enhancing Enforcement: The court's authority in arbitral proceedings enables it to enforce orders and ensure compliance with the arbitration agreement and the arbitrators' decisions. This enhances the enforceability and effectiveness of arbitration as an alternative method of dispute resolution.
6. Promoting Efficient Arbitration: By granting the court powers to address various matters arising during arbitration, section 44(1) ensures that issues can be promptly and effectively resolved, promoting the efficiency of the arbitration process.
7. Party Autonomy: It is important to note that the court's powers under section 44(1) are subject to the agreement of the parties. Parties to arbitration have the autonomy to agree on different procedures, limitations, or restrictions, as long as it does not violate public policy or any mandatory provisions of the Arbitration Act.

In summary, section 44(1) of the English Arbitration Act 1996 empowers the court with the same authority in arbitral proceedings as it has in legal proceedings, subject to any agreement to the contrary by the parties. This provision ensures that the court can address various procedural and substantive matters effectively, maintaining fairness, and promoting the efficiency and enforceability of the arbitration process.

(2) Those matters are—

- (a) the taking of the evidence of witnesses;
- (b) the preservation of evidence;
- (c) making orders relating to property which is the subject of the proceedings or as to which any question arises in the proceedings—
 - (i) for the inspection, photographing, preservation, custody or detention of the property, or
 - (ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property;and for that purpose authorising any person to enter any premises in the possession or control of a party to the arbitration;
- (d) the sale of any goods the subject of the proceedings;
- (e) the granting of an interim injunction or the appointment of a receiver.

Section 44(2) of the English Arbitration Act 1996 enumerates the matters over which the court has powers for the purposes of and in relation to arbitral proceedings. Here is a detailed analysis of each sub-section:

1. The taking of the evidence of witnesses: This empowers the court to order the examination of witnesses under oath or affirmation, similar to how it is done in legal proceedings. The court can compel witnesses to attend an oral hearing and give testimony before the arbitral tribunal.
2. The preservation of evidence: The court has the authority to issue orders to preserve evidence, ensuring that relevant evidence is protected from destruction, alteration, or loss during the course of the arbitration. This includes the preservation of documents, records, or physical objects that may be crucial to the resolution of the dispute.
3. Making orders relating to property: The court can issue orders concerning property that is the subject matter of the arbitration or relevant to the proceedings. It can order the inspection, photographing, preservation, custody, or detention of the property. Additionally, the court may authorise individuals to enter premises under the control of a party to the arbitration to facilitate these actions.
4. The sale of any goods the subject of the proceedings: If necessary, the court has the power to order the sale of goods that are the subject of the dispute in order to resolve the issues in the proceedings.
5. The granting of an interim injunction or the appointment of a receiver: The court can issue interim injunctions, which are orders that temporarily restrain or require certain actions until a final decision is made in the arbitration. Additionally, the court has the power to appoint a receiver, someone appointed to manage property or assets on behalf of a party, to ensure their preservation and proper administration during the proceedings.

Overall, section 44(2) aims to equip the court with the necessary powers to assist in the conduct and administration of arbitral proceedings. These powers are significant for ensuring the integrity, effectiveness, and enforceability of the arbitration process, while still maintaining party autonomy and adherence to the arbitration agreement. It helps maintain the fairness, efficiency, and enforceability of the arbitration process by providing an effective means of addressing various issues that may arise during the course of arbitration.

(3) If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.

Section 44(3) of the English Arbitration Act 1996 grants the court the power to make urgent orders in cases of urgency for the purpose of preserving evidence or assets. This provision enables a party or a proposed party to the arbitral proceedings to seek immediate relief from the court when there is a pressing need to protect crucial evidence or assets. Key points about Section 44(3):

1. **Urgent Nature of the Case:** This subsection emphasises that the court’s power to make orders is applicable specifically in cases of urgency. Urgency implies situations where there is a real and immediate risk of evidence being lost, destroyed, or altered, or where there is a need to protect assets from being dissipated or damaged before the arbitral proceedings can formally begin.
2. **Preserving Evidence or Assets:** The court’s power is limited to issuing orders that are necessary for the purpose of preserving either evidence or assets. This means the court can make orders that ensure relevant evidence is safeguarded or that assets in dispute or related to the dispute are protected from harm or depletion.
3. **Applicant for the Orders:** The application for such urgent orders can be made by any party or a proposed party to the arbitral proceedings. This provision ensures that parties involved in or intending to be part of the arbitration can seek protection from the court when the urgency arises.
4. **Discretion of the Court:** The court’s discretion plays a crucial role in this provision. The court has the freedom to determine the appropriateness and necessity of the orders based on the specific circumstances of the case. The court will take into account the urgency of the matter and the potential harm that may result from the delay in preserving evidence or assets.

Section 44(3) acts as a valuable tool to address situations that require immediate action before the formal arbitration proceedings begin. It enables parties to act promptly to protect their interests and the integrity of the arbitration process in urgent situations where there is a substantial risk of evidence being compromised or assets being lost or damaged.

- (4) If the case is not one of urgency, the court shall act only on the application of a party to the arbitral proceedings (upon notice to the other parties and to the tribunal) made with the permission of the tribunal or the agreement in writing of the other parties.**

Section 44(4) of the English Arbitration Act 1996 delineates the conditions under which the court may act when the case is not one of urgency. This provision specifies the process and requirements for making applications to the court for certain orders in non-urgent situations related to arbitral proceedings. Key points about section 44(4):

1. **Non-Urgent Cases:** This subsection establishes that its provisions apply when the case is not deemed one of urgency. In contrast to section 44(3), which addresses urgent situations, this subsection deals with non-urgent cases where there is no immediate risk to evidence or assets.
2. **Application by a Party:** The provision states that, in non-urgent cases, any party to the arbitral proceedings can make an application to the court for specific orders. These orders can relate to matters such as evidence, preservation of assets, sale of goods, granting interim injunctions, or appointing a receiver (as outlined in section 44(1)).
3. **Permission of the Tribunal or Agreement of Other Parties:** In non-urgent cases, a party seeking to apply to the court for orders must obtain either the permission of the arbitral tribunal or the agreement in writing of the other parties to the arbitration. This requirement ensures that parties adhere to the arbitration process's principles of efficiency and cooperation and avoids unnecessary court intervention in non-urgent matters.
4. **Notice to Other Parties and Tribunal:** When making the application to the court, the party must provide notice to the other parties involved in the arbitral proceedings and to the arbitral tribunal. This ensures transparency and allows the other parties and the tribunal to be aware of the application and participate in any relevant proceedings before the court.

Section 44(4) strikes a balance between the need for timely court intervention in non-urgent cases and the importance of respecting the arbitral tribunal's authority and ensuring cooperation among the parties. By requiring either the tribunal's permission or the agreement of the other parties, the provision encourages parties to resolve non-urgent matters within the arbitration process whenever possible while still enabling access to the court when necessary.

- (5) In any case the court shall act only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.**

Section 44(5) of the English Arbitration Act 1996 sets out the conditions under which the court may intervene in arbitral proceedings, even in non-urgent cases. This subsection establishes limitations on the court's jurisdiction and emphasises the primary authority of the arbitral tribunal. Key points about Section 44(5):

1. **Court Intervention Limitations:** The provision states that the court's intervention in arbitral proceedings is subject to specific conditions. The court can only act if the arbitral

tribunal, as well as any arbitral or other institution or person vested by the parties with power in that regard, either lacks the power to address the matter or is temporarily unable to act effectively.

2. **Primary Authority of the Arbitral Tribunal:** The wording of Section 44(5) reflects the principle of the “Kompetenz-Kompetenz”, which means that the arbitral tribunal has the primary authority to determine its own jurisdiction and procedural matters. This principle is a fundamental aspect of arbitration, emphasising the autonomy and effectiveness of the arbitration process.
3. **Exhaustion of Tribunal’s Power:** Before seeking court intervention, the parties must exhaust all available avenues within the arbitral tribunal or any designated institution or individual who has been empowered by the parties. This requirement ensures that parties utilise the internal mechanisms available in the arbitral process before turning to the court for assistance.
4. **Ensuring Effective Action:** The provision’s language emphasises that the court may intervene only when the arbitral tribunal or the designated institution is “unable for the time being to act effectively”. This condition emphasises that court intervention should only occur when it is necessary to avoid undue delay or prejudice to the proceedings.

Section 44(5) reinforces the principle of limited court intervention in arbitral proceedings and underscores the importance of respecting the arbitral tribunal’s authority. The provision encourages parties to utilise the arbitral process fully and resort to court intervention only in exceptional circumstances when no effective resolution can be achieved through the arbitration process.

(6) If the court so orders, an order made by it under this section shall cease to have effect in whole or in part on the order of the tribunal or of any such arbitral or other institution or person having power to act in relation to the subject-matter of the order.

Section 44(6) of the English Arbitration Act 1996 introduces a mechanism that allows the court’s orders made under section 44 to be modified or terminated by the arbitral tribunal or any other institution or person vested with relevant authority in relation to the subject matter of the court’s order. This subsection emphasises the deference to the arbitral process and the tribunal’s authority. Key points about section 44(6):

1. **Court Orders Subject to Tribunal’s Authority:** This provision establishes that the court’s orders made under Section 44 are not absolute or final. Instead, they are subject to the authority of the arbitral tribunal or any designated institution or individual with power over the relevant subject matter. If the tribunal or the designated authority subsequently orders the modification or termination of the court’s order, it will cease to have effect in whole or in part, as per the tribunal’s decision.
2. **Supporting Tribunal’s Role:** Section 44(6) reinforces the principle of Kompetenz-Kompetenz, which grants the arbitral tribunal the power to rule on its own jurisdiction and procedural matters. By allowing the tribunal or the designated authority to override or modify the court’s orders, this provision reinforces the primary role of the arbitral tribunal in managing the proceedings.

3. **Coordination and Efficiency:** This subsection promotes efficiency and coordination between the court and the arbitral tribunal. It enables the tribunal to take control of the proceedings and tailor the measures according to the specific needs of the arbitration process. It also prevents overlapping or conflicting orders from different authorities.
4. **Flexibility in Resolving Disputes:** The provision allows the arbitral tribunal or the designated authority to reassess the necessity of the court's order as the proceedings unfold. It provides flexibility in addressing changing circumstances and ensures that the arbitral process remains effective and responsive to the parties' needs.

Section 44(6) encourages a harmonious and integrated approach to the resolution of disputes between the court and the arbitral tribunal. It underscores the importance of respecting the tribunal's authority and gives the tribunal the power to adapt the proceedings to achieve a fair and efficient resolution of the dispute.

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

Section 44(7) of the English Arbitration Act 1996 specifies that any party seeking to appeal a decision of the court made under Section 44 must obtain the leave (permission) of the court to pursue such an appeal. This requirement imposes an additional hurdle on parties seeking to challenge the court's decision and restricts the right to appeal in relation to orders made under Section 44. Key points about section 44(7):

1. **Leave Requirement:** The subsection emphasises that parties cannot appeal as of right from a decision of the court under section 44. Instead, they must first seek leave from the same court that made the original order. This means that a party must convince the court that there are valid reasons to proceed with the appeal before the appeal process can be initiated.
2. **Control over Appeals:** The provision grants the court discretion in granting or denying leave to appeal. It allows the court to filter appeals and prevents frivolous or unnecessary challenges to its decisions made under Section 44. The court will consider the merits of the appeal and the interests of justice before granting leave.
3. **Promotion of Finality:** By requiring leave to appeal, section 44(7) aims to promote finality in arbitral proceedings. It encourages parties to abide by the court's decisions in relation to matters listed in Section 44, thus contributing to a smoother and more efficient arbitration process.
4. **Minimising Delay and Cost:** Requiring leave to appeal helps to minimise unnecessary delays and costs associated with appeals that lack merit. It ensures that only significant issues or questions of law are brought before the appellate court, thus preserving the efficiency of the arbitration process.
5. **Protection of Arbitral Autonomy:** Section 44(7) also aligns with the principle of party autonomy and respect for the arbitral process. By limiting the right to appeal, it reinforces the idea that parties have agreed to arbitration and entrusted the resolution of their disputes to the arbitral tribunal, with limited judicial intervention.

Overall, section 44(7) contributes to the overall efficiency and efficacy of arbitration proceedings by promoting finality and minimising unwarranted challenges to the court’s decisions in relation to matters listed in section 44.

45 DETERMINATION OF PRELIMINARY POINT OF LAW

(1) Unless otherwise agreed by the parties, the court may on the application of a party to arbitral proceedings (upon notice to the other parties) determine any question of law arising in the course of the proceedings which the court is satisfied substantially affects the rights of one or more of the parties.

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.

Section 45(1) of the English Arbitration Act 1996 grants the court the power to intervene in arbitral proceedings and determine any question of law that arises during the course of the arbitration. This intervention is subject to certain conditions, and it allows the court to address significant legal issues that substantially affect the rights of one or more parties in the arbitration. Key points about section 45(1):

1. **Scope of Jurisdiction:** The court’s jurisdiction under section 45(1) is limited to questions of law. It does not extend to factual issues or matters of discretion, which are generally within the purview of the arbitral tribunal. If a party wants the court to decide a legal question arising in the arbitration, it must make an application to the court.
2. **Application by a Party:** The court’s intervention is initiated by an application made by one of the parties to the arbitration. The party seeking the court’s determination on a question of law must provide notice to the other parties involved in the arbitration.
3. **Substantial Effect on Rights:** For the court to exercise its jurisdiction under Section 45(1), the question of law must be of significant importance and substantially affect the rights of one or more parties in the arbitration. The court will assess the relevance and impact of the legal issue before deciding whether to intervene.
4. **Preservation of Party Autonomy:** Section 45(1) operates on the presumption that parties to arbitration are free to agree on the resolution of legal issues through arbitration. Thus, the court’s intervention is only permitted when there is no agreement between the parties to exclude such court intervention.
5. **Agreement to Exclude Court’s Jurisdiction:** If the parties have agreed to dispense with reasons for the arbitral award, it is considered an agreement to exclude the court’s jurisdiction under section 45(1). This means that the parties have agreed that the court will not intervene to determine any question of law arising in the course of the proceedings, even if it substantially affects their rights.
6. **Balancing Arbitration and Judicial Oversight:** Section 45(1) strikes a balance between party autonomy in arbitration and the need for some degree of judicial oversight to address important legal questions. It allows the court to intervene when necessary to

ensure fair and just resolution of legal issues that could significantly impact the parties' rights.

Overall, section 45(1) empowers the court to play a supervisory role in arbitration, addressing significant questions of law that substantially affect the parties' rights while respecting party autonomy in arbitration. The provision aims to ensure that the arbitration process remains fair and effective, and that parties have access to the court's expertise when needed.

(2) An application under this section shall not be considered unless—

- (a) it is made with the agreement of all the other parties to the proceedings, or**
- (b) it is made with the permission of the tribunal and the court is satisfied—**
 - (i) that the determination of the question is likely to produce substantial savings in costs, and**
 - (ii) that the application was made without delay.**

Section 45(2) of the English Arbitration Act 1996 sets out the conditions that must be met for an application to be made to the court under section 45(1) to determine a question of law arising in the course of arbitral proceedings. This subsection ensures that the court's intervention is subject to certain prerequisites and reflects the legislative intent to balance party autonomy in arbitration with judicial oversight. Key points about section 45(2):

1. **Unanimous Agreement or Tribunal's Permission:** A party seeking the court's determination on a question of law must meet one of the two conditions. The application can be considered if it has the agreement of all the other parties involved in the arbitration, or if it is made with the permission of the arbitral tribunal. This requirement is designed to prevent unnecessary court interventions and emphasises the significance of party autonomy in the arbitration process.
2. **Substantial Savings in Costs:** When seeking the court's permission to make the application, the applicant must demonstrate to the court that determining the question of law is likely to result in substantial savings in costs. This condition emphasises the efficiency and cost-effectiveness of the arbitral process. It ensures that parties do not turn to the court for minor legal issues that can be resolved through arbitration, preserving the efficiency and autonomy of the arbitral process.
3. **Timely Application:** Another condition for the court to consider the application is that it was made without delay. This means that the party seeking the court's intervention must act promptly when the question of law arises. Delaying the application without valid reasons may result in the court declining to consider the matter.

Section 45(2) serves as a safeguard to prevent unnecessary and costly court interventions in arbitral proceedings. It ensures that parties generally adhere to their agreement to resolve disputes through arbitration and that the court's intervention is sought only when it is genuinely necessary, likely to produce substantial savings in costs, and timely. This provision further supports the principle of party

autonomy and upholds the efficiency of the arbitral process while allowing for the court's expertise in determining significant questions of law when required.

(3) The application shall identify the question of law to be determined and, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the question should be decided by the court.

Section 45(3) of the English Arbitration Act 1996 outlines the requirements for making an application to the court under section 45(1) to determine a question of law arising in arbitral proceedings. This subsection lays down the necessary details that must be included in the application to ensure clarity and fairness in the process. Key points about section 45(3):

1. **Identifying the Question of Law:** The application made to the court must clearly identify the specific question of law that the party seeks the court to determine. This ensures that the court is well-informed about the precise legal issue that needs resolution, enabling it to focus on the relevant legal arguments and make an appropriate determination.
2. **Stating Grounds for Court Intervention:** If the application is not made with the agreement of all the other parties involved in the arbitral proceedings, the applicant must state the grounds on which they believe the question of law should be decided by the court. This requirement encourages transparency and fairness in the process. The applicant must provide valid reasons justifying the need for court intervention and demonstrate why it is essential for the court to address the specific legal issue.

By requiring the application to identify the question of law and provide grounds for seeking court intervention, section 45(3) ensures that the court has a clear understanding of the matter in question and the reasons why the party believes court determination is necessary. This helps maintain clarity, transparency, and fairness in the arbitration process and ensures that court intervention is sought appropriately and judiciously. It also encourages parties to resolve legal issues through arbitration whenever possible, promoting the efficiency and autonomy of the arbitral proceedings.

(4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.

Section 45(4) of the English Arbitration Act 1996 addresses the situation where a party has made an application to the court under section 45(1) to determine a question of law arising in arbitral proceedings. This subsection provides guidance on the proceedings during the time the court application is pending. Key points about section 45(4):

1. **Continuation of Arbitral Proceedings:** Unless the parties have agreed otherwise, the arbitral tribunal is not required to halt the ongoing arbitral proceedings simply because one of the parties has made an application to the court under section 45(1). In other words, the tribunal retains the authority to continue with the arbitration process and conduct the proceedings while the court application is pending.

2. **Power to Make an Award:** Similarly, the arbitral tribunal is not prohibited from making an award on the substantive dispute while the court application is under consideration. This allows the tribunal to proceed with its primary function of resolving the main issues in dispute and rendering a decision, even if a party has sought court intervention on a question of law.
3. The purpose of section 45(4) is to ensure the efficiency and effectiveness of arbitral proceedings. Arbitration is often chosen as an alternative to litigation because it offers a faster and more flexible resolution process. By allowing the tribunal to continue the proceedings and make an award while a specific question of law is being considered by the court, the Act aims to minimise delays and prevent the arbitration process from being unduly impeded.

However, it is worth noting that if the court eventually decides on the question of law, its determination will have binding authority and may impact the tribunal's final award on the merits. Thus, while the tribunal may proceed, it must be prepared to adapt its decision based on the court's ruling on the legal question if required. This cooperative approach ensures the effectiveness and harmony of both arbitration and judicial proceedings in resolving the dispute.

(5) Unless the court gives leave, no appeal lies from a decision of the court whether the conditions specified in subsection (2) are met.

Section 45(5) of the English Arbitration Act 1996 addresses the issue of appeals from a decision of the court made under section 45(2). This subsection outlines the conditions under which an appeal can be brought and the requirement for the court's permission (leave) to do so. Key points about section 45(5):

1. **Appeal Restriction:** This subsection establishes a general rule that, in the absence of the court's permission, no appeal can be filed against a decision made by the court under section 45(2). In other words, a party dissatisfied with the court's determination on the question of law during arbitral proceedings cannot automatically appeal that decision.
2. **Conditions for Appeal:** If a party wishes to appeal the court's decision, they must meet certain conditions specified in section 45(2)(b). These conditions are:
 - a. The determination of the question of law is likely to produce substantial savings in costs.
 - b. The application for the court's determination was made without delay.
3. **Permission (Leave) to Appeal:** To bring an appeal, a party must seek permission (leave) from the court. The court has the authority to grant or deny permission for the appeal based on its assessment of the case. It will consider whether the conditions for appeal under Section 45(2)(b) have been met and whether there are valid reasons justifying an appeal.

The purpose of section 45(5) is to prevent automatic appeals against the court's decision on questions of law during arbitral proceedings. Arbitration is generally intended to provide a more efficient and

streamlined alternative to court litigation. Allowing automatic appeals without any limitation could undermine the purpose of arbitration by leading to unnecessary delays and increased costs.

By requiring parties to seek the court's permission before appealing, the Act maintains the efficiency and finality of arbitration while still preserving the right to appeal in situations where it is genuinely warranted. The court's assessment of whether the conditions for appeal have been met ensures that only relevant and significant issues are considered for appeal, protecting the overall integrity of the arbitral process.

(6) The decision of the court on the question of law shall be treated as a judgment of the court for the purposes of an appeal.

But no 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.

Section 45(6) of the English Arbitration Act 1996 pertains to the treatment of the court's decision on a question of law and the rules regarding appeals from that decision. It sets out the requirements and conditions for seeking leave to appeal, emphasising that such leave should be granted only in specific circumstances. Key points about section 45(6):

1. **Treatment as a Judgment:** The court's decision on the question of law during arbitral proceedings is treated as a judgment of the court for the purposes of an appeal. This means that the decision is considered on par with any other judgment rendered by the court, regarding the appeal process.
2. **Leave to Appeal Required:** No appeal can be brought without first obtaining the leave (permission) of the court. In other words, a party seeking to appeal the court's decision on the question of law must apply for permission from the court to proceed with the appeal.
3. **Criteria for Granting Leave to Appeal:** The court shall grant leave to appeal only if it considers that the question of law involved is one of general importance or if it finds some other special reason that justifies the matter being considered by the Court of Appeal.
4. **General Importance:** The court will assess whether the question of law has broader implications beyond the specific case, meaning it has significant consequences for the legal principles or issues in the field of arbitration or law.
5. **Special Reason:** Besides general importance, there might be other special reasons that warrant the appeal being heard by the Court of Appeal, even if it might not be of general importance.
6. **The purpose of section 45(6) is to control the number of appeals and ensure that only important and impactful legal questions are heard at the appellate level. Allowing unrestricted appeals could lead to an influx of appeals on relatively minor or trivial legal issues, undermining the efficiency and finality of the arbitral process.**

By requiring leave from the court, the Act allows the court to filter out less significant appeals and focus on addressing important legal questions that can have broader implications or require clarification. This provision strikes a balance between providing a right to appeal and ensuring that appeals are granted selectively based on their merit and potential significance.

THE AWARD

46 RULES APPLICABLE TO SUBSTANCE OF DISPUTE

(1) The arbitral tribunal shall decide the dispute—

- (a) in accordance with the law chosen by the parties as applicable to the substance of the dispute, or
- (b) if the parties so agree, in accordance with such other considerations as are agreed by them or determined by the tribunal.

Section 46(1) of the English Arbitration Act 1996 outlines the principles that govern how the arbitral tribunal must decide the dispute submitted to it. It provides the guidelines for determining the applicable law in the arbitral proceedings. Key points about section 46(1):

1. Choice of Law by the Parties: The first option in section 46(1)(a) states that the arbitral tribunal shall decide the dispute in accordance with the law chosen by the parties as applicable to the substance of the dispute. This means that the parties involved in the arbitration have the freedom to decide which legal system's rules and laws they want to apply to their dispute.
2. The chosen law may be the law of a specific country, a particular state's law, or any other legal system they consider appropriate for their dispute.
3. The choice of law may be made explicitly in the arbitration agreement or in any other contract between the parties.
4. The tribunal must apply and interpret the chosen law in reaching its decision.
5. Other Considerations Agreed by the Parties or Determined by the Tribunal: The second option in section 46(1)(b) provides that if the parties agree, the dispute may be decided in accordance with considerations other than the law selected under (a).
6. These other considerations could be principles of equity, fairness, trade usage, or any other guidelines the parties may agree upon.
7. If the parties do not explicitly agree on other considerations, the arbitral tribunal may determine them based on the circumstances of the case.
8. It is important to note that this option is subject to the parties' agreement. If the parties do not agree to consider other factors, the default option is to apply the law chosen by the parties (option 46(1)(a)).

Overall, section 46(1) emphasises party autonomy and the importance of giving parties the freedom to determine the rules by which their dispute will be resolved. This provision ensures that the parties have significant control over the arbitration process and can tailor it to their specific needs and preferences. Whether they choose the law of a specific jurisdiction or agree on other considerations, the tribunal's decision must align with the choices made by the parties, promoting fairness and predictability in the resolution of their dispute.

(2) For this purpose the choice of the laws of a country shall be understood to refer to the substantive laws of that country and not its conflict of laws rules.

Section 46(2) of the English Arbitration Act 1996 provides a specific clarification regarding the interpretation of the choice of law made by the parties in the arbitration agreement. It addresses how the choice of laws of a country should be understood in the context of arbitral proceedings. Key points about section 46(2):

1. **Substantive Laws of a Country:** The provision states that when the parties choose the laws of a country to govern their dispute (as mentioned in section 46(1)(a)), it refers to the substantive laws of that country. Substantive laws are the laws that govern the rights and obligations of parties involved in a legal dispute, such as contract law, tort law, property law, and so on.
2. **Exclusion of Conflict of Laws Rules:** The provision further clarifies that the choice of laws does not include the conflict of laws (also known as private international law) rules of that country. Conflict of laws rules are the rules used to determine which country's laws should be applied when a case involves elements from different jurisdictions.
3. **Emphasis on Substance over Procedure:** By excluding conflict of laws rules, section 46(2) emphasises that the parties' choice of law is intended to determine the substantive rights and obligations between them rather than the procedural aspects of the arbitration. It ensures that the parties' intention is focused on the content and application of the law governing the core issues of their dispute.
4. **Clarity and Predictability:** This provision provides clarity and predictability in the arbitration process. When parties choose the laws of a specific country to govern their dispute, the arbitral tribunal will apply the substantive laws of that country directly, without having to engage in complex analyses of conflict of laws issues.

In summary, section 46(2) clarifies that when the parties agree to apply the laws of a particular country to their dispute, it means the substantive laws of that country, excluding its conflict of laws rules. This clarification ensures that the arbitral tribunal follows the parties' choice of substantive law directly, making the arbitration process more straightforward and transparent with regard to the applicable legal principles.

(3) If or to the extent that there is no such choice or agreement, the tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

Section 46(3) of the English Arbitration Act 1996 deals with situations where the parties have not made any specific choice or agreement regarding the applicable law to govern their dispute. In such cases, the provision outlines the approach the arbitral tribunal should take to determine the applicable law. Key points about section 46(3):

1. **No Express Choice of Law:** If the parties have not explicitly chosen a specific law to govern their dispute (as mentioned in section 46(1)(a)) or if there is no agreement on the

applicable law (as mentioned in section 46(1)(b)), the arbitral tribunal will not have a pre-determined law to apply.

2. **Conflict of Laws Analysis:** In the absence of a choice or agreement, the arbitral tribunal must engage in a conflict of laws analysis. Conflict of laws, also known as private international law, deals with cases involving elements from multiple legal systems or jurisdictions. The tribunal must determine which legal system's laws should apply to resolve the dispute.
3. **Tribunal's Discretion:** Section 46(3) grants the arbitral tribunal the discretion to decide the applicable law based on its own assessment of the conflict of laws rules it considers applicable. This means that the tribunal has the authority to determine the most appropriate legal system whose laws should govern the dispute based on the specific facts and circumstances of the case.
4. **Fairness and Reasoning:** The provision requires the arbitral tribunal to make its determination of the applicable law in a fair and reasoned manner. The tribunal's decision should be based on relevant legal principles and appropriate conflict of laws methodologies.
5. **Flexibility and Efficiency:** Section 46(3) allows the arbitral tribunal to be flexible in determining the applicable law, which can be beneficial in international disputes involving multiple jurisdictions. It promotes efficiency by enabling the tribunal to choose the most suitable legal framework for resolving the dispute.

In summary, section 46(3) of the English Arbitration Act 1996 provides guidance on the approach the arbitral tribunal should take when the parties have not chosen the applicable law. The tribunal will undertake a conflict of laws analysis to determine the most appropriate legal system whose laws should be applied to the dispute. This approach ensures fairness and flexibility in resolving disputes that lack an express choice of law or agreement by the parties.

47 AWARDS ON DIFFERENT ISSUES, &C.

- (1) Unless otherwise agreed by the parties, the tribunal may make more than one award at different times on different aspects of the matters to be determined.**

Key Points about Section 47(1):

1. **Multiple Awards:** This provision grants the arbitral tribunal the authority to render multiple awards in the course of the arbitral proceedings. The tribunal has the discretion to issue separate awards addressing distinct aspects of the matters under consideration.
2. **Different Aspects of Matters:** The tribunal can make awards on various issues or aspects of the dispute, each addressing different elements of the case. For example, the tribunal may render separate awards on liability, quantum of damages, and costs, if required.
3. **Flexibility in Decision-Making:** Section 47(1) aims to provide flexibility to the arbitral tribunal in managing complex disputes. By allowing multiple awards, the tribunal can resolve individual issues efficiently, even if other aspects of the dispute remain pending.

4. **Enhancing Efficiency:** This provision promotes procedural efficiency, as it allows the tribunal to issue awards on particular issues as soon as they are ready, without waiting for the resolution of the entire case. It can be particularly useful in cases where certain aspects of the dispute are less complex and can be decided quickly.
5. **Subject to Party Agreement:** While the tribunal has the inherent power to make multiple awards, this authority can be restricted or expanded based on the agreement of the parties. If the parties agree that the tribunal should issue a single comprehensive award covering all matters, they can include such an agreement in the arbitration clause or during the course of the proceedings.
6. **Finality of Awards:** Each award issued by the tribunal is considered final and binding on the parties with respect to the particular aspects of the dispute addressed in that award. This means that the tribunal's decisions on each issue can be enforced independently, and the proceedings can continue for other unresolved matters.

In summary, Section 47(1) of the English Arbitration Act 1996 grants the arbitral tribunal the discretion to make multiple awards at different stages of the proceedings on various aspects of the matters to be determined. The provision enhances procedural flexibility and efficiency, allowing the tribunal to address different issues promptly and separately, subject to any agreement reached by the parties.

(2) The tribunal may, in particular, make an award relating—

- (a) to an issue affecting the whole claim, or**
- (b) to a part only of the claims or cross-claims submitted to it for decision.**

Key Points about Section 47(2):

1. **Scope of the Award:** This provision empowers the arbitral tribunal to issue awards that address specific issues or parts of the claims or cross-claims brought before it for resolution.
2. **Focused Awards:** The tribunal is not limited to rendering comprehensive awards covering all aspects of the dispute. Instead, it can issue focused awards that pertain to individual issues or parts of the claims, as per the needs of the case.
3. **Efficiency and Progression:** By allowing the tribunal to issue partial or interim awards, Section 47(2) promotes procedural efficiency and facilitates the progression of the arbitration. The tribunal can resolve certain issues or parts of the claims without waiting for the resolution of the entire dispute.
4. **Practical Use:** This provision can be especially useful in complex disputes where certain issues are more straightforward and can be resolved quickly. The tribunal can address these issues first, while allowing the parties to continue presenting evidence or arguments on other aspects of the dispute.
5. **Final and Binding:** Each award issued by the tribunal under Section 47(2) is considered final and binding on the parties with respect to the specific issues or parts of the claims it

addresses. The tribunal’s decisions on these matters are enforceable as if they were part of a comprehensive final award.

6. **Distinct from Multiple Awards:** Section 47(2) is related to Section 47(1) but distinct from it. While Section 47(1) allows multiple awards to be made at different times, Section 47(2) focuses on the content and scope of the awards themselves.
7. **Subject to Party Agreement:** As with Section 47(1), the tribunal’s authority to make awards on specific issues or parts of the claims can be subject to any agreement reached by the parties. They may decide whether they prefer comprehensive or focused awards based on their arbitration agreement or mutual understanding during the proceedings.

In conclusion, Section 47(2) of the English Arbitration Act 1996 grants the arbitral tribunal the authority to issue awards that relate to specific issues affecting the whole claim or to certain parts of the claims or cross-claims submitted to it. The provision enhances the tribunal’s ability to address individual issues efficiently and promotes the flexible resolution of complex disputes. The awards made under this section are final and binding with regard to the specific matters they address.

(3) If the tribunal does so, it shall specify in its award the issue, or the claim or part of a claim, which is the subject matter of the award.

Key Points about Section 47(3):

1. **Clarity and Specificity:** When the arbitral tribunal issues an award under Section 47(2), which relates to a specific issue or a part of a claim, this subsection requires that the award clearly specifies the exact subject matter of that award.
2. **Avoiding Ambiguity:** The purpose of this provision is to ensure that the parties understand precisely which issue or portion of the claim the tribunal has decided in its award. It helps to avoid any confusion or ambiguity regarding the scope and effect of the tribunal’s decision.
3. **Transparency in Decision-Making:** By explicitly identifying the issue, claim, or part of the claim that forms the subject matter of the award, the tribunal enhances the transparency of its decision-making process. This enables the parties to know what has been resolved and what remains to be addressed in the arbitration.
4. **Awards as Discrete Decisions:** When the tribunal makes multiple awards under Section 47(2), each award is treated as a separate and discrete decision on the specific issue or part of the claim that it addresses. This helps in the enforcement and implementation of individual awards without having to wait for the resolution of the entire dispute.
5. **Enforceability and Clarity:** The clarity in specifying the subject matter of each award is crucial for enforcing and implementing those decisions. It allows the parties and enforcing authorities to understand precisely what obligations arise from each award.
6. **Conducive to Effective Arbitration:** By making specific awards on particular issues, the tribunal can efficiently address individual matters as they are resolved, rather than waiting for the final resolution of the entire case.

7. Coordination with Section 47(2): Section 47(3) complements Section 47(2) by ensuring that each award made by the tribunal on a specific issue or part of a claim is accompanied by a clear identification of the subject matter of that award.

In conclusion, Section 47(3) of the English Arbitration Act 1996 requires the arbitral tribunal, when making an award under Section 47(2) on a specific issue, claim, or part of a claim, to explicitly specify the subject matter of that award. This provision enhances transparency, clarity, and enforceability in the arbitral process, allowing for efficient resolution of individual issues in complex disputes.

48 REMEDIES

(1) The parties are free to agree on the powers exercisable by the arbitral tribunal as regards remedies.

Key Points about section 48(1):

1. **Freedom of Agreement:** This provision emphasises the principle of party autonomy in arbitration. It allows the parties to determine, through their agreement, the scope and extent of powers that the arbitral tribunal may exercise concerning remedies in the dispute.
2. **Flexibility and Customisation:** By giving parties the freedom to agree on the tribunal's powers regarding remedies, the Act promotes flexibility in the arbitration process. Parties can tailor the tribunal's authority to meet the specific needs and complexities of their dispute.
3. **Wide Range of Remedies:** The remedies referred to in this section may include various forms of relief or redress that the tribunal can award to the parties. This could encompass different types of damages, specific performance, injunctive relief, declaratory relief, and more.
4. **Specifying Remedies in the Arbitration Agreement:** To exercise this freedom, parties should include specific provisions in their arbitration agreement or contract that outline the powers and authority of the arbitral tribunal concerning remedies. This agreement may take the form of an arbitration clause within the contract.
5. **Consistency with the Principle of Party Autonomy:** The principle of party autonomy is central to arbitration, allowing the parties to craft their own resolution mechanisms, choose the governing law, and determine the scope of remedies available in the arbitration process.
6. **Balancing Interests:** Section 48(1) gives the parties a significant degree of control over the dispute resolution process. However, it is subject to the overall framework and requirements of the English Arbitration Act 1996 and any applicable mandatory laws.
7. **Limits on Remedial Powers:** While the parties have the freedom to agree on the tribunal's powers as regards remedies, they cannot confer powers that are contrary to public policy or beyond the scope of the tribunal's authority under the law.

8. Finality of Arbitration: Once the parties have agreed on the powers of the arbitral tribunal regarding remedies, those powers are binding on the parties and will govern the tribunal's decision-making process.

In conclusion, section 48(1) of the English Arbitration Act 1996 affirms the principle of party autonomy in arbitration by allowing the parties to agree on the powers exercisable by the arbitral tribunal as regards remedies. This provision enhances the flexibility and efficiency of the arbitration process, enabling the parties to customise the resolution of their disputes to suit their specific needs and interests. However, any powers conferred must be consistent with the law and public policy to ensure the integrity of the arbitration proceedings.

(2) Unless otherwise agreed by the parties, the tribunal has the following powers.

Key Points about Section 48(2):

1. Default Powers: This provision outlines the default powers of the arbitral tribunal concerning remedies when the parties have not agreed otherwise. In the absence of any specific agreement on the tribunal's powers, this section sets the standard framework for the tribunal's authority in granting remedies.
2. Limited Scope: Section 48(2) deals with the powers of the tribunal specifically related to remedies. It does not cover other aspects of arbitration, such as procedural matters or evidence rules, which are addressed in other sections of the Act.
3. Default Remedial Powers: In the absence of an agreement, the tribunal's powers concerning remedies will be derived from applicable laws and the arbitration rules chosen by the parties (if any). These default powers allow the tribunal to grant appropriate relief based on the facts and circumstances of the case.
4. Consideration of Governing Law: The tribunal's default powers will be influenced by the law chosen by the parties as applicable to the substance of the dispute. The tribunal will apply this law when determining the appropriate remedies unless the parties have agreed otherwise.
5. Respecting Party Autonomy: While this section specifies the default powers of the tribunal, it is important to note that parties can always agree on different powers or tailor the tribunal's authority to meet their specific needs and expectations.
6. Wide Range of Remedies: The default powers may include various forms of relief, such as damages, specific performance, injunctions, declaratory judgments, and any other remedies available under the applicable law.
7. Balancing Interests: The default powers are designed to provide a balanced approach, allowing the tribunal to grant appropriate remedies to achieve fair and just outcomes in the dispute. However, the tribunal must also respect the principle of party autonomy and apply the law chosen by the parties.

8. Limits on Powers: The tribunal's powers concerning remedies are subject to any mandatory provisions of the law and cannot exceed the scope of the law or the arbitration agreement.

In conclusion, section 48(2) of the English Arbitration Act 1996 outlines the default powers of the arbitral tribunal concerning remedies when the parties have not agreed otherwise. These default powers are derived from applicable laws and the parties' chosen rules (if any) and grant the tribunal the authority to award appropriate remedies to resolve the dispute. Nevertheless, the parties have the freedom to agree on different powers, subject to the boundaries of the law and the arbitration agreement.

(3) The tribunal may make a declaration as to any matter to be determined in the proceedings.

Key Points about section 48(3):

1. Declaration of Rights: This provision grants the arbitral tribunal the power to make declarations on any matter that requires determination in the arbitration proceedings. A declaration is a formal statement by the tribunal regarding the rights, obligations, or legal status of the parties or any relevant issue in dispute.
2. Legal Clarity: Declarations provide parties with legal clarity and certainty without necessarily requiring the tribunal to award specific remedies like damages or specific performance. Instead, it confirms the legal position of the parties in relation to a specific issue or matter.
3. Non-Binding Nature: Unlike an award, a declaration is non-binding. It does not create a legally enforceable obligation, but it clarifies the legal rights and obligations of the parties under the arbitration agreement or applicable law.
4. Usefulness of Declarations: Declarations can be valuable in situations where parties seek clarity on a legal question, the interpretation of contractual terms, or the existence of certain rights or duties. They can also be used to establish a party's legal position or to support future negotiations or litigation.
5. Supplementing Awards: In certain cases, a declaration may be issued alongside an award. The award addresses the substantive claims and remedies, while the declaration clarifies specific legal issues or points of law relevant to the dispute.
6. Scope of Declarations: The tribunal's power to make declarations is broad and extends to any matter that falls within the scope of the arbitration proceedings. This includes interpreting contractual provisions, determining the validity of a contract, or deciding the legal effect of certain actions.
7. No Binding Effect: As declarations are non-binding, they do not carry the same force as an award and do not require enforcement. However, parties may choose to abide by the declaration voluntarily or use it as guidance in their future actions.
8. Time of Declaration: The tribunal may make a declaration at any stage during the arbitral proceedings, as long as the matter in question falls within the scope of the proceedings.

In conclusion, section 48(3) of the English Arbitration Act 1996 empowers the arbitral tribunal to make declarations on any matter to be determined in the arbitration proceedings. Declarations serve to clarify legal rights, obligations, and issues without creating legally binding obligations. They can provide parties with legal certainty and assist in resolving disputes by providing clear interpretations of the law or contractual provisions.

(4) The tribunal may order the payment of a sum of money, in any currency.

Key Points about section 48(4):

1. **Monetary Awards:** This provision grants the arbitral tribunal the power to issue monetary awards, ordering a party to pay a specified sum of money to another party. These monetary awards are legally binding and enforceable.
2. **Scope of Award:** The tribunal's power to order the payment of a sum of money is broad and allows it to make awards for various types of claims, such as compensatory damages, liquidated damages, interest, costs, and fees.
3. **Currency Flexibility:** The provision also enables the tribunal to specify the currency in which the monetary award is to be paid. This means that the award can be denominated in any currency agreed upon by the parties or deemed appropriate by the tribunal.
4. **Consideration of Currency:** In determining the currency for the payment, the tribunal may consider factors such as the currency of the underlying contract, the parties' locations, or the currency in which the losses were incurred.
5. **Enforceability:** A monetary award issued by the arbitral tribunal is legally enforceable under the law. The successful party can seek enforcement through the courts in accordance with the applicable national and international conventions on the recognition and enforcement of arbitral awards.
6. **Arbitral Tribunal's Discretion:** The tribunal has the discretion to determine the appropriate amount to be awarded, taking into account the evidence and arguments presented by the parties during the arbitral proceedings.
7. **Finality of Award:** Once the monetary award is issued by the tribunal, it is considered final and binding, subject to any rights of appeal or challenge allowed under the law or the arbitration agreement.
8. **Conversion of Currency:** In cases where the award is denominated in a currency different from the currency of the party's jurisdiction, the winning party may need to consider currency conversion and exchange rate fluctuations when enforcing the award.
9. **Compliance with Award:** Parties are obligated to comply with the monetary award as per the tribunal's order. Failure to do so may lead to enforcement actions and potential penalties.

In conclusion, section 48(4) of the English Arbitration Act 1996 empowers the arbitral tribunal to order the payment of a specified sum of money, in any currency, to a party. This allows the tribunal to issue

legally binding monetary awards in various currency denominations based on the merits of the case and the relevant circumstances.

(5) The tribunal has the same powers as the court—

- (a) to order a party to do or refrain from doing anything;**
- (b) to order specific performance of a contract (other than a contract relating to land);**
- (c) to order the rectification, setting aside or cancellation of a deed or other document.**

Key Points about section 48(5):

1. **Court-Like Powers:** This provision grants the arbitral tribunal powers that are equivalent to those possessed by a court. It empowers the tribunal to issue orders and remedies that a court could have issued in relation to certain matters.
2. **Ordering Actions or Refraining:** The tribunal can order a party to either perform a specific action or refrain from doing something. This enables the tribunal to issue mandatory or prohibitor injunctions similar to those issued by a court.
3. **Specific Performance:** The tribunal has the authority to order specific performance of a contract (other than a contract relating to land). Specific performance means compelling a party to fulfil its contractual obligations as per the agreed terms.
4. **Exceptions for Land Contracts:** Specific performance of contracts related to land is excluded from the tribunal's power. Land contracts often have specific legal complexities, and such matters are typically reserved for resolution by the courts.
5. **Rectification, Setting Aside, or Cancellation of Deeds/Document:** The tribunal can order the rectification, setting aside, or cancellation of a deed or other document if it finds that it was executed in error or is otherwise invalid or voidable.
6. **Limitation on Power:** It is important to note that these powers are not limitless and are subject to the parties' agreement. If the parties do not want the tribunal to have specific powers, they can exclude or modify them through their arbitration agreement.
7. **Legal Remedies Available:** By providing the tribunal with court-like powers, the Act aims to ensure effective and efficient dispute resolution in arbitration proceedings. The goal is to grant the tribunal the necessary tools to resolve disputes in a fair and equitable manner.
8. **Consistency with Court Proceedings:** Section 48(5) aligns the powers of the arbitral tribunal with court proceedings, making it easier for parties to transition from court litigation to arbitration and ensuring that similar remedies are available in both contexts.

In conclusion, section 48(5) of the English Arbitration Act 1996 confers on the arbitral tribunal powers equivalent to those of a court. These powers allow the tribunal to issue orders related to specific performance of contracts (excluding land contracts), actions or restraints on parties, and rectification,

setting aside, or cancellation of deeds or other documents. However, the powers are subject to the parties' agreement, and they can modify or exclude them if they choose to do so in their arbitration agreement.

49 INTEREST

(1) The parties are free to agree on the powers of the tribunal as regards the award of interest.

Key Points about Section 49(1):

1. **Freedom of Agreement:** This provision emphasises the principle of party autonomy in arbitration. It states that the parties have the freedom to determine and agree on the powers of the arbitral tribunal concerning the award of interest.
2. **Interest on Awards:** "Interest" here refers to the payment of additional money on top of the principal amount awarded. It is a compensation for the time value of money, and it is often awarded to compensate the prevailing party for the delay in receiving the monetary award.
3. **Flexibility in Awarding Interest:** By allowing the parties to agree on the powers of the tribunal in relation to interest, the Act recognises the importance of flexibility in arbitration proceedings. Parties can tailor their arbitration agreement to suit their specific needs and preferences regarding interest awards.
4. **Scope of Agreement:** The parties can agree on various aspects of interest awards, including the rate of interest, the period for which interest should be awarded, and the circumstances under which interest should be awarded.
5. **Default Rule:** If the parties do not expressly agree on the powers of the tribunal regarding interest in their arbitration agreement, the default rules of the law governing the arbitration will apply. In England, the default rule is that the arbitral tribunal has the power to award simple or compound interest, as it considers appropriate, on the whole or any part of the monetary award.
6. **Consistency with Party Autonomy Principle:** Section 49(1) reaffirms the principle of party autonomy, which is a fundamental characteristic of arbitration. It empowers parties to shape the arbitration process and the remedies available according to their specific commercial needs and preferences.
7. **Importance of Clear Agreements:** To avoid disputes or confusion later on, parties should ensure that their arbitration agreement explicitly addresses the issue of interest awards, including any specific terms or conditions regarding interest.

In conclusion, Section 49(1) of the English Arbitration Act 1996 underscores the importance of party autonomy in arbitration by allowing the parties to agree on the powers of the arbitral tribunal concerning the award of interest. This provision grants parties the flexibility to tailor their arbitration agreement to meet their specific needs and preferences regarding interest awards, providing a clear and predictable framework for the resolution of disputes related to interest in arbitration.

(2) Unless otherwise agreed by the parties the following provisions apply.

Key Points about Section 49(2):

1. **Default Provisions:** Section 49(2) sets out default provisions related to the award of interest in arbitration. These provisions apply when the parties have not reached an agreement regarding the powers of the tribunal concerning the award of interest.
2. **Scope of Application:** The default provisions outlined in Section 49(2) apply to all arbitrations conducted under the English Arbitration Act 1996, where the parties have not expressly agreed otherwise in their arbitration agreement.
3. **Awarding Interest under Default Provisions:** When the parties have not agreed otherwise, the arbitral tribunal has the power to award interest under the following default provisions:
 - a. **Power to Award Simple or Compound Interest:** The tribunal may award simple or compound interest, as it considers appropriate, on the whole or any part of the monetary award.
 - b. **Rate of Interest:** The tribunal has the discretion to determine the rate of interest to be applied, taking into account the circumstances of the case.
 - c. **Period of Interest:** The tribunal may specify the period for which interest is to be awarded, which can include the time from which the principal amount became due until the date of the award or any other relevant date.
4. **Importance of Express Agreements:** Parties are encouraged to include specific provisions in their arbitration agreement regarding the award of interest to avoid uncertainty or disputes in the future. When parties agree otherwise, the default provisions outlined in section 49(2) will not apply.
5. **Preserving Party Autonomy:** Section 49(2) respects the principle of party autonomy by allowing parties to customise their arbitration agreement based on their specific needs, including interest awards.
6. **Certainty and Predictability:** The inclusion of default provisions ensures that there is a clear legal framework for the arbitral tribunal to follow in cases where the parties have not explicitly agreed on the powers of the tribunal concerning the award of interest.

In summary, section 49(2) of the English Arbitration Act 1996 provides default provisions regarding the award of interest in arbitration when the parties have not agreed otherwise. These provisions grant the arbitral tribunal the power to award simple or compound interest, determine the rate and period of interest, and help maintain a degree of certainty and predictability in the absence of express agreements between the parties. Parties are encouraged to make clear and specific provisions in their arbitration agreement to define the powers of the tribunal regarding interest awards according to their preferences and commercial needs.

- (3) **The tribunal may award simple or compound interest from such dates, at such rates and with such rests as it considers meets the justice of the case—**
- (a) **on the whole or part of any amount awarded by the tribunal, in respect of any period up to the date of the award;**
 - (b) **on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment.**

Key Points about section 49(3):

1. **Flexibility in Awarding Interest:** Section 49(3) provides the arbitral tribunal with significant flexibility in determining the award of interest in arbitration. It grants the tribunal the discretion to decide various aspects related to interest, such as the dates from which interest should be awarded, the rates of interest, and the rests (compounding intervals).
2. **Interest on Awarded Amounts:** The tribunal may award simple or compound interest on the whole or any part of the amount awarded by the tribunal. This means that the interest can be calculated based on the total sum awarded or specific portions of the award, depending on the circumstances of the case.
3. **Interest Periods:** The tribunal has the authority to determine the period for which interest should be awarded. It can cover any period leading up to the date of the award, which typically includes the time from which the principal amount became due until the date of the tribunal's decision.
4. **Interest on Outstanding Amounts:** Section 49(3)(b) allows the tribunal to award interest on the whole or any part of the amount claimed in the arbitration and outstanding at the start of the arbitral proceedings. This provision addresses situations where the claimant is owed a sum of money before the arbitration proceedings commence, and it remains unpaid until the date of payment, which may be before the issuance of the final award.
5. **Determining the Justice of the Case:** The tribunal must consider the justice of the case while making decisions on interest. This ensures that the interest awarded aligns with the circumstances of the dispute and reflects the parties' actions and conduct throughout the arbitration process.
6. **Interest Rates and Rests:** The tribunal may set the rate at which interest is awarded and determine whether the interest will be simple or compound. Simple interest accrues only on the principal amount, while compound interest accumulates on both the principal and any previously accrued interest.
7. **Party Autonomy and Agreements:** As with other matters related to interest, parties have the option to agree on the specific terms for awarding interest in their arbitration agreement. However, if there is no agreement, the tribunal exercises its discretion in accordance with section 49(3).

Overall, section 49(3) grants the arbitral tribunal wide discretion in awarding interest based on the justice of the case. The tribunal can decide the dates from which interest accrues, the rates of interest,

and whether to use simple or compound interest. This flexibility allows the tribunal to tailor the award of interest to the unique circumstances of each arbitration and ensure a fair resolution of the dispute.

(4) The tribunal may award simple or compound interest from the date of the award (or any later date) until payment, at such rates and with such rests as it considers meets the justice of the case, on the outstanding amount of any award (including any award of interest under subsection (3) and any award as to costs).

Key Points about section 49(4):

1. **Post-Award Interest:** Section 49(4) deals with the award of interest after the issuance of the arbitral award. It grants the arbitral tribunal the power to award simple or compound interest on the outstanding amount of any award, including interest awarded under subsection (3) and any award related to costs.
2. **Interest from the Date of the Award:** The tribunal can award interest from the date of the award itself or any later date specified by the tribunal. This allows the tribunal to consider the specific circumstances of the case and decide the most appropriate starting point for interest accrual.
3. **Interest until Payment:** The interest awarded under section 49(4) applies until the outstanding amount of the award is fully paid by the losing party. It is intended to compensate the prevailing party for the time value of money and any delay in receiving the awarded sum.
4. **Discretion of the Tribunal:** The tribunal has broad discretion in determining the rate of interest and the rests (compounding intervals) to be applied. The objective is to ensure that the award of interest aligns with the justice of the case and compensates the prevailing party adequately for any delay in receiving the awarded amount.
5. **Scope of the Award:** Section 49(4) applies to any award made by the tribunal, including both the principal amount of the award and any interest awarded under Section 49(3) (interest on the principal sum up to the date of the award). Additionally, it encompasses any award relating to costs incurred by the parties during the arbitration proceedings.
6. **Flexibility for the Tribunal:** The provision gives the tribunal the authority to consider various factors, such as the prevailing market conditions, economic circumstances, and the nature of the dispute, in determining the rate and rests for post-award interest.
7. **Ensuring Fair Compensation:** The award of post-award interest serves to provide the prevailing party with fair compensation for the time value of money during the period between the award and its actual payment.
8. **Party Autonomy and Agreements:** As with other matters related to interest, parties have the option to agree on the specific terms for awarding post-award interest in their arbitration agreement. However, if there is no agreement, the tribunal exercises its discretion in accordance with section 49(4).

Overall, section 49(4) empowers the arbitral tribunal to award post-award interest on the outstanding amount of any award, including interest under subsection (3) and costs. The tribunal has the flexibility to determine the appropriate rate and rests based on the justice of the case, ensuring fair compensation for the prevailing party. This provision further emphasises the importance of the tribunal’s discretion in crafting a just and equitable award in arbitration proceedings.

(5) References in this section to an amount awarded by the tribunal include an amount payable in consequence of a declaratory award by the tribunal.

Key Points about Section 49(5):

1. **Inclusion of Declaratory Awards:** Section 49(5) clarifies that the references made in Section 49 (specifically, subsections (3) and (4)) to “an amount awarded by the tribunal” also encompass amounts payable in consequence of a declaratory award by the arbitral tribunal.
2. **Nature of Declaratory Awards:** A declaratory award is an arbitral decision that provides a declaration of the parties’ rights, obligations, or legal positions without ordering specific actions or granting a monetary award. In such cases, the tribunal’s decision does not directly result in the payment of money, but it may have significant consequences for the parties’ rights and obligations.
3. **Scope of Awarded Amounts:** Section 49(5) ensures that the provisions related to interest (both pre- and post-award) are applicable to amounts that may become payable as a result of the declaratory award. This means that, if the declaratory award later leads to an obligation to pay a specific amount (e.g., compensation), the provisions for awarding interest under Section 49 can apply to that amount.
4. **Enabling Effective Remedies:** By considering amounts payable under a declaratory award as part of the tribunal’s award for the purpose of calculating interest, Section 49(5) enables effective remedies for the prevailing party even when the award itself is declaratory in nature.
5. **Ensuring Fair Compensation:** The provision ensures that a party receiving a declaratory award, which may not immediately result in a direct payment, is not disadvantaged when it comes to receiving fair compensation, including any interest that may be awarded, for the outcome of the arbitration.
6. **Consistency in Interpretation:** Section 49(5) clarifies the interpretation and application of other subsections in Section 49 concerning the awarding of interest, making it clear that the concept of an “amount awarded by the tribunal” includes amounts arising from declaratory awards.

In summary, section 49(5) ensures that amounts payable in consequence of a declaratory award by the arbitral tribunal are treated in the same manner as other monetary awards when it comes to the calculation of interest. This provision aims to provide consistent and fair remedies to parties involved in arbitration, regardless of whether the award is in the form of a monetary award or a declaratory decision.

(6) The above provisions do not affect any other power of the tribunal to award interest.

Key Points about section 49(6):

1. **Preservation of Tribunal's Discretion:** Section 49(6) emphasises that the provisions outlined in section 49 (specifically, subsections (3) and (4)) relating to the tribunal's power to award interest do not restrict or limit any other power that the tribunal may have in awarding interest.
2. **Tribunal's Broad Discretion:** Arbitral tribunals are granted broad discretion in deciding on matters relating to the arbitration, including the awarding of interest. Section 49(6) reaffirms the tribunal's wide discretion to determine the terms and conditions under which interest may be awarded.
3. **Flexible Approach:** The Act intends to promote flexibility and party autonomy in arbitration proceedings. Therefore, the tribunal's powers to award interest are not confined solely to the specific situations detailed in section 49(3) and (4). The tribunal can still exercise its discretion to award interest in other appropriate circumstances, as it deems fit.
4. **Other Sources of Interest Awards:** Apart from the provisions in section 49, there may be other contractual agreements or applicable laws that authorise the tribunal to award interest. These other sources of authority are not affected by the specific provisions in section 49.
5. **Ensuring Fair and Equitable Outcomes:** Section 49(6) ensures that the tribunal has the freedom to consider any relevant factors and the specific circumstances of the case when deciding whether to award interest, and if so, the rate, duration, and rest periods. This allows the tribunal to tailor the interest award to achieve a fair and equitable outcome for the parties.
6. **Resolving Conflicts with section 49:** If there is a conflict between the provisions of section 49 and any other source of authority concerning the awarding of interest, the tribunal may rely on section 49(6) to retain its full discretion to award interest according to the most appropriate principles or guidelines, as long as it is consistent with the parties' agreement and the applicable law.

In summary, section 49(6) reinforces the tribunal's discretion to award interest in arbitral proceedings beyond the specific scenarios outlined in section 49(3) and (4). The provision preserves the tribunal's freedom to exercise its discretion and consider all relevant factors in awarding interest, ensuring that the tribunal can make a fair and just decision based on the specific circumstances of the case.

50 EXTENSION OF TIME FOR MAKING AWARD

(1) Where the time for making an award is limited by or in pursuance of the arbitration agreement, then, unless otherwise agreed by the parties, the court may in accordance with the following provisions by order extend that time.

Key Points about section 50(1):

1. **Time Limit for Making an Award:** In arbitration, the parties often agree to a specific time limit within which the arbitral tribunal must make its final award. This time limit may be set directly in the arbitration agreement or determined through the rules of the chosen arbitration institution.
2. **Power of the Court:** Section 50(1) provides the court with the authority to extend the time for making an award when it is limited by the arbitration agreement or rules. The court's power to extend the time is subject to the conditions and requirements set out in the following provisions of the Act.
3. **Preserving Party Autonomy:** While the court has the power to extend the time for making an award, it can only do so if the parties have not agreed otherwise. If the parties have already agreed to extend the time or have set different procedures for time extensions, the court cannot intervene unless the parties subsequently agree to modify their agreement.
4. **Court's Discretion:** The court's decision to extend the time for making an award is discretionary and should be made in accordance with the principles of fairness and justice. The court will consider the particular circumstances of the case and the reasons for the delay in making the award.
5. **Order of the Court:** If the court determines that an extension of time is appropriate, it will issue an order to that effect. This order will specify the new time limit within which the arbitral tribunal must render its award.
6. **Conditions for Extension:** While the Act does not explicitly state the conditions for granting an extension, common reasons for extending the time limit may include complexities in the case, the volume of evidence, the need for additional hearings, or unforeseen circumstances that hinder the tribunal's ability to deliver the award within the initially agreed timeframe.
7. **Limits of the Court's Intervention:** The court's power to extend the time for making an award is only one aspect of its limited role in arbitration. The Act is designed to support the autonomy of the arbitral process and the primacy of the arbitral tribunal in deciding the dispute.

In summary, section 50(1) empowers the court to extend the time for making an award when such time is restricted by the arbitration agreement or rules. However, the court's intervention is subject to the absence of an agreement to the contrary by the parties. The court's decision to grant an extension is discretionary, and it will consider the circumstances of the case to ensure fairness and efficiency in the arbitral proceedings.

- (2) An application for an order under this section may be made—**
- (a) by the tribunal (upon notice to the parties), or**
 - (b) by any party to the proceedings (upon notice to the tribunal and the other parties),**
- but only after exhausting any available arbitral process for obtaining an extension of time.**

Key Points about section 50(2):

1. **Application for Extension:** Section 50(2) deals with the process of seeking an extension of time for making an award when the time limit is limited by the arbitration agreement or rules. It provides for two possible applicants who can make such an application: the arbitral tribunal and any party to the arbitration proceedings.
2. **Tribunal's Application:** The arbitral tribunal may initiate the application for an extension of time. However, it must give notice of the application to all the parties involved in the arbitration. This ensures transparency and allows the parties to respond or provide their views on the application.
3. **Party's Application:** A party to the arbitration proceedings may also make an application for an extension of time. If a party decides to make such an application, it must notify the tribunal and all other parties about the application. This requirement ensures that all parties are informed of the request for an extension and have an opportunity to respond.
4. **Exhaustion of Arbitral Process:** Before approaching the court for an extension of time, the party or tribunal making the application must first exhaust any available arbitral process for obtaining an extension. This requirement reflects the principle of party autonomy and emphasises that parties should first attempt to resolve procedural matters, such as time extensions, within the arbitration process before seeking court intervention.
5. **Efficient Resolution:** The Act promotes efficient resolution of disputes through arbitration, and parties are encouraged to utilise the arbitral process to resolve procedural issues. This helps avoid unnecessary court involvement and maintains the parties' autonomy in the arbitration proceedings.
6. **Time Extension Procedure:** The Act does not specify a particular procedure for obtaining an extension of time within the arbitral process. The process for requesting and granting such an extension is typically outlined in the arbitration agreement, institutional rules, or agreed procedural guidelines established at the outset of the arbitration.

In summary, section 50(2) governs the application process for obtaining an extension of time for making an award when the time limit is limited by the arbitration agreement or rules. The application can be initiated by either the arbitral tribunal or a party to the proceedings, but only after the exhaustion of any available arbitral process for obtaining an extension. This provision reinforces the importance of utilising the arbitral process for resolving procedural matters and encourages efficient and effective resolution of disputes through arbitration.

(3) The court shall only make an order if satisfied that a substantial injustice would otherwise be done.

Key Points about Section 50(3):

1. **Court's Discretion:** Section 50(3) limits the court's power to make an order extending the time for making an award. The court has the discretion to grant an extension but is not obligated to do so.
2. **Standard of Review:** To make an order, the court must be satisfied that a "substantial injustice" would occur if the extension is not granted. This standard implies that a mere inconvenience or delay may not be sufficient grounds to justify an extension. Instead, the court must consider whether the failure to extend the time limit would result in a significant detriment to one or more parties.
3. **Balancing Interests:** The provision aims to strike a balance between ensuring that parties have adequate time to present their case effectively and preventing undue delays that might prejudice the other party or compromise the efficiency of the arbitration process.
4. **Cautionary Approach:** Courts generally adopt a cautious approach when deciding whether to grant an extension of time. They recognise the importance of enforcing agreed-upon timelines to maintain the efficiency and effectiveness of arbitration as an alternative dispute resolution mechanism.
5. **Fairness and Justice:** The principle underlying this provision is to prevent a situation where a party is unfairly prejudiced due to an unreasonably short time limit, especially when circumstances beyond their control may have caused the delay.
6. **Balancing Efficiency and Fairness:** While the Act seeks to promote efficiency in arbitration, it also acknowledges the need for fairness and justice in the process. Therefore, the court will assess the circumstances of each case to determine if a substantial injustice would result from the failure to grant an extension.
7. **Discretionary Nature:** The Act grants the court broad discretion in deciding whether to extend the time for making an award. Each case will be evaluated on its merits, and the court will consider the specific circumstances and reasons presented by the party seeking the extension.

In summary, section 50(3) emphasises the court's discretionary power to grant an extension of time for making an award. The court will only make such an order if it is satisfied that a substantial injustice would otherwise occur. This provision ensures that while parties have the flexibility to request time extensions, such requests will be carefully reviewed to maintain the balance between efficiency and fairness in the arbitral proceedings.

(4) The court may extend the time for such period and on such terms as it thinks fit, and may do so whether or not the time previously fixed (by or under the agreement or by a previous order) has expired.

Key Points about section 50(4):

1. **Discretionary Power:** Section 50(4) grants the court wide discretion in deciding the duration and terms of the time extension. The court can use its judgment to determine the appropriate period within which the award must be made, considering the circumstances of the case and the interests of the parties involved.
2. **Flexibility:** The provision allows the court to exercise its power to extend the time limit based on the merits of the application, regardless of whether the initial time limit has already expired. This provides parties and the court with flexibility in dealing with situations where additional time is necessary.
3. **No Limitation on Duration:** There is no specific limitation on the duration of the time extension that the court may grant. It means that the court can extend the time for a period it considers appropriate based on the facts and circumstances of the case. This ensures that the court can make a fair and just decision, taking into account the complexity of the issues, the availability of evidence, and other relevant factors.
4. **Imposing Terms:** Apart from deciding the period of extension, the court can also impose specific terms or conditions upon granting the extension. These terms could include requirements for expedited proceedings or compliance with certain procedural rules to ensure the timely conclusion of the arbitration.
5. **Balancing Interests:** When determining the terms of the extension, the court will consider the interests of both parties and aim to strike a fair balance between the need for a reasonable extension and the goal of expeditious resolution of the dispute.
6. **Subsequent Extensions:** The court's power to extend the time is not limited to a single extension. If necessary, the court can grant multiple extensions as long as it deems it appropriate and justified.
7. **Courts Facilitating Arbitration:** Section 50(4) reflects the broader policy of the Arbitration Act to facilitate the arbitral process by providing mechanisms for dealing with practical issues that may arise during the course of arbitration, including time extensions when needed.

In conclusion, section 50(4) grants the court significant discretion to extend the time for making an award on terms it deems fit. The court can make an order for an extension regardless of whether the initial time limit has already expired. The provision ensures that the court can address practical challenges in arbitration proceedings and make fair decisions while promoting the efficiency of the arbitration process.

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

Key Points about section 50(5):

1. **Appeals from Decisions:** Section 50(5) addresses the possibility of appeals from decisions made by the court regarding the extension of time for making an award under Section 50(1) of the Arbitration Act.

2. **Leave of the Court:** Before a party can appeal the court’s decision, they must first obtain “leave” from the court. “Leave” means permission or authorisation to proceed with the appeal. This requirement is in place to ensure that only appropriate and meritorious appeals are allowed.
3. **Limited Grounds for Appeal:** The Act imposes this leave requirement to restrict the right to appeal and discourage frivolous or unnecessary appeals. The court will only grant leave if there are valid grounds for appeal, such as an error in law or a significant issue of general importance.
4. **Judicial Discretion:** The court has discretion in granting or denying leave for an appeal. This discretionary power allows the court to filter out appeals that lack merit or do not raise substantial legal issues, thus saving judicial resources and ensuring efficient resolution of disputes.
5. **Preserving the Arbitration Process:** The requirement for leave to appeal helps maintain the finality and efficiency of arbitration proceedings. It prevents undue delays and legal challenges to the arbitral process, which is intended to offer a quicker and more flexible alternative to traditional court litigation.
6. **Harmonising with the Arbitration Process:** The Act aims to promote the principle of party autonomy and the finality of arbitration awards. By requiring leave for appeals, it encourages parties to adhere to their arbitration agreement and accept the arbitral tribunal’s decision as final, except in exceptional circumstances.
7. **Ensuring Consistency and Uniformity:** By requiring leave for appeals, the Act helps ensure a consistent and uniform approach to appeals from decisions on time extensions, preventing disparate interpretations of the law across different courts.

In conclusion, section 50(5) of the English Arbitration Act 1996 mandates that parties seeking to appeal a court decision on extending the time for making an award must first obtain leave from the court. This requirement ensures that appeals are only allowed in cases with strong grounds and contributes to the efficient and final resolution of disputes through the arbitration process.

51 SETTLEMENT

(1) If during arbitral proceedings the parties settle the dispute, the following provisions apply unless otherwise agreed by the parties.

Key Points about Section 51(1):

1. **Applicability of Provisions:** Section 51(1) deals with the situation where the parties involved in an arbitration proceeding reach a settlement to resolve their dispute before the arbitral tribunal renders a final award.
2. **Settlement During Arbitration:** Arbitration proceedings are designed to provide parties with a flexible and private alternative to court litigation for resolving disputes. However, parties may choose to settle their dispute at any stage of the arbitration process.

3. **Default Application:** Section 51(1) sets out default provisions that will apply when parties reach a settlement during arbitral proceedings, unless the parties have agreed otherwise in their arbitration agreement or subsequently during the proceedings.
4. **Effect of Settlement:** When the parties reach a settlement, the dispute is considered resolved between them based on the terms of the settlement agreement. This means that the substantive issues forming the subject of the dispute are settled, and no further adjudication by the arbitral tribunal is required.
5. **Enforceability of Settlement:** A settlement reached during arbitration is generally enforceable as a binding agreement between the parties. It is treated like any other contract, and the parties are bound to perform their respective obligations under the settlement terms.
6. **No Need for a Final Award:** As the dispute has been settled, there is no need for the arbitral tribunal to render a final award on the merits of the case. The settlement itself resolves the matter, making any further decision by the tribunal unnecessary.
7. **Time and Cost Savings:** Settling the dispute during arbitration can save time and costs for both parties, as they avoid the need to continue with further hearings and the final award process.
8. **Party Autonomy:** Section 51(1) recognises the principle of party autonomy, allowing the parties to agree on different provisions to apply in case of a settlement during arbitral proceedings. If the parties agree otherwise, the default provisions of this section would not apply.

In summary, Section 51(1) of the English Arbitration Act 1996 outlines the default provisions that apply when parties reach a settlement during arbitral proceedings. It confirms the finality and enforceability of the settlement agreement, making further proceedings before the arbitral tribunal unnecessary. However, parties have the freedom to agree on different provisions in their arbitration agreement or during the proceedings if they wish to deviate from the default provisions.

(2) The tribunal shall terminate the substantive proceedings and, if so requested by the parties and not objected to by the tribunal, shall record the settlement in the form of an agreed award.

Key Points about Section 51(2):

1. **Termination of Proceedings:** Section 51(2) requires the arbitral tribunal to terminate the substantive proceedings once the parties reach a settlement during the course of arbitration. This means that the proceedings come to an end, and the tribunal no longer needs to render a final award on the merits of the case.
2. **Recording the Settlement:** If the parties request it, and the tribunal does not object, the tribunal is obligated to record the terms of the settlement in the form of an “agreed award”. The agreed award serves as a written confirmation of the settlement agreement, and it acts as a formal document that sets out the terms and conditions of the settlement reached between the parties.

3. **Agreed Award:** An agreed award is a specific type of award that is unique to arbitration proceedings. Unlike a regular award, which is typically issued after a full hearing and a decision on the merits of the case, an agreed award is issued when the parties themselves reach a settlement and request the tribunal to record it.
4. **Voluntary Recording:** The recording of the settlement as an agreed award is not mandatory; it depends on the parties' request and the tribunal's lack of objection. If the parties prefer to keep the settlement confidential or wish to handle it in a different manner, they can choose not to request an agreed award.
5. **Benefits of an Agreed Award:** An agreed award can provide parties with a formal, recognised, and enforceable document that confirms the terms of their settlement. It adds a level of finality and authority to the settlement, making it easier to enforce in case of non-compliance by either party.
6. **Limitation of Tribunal's Role:** Once the parties reach a settlement, the role of the arbitral tribunal is limited to terminating the proceedings and, if requested, recording the settlement in the form of an agreed award. The tribunal does not need to engage further in deciding the merits of the case or rendering a traditional final award.

In summary, Section 51(2) of the English Arbitration Act 1996 mandates that the arbitral tribunal must terminate the substantive proceedings when the parties reach a settlement during arbitration. If requested by the parties and not objected to by the tribunal, the settlement can be recorded in the form of an agreed award, providing a formal and enforceable written record of the settlement agreement. However, recording the settlement as an agreed award is at the discretion of the parties and the tribunal, and they can choose other methods to document their settlement if they prefer.

(3) An agreed award shall state that it is an award of the tribunal and shall have the same status and effect as any other award on the merits of the case.

Key Points about Section 51(3):

1. **Form and Status of Agreed Award:** Section 51(3) clarifies that an agreed award, which records the settlement reached between the parties, must be in the form of an "award of the tribunal". Despite its nature as an agreed settlement, it is treated as an official award issued by the arbitral tribunal.
2. **Equivalent Status as Other Awards:** The section further states that an agreed award carries the same "status and effect" as any other award rendered by the tribunal on the merits of the case. This means that an agreed award is treated with the same legal significance and enforceability as a regular award that results from a full hearing and the tribunal's decision on the merits of the dispute.
3. **Legal Validity and Enforceability:** As with any other award, an agreed award is legally valid and enforceable. It binds the parties to the terms of their settlement, and they must comply with the obligations and provisions contained in the agreed award.
4. **Recognition and Enforcement:** The agreed award, like any other award, can be recognised and enforced by courts in accordance with the New York Convention on the Recognition

and Enforcement of Foreign Arbitral Awards (or other applicable conventions or national laws). The parties can seek enforcement of the agreed award in the same manner as they would for any other arbitral award.

5. Finality: Once the arbitral tribunal issues an agreed award, it has the same finality as any other award on the merits of the case. The settlement agreement recorded in the agreed award becomes binding on the parties and brings the arbitral proceedings to a definitive conclusion.
6. Transparency and Legal Protection: Requiring the agreed award to state that it is an award of the tribunal ensures transparency and legal protection for the parties. By explicitly designating it as an award, the parties have the assurance that the agreed award is subject to the same legal framework and safeguards as regular awards.

In summary, Section 51(3) of the English Arbitration Act 1996 mandates that an agreed award, which records a settlement reached between the parties during the arbitral proceedings, must be stated as an award of the tribunal. The agreed award carries the same legal status, effect, and enforceability as any other award rendered by the tribunal on the merits of the case. This provision ensures that the agreed award is treated with the same legal significance as a regular award and provides transparency and legal protection to the parties' settlement agreement.

(4) The following provisions of this Part relating to awards (sections 52 to 58) apply to an agreed award.

Key Points about Section 51(4):

1. Section 51(4) specifies that certain provisions in Part III of the English Arbitration Act 1996, specifically Sections 52 to 58, apply to an agreed award. Part III of the Act deals with various aspects of arbitral awards, including their form, correction, interpretation, challenge, and enforcement. By applying these provisions to an agreed award, the Act ensures that the agreed award receives similar treatment and is subject to the same legal framework as any other regular arbitral award.
2. Relevance of Sections 52 to 58:
 - a. ~~Section 52 — Form and Content of the Award: Section 52 deals with the form and content of the award. It sets out the requirements for the award's writing, signature, and the matters it should contain. This provision ensures that an agreed award complies with the necessary formalities for its validity and enforceability.⁶~~
 - b. ~~Section 53 — Correction of the Award: Section 53 allows parties to request the tribunal to correct any errors or mistakes in the award. This section's application to agreed awards allows the parties to seek corrections if necessary to reflect the settlement accurately.⁷~~

⁶ Incorrect guess by ChatGPT.

⁷ Incorrect guess by ChatGPT.

- c. ~~Section 54 — Additional Award in Respect of Claims Made in Arbitration: Section 54 permits the tribunal to issue additional awards addressing any claims or matters that were raised during the arbitration but not resolved in the main award. This provision enables the tribunal to make additional awards for any unresolved issues in the settlement, if applicable.⁸~~
- d. ~~Section 55 — Remission of the Award by the Court: Section 55 allows the court to remit an award to the tribunal for reconsideration in certain circumstances. This provision ensures that an agreed award, like any other award, is subject to the court’s authority for remission if necessary.⁹~~
- e. ~~Section 56 — Challenge of the Award: Section 56 sets out the grounds for challenging an award in court. While parties usually do not challenge agreed awards since they are based on settlement, this section still applies in case a party seeks to challenge the agreed award for any reason.¹⁰~~
- f. ~~Section 57 — Appeal on a Point of Law: Section 57 provides for appeals to the court on questions of law arising out of the award. While agreed awards typically result from a settlement and do not involve substantive legal determinations, this section still applies in case an issue of law arises and requires resolution by the court.¹¹~~
- g. ~~Section 58 — Enforcement of the Award: Section 58 deals with the enforcement of arbitral awards, including their recognition as binding and enforceable. By applying this section, an agreed award can be recognised and enforced by courts like any other regular award.¹²~~

In summary, Section 51(4) ensures that certain provisions in Part III of the English Arbitration Act 1996 (Sections 52 to 58) apply to agreed awards. These provisions deal with the form and content of the award, corrections, additional awards, remission, challenges, appeals on points of law, and enforcement. Applying these provisions to agreed awards ensures that they are treated with the same legal framework and safeguards as any other regular arbitral award.

(5) Unless the parties have also settled the matter of the payment of the costs of the arbitration, the provisions of this Part relating to costs (sections 59 to 65) continue to apply.

Key Points about Section 51(5):

1. Section 51(5) addresses the issue of costs in the context of a settlement agreement reached during arbitral proceedings. When parties settle a dispute through arbitration, they may not only resolve the substantive issues but also decide on the payment of the

⁸ Incorrect guess by ChatGPT.

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¹² Incorrect guess by ChatGPT.

arbitration costs. This section clarifies the treatment of costs when parties have or have not addressed it in their settlement agreement.

2. Relevance of Sections 59 to 65:

- a. ~~Section 59 — Costs of the Arbitration: Section 59 deals with the costs of the arbitration, including the fees and expenses of the arbitrators and any other expenses incurred during the proceedings. If the parties have not addressed the issue of costs in their settlement agreement, this section remains applicable, and the tribunal or the court (if necessary) will determine the allocation of costs between the parties.¹³~~
- b. ~~Section 60 — Security for Costs: Section 60 allows the tribunal to order a party to provide security for the costs of the arbitration if it deems it necessary. If the issue of security for costs has not been settled in the parties’ agreement, the tribunal can still exercise its power under this section to order security.¹⁴~~
- c. ~~Section 61 — Legal and Other Costs: Section 61 deals with legal and other costs incurred by the parties in relation to the arbitration. If the parties have not settled the matter of these costs in their settlement agreement, the tribunal or court will have the authority to determine the allocation of these costs between the parties.~~
- d. ~~Section 62 — Determination of Costs: Section 62 provides guidance to the tribunal on how to determine the costs of the arbitration. It outlines various factors that the tribunal should consider when assessing and apportioning costs among the parties.¹⁵~~
- e. ~~Section 63 — Award of Interest on Costs: Section 63 empowers the tribunal to award interest on costs, specifying the date from which interest is to be calculated and the rate of interest. If the matter of interest on costs has not been addressed in the settlement agreement, the tribunal can still decide on this matter under this section.¹⁶~~
- f. ~~Section 64 — Legal or Other Costs of the Arbitration: Section 64 allows the tribunal to make an order in respect of legal or other costs incurred in connection with an interlocutory or other application in the arbitration. If the parties have not resolved this matter in their settlement agreement, the tribunal can still exercise its power under this section.¹⁷~~

¹³ Incorrect guess by ChatGPT.

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- g. ~~Section 65 — Taxation or Assessment of Costs: Section 65 deals with the taxation or assessment of costs in the context of arbitration. It outlines the procedure for taxation or assessment if required.~~¹⁸

In summary, section 51(5) clarifies that unless the parties have specifically addressed the payment of the costs of the arbitration in their settlement agreement, the provisions in Part III of the English Arbitration Act 1996 relating to costs (sections 59 to 65) will continue to apply. These sections empower the tribunal or the court to determine the allocation of costs, including security for costs, legal and other costs, interest on costs, and taxation or assessment of costs, if necessary.

52 FORM OF AWARD

(1) The parties are free to agree on the form of an award.

Section 52(1) of the English Arbitration Act 1996 emphasises the principle of party autonomy in arbitration. It grants parties the freedom to determine the form in which the arbitral award will be rendered. This provision reflects the arbitration’s flexible and consensual nature, allowing parties to tailor the award to suit their specific needs and preferences. Key Points about section 52(1):

1. **Flexibility in Award Form:** Parties can decide on various aspects of the award, such as whether it will be a written document, oral declaration, or a combination of both. They may also agree on the level of detail or specificity required in the award.
2. **Binding Nature:** Regardless of the form chosen, the award remains legally binding and enforceable. As long as the award satisfies the essential requirements under the arbitration agreement and applicable law, it will have the same legal effect.
3. **Certainty and Clarity:** Parties may consider factors such as the complexity of the dispute, the necessity for detailed reasoning, and the clarity of the award. The form chosen may impact the parties’ understanding of the decision and its implications.
4. **Cost and Time Considerations:** Depending on the complexity of the dispute and the extent of reasoning required, the parties might opt for a written award, which typically provides a detailed rationale for the decision. However, an oral award can be more expedient and cost-effective.
5. **Enforceability and Recognition:** Regardless of the form chosen, the award must comply with the legal requirements for enforcement and recognition in the relevant jurisdiction. This includes ensuring that the award is in writing when required by the applicable law.

~~Section 52(2) — Form and Content of the Award: It is worth noting that section 52(2) of the Arbitration Act specifies that the award must state the reasons upon which it is based unless the parties have agreed otherwise. This highlights the importance of reasoning in~~

¹⁸ Incorrect guess by ChatGPT.

~~arbitral awards, but the Act also recognises the parties' freedom to agree otherwise in the form of the award.¹⁹~~

In summary, section 52(1) of the English Arbitration Act 1996 allows the parties to agree on the form of the arbitral award. This provision exemplifies the principle of party autonomy, enabling the parties to tailor the award to their specific requirements and preferences, subject to any statutory requirements in the jurisdiction where enforcement or recognition is sought.

(2) If or to the extent that there is no such agreement, the following provisions apply.

Section 52(2) of the English Arbitration Act 1996 comes into play when the parties have not agreed on the form of the arbitral award. In such cases, the Act provides default provisions that dictate the content and form of the award. Key Points about section 52(2):

1. Reasoning in the Award: The default rule under section 52(2) is that the arbitral award must state the reasons upon which it is based. This means that unless the parties have agreed otherwise, the award must contain a clear and coherent explanation of the tribunal's decision and the rationale behind it. Providing reasons enhances transparency and allows the parties to understand the basis of the decision.
2. Preserving Validity of the Award: The Act's requirement to provide reasons is crucial for the validity and enforceability of the award. Failing to include reasons, when required, could lead to challenges against the award on the grounds of lack of due process or non-compliance with the arbitration agreement.
3. Impact on Enforceability: In many jurisdictions, a reasoned award is more likely to be recognised and enforced. Some countries may have stricter requirements for enforcement when it comes to awards lacking reasoning, particularly in commercial arbitrations.
4. Consistency with International Standards: Providing reasons in the award aligns with international arbitration standards, such as those set by the UNCITRAL Model Law and international arbitration conventions, promoting uniformity and predictability in arbitration practice worldwide.
5. Arbitral Tribunal's Discretion: The arbitral tribunal still has some discretion in determining the level of detail and extent of the reasons to be provided in the award. The tribunal should aim to provide sufficient reasoning to explain the essential elements of the decision without necessarily having to provide an exhaustive analysis.

In summary, section 52(2) of the English Arbitration Act 1996 sets the default rule that the arbitral award must state the reasons upon which it is based if the parties have not agreed otherwise. This provision aims to ensure that awards are well-reasoned, transparent, and enforceable, which are fundamental principles of the arbitration process. However, parties can still agree otherwise on the form and content of the award, allowing for flexibility and customisation in the arbitral process.

¹⁹ Incorrect guess by ChatGPT.

(3) The award shall be in writing signed by all the arbitrators or all those assenting to the award.

Key Points about Section 52(3):

1. Section 52(3) of the English Arbitration Act 1996 sets out the essential requirement for the form of the arbitral award:
2. **Written Form:** The award must be in writing. This means that the decision of the arbitral tribunal should be recorded in a written document, which may be in physical or electronic form, and should be available as a tangible record of the tribunal's decision.
3. **Signature of Arbitrators:** The award must be signed by all the arbitrators. Alternatively, if there are multiple arbitrators, it may be signed by all those arbitrators who are in agreement with the decision and have assented to the award. This signature confirms the unanimous consent of the tribunal members to the award's contents and is essential to demonstrate the award's authenticity.
4. **Unanimity Requirement:** The requirement for all arbitrators' signatures ensures that the award represents a unanimous decision of the tribunal. This underscores the importance of a collective and agreed-upon judgment, preventing any single arbitrator from issuing a separate and potentially conflicting award.
5. **Validity and Enforceability:** The signature of all arbitrators adds validity and enforceability to the award. It serves as evidence of the tribunal's agreement on the decision, and it can be presented to courts and authorities when seeking enforcement or challenging the award.
6. **Assent to the Award:** Section 52(3) allows for situations where all the arbitrators may not have participated in the award-writing process. As long as those arbitrators who did contribute to the decision agree with the award's contents, they can sign it, indicating their assent to the award.

In summary, section 52(3) of the English Arbitration Act 1996 mandates that the arbitral award must be in writing and signed by all the arbitrators or by those who have assented to the award's contents. This requirement ensures that the award is a collective and unanimous decision of the arbitral tribunal, enhancing its validity, enforceability, and credibility in the arbitration process.

(4) The award shall contain the reasons for the award unless it is an agreed award or the parties have agreed to dispense with reasons.

Key Points about Section 52(4):

1. Section 52(4) of the English Arbitration Act 1996 lays down the requirement for the content of the arbitral award, specifically focusing on the inclusion of reasons for the decision:

2. **Reasons for the Award:** The arbitral award must include the reasons for the decision made by the tribunal. These reasons provide an explanation of the basis on which the tribunal arrived at its conclusion. The inclusion of reasons serves the principles of transparency, accountability, and fairness, as parties are entitled to understand the rationale behind the tribunal's decision.
3. **Exception: Agreed Award:** An "agreed award" is an award made when the parties reach a settlement during the arbitral proceedings (Section 51(2) of the Arbitration Act 1996). In such cases, where the parties have mutually agreed upon the terms of the settlement, there is no need for the tribunal to provide reasons for the award. The settlement itself stands as the basis for the agreed award.
4. **Exception: Dispensing with Reasons:** If the parties explicitly agree to dispense with the requirement for reasons in the award, then the tribunal is not obligated to include them. This agreement might be made at the outset of the arbitration or at any later stage when the parties mutually decide that the award need not contain detailed reasons.
5. **Importance of Reasons:** The inclusion of reasons in the award is considered crucial for several reasons. It enhances the legitimacy and enforceability of the award, provides parties with a better understanding of the decision, facilitates review and appeal processes (if available), and ensures that the tribunal has adequately considered the evidence and arguments presented by the parties.

In summary, Section 52(4) of the English Arbitration Act 1996 mandates that arbitral awards, with certain exceptions, should contain the reasons for the tribunal's decision. This requirement promotes transparency and accountability in the arbitration process. However, the provision recognises that there may be instances where the parties mutually agree to dispense with reasons or reach a settlement (agreed award) during the proceedings, making the inclusion of detailed reasons unnecessary in such cases.

(5) The award shall state the seat of the arbitration and the date when the award is made.

Key Points about Section 52(5):

1. Section 52(5) of the English Arbitration Act 1996 requires the arbitral award to include specific details related to the arbitration proceedings:
2. **Seat of the Arbitration:** The award must state the "seat" or "place" of the arbitration. The seat refers to the legal location or jurisdiction that governs the arbitration process, including the legal framework and procedural rules applicable to the arbitration. The choice of seat can have significant implications for the enforcement and challenge of the award, the supervisory jurisdiction of courts, and the applicable procedural laws.
3. **Date of the Award:** The award should specify the exact date when it was made. This date is essential for determining the time limits for challenging the award or seeking its enforcement in a court. It also establishes the point from which interest on the awarded amount might accrue.

4. **Importance of Seat and Date:** The inclusion of the seat and date in the award serves several purposes. First, it provides clarity regarding the legal framework governing the arbitration process. Second, it ensures that parties and courts can accurately determine when the award was issued for legal purposes. Finally, specifying the seat and date helps in identifying the relevant time frames and deadlines for actions related to the award.
5. **Clarity and Enforcement:** The requirement to state the seat of arbitration is essential to avoid potential disputes about the governing law and jurisdiction. When the seat is specified, courts can easily determine which laws apply to the arbitration process, which can significantly impact the enforceability of the award.

In summary, section 52(5) of the English Arbitration Act 1996 mandates that the arbitral award must include essential details like the seat of the arbitration and the date when the award was made. By including these details, the award becomes clear, enforceable, and properly situated within the legal framework that governs the arbitration process.

53 PLACE WHERE AWARD TREATED AS MADE

- (1) Unless otherwise agreed by the parties, where the seat of the arbitration is in England and Wales or Northern Ireland, any award in the proceedings shall be treated as made there, regardless of where it was signed, despatched or delivered to any of the parties.**

Key Points about Section 53(1):

1. Section 53(1) of the English Arbitration Act 1996 deals with the legal treatment of arbitral awards in proceedings with their seat in England and Wales or Northern Ireland. The section provides clarity on the location or jurisdiction where such an award is considered to be made. Key points to understand about this section are as follows:
2. **Seat of the Arbitration:** The term “seat of the arbitration” refers to the legal location or jurisdiction that governs the arbitration proceedings, including the procedural laws applicable to the arbitration. The choice of seat can have significant implications for the arbitration process, the enforcement and challenge of the award, and the supervisory jurisdiction of courts.
3. **Jurisdictional Treatment of the Award:** Section 53(1) states that if the seat of the arbitration is in England and Wales or Northern Ireland, then any award made in those proceedings shall be treated as if it was made in that seat, regardless of the actual physical location where the award was signed, dispatched, or delivered to the parties.
4. **Importance of Seat in Determining Award’s Origin:** The treatment of the award as made in the seat of arbitration is crucial for determining the supervisory and enforcement jurisdiction of courts. This treatment clarifies the legal framework that applies to the award and which court has the authority to hear challenges or enforce the award.
5. **Parties’ Agreement and Jurisdiction:** Section 53(1) emphasises that the parties can agree otherwise regarding the place where the award is considered made. This provision allows parties to agree on the legal treatment of the award in terms of its place of origin, even if the seat of the arbitration is in England and Wales or Northern Ireland.

6. **Certainty and Enforcement:** The treatment of the award as made in the seat of arbitration adds legal certainty and predictability to the arbitration process. It avoids potential disputes about the location of the award's origin, which could have implications for its enforceability and recognition in different jurisdictions.

In summary, Section 53(1) of the English Arbitration Act 1996 specifies that when the seat of the arbitration is in England and Wales or Northern Ireland, any award in the proceedings shall be treated as made in that seat, irrespective of where it was physically signed, dispatched, or delivered. This provision provides clarity and legal certainty in determining the origin of the award and its legal treatment within the relevant jurisdiction.

54 DATE OF AWARD

- (1) Unless otherwise agreed by the parties, the tribunal may decide what is to be taken to be the date on which the award was made.**

Key Points about Section 54(1):

1. Section 54(1) of the English Arbitration Act 1996 deals with the determination of the date on which the arbitral award is considered to be made. This section grants authority to the arbitral tribunal to decide and specify the official date on which the award is considered to have been rendered. Key points to understand about this section are as follows:
2. **Flexibility in Determining the Award Date:** Section 54(1) provides flexibility to the arbitral tribunal to determine the date on which the award is deemed to have been made. The tribunal is not bound by any specific time frame for making this determination, and it can exercise its discretion in choosing the appropriate date.
3. **Importance of the Award Date:** The date on which the award is considered to be made is significant for various reasons. It marks the formal conclusion of the arbitration proceedings and sets the starting point for several crucial time-sensitive matters, such as the time to challenge the award or seek its enforcement.
4. **Consistency and Finality:** Determining the award date allows for consistency and uniformity in recording and treating awards. It helps avoid any confusion or ambiguity regarding the timing of the award, ensuring that parties are aware of the applicable time limits for subsequent legal actions.
5. **Agreement of the Parties:** The section notes that the parties may agree otherwise on the date of the award. If the parties reach an agreement on the date of the award, the tribunal will be bound by that agreement.
6. **Flexibility for Different Circumstances:** The tribunal's discretion to determine the award date allows it to consider the unique circumstances of the case. The tribunal may account for factors such as the finalisation of the award's content, the completion of any procedural formalities, or other relevant considerations when deciding the award date.
7. **Impact on Time Limits:** The date chosen by the tribunal as the award date may have implications on various legal time limits. For example, it can affect the deadlines for

seeking annulment or challenging the award before the relevant court, or for commencing enforcement proceedings.

In summary, Section 54(1) of the English Arbitration Act 1996 grants the arbitral tribunal the discretion to determine the date on which the award is considered to have been made. This flexibility allows the tribunal to decide the most appropriate date based on the specific circumstances of the case. However, the parties may also agree on a different date, which would be binding on the tribunal. The determination of the award date is crucial for setting time limits for further legal actions and contributes to the finality and consistency of the arbitration process.

(2) In the absence of any such decision, the date of the award shall be taken to be the date on which it is signed by the arbitrator or, where more than one arbitrator signs the award, by the last of them.

Key Points about Section 54(2):

1. Section 54(2) of the English Arbitration Act 1996 addresses the situation when the arbitral tribunal does not make a specific decision on the date of the award. In such cases, the section provides a default rule to determine the date of the award. Key points to understand about this section are as follows:
2. Default Rule: If the arbitral tribunal does not decide on the date of the award explicitly, Section 54(2) establishes a default rule to ascertain the award's date. According to this default rule, the date of the award is considered to be the date on which it is signed by the arbitrator or, if multiple arbitrators sign the award, the date of the last signature.
3. Importance of Signature Date: The section highlights the significance of the signature date in determining the award date when no specific decision has been made by the tribunal. The signature date represents the official act of finalising and authorising the award by the arbitrators.
4. Presumption of Finality: By adopting the signature date as the award date, the Act presumes that the award is complete, final, and ready to be communicated to the parties. It also marks the conclusion of the tribunal's decision-making process.
5. Certainty and Clarity: Section 54(2) helps provide clarity and certainty regarding the award date in situations where the tribunal has not decided otherwise. The signature date is typically recorded on the face of the award and is a clear point in time when the award is considered to have been rendered.
6. Applicability to Single and Multiple Arbitrators: The default rule applies both in cases where a single arbitrator signs the award and where multiple arbitrators form the tribunal, and the award is signed by the last of them. In the latter scenario, the award date will be the date on which the last arbitrator signs.
7. Preventing Ambiguity: Having a default rule for determining the award date helps avoid any ambiguity or confusion that may arise if the tribunal does not explicitly specify the award date.

In summary, Section 54(2) of the English Arbitration Act 1996 establishes a default rule to determine the date of the award when the arbitral tribunal has not made a specific decision on this matter. According to this default rule, the date of the award is taken to be the date on which it is signed by the arbitrator or, if multiple arbitrators sign the award, by the last arbitrator. This approach ensures certainty and clarity regarding the award date in the absence of any explicit decision by the tribunal.

55 NOTIFICATION OF AWARD

(1) The parties are free to agree on the requirements as to notification of the award to the parties.

1. Key Points about Section 55(1):
2. Section 55(1) of the English Arbitration Act 1996 addresses the issue of notifying the award to the parties involved in the arbitral proceedings. This section emphasises the principle of party autonomy, granting the parties the freedom to agree on the specific requirements and procedures for how the award is to be communicated or notified to them. Here are the key points to understand about this section:
3. Party Autonomy: The principle of party autonomy is a fundamental aspect of arbitration. It means that the parties are allowed to determine the rules and procedures for resolving their disputes through arbitration. Section 55(1) reaffirms this principle by providing parties with the freedom to agree on the requirements related to how the award will be notified to them.
4. Flexibility and Efficiency: By allowing the parties to agree on the notification requirements, the Act promotes flexibility and efficiency in the arbitration process. Parties can tailor the notification process to suit their specific needs, timeframes, and preferences.
5. Certainty and Clarity: The provision enhances certainty and clarity in the arbitral process. When parties agree on the notification requirements, it eliminates any ambiguity regarding the manner and time of award communication, reducing the risk of disputes or delays in receiving the award.
6. Balanced Agreement: The parties are free to negotiate the notification requirements as part of the arbitration agreement. This ensures a balanced agreement that addresses the needs and concerns of all parties involved in the arbitration.
7. Default Rule: In cases where the parties do not agree on the notification requirements, the Act may provide default rules or procedures for notifying the award, or the arbitral institution's rules or guidelines may come into play.
8. Ensuring Compliance: Whatever notification requirements the parties agree upon will be binding on the parties and must be adhered to by the arbitral tribunal and any relevant arbitral institution or organisation involved in the proceedings.

In summary, section 55(1) of the English Arbitration Act 1996 grants parties the freedom to agree on the requirements related to how the award will be notified to them. The provision aligns with the principle of party autonomy and promotes flexibility, efficiency, and clarity in the arbitration process.

The parties can negotiate and agree on the notification procedures, ensuring a balanced and mutually acceptable agreement that governs the communication of the award.

(2) If there is no such agreement, the award shall be notified to the parties by service on them of copies of the award, which shall be done without delay after the award is made.

Key Points about section 55(2):

1. Section 55(2) of the English Arbitration Act 1996 provides a default rule for the notification of the arbitral award when the parties have not agreed on specific requirements for award notification. It specifies the method of notification and the timeline within which the award must be served on the parties. Here are the key points to understand about this section:
2. **Default Notification Rule:** When the parties involved in an arbitration have not agreed on the requirements for award notification, section 55(2) sets the default rule. According to this default rule, the award must be notified to the parties by serving them copies of the award.
3. **Service of Copies of the Award:** The preferred method for award notification under section 55(2) is through service of copies of the award. This means that the arbitral tribunal or the relevant arbitral institution must provide each party with a copy of the award document.
4. **Timely Notification:** The notification of the award must be done “without delay” after the award is made. This emphasises the importance of promptly notifying the parties of the outcome of the arbitration process to ensure that they are informed of the decision in a timely manner.
5. **Certainty and Comprehensibility:** The requirement for service of copies of the award ensures that each party receives a clear and complete copy of the award, enabling them to understand the decision fully and consider their further actions, if necessary.
6. **Legal Obligation:** The arbitral tribunal or the relevant arbitral institution has a legal obligation to serve copies of the award on the parties in accordance with this section.
7. **Form of Notification:** While the section specifies that the award should be served on the parties, it does not prescribe a specific method of service. The method of service may vary depending on the practices of the arbitral tribunal or the arbitration institution involved.
8. **Compliance with Legal Requirements:** Any notification of the award must comply with any other legal requirements or formalities applicable in the jurisdiction where the arbitration is seated.

In summary, section 55(2) of the English Arbitration Act 1996 provides the default rule for award notification when the parties have not agreed on specific requirements. The award must be served on the parties by providing them copies of the award without delay after the award is made. This ensures

that the parties are informed of the decision in a timely and comprehensible manner, allowing them to take any further necessary actions.

(3) Nothing in this section affects section 56 (power to withhold award in case of non-payment).

Key Points about section 55(3):

1. Section 55(3) of the English Arbitration Act 1996 clarifies that the provisions in section 55, which deal with the notification of the arbitral award, do not impact or override the provisions of section 56. Here are the key points to understand about this section:
2. Section 56 Refers to Withholding Award: Section 56 of the Arbitration Act 1996 deals with the power of the arbitral tribunal to withhold the award in certain circumstances. Specifically, it allows the arbitral tribunal to withhold the award in case a party has not paid the required fees and expenses relating to the arbitral proceedings.
3. No Impact on section 56: Section 55(3) explicitly states that the provisions of section 55, which pertain to the notification of the arbitral award to the parties, do not affect or alter the application of section 56. In other words, section 56 remains applicable even if the award is served on the parties in accordance with section 55(2) or any agreed-upon requirements.
4. Independent Provisions: Sections 55 and 56 are distinct and separate provisions within the Arbitration Act. Section 55 focuses on how the award is to be notified to the parties, while section 56 deals with the tribunal's power to withhold the award if certain conditions related to non-payment are met.
5. Purpose of Section 56: Section 56 aims to encourage parties to comply with their financial obligations in the arbitral proceedings. It provides an incentive for timely payment of fees and expenses, as a party's failure to do so may result in the arbitral tribunal withholding the award.
6. Compliance with Payment Obligations: If a party has not fulfilled its payment obligations as required under the arbitration agreement or the arbitral tribunal's directions, the tribunal may exercise its power under Section 56 to withhold the award until the necessary fees and expenses are paid.

In summary, section 55(3) of the English Arbitration Act 1996 makes it clear that the provisions in section 55, which address award notification, do not affect or interfere with the provisions of section 56, which grants the tribunal the power to withhold the award in case of non-payment of fees and expenses related to the arbitral proceedings. These are separate and independent provisions, each serving its specific purpose within the framework of arbitration proceedings.

56 POWER TO WITHHOLD AWARD IN CASE OF NON-PAYMENT

(1) The tribunal may refuse to deliver an award to the parties except upon full payment of the fees and expenses of the arbitrators.

Key Points about section 56(1):

1. Section 56(1) of the English Arbitration Act 1996 addresses the issue of payment of fees and expenses to the arbitrators. Here are the key points to understand about this section:
2. **Payment of Fees and Expenses:** This provision grants the arbitral tribunal the authority to withhold the delivery of the arbitral award to the parties until they have made full payment of the fees and expenses due to the arbitrators. The arbitrators' fees and expenses are generally related to the costs associated with conducting the arbitration proceedings.
3. **Refusal to Deliver Award:** If a party or parties involved in the arbitration have not fulfilled their financial obligations by failing to pay the required fees and expenses to the arbitrators, the tribunal has the discretion to refuse to deliver the final award.
4. **Encouraging Compliance:** The primary purpose of section 56(1) is to encourage parties to promptly fulfil their financial obligations related to the arbitration process. By granting the tribunal the power to withhold the award, the provision aims to ensure that the arbitrators' compensation is received in a timely manner and that the proceedings are conducted efficiently.
5. **Exceptional Measure:** While section 56(1) provides the tribunal with the authority to withhold the award, it is essential to note that this is considered an exceptional measure and is not routinely exercised. The tribunal typically resorts to this action only when parties have been persistently non-compliant in meeting their financial responsibilities.
6. **Balancing Interests:** The provision attempts to strike a balance between the interests of the arbitrators and the parties involved in the arbitration. It ensures that arbitrators are reasonably compensated for their services while also promoting accountability on the part of the parties to meet their financial commitments during the arbitration process.
7. **Fee and Expense Disputes:** In cases where there is a genuine dispute regarding the fees and expenses charged by the arbitrators, section 56(1) does not prevent the parties from raising such issues before the tribunal or seeking appropriate remedies under the arbitration agreement or applicable law.

In summary, section 56(1) of the English Arbitration Act 1996 empowers the arbitral tribunal to withhold the delivery of the award to the parties if they have not made full payment of the fees and expenses due to the arbitrators. This provision encourages prompt payment and financial compliance to maintain the integrity and efficiency of the arbitration proceedings. However, the tribunal's use of this power is typically reserved for situations where parties have persistently failed to meet their financial obligations.

- (2) If the tribunal refuses on that ground to deliver an award, a party to the arbitral proceedings may (upon notice to the other parties and the tribunal) apply to the court, which may order that—
- (a) the tribunal shall deliver the award on the payment into court by the applicant of the fees and expenses demanded, or such lesser amount as the court may specify,
 - (b) the amount of the fees and expenses properly payable shall be determined by such means and upon such terms as the court may direct, and
 - (c) out of the money paid into court there shall be paid out such fees and expenses as may be found to be properly payable and the balance of the money (if any) shall be paid out to the applicant.

Section 56(2) of the English Arbitration Act 1996 provides a mechanism for a party to the arbitral proceedings to seek court intervention when the tribunal refuses to deliver the arbitral award based on non-payment of fees and expenses. Here are the key points to understand about this section:

1. Application to the Court: If the arbitral tribunal refuses to deliver the award due to the non-payment of fees and expenses by one of the parties, that party has the right to apply to the court seeking resolution of the matter.
2. Notice to Other Parties and Tribunal: The party seeking court intervention must give notice to the other parties involved in the arbitration and the arbitral tribunal about their intention to apply to the court.
3. Court's Authority: Upon receiving the application, the court is vested with the authority to issue appropriate orders to address the situation.
4. Orders by the Court: The court may make the following orders:
 - a. The court may order that the tribunal shall deliver the arbitral award upon payment into court by the applicant of the demanded fees and expenses or a lesser amount specified by the court.
 - b. The court may determine the amount of fees and expenses properly payable through the means and upon the terms directed by the court. This allows the court to assess and determine the fair and appropriate amount of fees and expenses to be paid.
 - c. The court may direct that out of the money paid into court, the amount of fees and expenses properly payable shall be paid, and the balance of the money (if any) shall be returned to the applicant.
5. Dispute Resolution: This provision aims to provide an avenue for resolving disputes related to the payment of fees and expenses to the arbitral tribunal. It ensures that a party is not unduly deprived of the arbitral award due to non-payment disputes.
6. Balancing Interests: Section 56(2) aims to strike a balance between the interest of the arbitrators in receiving timely payment and the interest of the parties in receiving the arbitral award. It offers a mechanism for resolving the impasse created by non-payment.

7. Promptness and Efficiency: The court's involvement in determining the amount of fees and expenses properly payable can promote promptness and efficiency in resolving payment disputes, thereby supporting the timely issuance of the arbitral award.

In summary, section 56(2) of the English Arbitration Act 1996 allows a party to apply to the court when the arbitral tribunal refuses to deliver the award due to non-payment of fees and expenses. The court may then issue orders, including directing the tribunal to deliver the award upon the payment of the demanded fees and expenses into court, determining the appropriate amount of fees and expenses payable, and facilitating the resolution of payment disputes. This provision aims to ensure a fair resolution and protect the interests of both parties and the arbitrators involved in the arbitration process.

(3) For this purpose the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section 28 or any agreement relating to the payment of the arbitrators.

Section 56(3) of the English Arbitration Act 1996 further clarifies the criteria for determining the “amount of fees and expenses properly payable” when a party seeks court intervention to obtain an arbitral award from the tribunal. Here is the key point to understand about this provision:

1. Determining Properly Payable Fees and Expenses: Section 56(3) reiterates the principle that when a party applies to the court for an order to obtain an arbitral award from the tribunal, the court must determine the amount of fees and expenses that are “properly payable”.
2. Reference to section 28: Section 56(3) clarifies that the “amount of fees and expenses properly payable” is the amount the applicant (the party seeking the arbitral award) is liable to pay under section 28 of the Arbitration Act 1996.
3. Reference to Any Agreement Relating to Payment: Additionally, section 56(3) mentions that the amount properly payable may also include any amount agreed upon by the parties in an agreement specifically related to the payment of the arbitrators' fees and expenses.
4. Clarity on Payment Obligations: By referencing section 28 and any relevant agreements, section 56(3) aims to provide clarity on the payment obligations of the parties to the arbitrators. It ensures that the court considers the actual amount that the applicant is legally bound to pay under the applicable provisions or agreements.
5. Scope of Properly Payable Amount: The “amount of fees and expenses properly payable” refers to the amount that the applicant is required to pay for the arbitrators' remuneration, as determined by section 28 or any applicable agreements.
6. Consistency with Other Sections: Section 56(3) complements and works in conjunction with other provisions of the Act, such as sections 56(1) and 56(2), to ensure a coherent approach to the determination of arbitrators' fees and expenses.

In conclusion, section 56(3) of the English Arbitration Act 1996 clarifies that the “amount of fees and expenses properly payable” is the amount that the applicant (the party seeking the arbitral award) is

liable to pay under section 28 of the Act or any relevant agreement concerning payment to the arbitrators. This provision is essential in ensuring transparency and fairness in the arbitration process by considering the actual payment obligations of the parties related to arbitrators' remuneration when delivering an arbitral award.

(4) No application to the court may be made where there is any available arbitral process for appeal or review of the amount of the fees or expenses demanded.

Section 56(4) of the English Arbitration Act 1996 serves as a limitation on the parties' right to apply to the court for an order to obtain an arbitral award from the tribunal when there is an available arbitral process for appeal or review of the amount of fees or expenses demanded. Here is the key point to understand about this provision:

1. **Limitation on Court Application:** Section 56(4) stipulates that no application to the court may be made if there is an "available arbitral process" for appealing or reviewing the amount of the fees or expenses demanded by the arbitrators.
2. **Exhaustion of Arbitral Process:** The provision implies that before seeking court intervention, the party must first exhaust any appeal or review mechanism that may exist within the arbitration process for disputing the amount of fees and expenses claimed by the arbitrators.
3. **Preserving the Arbitral Process:** Section 56(4) aims to preserve the integrity and autonomy of the arbitration process. By requiring parties to first pursue available internal remedies within the arbitration proceedings, it encourages the resolution of disputes regarding fees and expenses within the context of the arbitration itself.
4. **Finality of Arbitral Process:** The provision seeks to uphold the finality of the arbitral process and ensure that any disagreements over fees and expenses are settled through the mechanisms provided by the arbitration agreement or the applicable arbitral rules.
5. **Avoidance of Duplicate Proceedings:** Allowing parties to appeal or review the arbitrators' fees and expenses within the arbitration process avoids duplication of proceedings and promotes efficiency in resolving such disputes.
6. **Judicial Economy:** Section 56(4) serves the principle of judicial economy by discouraging parties from seeking court intervention prematurely, and it encourages them to utilise the established procedures within the arbitration to address disputes regarding fees and expenses.

In conclusion, Section 56(4) of the English Arbitration Act 1996 imposes a limitation on parties by preventing them from applying to the court for an order to obtain an arbitral award from the tribunal when there is an available arbitral process for appeal or review of the amount of fees or expenses demanded. By doing so, this provision promotes the effectiveness and finality of the arbitration process and encourages parties to resolve disputes regarding fees and expenses internally through the mechanisms provided within the arbitration proceedings.

(5) References in this section to arbitrators include an arbitrator who has ceased to act and an umpire who has not replaced the other arbitrators.

Section 56(5) of the English Arbitration Act 1996 expands the scope of the term “arbitrators” in the context of section 56, which deals with the tribunal’s authority to refuse to deliver an award until the payment of arbitrators’ fees and expenses. Here is the key analysis of this provision:

1. **Inclusion of Former Arbitrators:** Section 56(5) clarifies that the term “arbitrators” used in Section 56 includes not only the current arbitrators but also arbitrators who have already ceased to act in the arbitral proceedings. In other words, the provision extends the application of Section 56 to arbitrators who were part of the tribunal at some point in the past but are no longer actively involved in the proceedings.
2. **Continued Application to Former Arbitrators:** Even if an arbitrator has resigned, been replaced, or otherwise ceased to participate in the arbitral process, section 56(5) ensures that the provisions of Section 56 still apply to that arbitrator in the context of fees and expenses. This means that the tribunal’s authority to withhold the award until the payment of fees and expenses also extends to former arbitrators.
3. **Umpire Not Replacing Other Arbitrators:** Additionally, section 56(5) specifies that the term “arbitrators” includes an “umpire who has not replaced the other arbitrators”. An umpire is an arbitrator appointed to break a deadlock between the other arbitrators, typically when there is no unanimous decision. If an umpire is involved in the proceedings but has not replaced the other arbitrators, Section 56 applies to them as well concerning fees and expenses.
4. **Consistency in Application:** The inclusion of former arbitrators and umpires who have not replaced other arbitrators ensures consistency in the application of section 56 throughout the entire course of the arbitration. It prevents any gaps in the coverage of this section and ensures that the tribunal’s authority to withhold the award is not limited by changes in the composition of the arbitral panel.

In conclusion, section 56(5) of the English Arbitration Act 1996 extends the application of section 56, which deals with the tribunal’s authority to withhold an award until the payment of fees and expenses, to include former arbitrators who have ceased to act and umpires who have not replaced the other arbitrators. By doing so, this provision ensures consistency and completeness in the application of Section 56, regardless of changes in the composition of the arbitral panel during the arbitration proceedings.

(6) The above provisions of this section also apply in relation to any arbitral or other institution or person vested by the parties with powers in relation to the delivery of the tribunal’s award.

As they so apply, the references to the fees and expenses of the arbitrators shall be construed as including the fees and expenses of that institution or person.

Section 56(6) of the English Arbitration Act 1996 extends the provisions of Section 56 to cover not only arbitrators but also any arbitral or other institution or person vested by the parties with powers in relation to the delivery of the tribunal’s award. Here is the key analysis of this provision:

1. **Inclusion of Other Institutions or Persons:** Section 56(6) expands the scope of Section 56 to encompass any arbitral or other institution or person that the parties have vested with powers related to the delivery of the tribunal's award. These institutions or persons could be involved in various aspects of the arbitral process, such as administering the arbitration or assisting with the award's delivery.
2. **Application to Fees and Expenses of Institutions or Persons:** As the above provisions of section 56 apply to these other institutions or persons, any references in Section 56 to the "fees and expenses of the arbitrators" shall be interpreted to include the fees and expenses of the mentioned institution or person. In other words, the financial obligations related to these additional entities are treated similarly to the fees and expenses of the arbitrators mentioned earlier in the section.
3. **Comprehensive Coverage:** By including other institutions or persons vested with powers over the delivery of the award, section 56(6) ensures a comprehensive application of the provision. This extension addresses situations where parties have agreed to engage an arbitral institution to administer the proceedings or have given authority to a particular person or body to handle award-related matters.
4. **Consistency with the Parties' Agreements:** The extension of section 56 to cover institutions or persons vested with powers is aligned with the principle of party autonomy in arbitration. It respects the parties' freedom to tailor their arbitration process according to their needs and preferences, including the choice of administering institutions or individuals.

In conclusion, section 56(6) of the English Arbitration Act 1996 broadens the scope of section 56 to include any arbitral or other institution or person vested by the parties with powers in relation to the delivery of the tribunal's award. This extension ensures that the provisions of section 56 also apply to financial obligations related to these additional entities and aligns with the principle of party autonomy in arbitration.

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

Section 56(7) of the English Arbitration Act 1996 states that if a party seeks to appeal a decision of the court made under Section 56 (regarding the delivery of the award upon full payment of arbitrators' fees and expenses), they must obtain leave (permission) from the court before filing such an appeal. Here is the key analysis of this provision:

1. **Permission to Appeal:** Section 56(7) introduces an additional requirement for parties seeking to appeal a decision made by the court under Section 56. It mandates that the party must first obtain leave (permission) from the court to proceed with the appeal. In practical terms, this means that a party must make a formal application to the court, outlining the grounds for the appeal and seeking approval to proceed.
2. **Control of Appeals:** Requiring leave to appeal provides the court with a level of control over the appellate process in matters related to the delivery of the award and the payment of arbitrators' fees and expenses. This control helps ensure that only meritorious

appeals proceed, which can help streamline the arbitration process and avoid unnecessary delays.

3. **Preventing Frivolous Appeals:** The requirement for leave acts as a filter to prevent parties from making frivolous or unfounded appeals. It helps prevent parties from pursuing appeals without valid reasons, which could burden the court system and create unnecessary costs for both parties.
4. **Balancing Finality and Review:** Requiring leave for appeals helps balance the finality of arbitration awards with the need for a limited right to seek review. It upholds the principle of party autonomy in arbitration, where parties choose arbitration as an alternative dispute resolution method with a goal of obtaining a final and binding decision.
5. **Court's Discretion:** The court has the discretion to grant or deny leave to appeal under this section. It will consider the circumstances of the case, the grounds of the appeal, and whether there are substantial reasons justifying an appellate review.

In conclusion, section 56(7) of the English Arbitration Act 1996 mandates that parties seeking to appeal a court decision under section 56 must obtain leave (permission) from the court to proceed with the appeal. This requirement provides the court with control over the appellate process and helps prevent frivolous appeals, ensuring a balance between the finality of arbitration awards and the limited right to seek review.

(8) Nothing in this section shall be construed as excluding an application under section 28 where payment has been made to the arbitrators in order to obtain the award.

Section 56(8) of the English Arbitration Act 1996 clarifies that the provisions of Section 56 (regarding the delivery of the award upon full payment of arbitrators' fees and expenses) do not prevent a party from making an application under Section 28 even if payment has been made to the arbitrators in order to obtain the award. Here is the key analysis of this provision:

1. **Section 28 Application:** Section 28 of the Act deals with the failure or refusal of an arbitrator to act or the termination of an arbitrator's authority. In such situations, a party may apply to the court for the removal of the arbitrator or for a declaration of the termination of their mandate.
2. **Effect on Section 56:** Section 56 deals specifically with the delivery of the award upon full payment of the arbitrators' fees and expenses. However, Section 56(8) clarifies that the availability of an application under section 28 is not affected even if the payment has already been made to the arbitrators.
3. **Preserving Remedies:** This subsection ensures that parties are not deprived of their right to seek appropriate remedies under Section 28, even if they have made the required payment under Section 56 to receive the award. If a situation arises where an arbitrator's actions or authority are disputed after payment has been made, parties can still resort to Section 28 to address those concerns.
4. **Different Purposes:** Section 56 primarily deals with the mechanics of award delivery and the requirement for full payment before the award is handed over. On the other hand,

Section 28 deals with the removal or termination of an arbitrator, which is a separate issue from payment for the award.

5. **Holistic Approach:** The Act allows parties to exercise their rights under various provisions as long as they are not explicitly excluded by other sections. Section 56(8) confirms that making a payment to obtain the award does not preclude a party from seeking remedies under section 28 if it becomes necessary.

In conclusion, section 56(8) clarifies that the availability of an application under section 28 is not affected by making the required payment under section 56 to obtain the award. This provision ensures that parties retain their rights to seek remedies under section 28, even if they have already made the payment for the award's delivery.

57 CORRECTION OF AWARD OR ADDITIONAL AWARD

(1) The parties are free to agree on the powers of the tribunal to correct an award or make an additional award.

Section 57(1) of the English Arbitration Act 1996 grants parties the freedom to agree on the powers of the arbitral tribunal to correct errors in an award or to make an additional award. Here is the key analysis of this provision:

1. **Flexibility through Party Agreement:** The Act recognises the principle of party autonomy, allowing the parties involved in arbitration to tailor the arbitral process to their specific needs and preferences. This extends to the powers of the arbitral tribunal to address certain issues related to the award.
2. **Correcting Errors:** The provision pertains to the correction of errors that may have occurred in the original award. These errors could be typographical, clerical, or computational in nature. By agreeing on the powers of the tribunal in this regard, parties can establish the scope and limitations for such corrections.
3. **Making Additional Awards:** Parties can also agree on whether the arbitral tribunal should have the authority to make additional awards. These additional awards may be necessary to address specific issues or claims that were not fully resolved in the original award.
4. **Efficiency and Finality:** Allowing parties to agree on the powers of the tribunal for correction and additional awards can promote efficiency in the arbitration process. It can reduce the need for protracted post-award proceedings and help in achieving a more expeditious resolution of disputes.
5. **Clear and Transparent Process:** By stipulating the powers of the tribunal in the arbitration agreement, parties can ensure that the procedures for correction or additional awards are transparent and well-defined. This can minimise misunderstandings or disputes that may arise in relation to these matters.
6. **Limitation on Court Intervention:** The provision emphasises the importance of party agreement in determining the tribunal's powers regarding corrections and additional

awards. By doing so, the Act aims to reduce the necessity for court intervention in matters that parties can resolve among themselves.

In conclusion, section 57(1) of the English Arbitration Act 1996 underscores the principle of party autonomy in arbitration. It allows parties to agree on the powers of the arbitral tribunal to correct errors in an award or to make additional awards. By granting this freedom, the Act seeks to promote a more efficient, clear, and self-regulating arbitration process that is tailored to the specific needs and preferences of the parties involved.

(2) If or to the extent there is no such agreement, the following provisions apply.

Section 57(2) of the English Arbitration Act 1996 provides default provisions that come into effect when the parties have not agreed on the powers of the arbitral tribunal to correct an award or make an additional award. Here is the analysis of this provision:

1. **Default Rules:** When the parties have not specifically addressed the issue in their arbitration agreement, the Act steps in to provide a default set of rules to govern the powers of the arbitral tribunal in making corrections or additional awards.
2. **Power to Correct Clerical, Typographical, or Computational Errors:** In the absence of an agreement to the contrary, the arbitral tribunal has the inherent power to correct any clerical, typographical, or computational errors that might have occurred in the award. This allows the tribunal to rectify inadvertent mistakes that do not involve a reconsideration of the merits of the dispute.
3. **Time Limit for Corrections:** The Act sets a time limit within which corrections may be made. According to section 57(2)(b), any application for correction must be made within 28 days of the award being made, or any longer period that the parties may agree upon.
4. **Additional Awards on Unresolved Claims:** If the arbitral tribunal failed to address all the issues or claims submitted to it for decision, and there was no agreement on the tribunal's powers to make additional awards, the tribunal may make an additional award on the unresolved claims. This enables the tribunal to fully resolve all matters in dispute between the parties.
5. **Notification of Corrections and Additional Awards:** Once corrections or additional awards are made, the tribunal is required to notify the parties in writing, and such corrections or additional awards shall form part of the original award.
6. **Finality of Corrections and Additional Awards:** Corrections or additional awards made by the tribunal in accordance with section 57(2) are deemed to be part of the original award and are subject to the same legal standing and finality.
7. **Limitation on Substantive Review:** Section 57(3) clarifies that corrections or additional awards made by the tribunal under this section are not subject to any further reconsideration or substantive review. This promotes finality and ensures that the arbitration process remains efficient and effective.

In summary, Section 57(2) of the English Arbitration Act 1996 provides default rules for the powers of the arbitral tribunal to correct awards and make additional awards in cases where the parties have not agreed on these matters. It allows for the correction of clerical errors and provides a mechanism for addressing unresolved claims. The section enhances the efficiency and finality of the arbitration process while providing clarity on the powers of the tribunal when parties have not explicitly addressed these issues in their arbitration agreement.

(3) The tribunal may on its own initiative or on the application of a party—

- (a) correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission or clarify or remove any ambiguity in the award, or**
- (b) make an additional award in respect of any claim (including a claim for interest or costs) which was presented to the tribunal but was not dealt with in the award.**

These powers shall not be exercised without first affording the other parties a reasonable opportunity to make representations to the tribunal.

Section 57(3) of the English Arbitration Act 1996 outlines the powers of the arbitral tribunal to correct an award and make additional awards. Here is the analysis of this provision:

1. **Correction of Award:** The arbitral tribunal, either on its own initiative or upon application by a party, has the authority to correct an award in certain circumstances. Specifically, the tribunal may correct any clerical mistake, error arising from an accidental slip or omission, or clarify and remove any ambiguity in the award. This power ensures that any unintended errors or inaccuracies in the award can be rectified without altering the substance of the decision.
2. **Additional Award for Undealt Claims:** If the arbitral tribunal overlooked or failed to address a claim or issue presented to it in the arbitral proceedings, the tribunal may make an additional award to resolve that specific claim. This empowers the tribunal to fully dispose of all claims submitted to it and ensures that no issues are left unresolved.
3. **Scope of Additional Awards:** The tribunal's power to make additional awards extends to any claim, including claims for interest or costs, that were presented during the arbitral proceedings but were not addressed in the original award.
4. **Due Process Safeguards:** The Act provides a critical safeguard by requiring that before exercising its powers to correct an award or make an additional award, the tribunal must give the other parties a reasonable opportunity to make representations. This ensures that all parties have a fair chance to comment on any proposed changes to the award and helps maintain due process in the arbitration.
5. **Finality of Corrections and Additional Awards:** Once the tribunal has made corrections or additional awards under this section, those changes become an integral part of the original award and are subject to the same finality and enforceability as the initial award.

In summary, section 57(3) of the English Arbitration Act 1996 grants the arbitral tribunal the authority to correct clerical errors, remove accidental slips or omissions, and clarify ambiguities in the award.

Additionally, it allows the tribunal to make additional awards to address claims that were presented but not dealt with in the original award. The provision ensures that due process is upheld by requiring the tribunal to afford other parties the opportunity to make representations before exercising these powers. Ultimately, these measures promote efficiency, fairness, and the enforceability of the arbitration process.

(4) Any application for the exercise of those powers must be made within 28 days of the date of the award or such longer period as the parties may agree.

Section 57(4) of the English Arbitration Act 1996 specifies the time limit within which any application for the exercise of correction or additional award powers by the arbitral tribunal must be made. Here is the analysis:

1. **Time Limit for Application:** The provision states that any application seeking the exercise of powers under section 57(3) must be made within 28 days of the date of the award. This means that a party seeking corrections or additional awards in the award must act promptly and submit the application within this time frame.
2. **Extension by Agreement:** The Act allows for flexibility in the time limit. The parties have the freedom to agree to a longer period for making such an application beyond the initial 28 days. This can be done through an agreement between the parties involved in the arbitration.
3. **Rationale for Time Limit:** The purpose of this time limit is to ensure that the arbitral proceedings reach finality in a timely manner. By setting a deadline for applications, the Act aims to promote efficiency in the arbitration process and reduce any undue delays.
4. **Promptness and Legal Certainty:** The 28-day time limit encourages parties to review the award promptly, identify any issues requiring correction or any claims not addressed, and initiate the necessary actions. This promotes legal certainty and finality of the award, as it prevents parties from making endless requests for adjustments after the award has been issued.
5. **Importance of Agreement:** The Act emphasises party autonomy, and the ability to agree to an extended period allows parties to tailor the arbitration process to their specific needs and circumstances.

In summary, section 57(4) of the English Arbitration Act 1996 sets a 28-day time limit for parties to apply for the correction of an award or seek an additional award. Parties are encouraged to act promptly within this timeframe to ensure the timely resolution of issues and promote finality in the arbitration process. However, this time limit can be extended if the parties agree to a longer period, demonstrating the Act's commitment to party autonomy in arbitration proceedings.

(5) Any correction of an award shall be made within 28 days of the date the application was received by the tribunal or, where the correction is made by the tribunal on its own initiative,

within 28 days of the date of the award or, in either case, such longer period as the parties may agree.

Section 57(5) of the English Arbitration Act 1996 sets out the time limit within which corrections to an award must be made. Here is the analysis:

1. Time Limit for Making Corrections: According to section 57(5), any correction to an award must be made within 28 days of the following events:
2. The date the application for correction was received by the tribunal, if the correction is made in response to a party's application.
3. The date of the original award, if the tribunal initiates the correction on its own.
4. This time limit is designed to ensure that any necessary corrections to the award are made in a timely manner after the need for correction is identified.
5. Flexibility with Time Limit: Similar to the provision in section 57(4) for making an application, parties are allowed to agree to a longer period within which corrections can be made. This provides parties with the freedom to tailor the timeline according to the specific circumstances of the arbitration and ensures that practical considerations are taken into account.
6. Promoting Efficient Arbitration Proceedings: The 28-day time limit (or any longer period agreed upon) encourages the arbitral tribunal to promptly review the award, address any identified errors or clarifications, and issue the corrected award within the specified timeframe. This promotes the efficient resolution of disputes and prevents unnecessary delays in the arbitration process.
7. Importance of Finality: The Act acknowledges the importance of finality in arbitral proceedings. By setting a reasonable time limit for making corrections to an award, parties can expect that the arbitration process will conclude in a timely and definitive manner.
8. Collaborative Approach: The provision also encourages a collaborative approach, allowing the parties to agree on an extended time frame for making corrections. This promotes a cooperative environment where the parties can work together to resolve any outstanding issues related to the award.

In summary, section 57(5) of the English Arbitration Act 1996 mandates that any corrections to an award must be made within 28 days of the receipt of the application for correction or the date of the award, depending on the circumstances. Parties have the flexibility to agree on a longer time period if necessary. This provision underscores the importance of efficiency and finality in arbitration proceedings while maintaining a cooperative approach between the parties and the tribunal.

(6) Any additional award shall be made within 56 days of the date of the original award or such longer period as the parties may agree.

Section 57(6) of the English Arbitration Act 1996 sets out the time limit within which an additional award must be made. Here is the analysis:

1. **Time Limit for Making Additional Award:** According to section 57(6), any additional award must be made within 56 days of the date of the original award. This time limit is designed to ensure that any outstanding claims or issues that were presented to the tribunal but not dealt with in the original award are resolved in a reasonable timeframe.
2. **Flexibility with Time Limit:** Similar to the provision in section 57(4) and section 57(5), parties are allowed to agree to a longer period within which an additional award can be made. This flexibility allows parties to extend the timeline if there are complex issues that require further consideration or if there is a need for more time to reach a resolution.
3. **Efficient Resolution of Claims:** The 56-day time limit (or any longer period agreed upon) encourages the arbitral tribunal to promptly address any remaining claims or issues and issue the additional award within the specified timeframe. This promotes the efficient resolution of all disputes arising from the arbitration.
4. **Finality and Closure:** The Act recognises the importance of bringing the arbitration process to a conclusion in a timely manner. By setting a specific time limit for making an additional award, the Act aims to achieve finality and closure in the dispute resolution process.
5. **Collaborative Approach:** Like in section 57(5), the provision encourages a collaborative approach by allowing the parties to agree on an extended time frame for making an additional award. This fosters cooperation between the parties and the tribunal, enabling them to work together to resolve any outstanding matters.
6. **Preservation of Parties' Rights:** By setting a definite time limit for the issuance of an additional award, the Act ensures that parties' rights to have their claims adjudicated are protected without undue delay.

In summary, section 57(6) of the English Arbitration Act 1996 requires any additional award to be made within 56 days of the date of the original award. Parties have the flexibility to agree on a longer time period if necessary. This provision reinforces the importance of timely resolution of all claims and issues arising from the arbitration process, while promoting a collaborative and efficient approach to dispute resolution.

(7) Any correction of an award shall form part of the award.

Section 57(7) of the English Arbitration Act 1996 addresses the effect of corrections made to an award and provides the following:

1. **Incorporation of Corrections:** According to section 57(7), any correction made to an award shall be treated as an integral part of the original award. In other words, once the correction is made, it becomes an inseparable and essential component of the award itself.
2. **No Separation of Corrections:** This provision ensures that corrections to an award are not treated as independent or separate documents but are instead considered as a unified and complete award. It prevents any ambiguity or confusion that could arise if corrections were treated as distinct from the main award.

3. **Maintaining Integrity of the Award:** By incorporating corrections into the award, the integrity of the award is preserved. It ensures that any changes or clarifications made to the award are properly reflected within the award document and are not subject to dispute or challenge.
4. **Avoiding Multiple Versions:** Treating corrections as part of the award helps avoid the possibility of having multiple versions of the award floating around, which could lead to confusion or disputes about the authoritative version of the award.
5. **Finality and Certainty:** Incorporating corrections within the original award contributes to the finality and certainty of the arbitral process. It provides parties with a clear and definitive resolution to their dispute without the need for additional documentation or references to modifications.
6. **Consistency in Enforcement:** By treating corrections as part of the award, enforcement of the award becomes more straightforward and consistent. It ensures that any court or authority responsible for enforcing the award will apply the corrections without any ambiguity.

In summary, section 57(7) of the English Arbitration Act 1996 mandates that any correction made to an award shall form part of the award itself. This provision ensures that corrections are seamlessly integrated into the original award, contributing to the finality, integrity, and enforceability of the arbitral decision.

58 EFFECT OF AWARD

(1) Unless otherwise agreed by the parties, an award made by the tribunal pursuant to an arbitration agreement is final and binding both on the parties and on any persons claiming through or under them.

Section 58(1) of the English Arbitration Act 1996 establishes the general principle regarding the finality and binding nature of awards made by the arbitral tribunal. The section can be analysed as follows:

1. **Finality of the Award:** The provision states that unless the parties agree otherwise, an award rendered by the arbitral tribunal is considered final. This means that once the tribunal issues the award, it brings an end to the dispute and the arbitrators' role in the case.
2. **Binding Nature of the Award:** The section also emphasises that the award is binding on the parties involved in the arbitration. This binding effect means that the parties are legally obligated to comply with the decision and the terms stated in the award.
3. **Extending to Claimants and Successors:** The finality and binding nature of the award are not limited to just the parties who directly participated in the arbitration. It extends to "any persons claiming through or under them". This includes successors, assignees, or any other legal entities or individuals who derive their rights from the original parties to the arbitration.

4. **Presumption of Enforceability:** By stating that the award is final and binding, section 58(1) establishes a presumption of enforceability. This means that the award is presumed to be legally valid and enforceable, and parties seeking to challenge or set aside the award would need to demonstrate specific legal grounds for doing so.
5. **Party Autonomy:** The section also reflects the principle of party autonomy in arbitration. Parties are free to agree to different terms regarding the finality and binding nature of the award. For instance, in some cases, parties may agree to a non-binding or provisional award.
6. **Legal Force of the Award:** Once an award is final and binding, it has the same legal force and effect as a court judgment. It can be enforced in the same manner as a court judgment, subject to the enforcement laws of the relevant jurisdiction.

In summary, section 58(1) of the English Arbitration Act 1996 establishes that, in the absence of a different agreement between the parties, an award made by the arbitral tribunal pursuant to an arbitration agreement is final and binding on the parties and any individuals or entities claiming through or under them. This provision upholds the principle of party autonomy and underscores the enforceability of arbitration awards.

(2) This does not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Part.

1. Section 58(2) of the English Arbitration Act 1996 clarifies an important aspect of the finality and binding nature of arbitral awards. It states that despite an award being final and binding on the parties and any persons claiming through or under them, this does not eliminate or affect a person's right to challenge the award through available arbitral processes of appeal or review, or in accordance with the provisions of the Act itself. Here is a more detailed analysis of Section 58(2):
2. **Preservation of Right to Challenge:** The provision ensures that the finality and binding nature of an arbitral award do not prevent parties or individuals from challenging the award if they believe there are valid grounds to do so.
3. **Arbitral Process of Appeal or Review:** The section allows parties to avail themselves of any available arbitral process for appeal or review. This means that the arbitration agreement or the rules of the arbitral institution may provide for mechanisms through which parties can seek to challenge the award within the arbitral process itself.
4. **Challenge under the Act:** Additionally, section 58(2) also indicates that the Act itself provides for certain grounds and procedures to challenge an award, which includes Sections 67 to 69. These sections of the Act allow parties to challenge an award before the courts on specific grounds, such as the jurisdiction of the tribunal, procedural irregularities, and issues related to the public policy.
5. **Procedural Safeguards:** The provision acts as a safeguard to ensure that parties have an opportunity to raise legitimate challenges and seek redress if they believe the award was wrongly decided or there were procedural flaws during the arbitration process.

6. Consistency with International Arbitration Standards: This provision aligns with international standards of arbitration, which generally recognise the principle of finality of arbitral awards while also allowing parties to have recourse to limited avenues for challenging the award.

In conclusion, section 58(2) of the English Arbitration Act 1996 reinforces that the finality and binding nature of an arbitral award do not prevent parties from pursuing legitimate challenges through available arbitral processes of appeal or review or in accordance with the specific provisions of the Act itself. This provision strikes a balance between the enforceability of arbitral awards and the need for procedural safeguards to address potential errors or flaws in the arbitral process.

COSTS OF THE ARBITRATION

59 COSTS OF THE ARBITRATION

(1) References in this Part to the costs of the arbitration are to—

- (a) the arbitrators' fees and expenses,**
- (b) the fees and expenses of any arbitral institution concerned, and**
- (c) the legal or other costs of the parties.**

Section 59(1) of the English Arbitration Act 1996 provides a definition for the term “costs of the arbitration” as used in this Part of the Act. The term refers to various types of expenses and fees incurred during the arbitration process, and it includes the following components:

1. **Arbitrators' Fees and Expenses (a):** This includes the remuneration and any necessary expenses incurred by the arbitrators for their services in conducting the arbitration. Arbitrators are usually entitled to be compensated for their time and expertise, and the expenses may cover travel, accommodation, and other costs directly related to the arbitration proceedings.
2. **Fees and Expenses of any Arbitral Institution Concerned (b):** In some cases, parties choose to administer their arbitration through a reputable arbitral institution. These institutions may provide administrative services, procedural support, and facilities for conducting the arbitration. The fees and expenses of such institutions, as agreed upon or prescribed by the institution's rules, are considered as part of the costs of the arbitration.
3. **Legal or Other Costs of the Parties (c):** This component covers the legal fees and other expenses incurred by the parties in connection with the arbitration. These costs may include legal representation, expert witness fees, translation expenses, and other costs directly related to preparing and presenting their cases during the arbitration proceedings.

Overall, section 59(1) ensures that the term “costs of the arbitration” encompasses a comprehensive range of expenses and fees incurred by the parties and the arbitrators during the arbitration process. It clarifies that the costs include not only the arbitrators' remuneration but also the expenses related to any arbitral institution involved and the legal or other costs borne by the parties themselves. The allocation and recovery of these costs are subject to the principles and rules established by the arbitral tribunal or as agreed by the parties.

(2) Any such reference includes the costs of or incidental to any proceedings to determine the amount of the recoverable costs of the arbitration (see section 63).

Section 59(2) of the English Arbitration Act 1996 expands the scope of the term “costs of the arbitration” as defined in Section 59(1). It specifies that any reference to the costs of the arbitration includes not only the direct costs incurred during the arbitration process but also the costs or expenses incurred in any proceedings related to the determination of the amount of recoverable costs.

In other words, when section 59(2) mentions “any such reference”, it is referring to any provision or context in the Act where the term “costs of the arbitration” is used. These references include the arbitrators’ fees and expenses, the fees and expenses of any arbitral institution, and the legal or other costs of the parties as defined in section 59(1).

The additional inclusion in section 59(2) is the “costs of or incidental to any proceedings to determine the amount of the recoverable costs of the arbitration”. This refers to any subsequent proceedings or steps taken to ascertain and determine the actual amount of costs that the successful party is entitled to recover from the unsuccessful party after the arbitration has concluded. Such proceedings typically occur when the parties disagree on the amount of recoverable costs or when the arbitral tribunal’s award does not specifically address the issue of costs.

Section 63 of the Arbitration Act 1996 provides the framework for these post-arbitration proceedings to determine the amount of recoverable costs. Therefore, Section 59(2) clarifies that the term “costs of the arbitration” also covers the expenses incurred during such post-arbitration proceedings related to the determination of the recoverable costs.

In summary, section 59(2) ensures that the definition of “costs of the arbitration” is comprehensive and includes not only the direct costs incurred during the arbitration process but also the costs associated with proceedings to determine the amount of recoverable costs after the arbitration has concluded.

60 AGREEMENT TO PAY COSTS IN ANY EVENT

(1) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event is only valid if made after the dispute in question has arisen.

Section 60 of the English Arbitration Act 1996 addresses the issue of cost allocation in arbitration agreements. It specifies a condition under which an agreement that requires a party to pay the whole or part of the costs of the arbitration in any event will be considered valid.

In simpler terms, this means that an agreement that obliges a party to bear the arbitration costs, regardless of the outcome of the arbitration, can only be considered legally enforceable if it is made after the specific dispute has arisen between the parties.

The rationale behind this provision is to ensure fairness and avoid potential abuses. If such agreements were allowed to be made before a dispute arises, it could create a situation where one party with greater bargaining power compels the other party to agree to bear all or a significant portion of the arbitration costs, putting the latter at a disadvantage even before the dispute arises.

By requiring the agreement to be made after the dispute arises, the Act seeks to ensure that both parties have a clearer understanding of the issues at hand and their positions before deciding on the allocation of costs. This way, parties are less likely to enter into such agreements hastily or under undue pressure.

In summary, section 60 of the English Arbitration Act 1996 safeguards against unfair cost allocation practices by requiring that an agreement to pay the whole or part of the arbitration costs in any event can only be valid if it is made after the dispute in question has arisen.

61 AWARD OF COSTS

(1) The tribunal may make an award allocating the costs of the arbitration as between the parties, subject to any agreement of the parties.

Section 61(1) of the English Arbitration Act 1996 pertains to the power of the arbitral tribunal to allocate the costs of the arbitration between the parties. It provides the tribunal with the authority to decide how the costs incurred during the arbitration process should be apportioned, subject to any prior agreement made by the parties.

In simpler terms, this means that the arbitral tribunal has the discretion to issue an award that specifies how the costs related to the arbitration proceedings are to be divided and borne by the parties. The tribunal can determine who should be responsible for paying the arbitrators' fees and expenses, the fees and expenses of any arbitral institution involved, and the legal or other costs incurred by the parties during the arbitration process.

However, the tribunal's power to allocate costs is not absolute, as it is subject to any prior agreement reached by the parties. If the parties have a separate agreement that outlines how the costs should be shared, the tribunal must take that agreement into account when making its award. In the absence of such an agreement, the tribunal has the authority to decide on the allocation of costs based on the circumstances of the case, the conduct of the parties, and the principles of fairness and reasonableness.

In summary, Section 61(1) of the English Arbitration Act 1996 grants the arbitral tribunal the power to issue an award determining how the costs of the arbitration should be allocated between the parties, except where there is a prior agreement on cost allocation made by the parties. The purpose of this provision is to ensure a fair and equitable distribution of the financial burden of the arbitration process.

(2) Unless the parties otherwise agree, the tribunal shall award costs on the general principle that costs should follow the event except where it appears to the tribunal that in the circumstances this is not appropriate in relation to the whole or part of the costs.

Section 61(2) of the English Arbitration Act 1996 deals with the general principle for awarding costs in arbitration proceedings. It sets out the default rule that the arbitral tribunal should follow when determining which party should bear the costs of the arbitration, subject to any contrary agreement between the parties.

In simpler terms, this means that if the parties have not agreed on how costs should be allocated, the default principle is that "costs should follow the event". This principle implies that the party who is successful in the arbitration (i.e., the prevailing party) should be awarded its costs by the other party who did not succeed.

However, the principle of "costs follow the event" is not an absolute rule, as the provision also allows the arbitral tribunal to exercise its discretion. The tribunal may deviate from this default rule if it deems it inappropriate to apply it in the given circumstances, either in whole or in part. This means that even if one party prevails, the tribunal may determine that it is not fair or appropriate to award all the costs to the winning party, and it may allocate the costs differently.

The tribunal's decision to depart from the general principle is based on considerations of fairness and justice, taking into account various factors such as the conduct of the parties during the arbitration, the merits of their respective claims, and any other relevant circumstances.

In summary, section 61(2) of the English Arbitration Act 1996 establishes the default principle of "costs follow the event" for allocating costs in arbitration proceedings. However, the tribunal retains the discretion to depart from this principle if it deems it appropriate in the circumstances. This provision aims to strike a balance between predictability and flexibility in determining cost allocation in arbitration.

62 EFFECT OF AGREEMENT OR AWARD ABOUT COSTS

Unless the parties otherwise agree, any obligation under an agreement between them as to how the costs of the arbitration are to be borne, or under an award allocating the costs of the arbitration, extends only to such costs as are recoverable.

Section 62 of the English Arbitration Act 1996 deals with the scope of the obligation to bear costs as agreed between the parties or allocated by an arbitral award. It establishes that any such agreement or award regarding the costs of the arbitration only extends to "recoverable costs", unless the parties have agreed otherwise.

In simpler terms, this means that any agreement between the parties regarding the allocation of costs or any award by the arbitral tribunal on cost allocation will only apply to costs that are considered "recoverable". Recoverable costs are those costs that are deemed reasonable and necessary in connection with the arbitration and are generally considered to be reasonably incurred by the prevailing party.

The provision ensures that parties cannot agree or be ordered to bear costs that are not considered recoverable under the law or the applicable rules of arbitration. For example, costs that may be considered excessive, unnecessary, or incurred unreasonably would not be recoverable and, therefore, would not be covered by the obligation to bear costs under the agreement or award.

Section 62 also emphasises that the obligation to bear costs is subject to any contrary agreement between the parties. This means that the parties can agree to a different scope of recoverable costs in their arbitration agreement or in any subsequent agreement related to cost allocation.

In conclusion, Section 62 of the English Arbitration Act 1996 clarifies that any agreement or award regarding cost allocation in arbitration extends only to recoverable costs. It prevents parties from being obligated to bear costs that are not considered reasonable or necessary in the arbitration process, subject to any contrary agreement between the parties.

63 THE RECOVERABLE COSTS OF THE ARBITRATION

(1) The parties are free to agree what costs of the arbitration are recoverable.

Section 63(1) of the English Arbitration Act 1996 grants parties the freedom to agree on the recoverability of costs in an arbitration. This provision allows the parties to stipulate and define which

costs incurred during the arbitration process can be recovered by the prevailing party. The ability to agree on recoverable costs provides flexibility and allows the parties to tailor the cost allocation to suit their specific needs and circumstances. Key points from Section 63(1):

1. Freedom to agree on recoverable costs: The provision states that the parties are “free to agree” on the costs that are recoverable. This means that the parties have the liberty to negotiate and decide the scope of costs that can be claimed and recovered in the event of a successful outcome in the arbitration.
2. Scope of recoverable costs: The term “recoverable costs” refers to the costs that can be reclaimed and compensated by the successful party in the arbitration. These costs are typically associated with the proceedings and may include legal fees, administrative expenses, arbitrator fees, witness expenses, and other reasonable costs incurred during the arbitration process.
3. Importance of clear agreement: It is essential for the parties to have a clear and unambiguous agreement on the recoverable costs to avoid disputes or uncertainties after the arbitration has concluded. A well-drafted arbitration clause or separate agreement outlining the scope of recoverable costs can prevent disagreements and streamline the cost recovery process.
4. Flexibility and customisation: Allowing parties to agree on recoverable costs provides flexibility and customisation options. Different arbitrations may involve varying types of costs, and parties can negotiate terms that best suit their specific case, industry, or budget.

Overall, Section 63(1) grants parties the autonomy to determine the recoverable costs in their arbitration, offering them the freedom to agree on the scope of costs that can be claimed and reimbursed. Having a clear and mutually agreed-upon definition of recoverable costs is essential for an efficient and transparent arbitration process.

(2) If or to the extent there is no such agreement, the following provisions apply.

Section 63(2) of the English Arbitration Act 1996 provides a default rule for determining the recoverable costs when the parties have not agreed on the scope of costs that can be claimed and reimbursed in the arbitration. In the absence of an agreement, the following provisions come into effect to determine the recoverable costs:

1. General principle of recoverability: The default rule states that the recoverable costs shall be those costs that the tribunal considers to be reasonable and proportionate to the circumstances of the case. This means that the tribunal has the discretion to assess the reasonableness and proportionality of the costs claimed by each party.
2. Costs follow the event principle: The default rule also applies the “costs follow the event” principle. This principle means that, generally, the successful party in the arbitration will be entitled to recover its reasonable costs from the unsuccessful party. In other words, the losing party will typically be required to bear the costs of the prevailing party.

3. Discretion of the tribunal: It is important to note that the tribunal has significant discretion in determining the recoverable costs. The tribunal may take into account various factors, including the complexity of the case, the conduct of the parties during the arbitration, the amount in dispute, and any other relevant circumstances.
4. Reasonableness and proportionality: The emphasis on reasonableness and proportionality indicates that the tribunal should ensure that the costs claimed by the prevailing party are justified and appropriate in relation to the issues and complexities involved in the arbitration. This helps prevent excessive or unjustifiable cost claims.

In summary, Section 63(2) serves as a default provision to address situations where the parties have not agreed on the recoverable costs in the arbitration. The tribunal has the authority to assess the reasonableness and proportionality of the costs claimed and apply the “costs follow the event” principle to determine the recoverable costs. This provision ensures that the award of costs is fair and reasonable, taking into account the specific circumstances of the arbitration case.

(3) The tribunal may determine by award the recoverable costs of the arbitration on such basis as it thinks fit.

If it does so, it shall specify—

- (a) the basis on which it has acted, and**
- (b) the items of recoverable costs and the amount referable to each.**

Section 63(3) of the English Arbitration Act 1996 empowers the arbitral tribunal to determine the recoverable costs of the arbitration and sets out the requirements when making such an award. If the tribunal chooses to decide the recoverable costs, it has the discretion to do so on any basis it deems appropriate. The section further mandates that when making an award on costs, the tribunal must provide specific details:

1. Basis for the determination: The tribunal must specify the basis on which it has acted when determining the recoverable costs. This means that the tribunal needs to explain the reasoning and factors considered while arriving at the decision on costs.
2. Items of recoverable costs: The tribunal must identify the individual items that are considered recoverable costs. Recoverable costs may include legal fees, arbitrators’ fees, expert witness fees, administrative expenses, and other expenses directly related to the arbitration.
3. Amount of recoverable costs: The tribunal should also specify the amount that can be recovered for each item identified. This means that the award should indicate the monetary value associated with each recoverable cost item.

By requiring the tribunal to provide explicit details in the award, this provision aims to enhance transparency and clarity in the assessment of recoverable costs. It enables the parties to understand the rationale behind the tribunal’s decision and the components of the recoverable costs.

Overall, Section 63(3) ensures that the tribunal exercises its discretion to determine the recoverable costs in a reasoned and specific manner. This promotes fairness and allows the parties to be aware of the breakdown of costs they may be entitled to recover or liable to pay.

- (4) If the tribunal does not determine the recoverable costs of the arbitration, any party to the arbitral proceedings may apply to the court (upon notice to the other parties) which may—**
- (a) determine the recoverable costs of the arbitration on such basis as it thinks fit, or**
 - (b) order that they shall be determined by such means and upon such terms as it may specify.**

Section 63(4) of the English Arbitration Act 1996 addresses the situation where the arbitral tribunal fails to determine the recoverable costs of the arbitration. In such cases, any party involved in the arbitral proceedings has the right to apply to the court seeking a determination of the recoverable costs. The application to the court should be made with notice to the other parties.

The section provides two courses of action that the court may take:

1. **Determine the recoverable costs:** The court may independently assess and determine the recoverable costs of the arbitration on a basis it deems appropriate. This means the court will make a final decision regarding the costs, considering the relevant evidence and arguments presented by the parties.
2. **Order a different means of determination:** Alternatively, the court may order that the recoverable costs be determined by other means or mechanisms as specified by the court. This could involve appointing an expert to assess the costs or employing any other suitable method to arrive at a fair and reasonable determination.

By allowing the court to intervene and resolve disputes over recoverable costs, Section 63(4) aims to provide a mechanism for parties to seek clarity and resolution when the arbitral tribunal has not made a determination on this matter. It offers an avenue for parties to ensure that the costs are assessed and allocated appropriately, promoting fairness and efficiency in the arbitration process.

Overall, section 63(4) enhances the overall effectiveness and enforceability of the arbitral process by providing a solution for parties when the tribunal does not make a determination on recoverable costs. It helps ensure that parties have a means to address disputes over costs, thus contributing to the smooth functioning of arbitration proceedings.

- (5) Unless the tribunal or the court determines otherwise—
- (a) the recoverable costs of the arbitration shall be determined on the basis that there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and
 - (b) any doubt as to whether costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party.

Section 63(5) of the English Arbitration Act 1996 sets out default rules for determining the recoverable costs of the arbitration in the absence of specific determinations by the arbitral tribunal or the court. The section establishes two guiding principles for assessing recoverable costs:

1. Reasonable amount for costs incurred: The default basis for determining recoverable costs is that a reasonable amount should be allowed in respect of all costs that were reasonably incurred. This means that the recoverable costs should reflect the actual expenses reasonably necessary to conduct the arbitration effectively and efficiently.
2. Doubt resolved in favour of the paying party: If there is any uncertainty or doubt about whether certain costs were reasonably incurred or were reasonable in amount, such doubt is resolved in favour of the paying party. In other words, if the reasonableness of specific costs is unclear, the burden falls on the party seeking recovery to demonstrate that those costs were indeed reasonably incurred and are reasonable in amount.

By specifying these default principles, Section 63(5) promotes fairness and predictability in the determination of recoverable costs. The requirement to assess costs reasonably incurred ensures that parties are not unduly burdened with unnecessary or excessive expenses, while also encouraging parties to be prudent in their spending during the arbitration process.

Additionally, resolving doubts in favour of the paying party is a safeguard against potential abuse of the costs recovery process. It helps prevent situations where one party may attempt to claim excessive or unjustified costs, putting the burden on the claiming party to provide adequate justification for the expenses incurred.

Overall, section 63(5) provides clarity and guidance for determining recoverable costs in arbitration when no specific determination is made by the tribunal or the court. The principles of reasonableness and resolving doubts in favour of the paying party aim to strike a fair balance between the parties and encourage cost-effective and efficient arbitration proceedings.

- (6) The above provisions have effect subject to section 64 (recoverable fees and expenses of arbitrators).

Section 63(6) of the English Arbitration Act 1996 clarifies that the provisions regarding the determination of recoverable costs, as described in Section 63(1) to Section 63(5), are subject to Section 64 of the Act. This means that Section 64 takes precedence over the general principles laid out in section 63 when it comes to the specific issue of the recoverable fees and expenses of the arbitrators.

Section 64 deals with the recovery of fees and expenses of the arbitrators, which are the costs associated with the arbitrators' services in conducting the arbitration proceedings. It sets out the

default rule that the parties are jointly and severally liable for paying the fees and expenses of the arbitrators unless they agree otherwise. This means that all parties are collectively responsible for covering the arbitrators' fees and expenses unless there is a specific agreement stating otherwise.

By including section 63(6), the Act ensures that the specific rules governing the recoverable fees and expenses of the arbitrators outlined in Section 64 take precedence over any general principles or agreements regarding recoverable costs under Section 63. This is because the arbitrators' fees and expenses are a distinct and essential component of the costs of the arbitration process, and the Act establishes a clear and separate rule for their allocation and recovery.

In summary, while section 63 sets out the general principles for determining recoverable costs in arbitration, section 63(6) emphasises that these principles are subject to section 64, which governs the recoverable fees and expenses of the arbitrators. This provision ensures that the specific rules related to arbitrators' fees and expenses take priority when it comes to cost allocation in arbitration proceedings.

(7) Nothing in this section affects any right of the arbitrators, any expert, legal adviser or assessor appointed by the tribunal, or any arbitral institution, to payment of their fees and expenses.

Section 63(7) of the English Arbitration Act 1996 clarifies that the provisions in Section 63 regarding the determination of recoverable costs in arbitration proceedings do not affect the right of certain individuals and entities to payment of their fees and expenses. This provision specifically refers to the right of the following parties to receive payment for their services:

1. **Arbitrators:** The arbitrators, who are responsible for deciding the dispute and issuing the award, have a right to be compensated for their time and expertise. Their fees and expenses are separate from the recoverable costs of the arbitration, and they are entitled to be paid for their work in conducting the proceedings and rendering the award.
2. **Experts, Legal Advisers, and Assessors:** In some arbitration proceedings, the tribunal may appoint experts, legal advisers, or assessors to assist in resolving specific technical or legal issues. These individuals also have the right to be paid for their services, and their fees and expenses are not affected by the provisions in section 63.
3. **Arbitral Institutions:** In certain cases, parties may choose to have their arbitration administered by an arbitral institution, such as the International Chamber of Commerce (ICC) or the London Court of International Arbitration (LCIA). These institutions provide administrative support for the arbitration proceedings and may charge fees for their services. Section 63(7) confirms that their right to payment for their services is not affected by the provisions on recoverable costs.

In summary, section 63(7) ensures that the right of arbitrators, experts, legal advisers, assessors, and arbitral institutions to receive payment for their services is preserved, regardless of the provisions for determining recoverable costs in the arbitration. It clarifies that the costs associated with these individuals and entities are separate from the recoverable costs of the arbitration and are not subject to the same principles for allocation and recovery.

64 RECOVERABLE FEES AND EXPENSES OF ARBITRATORS

- (1) Unless otherwise agreed by the parties, the recoverable costs of the arbitration shall include in respect of the fees and expenses of the arbitrators only such reasonable fees and expenses as are appropriate in the circumstances.**

Section 64(1) of the English Arbitration Act 1996 deals with the recoverable costs of the arbitration related to the fees and expenses of the arbitrators. It establishes a default rule that, unless the parties agree otherwise, the recoverable costs shall include only “such reasonable fees and expenses as are appropriate in the circumstances”.

This provision is significant because it ensures that the fees and expenses of the arbitrators, which are generally borne by the parties, are subject to reasonableness and appropriateness. It prevents excessive or unreasonable fees from being recoverable as costs in the arbitration. The intention is to promote fairness and transparency in the determination of arbitrators’ fees and expenses, preventing any party from being burdened with unreasonably high costs.

By setting the standard as “reasonable fees and expenses as are appropriate in the circumstances”, the Act allows for some flexibility in determining the recoverable costs. This allows the tribunal or court to take into account factors such as the complexity of the case, the time and effort invested by the arbitrators, the rates typically charged for similar arbitrations, and any agreements between the parties regarding the fees and expenses.

It is worth noting that this provision focuses specifically on the arbitrators’ fees and expenses. Other costs of the arbitration, such as administrative fees of arbitral institutions, legal costs, and expert fees, are subject to the provisions of Section 63.

In summary, Section 64(1) ensures that the recoverable costs of the arbitration, related to the fees and expenses of the arbitrators, are reasonable and appropriate. It aims to strike a balance between allowing arbitrators to be fairly compensated for their services and preventing parties from being burdened with unreasonably high costs.

- (2) If there is any question as to what reasonable fees and expenses are appropriate in the circumstances, and the matter is not already before the court on an application under section 63(4), the court may on the application of any party (upon notice to the other parties)—**
- (a) determine the matter, or**
 - (b) order that it be determined by such means and upon such terms as the court may specify.**

Section 64(2) of the English Arbitration Act 1996 addresses situations where there is a question about what constitutes reasonable fees and expenses of the arbitrators in the arbitration. If such a question arises, and it is not already before the court due to an application under section 63(4), the Act allows any party to apply to the court for resolution.

The provision outlines two options available to the court upon such an application:

1. Determine the matter: The court may directly decide what constitutes reasonable fees and expenses of the arbitrators in the given circumstances. The court will consider various factors, including the complexity of the case, time spent by the arbitrators, market rates, and any other relevant factors.
2. Order determination: Alternatively, the court may choose to order that the matter be determined by other means and on specific terms. This means that the court may delegate the task of determining the reasonable fees and expenses to an independent expert or another qualified person, who will make the determination following the court's instructions.

The purpose of this provision is to provide a mechanism for parties to seek resolution when there is a dispute or uncertainty over the appropriateness of arbitrators' fees and expenses. By allowing parties to apply to the court, it ensures that any concerns regarding the reasonableness of these costs can be addressed and resolved in a fair and impartial manner.

It is important to note that Section 64(2) does not limit the parties' ability to agree on the fees and expenses of the arbitrators. If the parties reach an agreement on the arbitrators' fees, such agreement will prevail. However, in the absence of an agreement or when a dispute arises, this section allows the court to step in and provide a resolution on the matter.

(3) Subsection (1) has effect subject to any order of the court under section 24(4) or 25(3)(b) (order as to entitlement to fees or expenses in case of removal or resignation of arbitrator).

Section 64(3) of the English Arbitration Act 1996 clarifies the effect of subsection (1) in situations where there is an order of the court under Section 24(4) or Section 25(3)(b).

Section 24(4) of the Act deals with the entitlement to fees or expenses of an arbitrator when the arbitrator is removed during the arbitration proceedings. If the court makes an order under Section 24(4) specifying the entitlement to fees or expenses of the removed arbitrator, that order will take precedence over the provisions of Section 64(1).

Similarly, Section 25(3)(b) of the Act deals with the entitlement to fees or expenses of an arbitrator when the arbitrator resigns during the arbitration proceedings. If the court makes an order under Section 25(3)(b) specifying the entitlement to fees or expenses of the resigning arbitrator, that order will also take precedence over the provisions of Section 64(1).

In essence, Section 64(3) ensures that any specific orders made by the court under Section 24(4) or Section 25(3)(b) regarding the entitlement to fees or expenses of arbitrators will prevail over the general rule set out in Section 64(1). The specific orders made by the court in such cases will govern the recoverable costs of the arbitration concerning the fees and expenses of the arbitrators involved.

(4) Nothing in this section affects any right of the arbitrator to payment of his fees and expenses.

Section 64(4) of the English Arbitration Act 1996 clarifies that nothing in Section 64 affects the right of the arbitrator to payment of their fees and expenses. In other words, this provision ensures that the

arbitrator's right to be compensated for their services is not affected by the rules related to recoverable costs in the arbitration proceedings.

While Section 64(1) deals with the recoverable costs of the arbitration, including the fees and expenses of the arbitrators, Section 64(4) emphasises that the provision is not intended to interfere with or diminish the arbitrator's entitlement to be paid for their time and expertise in conducting the arbitration.

The arbitrator's right to payment for their fees and expenses is typically agreed upon in the arbitration agreement or contract between the parties and the arbitrator. The amount and terms of payment are usually specified in these agreements, and the arbitrator's right to receive payment is independent of the costs recoverable from the parties in the arbitration.

In summary, Section 64(4) reaffirms that the rules related to recoverable costs in the arbitration proceedings do not impede the arbitrator's right to payment for their professional services and expenses incurred in conducting the arbitration.

65 POWER TO LIMIT RECOVERABLE COSTS

(1) Unless otherwise agreed by the parties, the tribunal may direct that the recoverable costs of the arbitration, or of any part of the arbitral proceedings, shall be limited to a specified amount.

Section 65(1) of the English Arbitration Act 1996 grants the tribunal the power to set a limit on the recoverable costs of the arbitration or any specific part of the arbitral proceedings. This provision allows the tribunal to control the costs incurred during the arbitration process, subject to any agreement made by the parties.

The power to limit recoverable costs can be particularly significant in cases where the parties' arbitration agreement or applicable law does not specify the maximum costs that can be recovered. In such situations, the tribunal can exercise its discretion to prevent excessive costs and promote efficiency in the arbitration proceedings.

The tribunal may consider several factors when deciding to limit the recoverable costs, including the complexity of the case, the duration of the proceedings, the number of issues involved, the conduct of the parties, and any other relevant circumstances.

It is important to note that the power of the tribunal to limit recoverable costs under Section 65(1) applies in the absence of any specific agreement between the parties regarding cost limitation. However, if the parties have already agreed on a cap for recoverable costs, the tribunal must adhere to that agreed-upon limit.

Overall, Section 65(1) provides the tribunal with the authority to control and manage the costs of the arbitration, helping to ensure that the process remains fair, efficient, and cost-effective for the parties involved.

- (2) **Any direction may be made or varied at any stage, but this must be done sufficiently in advance of the incurring of costs to which it relates, or the taking of any steps in the proceedings which may be affected by it, for the limit to be taken into account.**

Section 65(2) of the English Arbitration Act 1996 clarifies the procedural aspect of the tribunal's power to direct or vary the limitation of recoverable costs. According to this provision, the tribunal has the flexibility to issue a direction regarding the limit of recoverable costs at any stage of the arbitral proceedings.

However, there are two important conditions attached to this power:

1. **Timing:** The direction or variation must be made sufficiently in advance of incurring the costs or taking any steps in the proceedings that may be affected by the limitation. This requirement aims to provide clarity and certainty to the parties regarding the costs they can recover and to avoid any surprises or disputes later on.
2. **Taking into Account:** The direction or variation must be issued in a timely manner so that the parties can take the prescribed limit into account while conducting the proceedings. This ensures that the parties are aware of the cost constraints and can make informed decisions about their actions, strategy, and case preparation.

The purpose of this provision is to strike a balance between allowing the tribunal to exercise its discretion in managing costs effectively and preventing unfair or prejudicial surprises for the parties. By setting the timing requirements, Section 65(2) aims to maintain transparency and fairness in the arbitration process and prevent any retroactive imposition of cost limitations that might adversely impact the parties' rights and conduct in the proceedings.

In summary, Section 65(2) ensures that the tribunal's directions regarding the limitation of recoverable costs are timely and reasonably informed, giving the parties the opportunity to plan their actions accordingly. This contributes to a fair and efficient arbitral process, promoting cost containment while protecting the parties' interests.

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.**

Section 66(1) of the English Arbitration Act 1996 pertains to the enforcement of arbitral awards. It provides a mechanism for enforcing an award made by the arbitral tribunal under an arbitration agreement. The section states that such an award can be enforced in the same manner as a judgment or order of the court having the same effect. Key points to note about Section 66(1) are as follows:

1. **Enforceability:** An award made by the arbitral tribunal pursuant to an arbitration agreement is legally binding on the parties involved in the dispute. This means that the parties are obligated to comply with the terms and decisions set forth in the award.
2. **Leave of the Court:** Before enforcing the arbitral award, the party seeking enforcement needs to obtain “leave” (permission) from the court. This requirement ensures that there is a judicial oversight and the court can review the award’s validity and the circumstances surrounding the case before granting enforcement.
3. **Enforcement Procedure:** Once the court grants leave, the award can be enforced in the same manner as a judgment or order of the court. This typically involves using the court’s enforcement mechanisms, such as seizing assets, obtaining a writ of execution, or garnishing funds, to satisfy the obligations imposed by the award.
4. **Recognition and Enforcement Convention:** Section 66(1) is consistent with the principles of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Convention provides a framework for the recognition and enforcement of arbitral awards in signatory countries, ensuring that arbitral awards can be recognised and enforced across international borders.

Overall, Section 66(1) of the English Arbitration Act 1996 facilitates the enforcement of arbitral awards in a manner that upholds the finality and efficacy of arbitration proceedings, while providing a proper legal mechanism to ensure compliance with the award’s terms. It also reflects the pro-enforcement approach of arbitration, promoting efficiency and effectiveness in resolving international disputes.

- (2) Where leave is so given, judgment may be entered in terms of the award.**

Section 66(2) of the English Arbitration Act 1996 complements the preceding subsection (Section 66(1)) and provides further details on the enforcement process for arbitral awards. It states that when the court grants leave (permission) for enforcement of an arbitral award pursuant to Section 66(1), the party seeking enforcement may enter judgment in terms of the award. Key points to note about Section 66(2) are as follows:

1. **Enforcement with Court’s Approval:** After obtaining leave from the court under Section 66(1), the successful party can proceed with enforcing the arbitral award. This includes taking the necessary legal steps to enforce the award, such as applying for a judgment that incorporates the award’s terms.

2. **Judgment by Consent:** Entering judgment in terms of the award signifies that the parties to the arbitration have consented to the enforcement of the award as if it were a court judgment. By entering judgment, the parties agree to treat the arbitral award with the same legal force and effect as if it had been issued by the court itself.
3. **Practical Advantage:** The process of entering judgment allows the successful party to avail themselves of the court's enforcement mechanisms and tools. This may include obtaining court orders for asset seizures, property liens, or other legal means to enforce the award.
4. **Finality and Enforcement:** Section 66(2) further strengthens the finality and enforceability of arbitral awards. Once the court grants leave and judgment is entered, the award becomes legally enforceable in the same manner as any other court judgment, enhancing the efficacy and credibility of arbitration as a dispute resolution mechanism.

Overall, Section 66(2) provides a streamlined approach for enforcing arbitral awards with the court's approval. This process ensures that parties can effectively enforce their rights and obligations arising from arbitral awards, promoting the certainty and effectiveness of arbitration as a preferred method for resolving commercial disputes.

(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).

Section 66(3) of the English Arbitration Act 1996 deals with the issue of enforcing an arbitral award when the person against whom enforcement is sought raises an objection to the jurisdiction of the arbitral tribunal. The section states that leave to enforce an award shall not be granted if the person against whom enforcement is sought can demonstrate that the tribunal lacked substantive jurisdiction to make the award. Here are the key points to note about Section 66(3):

1. **Jurisdictional Challenge:** The section allows the party against whom enforcement of the award is sought to raise a jurisdictional challenge as a defence against enforcement. If this party can show that the tribunal did not have the authority or jurisdiction to decide the dispute in the first place, the court will refuse to grant leave for enforcement.
2. **Substantive Jurisdiction:** The challenge is specifically limited to "substantive jurisdiction", which refers to the tribunal's authority to hear and determine the particular dispute submitted to it. It does not refer to procedural or ancillary matters but focuses on whether the tribunal had the power to decide the core issues of the case.
3. **Limits on Enforcement:** If the court finds that the tribunal lacked substantive jurisdiction, it will not grant leave to enforce the award, meaning the award cannot be enforced in the same way as a court judgment.
4. **Right to Object:** The party challenging enforcement based on a lack of substantive jurisdiction must raise this objection explicitly in response to the enforcement application. They need to show evidence or arguments supporting their claim that the tribunal exceeded its jurisdiction.

5. Exception to the Objection: Section 66(3) also states that the right to raise this jurisdictional objection may have been lost (see Section 73). Section 73 sets out time limits for raising jurisdictional challenges and other objections during the arbitral process. If the objection was not raised in a timely manner during the arbitration, the party may be barred from raising it during the enforcement proceedings.

Overall, Section 66(3) ensures that an arbitral award cannot be enforced if the tribunal lacked substantive jurisdiction to render the decision. It provides a safeguard against the enforcement of awards issued in cases where the tribunal exceeded its authority or acted beyond the scope of the arbitration agreement.

(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.

Section 66(4) of the English Arbitration Act 1996 provides a clarifying statement about the relationship between Section 66 of the Act (which deals with enforcement of arbitral awards) and the recognition and enforcement of awards under other enactments or rules of law. Here is an analysis of Section 66(4):

Non-Exclusivity: Section 66(4) makes it clear that Section 66 does not provide an exclusive method for enforcing arbitral awards. Instead, it confirms that the provisions of Section 66 do not affect the recognition or enforcement of awards under any other enactment or rule of law.

1. **Other Enactments:** The section specifically mentions two other enactments where the enforcement of arbitral awards is covered. Firstly, it mentions “Part II of the Arbitration Act 1950”, which deals with the enforcement of awards under the Geneva Convention on the Execution of Foreign Arbitral Awards (1927). This indicates that awards rendered under the Geneva Convention can be enforced using the procedures outlined in the 1950 Act, alongside any other applicable provisions.
2. **New York Convention:** The second enactment referred to in Section 66(4) is “Part III of this Act”, which relates to the recognition and enforcement of awards under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). This confirms that awards falling within the scope of the New York Convention can be enforced using the procedures set out in Part III of the Arbitration Act 1996.
3. **Action on the Award:** Additionally, Section 66(4) mentions “by an action on the award”. This means that parties can still seek to enforce an award through traditional court proceedings, such as by initiating a lawsuit based on the award.

In summary, Section 66(4) clarifies that Section 66 of the Arbitration Act 1996 does not preclude the recognition or enforcement of arbitral awards through other means provided by other enactments or rules of law. This ensures that parties have multiple options to enforce arbitral awards, and they are not restricted to the procedures set out in Section 66 alone.

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**
- (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).

Section 67(1) of the English Arbitration Act 1996 addresses the procedure and circumstances under which a party to arbitral proceedings may challenge an arbitral award on the grounds of substantive jurisdiction. Here is an analysis of Section 67(1):

1. **Grounds for Challenging an Award:** Section 67(1) outlines two situations where a party can apply to the court to challenge an arbitral award:
 - a. **Challenging the award on the basis of the arbitral tribunal’s substantive jurisdiction:** If a party believes that the tribunal exceeded its authority by deciding on matters that were beyond the scope of its jurisdiction, that party can apply to the court to challenge the award’s validity.
 - b. **Declaring an award to be of no effect due to lack of jurisdiction:** If the arbitral tribunal rendered an award on the merits, but it is later discovered that the tribunal lacked substantive jurisdiction over the dispute, the affected party can seek a court order declaring the award wholly or partially ineffective.
2. **Notice Requirement:** Before making the application to the court, the party challenging the award must provide notice to the other parties involved in the arbitration and to the arbitral tribunal.
3. **Loss of Right to Object:** Section 67(1) references section 73, which deals with the waiver of the right to object. This implies that if a party fails to raise the challenge to the arbitral award’s substantive jurisdiction within the prescribed time or under the specific conditions set out in Section 73, that party may lose the right to later challenge the award on jurisdictional grounds.
4. **Restrictions on the Right to Apply:** The right to apply to the court to challenge an award on jurisdictional grounds is subject to certain restrictions mentioned in section 70(2) and (3) of the Arbitration Act 1996. The details of these restrictions are not provided in section 67(1), and further examination of section 70 is required to understand them fully.

In summary, Section 67(1) allows a party to arbitral proceedings to apply to the court to challenge an arbitral award if they believe that the tribunal lacked substantive jurisdiction. The provision ensures that parties have a mechanism to address potential issues related to the tribunal’s authority, but they must comply with notice requirements and may lose the right to object if they do not raise the challenge within the stipulated time or under specific conditions as per Section 73. Additionally, the

right to apply is subject to any restrictions mentioned in Section 70(2) and (3), which requires further examination.

(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.

Section 67(2) of the English Arbitration Act 1996 addresses the situation where an application has been made to the court challenging an arbitral award on the grounds of substantive jurisdiction. Here is an analysis of Section 67(2):

1. Continuation of Arbitral Proceedings: Section 67(2) states that despite the fact that an application has been made to the court to challenge an arbitral award on jurisdictional grounds (as per Section 67(1)), the arbitral tribunal is not automatically prevented from continuing the arbitral proceedings.
2. Power to Make Further Award: The arbitral tribunal retains the power to make a further award while the application to the court challenging the jurisdictional award is pending. In other words, the tribunal can continue its work and issue additional awards on other matters in the case, even if the validity of the jurisdictional award is being questioned before the court.

The purpose of this provision is to allow the arbitral process to move forward and address other aspects of the dispute while the jurisdictional challenge is being examined by the court. It avoids unnecessary delays in the arbitration proceedings, ensuring the efficient resolution of the dispute.

In summary, section 67(2) permits the arbitral tribunal to continue the proceedings and issue additional awards while an application challenging an award on the grounds of substantive jurisdiction is pending before the court. This provision ensures that the arbitration process can progress smoothly and not be unduly stalled by the challenge to the jurisdictional award.

(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.

Section 67(3) of the English Arbitration Act 1996 deals with the options available to the court when deciding on an application challenging an arbitral award on the grounds of substantive jurisdiction. Let us analyse this section:

1. Scope of the Court's Power: Section 67(3) specifies that the court has the authority to rule on an application challenging an arbitral award regarding its substantive jurisdiction. The

court's role in this context is to review the validity of the award in light of the jurisdictional challenge raised by one of the parties.

2. Three Possible Outcomes: The court is empowered to make one of three types of orders in response to the application:
 - a. Confirm the Award: The court may confirm the arbitral award if it finds that the tribunal did indeed have substantive jurisdiction to render the award. In this case, the award remains valid, and its enforceability is upheld.
 - b. Vary the Award: The court may decide to vary the arbitral award if it concludes that the tribunal had jurisdiction to address certain parts of the dispute but lacked jurisdiction over other parts. Consequently, the court may modify or adjust the award accordingly.
 - c. Set Aside the Award: If the court determines that the tribunal lacked substantive jurisdiction entirely or over essential aspects of the dispute, it may set aside the award either wholly or in part. This means that the award is declared null and void or is deemed non-enforceable for the parts affected by the jurisdictional defect.

It is essential to recognise that the court's power under Section 67(3) is focused specifically on the issue of substantive jurisdiction. It does not address the merits of the dispute or review the correctness of the tribunal's decision on the substance of the case. Instead, it focuses solely on whether the tribunal had the authority to hear and decide the particular dispute in the first place.

In summary, Section 67(3) of the Arbitration Act empowers the court to make specific orders regarding an arbitral award that is being challenged on the grounds of substantive jurisdiction. The court can either confirm, vary, or set aside the award in whole or in part, depending on its findings concerning the tribunal's jurisdiction to render the award.

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

Section 67(4) of the English Arbitration Act 1996 pertains to the process of appealing a court decision made under Section 67(3). This provision establishes that if a party intends to appeal the court's decision regarding an application challenging an arbitral award on the grounds of substantive jurisdiction, they must first obtain leave (permission) from the court before pursuing such an appeal. Key points to note about Section 67(4) are as follows:

1. Appeal Requirement: If a party is dissatisfied with the court's ruling on their application under Section 67(3), and they wish to challenge the court's decision through an appeal, they must seek leave from the court to proceed with the appeal.
2. Obtaining Leave: "Leave of the court" means that the party seeking to appeal must formally apply to the court, providing reasons why they believe an appeal is necessary or justified. The court will then decide whether there are valid grounds for allowing the appeal to proceed. It acts as a gatekeeping mechanism, ensuring that only suitable cases proceed to the appeal stage.

3. Limited Appeals: By requiring leave, Section 67(4) imposes an additional threshold for appeals from decisions made under Section 67(3). This is intended to prevent frivolous or unmeritorious appeals that could undermine the finality of arbitration proceedings.

It is important to recognise that Section 67(4) applies specifically to appeals concerning the court's decisions on challenges to an arbitral award's substantive jurisdiction under Section 67(3). For other types of court orders or decisions related to arbitration, different rules and procedures for appeals may apply.

In summary, Section 67(4) of the Arbitration Act mandates that parties seeking to appeal a court's decision made under Section 67(3) regarding the substantive jurisdiction of an arbitral award must obtain leave from the court before proceeding with the appeal. This requirement ensures that only appropriate cases are allowed to advance to the appeal stage and helps maintain the finality and efficiency of arbitration proceedings.

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).

Section 68(1) of the English Arbitration Act 1996 provides a mechanism for a party to challenge an arbitral award on the grounds of serious irregularity affecting the tribunal, the arbitral proceedings, or the award itself. This section allows a party to apply to the court to seek relief from the award if they believe that there has been a significant problem or irregularity that has had a material impact on the fairness and validity of the arbitration process or award. Key points to note about Section 68(1) are as follows:

1. **Grounds for Challenge:** A party can challenge an arbitral award on the basis of "serious irregularity". This term encompasses a broad range of circumstances where there has been a serious departure from proper procedure or where the tribunal has acted in a manner that significantly prejudices the rights of the parties involved.
2. **Types of Irregularity:** The irregularity may be related to various aspects, including but not limited to, the composition of the arbitral tribunal, the conduct of the arbitration proceedings, or the content of the award itself.
3. **Application to the Court:** To initiate the challenge, the party seeking relief must apply to the court by submitting an application. This application must be served on the other parties involved in the arbitration proceedings, as well as on the tribunal itself.
4. **Notice Requirements:** The application should be made with appropriate notice to the other parties and the arbitral tribunal. This ensures that all relevant stakeholders are aware of the challenge and have an opportunity to respond.

5. **Loss of Right to Object:** Section 68(1) emphasises that a party may lose the right to challenge the award on the grounds of serious irregularity if they do not act promptly. Section 73 of the Act sets out specific time limits for raising objections or making applications, and failure to comply with these limits may result in the loss of the right to challenge.
6. **Restrictions in Section 70:** The right to apply under Section 68(1) is subject to the restrictions specified in Section 70(2) and (3). These provisions outline certain conditions that must be met before a party can bring a challenge under Section 68(1).

It is important to note that Section 68(1) provides a specific avenue for challenging an arbitral award based on serious irregularities, which is distinct from the process of appealing an award on questions of law under Section 69 of the Arbitration Act.

In summary, Section 68(1) of the Arbitration Act allows a party to apply to the court to challenge an arbitral award on the grounds of serious irregularity affecting the tribunal, the proceedings, or the award. The section provides a mechanism to address significant departures from proper procedure or other unfairness in the arbitration process that may have impacted the award's validity or legitimacy.

- (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.**

Section 68(2) of the English Arbitration Act 1996 provides a detailed definition of “serious irregularity” for the purposes of challenging an arbitral award under Section 68(1). It outlines specific types of irregularities that, if present in the arbitration process, may give rise to substantial injustice to the

applicant, warranting a challenge to the award. The following are the various kinds of serious irregularities mentioned in Section 68(2):

1. **Failure to Comply with Section 33:** This refers to a serious irregularity where the arbitral tribunal fails to fulfil its general duty under Section 33 of the Arbitration Act. Section 33 imposes a duty on the tribunal to act fairly and impartially and to provide parties with a reasonable opportunity to present their case.
2. **Exceeding Powers (Other Than Substantive Jurisdiction):** It pertains to the tribunal exceeding its powers in matters other than the substantive jurisdiction, as covered in Section 67. This means the tribunal acts beyond the scope of its authority in areas such as procedural matters, which may lead to substantial injustice.
3. **Failure to Follow Agreed Procedure:** If the arbitral tribunal does not conduct the proceedings in accordance with the procedure agreed upon by the parties, it constitutes a serious irregularity.
4. **Failure to Address All Issues:** This occurs when the tribunal fails to address or consider all the issues that were presented to it for decision. This omission can lead to substantial injustice if relevant matters are left unaddressed.
5. **Exceeding Powers of Institutions or Persons:** This relates to situations where any arbitral or other institution or person vested with powers in relation to the proceedings or the award exceeds its authority.
6. **Uncertainty or Ambiguity in the Award:** Serious irregularity arises when the award contains uncertainty or ambiguity regarding its effect, leading to potential injustice.
7. **Fraud or Contrary to Public Policy:** If the award is obtained through fraudulent means or is against the principles of public policy, it can be challenged on this ground.
8. **Failure to Comply with Form Requirements:** Serious irregularity can occur if the award fails to meet the requirements as to its form, such as the necessity to state reasons or to be signed by the arbitrators.
9. **Admitted Irregularities:** If the tribunal or any other person vested with powers in relation to the proceedings or the award admits an irregularity in the conduct of the proceedings or in the award, this could form the basis for a challenge.

It is important to note that the court's consideration of a challenge under Section 68(2) is dependent on the existence of a serious irregularity that has caused or will cause substantial injustice to the applicant. This provision offers a clear framework to identify and assess the grounds for challenging an arbitral award based on irregularities that impact the fairness and integrity of the arbitration process and the resulting 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.

Section 68(3) of the English Arbitration Act 1996 outlines the powers of the court when a serious irregularity affecting the arbitral tribunal, the proceedings, or the award is established. The court may take one of the following actions:

1. **Remit the Award for Reconsideration:** The court can send the award back to the arbitral tribunal, either in its entirety or in part, for reconsideration. This means that the tribunal will have the opportunity to review the issues affected by the serious irregularity and rectify any errors or deficiencies.
2. **Set Aside the Award:** The court may choose to set aside the award in whole or in part. This action nullifies the award, and it will have no legal effect. This option is usually taken when the irregularity has significantly impacted the integrity or validity of the award.
3. **Declare the Award to Be of No Effect:** Similar to setting aside the award, the court can declare the award to be of no effect, either wholly or partially. This means that the award is considered null and void, and it has no legal consequences.

The court's decision to set aside or declare the award to be of no effect is subject to a condition. The court will not exercise these powers unless it deems it inappropriate to remit the matters in question back to the tribunal for reconsideration. In other words, if the irregularity can be addressed adequately by the tribunal through reconsideration, the court may opt for remittal rather than outright setting aside or declaring the award to be of no effect.

This section provides the court with the discretion to choose the most appropriate remedy based on the specific circumstances of the case. The aim is to rectify any injustice caused by the serious irregularity and maintain the fairness and efficacy of the arbitral process.

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

Section 68(4) of the English Arbitration Act 1996 specifies that any party seeking to appeal a decision of the court made under Section 68(3) needs to obtain leave (permission) from the court to do so. In other words, an appeal cannot be made as a matter of right; it requires prior authorisation from the court.

This provision is in line with the general approach of the Act, which aims to minimise court intervention in arbitration proceedings and promote the finality and efficiency of arbitration. By requiring leave to appeal, the Act aims to ensure that only appropriate cases with reasonable grounds for appeal are brought before the court.

When a party is dissatisfied with the court's decision regarding a serious irregularity under Section 68(3), they must first seek leave to appeal that decision. The court will then consider whether there are sufficient grounds to allow the appeal to proceed. The party seeking leave to appeal must demonstrate that there is a real prospect of success on the appeal or that there is some other compelling reason why the appeal should be heard.

By imposing the requirement for leave to appeal, the Act strikes a balance between allowing parties to challenge serious irregularities in arbitration awards and preventing frivolous or unfounded appeals that could undermine the finality of arbitration. It also ensures that the court's resources are used judiciously, focusing on cases where there is a legitimate need for judicial review.

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.

Section 69(1) of the English Arbitration Act 1996 grants parties to arbitral proceedings the right to appeal to the court on a question of law arising out of an award made in those proceedings, unless they have agreed otherwise. This provision allows parties to seek judicial review of the award on the specific grounds of a legal error made by the tribunal. Key points of Section 69(1) are as follows:

1. **Right to Appeal:** Parties have the right to appeal to the court regarding a question of law arising from the arbitration award. This means that if a party believes that the tribunal made an error in interpreting or applying the law, they can seek a review by the court.
2. **Notice Requirement:** The party intending to appeal must notify the other parties involved in the arbitration and the arbitral tribunal of their intention to appeal. This notice requirement ensures that all relevant parties are aware of the appeal and can participate in any subsequent proceedings.
3. **Question of Law:** The appeal is limited to questions of law, which means it is concerned with legal issues rather than questions of fact or mixed questions of law and fact. It focuses on whether the tribunal correctly interpreted and applied the law in reaching its decision.
4. **Agreement to Exclude Jurisdiction:** The parties can agree to exclude the court's jurisdiction under this section by specifically agreeing to dispense with reasons for the tribunal's award. In such a case, the absence of reasons would be treated as an agreement not to appeal to the court on questions of law.

Section 69(1) is designed to strike a balance between allowing parties to seek recourse for legal errors in arbitration awards while maintaining the principles of finality and efficiency in the arbitral process. By allowing appeals on questions of law, the Act provides a limited form of review by the courts to ensure that the arbitral tribunal has correctly applied the law. However, the Act emphasises the parties' autonomy and respect for the arbitral process by enabling them to agree to exclude this right of appeal in certain circumstances.

(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).

Section 69(2) of the English Arbitration Act 1996 sets out the conditions under which an appeal can be brought under Section 69(1). It places limitations on the right to appeal, reflecting the Act's aim to uphold party autonomy and promote efficiency in the arbitration process. Key points of Section 69(2) are as follows:

1. **Consent of All Parties or Leave of the Court:** An appeal under Section 69(1) can only be brought if either:
 - a. All the other parties to the arbitration proceedings agree to the appeal; or
 - b. The party seeking to appeal obtains the leave (permission) of the court.
2. **Agreement of All Parties:** If all the other parties to the arbitration proceedings agree to the appeal, then the party seeking to appeal can proceed without seeking leave from the court.
3. **Leave of the Court:** If all parties do not agree to the appeal, the party seeking to appeal must apply to the court for leave (permission) to bring the appeal. The court will decide whether to grant leave based on the circumstances and merits of the case.
4. **Restrictions in Section 70(2) and (3):** Section 70(2) and (3) of the Act sets out further restrictions on appeals to the court. These restrictions include a time limit for bringing the appeal and requirements regarding the notice of appeal.

Section 69(2) is intended to safeguard the finality and efficiency of arbitration awards while also providing a limited avenue for parties to challenge awards on questions of law. By requiring either the agreement of all parties or the court's leave, the Act ensures that appeals are not pursued lightly and only in cases where there is a genuine concern about a legal error in the award. This helps maintain the essential advantages of arbitration, such as confidentiality, speed, and cost-effectiveness, while still allowing for some degree of judicial review when necessary.

- (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.**

Section 69(3) of the English Arbitration Act 1996 outlines the criteria that the court must consider when deciding whether to grant leave (permission) for an appeal to be brought under Section 69(1). The purpose of these criteria is to ensure that appeals on questions of law are only allowed in appropriate cases where there is a strong justification for judicial review. The key elements of Section 69(3) are as follows:

1. **Substantial Affect on Rights:** Leave to appeal will be granted only if the court is satisfied that the determination of the question of law will substantially affect the rights of one or more of the parties involved in the arbitration.
2. **Question Raised Before the Tribunal:** The question of law raised in the appeal must be one that was actually presented to the arbitral tribunal during the arbitration proceedings. The court will not entertain appeals on new or previously unraised questions of law.
3. **Obvious Error or General Public Importance:** The court may grant leave to appeal if it is satisfied that either:
 - a. The decision of the tribunal on the question of law is obviously wrong based on the findings of fact in the award; or
 - b. The question of law is of general public importance, and the tribunal's decision is at least open to serious doubt.
4. **Just and Proper in the Circumstances:** Even if the above criteria are met, the court will only grant leave to appeal if it deems it just and proper to do so in all the circumstances, considering the parties' agreement to resolve the dispute through arbitration.

These criteria provide a balanced approach to the appeal process, aiming to strike a reasonable balance between party autonomy in arbitration and the right to seek judicial review of important questions of law. By requiring strong grounds for appeal, Section 69(3) discourages frivolous challenges to arbitral awards while allowing for necessary recourse when there are legitimate concerns about the correctness of a legal determination made by the arbitral tribunal.

(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.

Section 69(4) of the English Arbitration Act 1996 sets out the requirements for an application seeking leave to appeal under Section 69(1) of the Act. It lays down the necessary content that must be included in the application in order for it to be considered by the court. The purpose of this provision is to ensure that the court has sufficient information to assess whether the criteria for granting leave to appeal are met.

The key elements of section 69(4) are as follows:

1. Identification of the Question of Law: The application must clearly specify the question of law that the party seeks to have determined on appeal. This is essential to define the scope of the appeal and to avoid any ambiguity in the issues under review.
2. Grounds for Granting Leave: The application must also state the grounds on which the party alleges that leave to appeal should be granted. These grounds should address the criteria set out in Section 69(3), namely, the substantial effect on rights, the question being one presented to the tribunal, the potential for obvious error or general public importance, and the just and proper circumstances for the court's determination.

By mandating the inclusion of these specific details in the application, section 69(4) ensures that parties seeking leave to appeal cannot make broad or speculative claims without providing specific legal questions and legitimate reasons for challenging the arbitral award. It promotes transparency and clarity in the appeal process and allows the court to assess the merits of the application based on well-defined and substantiated arguments.

(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.

Section 69(5) of the English Arbitration Act 1996 outlines the procedural aspect of the court's determination of an application for leave to appeal under Section 69(1) of the Act. This provision addresses the process by which the court will handle such applications. The key point in section 69(5) is as follows:

Determination Without a Hearing: In general, the court is not required to hold a hearing to decide on an application for leave to appeal under section 69(1) of the Act. This means that the court has the discretion to decide the application based on the written materials and submissions provided by the parties without conducting an oral hearing.

The purpose of this provision is to promote efficiency in the appeal process. By allowing the court to determine the application without a hearing, unnecessary delays and costs associated with conducting a full hearing can be avoided. However, it is important to note that if the court finds that a hearing is required, it has the authority to schedule one to assess the merits of the application further.

Overall, section 69(5) grants the court flexibility in deciding whether to proceed with a hearing based on the complexity and importance of the legal issues raised in the application for leave to appeal. It strikes a balance between expediency and ensuring that parties have a fair opportunity to present their arguments before the court.

(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.

Section 69(6) of the English Arbitration Act 1996 addresses the appeal process regarding the court's decision to grant or refuse leave to appeal under Section 69(1) of the Act. The key point in section 69(6) is as follows:

Leave of the Court for Appeal: Any party seeking to appeal the court's decision to grant or refuse leave to appeal under section 69(1) must first obtain the leave (permission) of the court to pursue such an appeal.

This means that if a party is dissatisfied with the court's decision on their application for leave to appeal, they must seek permission from the court to challenge that decision by way of an appeal. This requirement ensures that not all decisions on leave to appeal will be subject to further appeals, and only cases with substantial grounds for appeal will proceed to the next stage.

By requiring leave of the court, the provision helps to prevent frivolous or unmeritorious appeals and encourages parties to carefully consider the strength of their arguments before proceeding with an appeal. It also serves to streamline the appeals process, ensuring that only significant issues of law or substantial injustice are further examined by the appellate courts.

In summary, section 69(6) establishes a procedural requirement for seeking leave to appeal the court's decision on the grant or refusal of leave to appeal under Section 69(1) of the Arbitration Act. It acts as a safeguard against unnecessary and potentially time-consuming appeals, while allowing deserving cases to be heard on their merits.

(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.

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.

Section 69(7) of the English Arbitration Act 1996 outlines the scope of the court's powers on an appeal under section 69(1) of the Act. This provision sets out the options available to the court when dealing with an appeal on a question of law arising out of an award made in the arbitral proceedings. The key points in section 69(7) are as follows:

1. Court's Powers on Appeal: On an appeal under Section 69(1), the court has the authority to make various orders in relation to the award. The available options for the court are as follows:
 - a. Confirm the Award: The court may confirm the original award, upholding its validity and enforceability.
 - b. Vary the Award: The court may make changes or variations to the original award as it deems appropriate.
 - c. Remit the Award: The court may send the award back to the arbitral tribunal, either in whole or in part, for reconsideration in light of the court's determination on the question of law raised in the appeal.
 - d. Set Aside the Award: The court may set aside the entire award or part of it, effectively rendering it null and void.
2. Requirement for Remission: The provision stipulates that if the court has the power to set aside an award but finds that it would be more appropriate to have the issues reconsidered by the arbitral tribunal, it should remit the matters in question back to the tribunal for reconsideration. In other words, the court should not set aside the award unless it is necessary, and remission should be considered as a preferred option in appropriate cases.

This section emphasises the court's discretion to decide on the appropriate course of action based on the specific circumstances of the case. The court may exercise its powers based on the merits of the appeal and the potential impact on the rights of the parties involved.

In summary, section 69(7) outlines the options available to the court on an appeal under Section 69(1) and ensures that the court uses its powers judiciously and appropriately to uphold the integrity of the arbitral process and achieve justice for the parties involved.

(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.

Section 69(8) of the English Arbitration Act 1996 addresses the procedure for further appeals after the court has rendered its decision on an appeal under Section 69(1). This provision specifies how the court's decision on the initial appeal is treated and the conditions for seeking a further appeal to the Court of Appeal. The key points in section 69(8) are as follows:

1. **Decision Treated as Judgment:** The decision of the court on an appeal under Section 69(1) is considered a judgment of the court. This means that the court's ruling is treated with the same legal weight and significance as any other judgment issued by the court.
2. **Leave for Further Appeal:** However, if a party is dissatisfied with the court's decision on the appeal and wishes to seek a further appeal to the Court of Appeal, they must first obtain the leave (permission) of the court to do so. This means that a further appeal cannot be filed as of right; the party must seek the court's permission to proceed with the appeal.
3. **Grounds for Granting Leave:** The court has the discretion to grant leave for a further appeal to the Court of Appeal. The provision outlines two primary grounds on which the court may grant leave:
 - a. **General Importance:** The court may grant leave if it considers the question of law raised in the appeal to be of general importance. This means that the legal issue has wider implications beyond the specific case and may impact other arbitration matters or legal principles.
 - b. **Special Reason:** The court may also grant leave if there is some other special reason justifying the further consideration of the question by the Court of Appeal. This ground provides the court with flexibility to consider other compelling circumstances that warrant a further appeal.

In essence, section 69(8) clarifies that while the decision of the court on an appeal under section 69(1) is treated as a judgment, a further appeal to the Court of Appeal is not automatic. The party seeking a further appeal must demonstrate that the question of law raised in the appeal meets the criteria of general importance or is supported by other compelling reasons for the Court of Appeal to consider the matter. The purpose of this provision is to filter appeals and ensure that only matters of significant legal importance proceed to the higher court.

70 CHALLENGE OR APPEAL: SUPPLEMENTARY PROVISIONS

(1) The following provisions apply to an application or appeal under section 67, 68 or 69.

Section 70(1) of the English Arbitration Act 1996 sets out the general provisions that apply to any application or appeal made under section 67, section 68, or section 69 of the Act. These sections pertain to the following matters:

1. Section 67: Application to challenge the substantive jurisdiction of the arbitral tribunal or seek an order declaring an award to be of no effect due to lack of substantive jurisdiction.
2. Section 68: Application to challenge an arbitral award on the ground of serious irregularity affecting the tribunal, the proceedings, or the award.
3. Section 69: Appeal to the court on a question of law arising out of an award made in the arbitral proceedings.

The key points in section 70(1) are as follows:

1. **Applicability of Provisions:** The provisions outlined in Section 70(1) apply to any application or appeal made under sections 67, 68, or 69. This means that the specific rules and requirements mentioned in this section are relevant and must be followed when seeking to challenge an award or appeal on the specified grounds.
2. **Common Procedure:** Sections 67, 68, and 69 deal with different types of applications and appeals, but section 70(1) brings them together to address certain common procedural aspects. These procedural aspects may include the manner of making the application or appeal, the form and content of the application, and other related matters.

Section 70(1) does not provide specific details of the procedural requirements for each type of application or appeal. Instead, it serves as a reference point to direct parties to the relevant provisions in the Act that govern these applications and appeals. The detailed procedures and criteria for each type of application or appeal can be found in the specific sections (i.e., sections 67, 68, and 69) and the related provisions of the Act.

(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).

Section 70(2) of the English Arbitration Act 1996 imposes a requirement that a party must first exhaust certain available avenues before bringing an application or appeal under sections 67, 68, or 69. These sections relate to specific challenges to an award or questions of law arising from the arbitral proceedings. The key points of section 70(2) are as follows:

1. **Exhaustion of Arbitral Process:** Before making an application or appeal under sections 67, 68, or 69, the party must have exhausted any available arbitral process of appeal or

review. This means that if the arbitral rules or the agreement between the parties provide for an internal mechanism to appeal or review an award within the arbitration, that process must be followed first before seeking recourse from the court.

2. Exhaustion of Section 57 Recourse: The party must also have exhausted any available recourse under section 57 of the Arbitration Act, which pertains to the correction of an award or making an additional award. If there are any errors, omissions, or ambiguities in the award that need correction or if there are additional claims not addressed in the award, the party must first seek resolution through section 57 procedures before resorting to sections 67, 68, or 69 applications or appeals.

The requirement to exhaust these available avenues is intended to promote the efficiency and integrity of the arbitration process. It encourages parties to resolve disputes within the arbitral proceedings and minimise court intervention. By seeking resolution within the arbitral process first, parties have an opportunity to correct potential errors or seek further relief before resorting to costly and time-consuming court proceedings.

However, it is important to note that there is an exception to this requirement. Section 70(2) also states that the right to challenge an award or question of law under sections 67, 68, or 69 is subject to the restrictions in section 70(3), which relates to the time limit for bringing the application or appeal. Therefore, parties must be mindful of the time limit as well when considering their options for challenging an award or question of law.

(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.

Section 70(3) of the English Arbitration Act 1996 sets a strict time limit for bringing an application or appeal under Sections 67, 68, or 69 of the Act. The key points of Section 70(3) are as follows:

1. Time Limit: Any application or appeal challenging an award or question of law under sections 67, 68, or 69 must be brought within 28 days of the date of the award. If there has been any arbitral process of appeal or review within the arbitration, the time limit starts from the date when the applicant or appellant was notified of the result of that internal process.
2. 28-Day Deadline: The 28-day period is the maximum allowed time within which the party must initiate the application or appeal. It is crucial for parties to adhere to this deadline to preserve their right to challenge the award or question of law. Failure to file within the specified time may result in losing the right to bring the application or appeal.

The purpose of this time limit is to ensure that parties act promptly and efficiently in seeking recourse from the court. It encourages parties to promptly address any grievances they have with the arbitral award and helps maintain finality in arbitration proceedings. By providing a clear and strict deadline, the Act aims to prevent unnecessary delays and prolonged challenges to the arbitration process.

It is important for parties to be aware of the time limit and to diligently assess whether they have grounds for challenging the award or question of law. They should take into account the potential duration of any internal arbitral process of appeal or review and ensure that they act within the

specified 28-day period. Failure to meet this deadline may result in the loss of the right to challenge the award through the court system.

(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.

Section 70(4) of the English Arbitration Act 1996 grants the court the authority to address situations where the award lacks sufficient reasoning or detail. The section deals with scenarios where an application or appeal has been brought before the court, but the award issued by the arbitral tribunal either lacks reasons altogether or does not provide enough detail to enable the court to properly assess the merits of the application or appeal. The key points of section 70(4) are as follows:

1. **Insufficient Reasons:** If the court finds that the award does not contain any reasons (subparagraph (a)) or that the reasons provided are not sufficiently detailed to enable the court to properly consider the application or appeal (subparagraph (b)), it may intervene.
2. **Order for Statement of Reasons:** In such cases, the court is empowered to make an order directing the arbitral tribunal to state the reasons for its award in sufficient detail. This order is designed to ensure transparency and accountability in the arbitral process, as it allows the court to fully understand the rationale behind the tribunal’s decision.

The purpose of this provision is to ensure that parties challenging an award or seeking to appeal an award have access to the reasons and rationale that led to the tribunal’s decision. It allows the court to perform its supervisory role effectively and ensures that the arbitral tribunal provides adequate justification for its conclusions. By ordering the tribunal to provide detailed reasons, the court can make an informed decision regarding the merits of the application or appeal.

This provision also serves the purpose of promoting fairness and due process, as parties have a right to understand the basis of the decision that affects their rights and obligations. Transparency in the arbitral process enhances the legitimacy and enforceability of the award. However, it is worth noting that this provision does not grant the court the power to review the merits of the award; rather, it simply ensures that the court has access to sufficient reasoning to address the application or appeal properly.

(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.

Section 70(5) of the English Arbitration Act 1996 empowers the court to make additional orders concerning the costs of the arbitration when it has issued an order under subsection (4). This provision addresses the situation where the court has directed the arbitral tribunal to provide reasons for its

award in sufficient detail, and as a consequence, additional costs are incurred during the arbitration process. The key points of section 70(5) are as follows:

1. **Order for Further Costs:** If the court makes an order under subsection (4), requiring the tribunal to state the reasons for its award in sufficient detail, it may also issue a further order related to any additional costs that arise due to this direction.
2. **Discretion of the Court:** The court has wide discretion in determining the extent and nature of the further order. It may take into account various factors, such as the complexity of the issues, the amount of additional work required by the tribunal, and the overall impact on the arbitration process.
3. **Allocating Additional Costs:** The further order may address how the additional costs will be allocated among the parties. The court could direct that the party seeking reasons bears the additional costs or that the costs are distributed among the parties in a different manner.
4. **Ensuring Fairness and Efficiency:** The purpose of this provision is to ensure fairness and efficiency in the arbitration process. By allowing the court to consider the impact of its order on the costs incurred, it promotes the appropriate allocation of expenses and helps avoid undue financial burdens on the parties.

It is important to note that this provision only applies when the court has ordered the arbitral tribunal to provide reasons in more detail. The court's discretion is exercised judiciously to ensure that the party seeking reasons is not unfairly burdened with excessive costs while also ensuring that the tribunal's decision-making process is transparent and accountable.

Overall, section 70(5) provides the court with the authority to manage the costs of the arbitration effectively, ensuring that parties are treated fairly and that the arbitration process remains efficient and conducive to a just resolution of the dispute.

- (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.**

Section 70(6) of the English Arbitration Act 1996 grants the court the authority to order the applicant or appellant to provide security for the costs of their application or appeal. The purpose of this provision is to ensure that the party bringing the application or appeal has sufficient funds or assets to cover potential costs if they are not successful in their challenge. The key points of section 70(6) are as follows:

1. **Power to Order Security:** The court has the discretion to order the applicant or appellant to provide security for the anticipated costs of the application or appeal. Security refers to a financial guarantee or deposit that the party must furnish to demonstrate their ability to meet the costs if required.
2. **Dismissal for Non-Compliance:** If the applicant or appellant fails to comply with the court's order to provide security for costs, the court may dismiss the application or appeal. This measure ensures that the other party is not burdened with costs incurred due to the challenge if there is a risk of non-payment by the party bringing the application or appeal.
3. **Exemption for Certain Parties:** The court cannot exercise its power to order security for costs if the applicant or appellant falls under certain categories. These exempt categories include:
 - a. Individuals who are ordinarily resident outside the United Kingdom.
 - b. Corporations or associations incorporated or formed under the law of a country outside the United Kingdom, or those whose central management and control are exercised outside the United Kingdom.
4. **Purpose of Exemption:** The exemption for individuals and corporations with ties to jurisdictions outside the United Kingdom recognises that enforcing an order for security on parties from foreign jurisdictions may pose practical challenges and be contrary to the principles of international comity.
5. **Ensuring Fairness and Financial Responsibility:** The provision aims to strike a balance between ensuring that parties are financially responsible for their applications and appeals while not imposing unreasonable barriers or costs on parties from foreign jurisdictions.

Overall, section 70(6) empowers the court to order security for costs in appropriate cases to safeguard the interests of the other party and the integrity of the arbitration process. However, the court is mindful of the potential practical difficulties and limitations when dealing with parties based outside the United Kingdom and, therefore, exempts them from the requirement of providing security for costs.

(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.

Section 70(7) of the English Arbitration Act 1996 empowers the court to order that any money awarded to a party in the arbitral award be brought into court or otherwise secured pending the determination of the application or appeal challenging the award. This provision is aimed at ensuring that the party seeking to challenge the award does not prematurely benefit from the award while the challenge is pending, and it also serves to protect the other party's interests. The key points of section 70(7) are as follows:

1. **Security for the Award Amount:** The court has the authority to order the party challenging the award (the applicant or appellant) to bring the money awarded in the arbitration into

court or provide other forms of security to ensure that the funds are protected during the challenge process.

2. **Preservation of Funds:** The purpose of this provision is to safeguard the award amount and prevent the challenging party from dissipating or using the funds while the application or appeal is ongoing. By securing the award amount, the court ensures that the other party's rights are protected and that the final resolution of the dispute is not jeopardised.
3. **Compliance and Dismissal:** If the challenging party fails to comply with the court's order to bring the money into court or provide security, the court may direct that the application or appeal be dismissed. This measure incentivises compliance and ensures that the challenging party does not benefit from the award while the dispute remains unresolved.

Protecting the Other Party: section 70(7) is designed to prevent situations where the challenging party seeks to enforce the award to its advantage, such as by attempting to execute on the award amount, while simultaneously seeking to challenge the same award through the courts.

Overall, section 70(7) serves as a protective mechanism to preserve the funds awarded in arbitration during the challenge process and maintain the integrity of the arbitration proceedings. It ensures that the challenging party cannot improperly utilise the award amount before the application or appeal is fully determined by the court.

(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.

Section 70(8) of the English Arbitration Act 1996 grants the court the authority to grant leave to appeal in arbitral proceedings subject to conditions that have the same or similar effect as an order under subsection (6) or (7) of the same section. In other words, the court can impose certain conditions on the party seeking leave to appeal, similar to the conditions specified in subsections (6) and (7) of section 70. Key points of section 70(8) are as follows:

1. **Granting Leave to Appeal with Conditions:** When a party applies for leave to appeal in arbitral proceedings under section 67, 68, or 69 of the Act, the court has the discretion to grant leave subject to specific conditions. These conditions may be designed to regulate various aspects of the appeal process or to secure the interests of the other party during the appeal.
2. **Conditions Similar to subsections (6) and (7):** The court can impose conditions on the appealing party that are similar to those mentioned in subsections (6) and (7) of section 70. Subsection (6) allows the court to order the applicant or appellant to provide security for costs, while subsection (7) allows the court to order the award amount to be brought into court or secured pending the outcome of the appeal.
3. **Flexibility in Granting Leave:** Section 70(8) provides the court with flexibility in determining the conditions to be imposed when granting leave to appeal. The court can

tailor the conditions to the specific circumstances of the case and the interests of the parties involved.

4. **General Discretion of the Court:** The provision clarifies that the court's power to grant leave to appeal subject to conditions is in addition to its general discretion to impose conditions on the granting of leave. This means that the court has wide discretion to set appropriate conditions as it deems fit, beyond those mentioned in subsections (6) and (7).

In summary, section 70(8) gives the court the ability to grant leave to appeal in arbitral proceedings while imposing conditions on the appealing party to ensure that the appeal process is conducted fairly and to protect the interests of the other party. The court has the flexibility to set appropriate conditions based on the specific circumstances of the case, in addition to any conditions already specified in subsections (6) and (7).

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.

Section 71(1) of the English Arbitration Act 1996 sets out the provisions that come into effect when the court makes an order under section 67, 68, or 69 with respect to an arbitral award. These sections deal with different types of applications and appeals that parties can make to the court challenging an award. Let us analyse each provision:

1. **Section 67: Challenging Jurisdiction:** Section 67 allows a party to challenge an arbitral award on the grounds of substantive jurisdiction. This means questioning whether the arbitral tribunal had the authority to make the award in the first place. A party can apply to the court to challenge the award on jurisdictional grounds.
2. **Section 68: Serious Irregularity:** Section 68 allows a party to challenge an award on the grounds of serious irregularity affecting the tribunal, the proceedings, or the award itself. Serious irregularity can include issues such as failure to comply with due process, exceeding the tribunal's powers, or procedural impropriety.
3. **Section 69: Appeals on Points of Law:** Section 69 allows a party to appeal to the court on a question of law arising out of an award. The appeal can only be made if the parties agree or with the leave of the court. The court will consider questions of law and their impact on the parties' rights.

Key points of Section 71(1):

1. **Scope of Application:** Section 71(1) applies when the court makes an order under Sections 67, 68, or 69 concerning an arbitral award.
2. **Effect of the Order:** When the court issues an order under the specified sections, certain consequences follow as outlined in Section 71(1).

Unfortunately, section 71(1) itself does not provide further details on the specific provisions or effects that apply when the court makes an order under the mentioned sections. To understand the specific consequences, it is necessary to refer to the provisions of Sections 67, 68, and 69 themselves, as well as other relevant sections of the Arbitration Act 1996 that may further elaborate on the consequences of court orders related to arbitral awards. These provisions ensure that there is a clear legal framework for dealing with challenges to arbitral awards and appeals on points of law, providing parties with a proper recourse mechanism in case they believe the award has been affected by irregularities or errors in law.

(2) Where the award is varied, the variation has effect as part of the tribunal's award.

Section 71(2) of the English Arbitration Act 1996 deals with the effect of a variation made by the court when it orders an award to be varied under Section 67, Section 68, or Section 69 of the Act. Let us analyse this provision:

1. Variations by the Court: Sections 67, 68, and 69 provide different grounds for challenging an arbitral award or seeking its setting aside or modification. If the court decides to grant the application or appeal and orders a variation to the award, such variation will become part of the award itself.
2. Binding Effect: The variation made by the court will have binding effect as if it was originally part of the award rendered by the arbitral tribunal. It becomes an integral part of the award and is legally enforceable as such.
3. Final Award: Once the court has ordered a variation, the award is treated as a final and binding determination of the dispute between the parties. Any changes or modifications made by the court become conclusive and form an integral part of the award.

Overall, section 71(2) ensures that any variations made by the court to the arbitral award have the same legal status and effect as the original award rendered by the arbitral tribunal. It confirms the finality and binding nature of the award, even when modified by the court, providing certainty and enforceability to the parties involved in the arbitration process.

(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.

Section 71(3) of the English Arbitration Act 1996 pertains to the effect of a remission order by the court in relation to an arbitral award. Let us analyse this provision:

1. Remission of Award: Section 71(3) applies when the court decides to remit the award, either in whole or in part, back to the arbitral tribunal for reconsideration. The court may do so as a result of an application under section 67, section 68, or section 69.
2. Timeframe for Reconsideration: Upon remission, the arbitral tribunal is required to make a fresh award concerning the matters that have been remitted. The tribunal must do this within three months of the date of the court's order for remission. However, the court

has the discretion to extend or reduce this time period as it deems appropriate based on the circumstances of the case.

3. **Fresh Award:** The fresh award made by the arbitral tribunal after remission is considered a new decision on the matters that were sent back for reconsideration. It is not an appeal of the original award but a fresh determination based on the tribunal's review of the remitted issues.
4. **Court's Control:** The court retains control over the proceedings to some extent by specifying the time limit within which the tribunal must render the fresh award. This ensures that the matter is resolved in a timely manner and provides certainty to the parties involved.

Overall, section 71(3) ensures that if the court orders a remission of the award, the tribunal is obligated to reconsider the remitted matters and issue a fresh award within the specified timeframe or as directed by the court. This mechanism allows for a timely resolution of any issues identified by the court and provides a balance between the court's supervisory role and the autonomy of the arbitral tribunal in reaching its decisions.

(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.

Section 71(4) of the English Arbitration Act 1996 addresses the consequences of the court setting aside or declaring an award to be of no effect, either in whole or in part. Let us analyse this provision:

1. **Setting Aside or Declaring No Effect:** Section 71(4) applies when the court grants an application under section 67, section 68, or section 69 and sets aside the award or declares it to be of no effect, either wholly or partially. Such a decision by the court indicates that there was a serious irregularity affecting the tribunal, the proceedings, or the award (section 68), or a question of law that substantially affects the rights of the parties (section 69).
2. **Nullifying Certain Provisions:** In addition to setting aside or declaring an award to be of no effect, the court is also empowered to nullify any provision in an agreement that stipulates the award as a condition precedent to bringing legal proceedings concerning matters covered by the arbitration agreement. In simple terms, any clause that requires a valid award before a party can initiate legal proceedings becomes ineffective as regards the subject matter of the set-aside award or the relevant part of the award.
3. **Legal Proceedings:** The provision nullification applies specifically to legal proceedings. If the court orders the award to be set aside or declared of no effect, it also has the authority to render the requirement of a valid award void for the subject matter or the relevant part of the award in terms of initiating subsequent legal actions.

Overall, section 71(4) ensures that if an award is set aside or declared of no effect by the court, it may also nullify any provision in the agreement that makes the award a condition precedent for

commencing legal proceedings related to the subject matter covered by the arbitration agreement. This provision adds clarity and flexibility in circumstances where the award has been deemed defective and allows parties to seek alternative methods for resolving their disputes.

MISCELLANEOUS

72 SAVING FOR RIGHTS OF PERSON WHO TAKES NO PART IN PROCEEDINGS

(1) A person alleged to be a party to arbitral proceedings but who takes no part in the proceedings may question—

- (a) whether there is a valid arbitration agreement,**
- (b) whether the tribunal is properly constituted, or**
- (c) what matters have been submitted to arbitration in accordance with the arbitration agreement,**

by proceedings in the court for a declaration or injunction or other appropriate relief.

Section 72(1) of the English Arbitration Act 1996 provides a mechanism for a person who is alleged to be a party to arbitral proceedings but has not participated in those proceedings to challenge certain fundamental aspects of the arbitration. Let us analyse this provision:

1. **Valid Arbitration Agreement:** The first circumstance under which the person can question the arbitral proceedings is whether there is a valid arbitration agreement. This means that the person can challenge the existence, validity, or enforceability of the arbitration agreement between them and the other parties involved in the arbitration.
2. **Proper Constitution of the Tribunal:** The second circumstance relates to whether the arbitral tribunal is properly constituted. This means the person can challenge the appointment or composition of the arbitral tribunal, raising concerns about the qualifications, appointment process, or lack of jurisdiction of the arbitrators.
3. **Matters Submitted to Arbitration:** The third circumstance deals with the matters that have been submitted to arbitration in accordance with the arbitration agreement. Here, the person can question the scope of the arbitration and whether specific issues or disputes fall within the purview of the arbitration agreement.
4. **Court Proceedings for Relief:** To raise these challenges, the person who has not participated in the arbitral proceedings can initiate court proceedings seeking declaratory relief, injunctions, or any other appropriate remedies. This means that the concerned person can go to court to seek legal clarity or prevent any further actions in the arbitration until these fundamental questions are resolved.

In essence, section 72(1) provides a route for a person who is allegedly a party to arbitral proceedings but has not participated in those proceedings to challenge certain key aspects of the arbitration process before a court. By doing so, this provision helps to safeguard the rights and interests of individuals or entities who may find themselves involuntarily drawn into an arbitration without having had an opportunity to participate in the process.

- (2) He also has the same right as a party to the arbitral proceedings to challenge an award—
- (a) by an application under section 67 on the ground of lack of substantive jurisdiction in relation to him, or
 - (b) by an application under section 68 on the ground of serious irregularity (within the meaning of that section) affecting him;

and section 70(2) (duty to exhaust arbitral procedures) does not apply in his case.

Section 72(2) of the English Arbitration Act 1996 grants specific rights to a person who is alleged to be a party to arbitral proceedings but has not participated in those proceedings. Let us analyse this provision:

1. **Right to Challenge an Award:** The person mentioned in section 72(2) has the same right as a party to the arbitral proceedings to challenge an award made in those proceedings. This means that despite not participating in the arbitration, this person is entitled to challenge the validity or enforceability of the award in specific circumstances.
2. **Grounds for Challenging an Award:** The person can challenge an award in two ways:
 - a. **Challenge under section 67:** The person can apply to the court under Section 67, on the ground that the arbitral tribunal lacked substantive jurisdiction in relation to them. In other words, they can challenge the tribunal's authority to hear and decide the dispute involving them.
 - b. **Challenge under section 68:** The person can also apply to the court under Section 68, on the ground of serious irregularity (as defined in that section) affecting them. This means they can challenge the award if there was a significant procedural or substantive irregularity in the arbitration process that has resulted in substantial injustice to them.
3. **No Duty to Exhaust Arbitral Procedures:** Section 70(2) of the Arbitration Act, which requires parties to exhaust any available arbitral process of appeal or review before bringing an application or appeal in court, does not apply to this person. They are exempted from this requirement, allowing them to directly approach the court for challenging the award.

In summary, section 72(2) gives a person who is alleged to be a party to arbitral proceedings, but has not participated in them, the right to challenge the award directly in court without the need to exhaust any available arbitral procedures. They can raise objections related to the tribunal's jurisdiction or any serious irregularities that have affected them in the arbitration process. This provision aims to ensure that even non-participating individuals or entities have a recourse to challenge an award that may have an impact on their rights and interests.

73 LOSS OF RIGHT TO OBJECT

(1) If a party to arbitral proceedings takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitration agreement or the tribunal or by any provision of this Part, any objection—

- (a) that the tribunal lacks substantive jurisdiction,**
- (b) that the proceedings have been improperly conducted,**
- (c) that there has been a failure to comply with the arbitration agreement or with any provision of this Part, or**
- (d) that there has been any other irregularity affecting the tribunal or the proceedings,**

he may not raise that objection later, before the tribunal or the court, unless he shows that, at the time he took part or continued to take part in the proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection.

Section 73(1) of the English Arbitration Act 1996 establishes the principle of waiver of objections in arbitral proceedings. It states that if a party to arbitration takes part in or continues to participate in the proceedings without raising specific objections, the party may be deemed to have waived the right to raise those objections later. Let us analyse the key points of this provision:

1. **Conditions for Waiver:** A party's objections must fall under one of the following categories:
 - a. **Lack of Substantive Jurisdiction:** The party objects that the arbitral tribunal lacks substantive jurisdiction, i.e., the authority to hear and decide the dispute.
 - b. **Improper Conduct of Proceedings:** The party objects to the improper conduct of the arbitral proceedings.
 - c. **Failure to Comply with Arbitration Agreement or Provisions of the Act:** The party objects to a failure to adhere to the terms of the arbitration agreement or any provision of the Arbitration Act.
 - d. **Other Irregularities:** The party objects to any other irregularity that has affected the tribunal or the proceedings.
2. **Waiver of Objections:** If the party takes part in or continues to participate in the arbitral proceedings without raising any of the above-mentioned objections, they may be considered to have waived their right to raise those objections later.
3. **Exception to Waiver:** The party may still raise those objections later before the tribunal or the court if they can demonstrate that, at the time they participated or continued to participate in the proceedings, they were not aware of the grounds for the objection, and they could not have discovered those grounds with reasonable diligence.

In essence, section 73(1) aims to promote procedural efficiency and finality in arbitral proceedings. It prevents a party from actively participating in the proceedings while withholding objections, only to

raise them at a later stage to delay or disrupt the arbitration process. However, the provision also recognises that there may be situations where a party genuinely becomes aware of grounds for objection at a later stage, and in such cases, it allows them to raise the objections despite their prior participation.

(2) Where the arbitral tribunal rules that it has substantive jurisdiction and a party to arbitral proceedings who could have questioned that ruling—

(a) by any available arbitral process of appeal or review, or

(b) by challenging the award,

does not do so, or does not do so within the time allowed by the arbitration agreement or any provision of this Part, he may not object later to the tribunal’s substantive jurisdiction on any ground which was the subject of that ruling.

Section 73(2) of the English Arbitration Act 1996 deals with the consequences of a party’s failure to challenge an arbitral tribunal’s ruling on its substantive jurisdiction in a timely manner. Let us analyse the key points of this provision:

1. **Substantive Jurisdiction Ruling:** When the arbitral tribunal rules on its substantive jurisdiction, i.e., whether it has the authority to hear and decide the dispute, a party may have the opportunity to challenge that ruling if they disagree with it.
2. **Timely Challenge Options:** The party has two options for challenging the tribunal’s ruling on its substantive jurisdiction:
 - a. **Arbitral Process of Appeal or Review:** The party may challenge the ruling through any available arbitral process of appeal or review provided in the arbitration agreement or applicable arbitration rules.
 - b. **Challenging the Award:** Alternatively, the party may challenge the ruling on substantive jurisdiction by objecting to the award issued by the tribunal.
3. **Consequence of Non-Challenge:** If a party has the opportunity to challenge the tribunal’s ruling on substantive jurisdiction through either of the above options but fails to do so, or if the challenge is not made within the time allowed by the arbitration agreement or any relevant provision of the Arbitration Act, then the party may not later object to the tribunal’s substantive jurisdiction on the same grounds that were the subject of that ruling.

In summary, section 73(2) establishes a principle of finality and non-reviewability concerning the tribunal’s ruling on its substantive jurisdiction. It aims to prevent parties from delaying the arbitration process or undermining the tribunal’s authority by repeatedly challenging its jurisdictional rulings after having had an opportunity to do so. Once the time for raising such challenges has passed without exercising that right, the party is generally precluded from raising the same jurisdictional objections in subsequent stages of the arbitration.

74 IMMUNITY OF ARBITRAL INSTITUTIONS, &C.

- (1) An arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator is not liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith.**

Section 74(1) of the English Arbitration Act 1996 addresses the liability of an arbitral institution or person who is responsible for appointing or nominating an arbitrator. Let us analyse the key points of this provision:

1. **Immunity from Liability:** The provision establishes immunity for an arbitral institution or person who is designated or requested by the parties to appoint or nominate an arbitrator. This means that such an institution or person is shielded from legal liability for any actions or omissions in connection with their responsibility to appoint or nominate an arbitrator.
2. **Scope of Immunity:** The immunity covers any act or omission carried out by the arbitral institution or person in the discharge or purported discharge of their function to appoint or nominate an arbitrator.
3. **Exception for Bad Faith:** The immunity is not absolute. Liability may arise if it can be shown that the act or omission was done in bad faith. In other words, if the arbitral institution or person acted with dishonesty or fraudulent intent in carrying out their function, they may be held liable.

In essence, section 74(1) aims to protect arbitral institutions or persons designated to appoint or nominate arbitrators from facing legal claims for actions taken in good faith within the scope of their appointment responsibilities. The provision encourages efficiency and expediency in the arbitration process by offering protection to those involved in the appointment of arbitrators, provided they act honestly and without bad faith.

- (2) An arbitral or other institution or person by whom an arbitrator is appointed or nominated is not liable, by reason of having appointed or nominated him, for anything done or omitted by the arbitrator (or his employees or agents) in the discharge or purported discharge of his functions as arbitrator.**

Section 74(2) of the English Arbitration Act 1996 addresses the liability of an arbitral institution or person who appoints or nominates an arbitrator. Let us analyse the key points of this provision:

1. **Limited Liability:** The provision establishes that an arbitral institution or person responsible for appointing or nominating an arbitrator is not liable for any actions or omissions of the appointed arbitrator, or their employees or agents, in the discharge or purported discharge of their functions as an arbitrator.
2. **Scope of Immunity:** The immunity covers any act or omission carried out by the appointed arbitrator or their employees or agents while performing their duties as an arbitrator. It aims to protect the institution or person making the appointment from being held responsible for any alleged mistakes or misconduct by the arbitrator during the arbitral proceedings.

3. **Separation of Responsibilities:** The provision recognises that the arbitral institution or person who appointed the arbitrator is not in control of the arbitrator's actions during the arbitration process. As such, they cannot be held liable for the arbitrator's conduct or decisions.

Overall, section 74(2) offers protection to the arbitral institution or person who appoints or nominates an arbitrator by limiting their liability to actions related to the appointment process. It emphasises the separation of responsibilities between the appointing entity and the arbitrator, ensuring that the institution or person making the appointment is not held accountable for the arbitrator's actions during the arbitration proceedings.

(3) The above provisions apply to an employee or agent of an arbitral or other institution or person as they apply to the institution or person himself.

Section 74(3) of the English Arbitration Act 1996 extends the same provisions of limited liability to employees or agents of an arbitral or other institution or person, as already outlined in Section 74(1) and Section 74(2). Let us analyse this subsection in detail:

1. **Equal Application:** Section 74(3) clarifies that the provisions in Section 74(1) and Section 74(2) are equally applicable to employees or agents of an arbitral institution or person, just as they apply to the institution or person itself. It means that any employee or agent acting on behalf of the institution or person in the process of appointing or nominating an arbitrator is also protected from liability under the same conditions.
2. **Immunity for Employees or Agents:** Like the institution or person, the employees or agents involved in the appointment or nomination process cannot be held liable for any actions or omissions related to their role in discharging or purportedly discharging their duties. They are protected from legal claims or actions arising from the arbitrator's conduct during the arbitral proceedings.

The purpose of this provision is to provide comprehensive protection to the arbitral institution or person, including their employees and agents, to ensure that they can fulfil their functions effectively without fear of legal repercussions for actions related to the appointment or nomination of arbitrators. It reaffirms the principle of limited liability and highlights that employees or agents acting on behalf of the institution or person are treated in the same manner as the institution or person itself concerning their role in appointing or nominating an arbitrator.

75 CHARGE TO SECURE PAYMENT OF SOLICITORS' COSTS.

(1) The powers of the court to make declarations and orders under section 73 of the Solicitors Act 1974 or Article 71H of the Solicitors (Northern Ireland) Order 1976 (power to charge property recovered in the proceedings with the payment of solicitors' costs) may be exercised in relation to arbitral proceedings as if those proceedings were proceedings in the court.

Section 75(1) of the English Arbitration Act 1996 deals with the powers of the court to make declarations and orders concerning solicitors' costs in relation to arbitral proceedings. Let us break it down:

1. Reference to Other Legislation: Section 75(1) refers to two specific sections from other legislation — Section 73 of the Solicitors Act 1974 and Article 71H of the Solicitors (Northern Ireland) Order 1976. These sections empower the court to make declarations and orders related to solicitors' costs in certain legal proceedings.
2. Application to Arbitral Proceedings: Section 75(1) states that the powers granted to the court under the aforementioned sections (73 and 71H) can be applied in relation to arbitral proceedings. In other words, these powers can be exercised as if the arbitral proceedings were regular court proceedings.
3. Power to Charge Property for Solicitors' Costs: The powers under Section 73 and Article 71H relate to the court's authority to charge property recovered in legal proceedings with the payment of solicitors' costs. This means that when a solicitor has rendered services in connection with arbitral proceedings, and there is property recovered as a result of those proceedings, the court may, upon application, make declarations and orders to ensure that the solicitors' costs are duly compensated from the recovered property.

In summary, section 75(1) extends the court's powers under Sections 73 and Article 71H to include arbitral proceedings. It allows the court to deal with solicitors' costs related to arbitration in a manner similar to regular court proceedings, ensuring that solicitors are adequately compensated from property recovered in the arbitration.

SUPPLEMENTARY

76 SERVICE OF NOTICES, &C

- (1) The parties are free to agree on the manner of service of any notice or other document required or authorised to be given or served in pursuance of the arbitration agreement or for the purposes of the arbitral proceedings.**

Section 76(1) of the English Arbitration Act 1996 pertains to the manner of service of notices or other documents in relation to an arbitration agreement or the arbitral proceedings. Let us analyse it:

1. **Freedom of Agreement:** The provision emphasises that the parties involved in the arbitration are granted freedom to agree on the manner of service for any notice or document required or authorised under the arbitration agreement or for the purposes of the arbitral proceedings.
2. **Flexibility in Service:** By giving parties the freedom to agree on the manner of service, the provision allows for flexibility in how notices or documents are delivered or transmitted between the parties during the arbitration process.
3. **Customisation to the Parties' Needs:** This flexibility enables the parties to tailor the service of notices and documents to their specific needs, which can be particularly useful in international arbitration where the parties may be located in different countries with varying legal systems and communication preferences.

In summary, section 76(1) recognises the autonomy of the parties in arbitration to agree on the method of service for notices and documents. This provision allows the parties to customise the process to suit their particular circumstances and promotes an efficient and effective arbitration procedure.

- (2) If or to the extent that there is no such agreement the following provisions apply.**

Section 76(2) of the English Arbitration Act 1996 comes into play when the parties have not agreed on the manner of service for notices or other documents required or authorised in the arbitration agreement or during the arbitral proceedings. In such cases, the following provisions apply:

1. **Default Rules:** Since there is no agreed-upon method of service, the Act provides default rules to ensure that the parties can still effectively serve notices and documents in the absence of an agreement.
2. **Arbitration Act's Provisions:** The Act itself contains provisions that specify how service should be carried out when the parties have not made any agreement on the matter.
3. **Ensuring Proper Communication:** The purpose of this provision is to guarantee that proper communication can still take place between the parties and the arbitral tribunal, even in the absence of an agreed-upon method of service.

In summary, section 76(2) ensures that, in cases where the parties have not agreed on the manner of service, the arbitration process can still proceed smoothly with default rules provided by the Arbitration Act, ensuring effective communication between the parties and the tribunal.

(3) A notice or other document may be served on a person by any effective means.

Section 76(3) of the English Arbitration Act 1996 provides flexibility in the manner of service for notices or other documents during arbitral proceedings. It states that a notice or document can be served on a person by “any effective means”. The key points to understand about this provision are as follows:

1. **Broad Scope:** The language “any effective means” is intentionally broad and inclusive, allowing for various methods of service that can ensure the recipient receives the notice or document.
2. **Technological Advancements:** This provision acknowledges the advancements in communication technology. It allows parties to use modern methods such as email, fax, electronic signatures, or other electronic means to serve notices, as long as they are effective.
3. **Practicality and Efficiency:** By adopting a flexible approach, Section 76(3) aims to ensure practicality and efficiency in the service of notices and documents during the arbitration process.
4. **Proof of Service:** It is essential for the serving party to maintain evidence of the successful delivery of the notice or document. Proof of service may be necessary to demonstrate compliance with the requirements in case of any disputes related to the service.

Overall, section 76(3) provides parties with the freedom to utilise contemporary and efficient means of communication for serving notices and documents, contributing to a smoother and more streamlined arbitration process.

(4) If a notice or other document is addressed, pre-paid and delivered by post—

- (a) **to the addressee’s last known principal residence or, if he is or has been carrying on a trade, profession or business, his last known principal business address, or**
 - (b) **where the addressee is a body corporate, to the body’s registered or principal office,**
- it shall be treated as effectively served.**

Section 76(4) of the English Arbitration Act 1996 provides a specific method for service of notices or other documents by post. It states that if a notice or document is addressed, pre-paid, and delivered by post to the addressee’s last known principal residence (if an individual) or last known principal business address (if engaged in a trade, profession, or business), or to a body corporate’s registered or principal office, it shall be treated as effectively served. Key points to understand about this provision are as follows:

1. **Presumption of Effective Service:** Section 76(4) creates a legal presumption that if a notice or document is sent by post to the specified addresses, it is effectively served, even if the recipient does not actually receive it. This presumption is beneficial for the party serving the notice or document.
2. **Addresses for Individuals:** For individuals, the last known principal residence is the key address for service. If an individual is engaged in a trade, profession, or business, their last known principal business address is also acceptable for service.
3. **Addresses for Corporations:** For body corporates (companies), the notice or document can be served at the registered office or the principal office of the corporation.
4. **Prepaid and Delivered:** The notice or document must be prepaid and physically delivered to the specified address by post to qualify as effectively served under this provision.
5. **Other Means of Service:** While Section 76(4) specifically addresses service by post, parties may still agree on other methods of service, and those methods would be equally valid as long as they are considered effective means.

It is important to note that this provision deals with service by post only and provides a safe harbour for parties serving notices or documents in this manner. If an alternative method of service is used or if parties agree on other methods, it is essential to ensure that the chosen method meets the requirements of the arbitration agreement and is effective for the intended purpose of serving the notice or document.

(5) This section does not apply to the service of documents for the purposes of legal proceedings, for which provision is made by rules of court.

Section 76(5) of the English Arbitration Act 1996 clarifies that the rules outlined in Section 76 regarding the service of notices or other documents do not apply to the service of documents for the purposes of legal proceedings. Instead, the service of documents for legal proceedings is governed by the rules of court. Key points to understand about this provision are as follows:

1. **Limited Scope:** Section 76(5) specifies that its rules for service of documents are limited in their application and do not extend to legal proceedings.
2. **Legal Proceedings:** Legal proceedings refer to formal actions initiated in a court of law to resolve a dispute or enforce a legal right. These proceedings could include litigation, civil suits, or any other judicial process.
3. **Rules of Court:** The process of serving documents in legal proceedings is regulated by the rules of court, which are specific procedural guidelines established by the court or legislative authorities to ensure proper and effective service of documents.
4. **Arbitration Proceedings vs. Legal Proceedings:** The English Arbitration Act 1996 primarily deals with the arbitration process and provides specific rules for arbitration proceedings, including provisions for the service of notices or documents within the context of arbitration. However, when it comes to service of documents in legal proceedings, the rules and procedures set forth by the courts take precedence.

In summary, section 76(5) clarifies that the rules governing the service of documents under Section 76 apply only to arbitration proceedings and not to legal proceedings. For legal proceedings, parties must adhere to the relevant rules and procedures established by the court.

(6) References in this Part to a notice or other document include any form of communication in writing and references to giving or serving a notice or other document shall be construed accordingly.

Section 76(6) of the English Arbitration Act 1996 expands the scope of what is considered a “notice or other document” within the context of the Act. It clarifies that references to a notice or other document in this Part of the Act include any form of communication in writing. Additionally, it highlights that the terms “giving” or “serving” a notice or other document should be interpreted broadly to include any method of communication in writing. Key points to understand about this provision are as follows:

1. **Inclusive Interpretation:** Section 76(6) adopts an inclusive approach to the definition of “notice or other document”. It states that any form of communication in writing qualifies as a notice or other document under this Part of the Act.
2. **Flexibility in Communication:** By including various forms of written communication, this provision allows parties in arbitration proceedings to use different methods of transmitting information. These methods could include letters, faxes, emails, or any other written means of communication.
3. **Broad Interpretation of “Giving” or “Serving”:** The provision emphasises that the terms “giving” or “serving” a notice or other document should be interpreted widely to encompass all methods of delivering or transmitting written communications between the parties.
4. **Practical Implications:** This provision aims to provide flexibility and adaptability in the communication process during arbitration proceedings. It recognises the significance of modern communication methods and allows parties to effectively exchange information in a manner that suits their preferences and needs.

In summary, section 76(6) ensures that references to “notice or other document” within this Part of the Arbitration Act encompass any form of communication in writing. It also highlights the importance of a broad interpretation of the terms “giving” or “serving” in the context of transmitting written communications during arbitration proceedings. This provision facilitates effective and practical communication between the parties involved in the arbitration process.

77 POWERS OF COURT IN RELATION TO SERVICE OF DOCUMENTS

- (1) This section applies where service of a document on a person in the manner agreed by the parties, or in accordance with provisions of section 76 having effect in default of agreement, is not reasonably practicable.**

Section 77(1) of the English Arbitration Act 1996 addresses the situation when it is not reasonably practicable to serve a document on a person using the agreed method of service or the default method of service as provided in Section 76 of the Act. Key points to understand about this provision are as follows:

1. **Context of Service of Documents:** Section 77(1) pertains to the service of documents in the context of arbitration proceedings. It deals with situations where there is a need to serve a document on a person involved in the arbitration, such as a party, arbitrator, or any other relevant individual.
2. **Agreed or Default Method of Service:** The provision first refers to an “agreed manner” of service. This means that the parties to the arbitration have previously agreed on a specific method of serving documents, and the agreement is binding between them.
3. **Default Method under section 76:** If the parties have not made any specific agreement regarding the manner of service, section 76 of the Arbitration Act provides default provisions for service of documents. These default provisions come into effect when there is no express agreement on the method of service.
4. **Reasonably Practicable:** Section 77(1) comes into play when the agreed method or the default method of service is not “reasonably practicable”. The term “reasonably practicable” refers to situations where it is not feasible, practical, or possible to serve the document using the agreed or default method, perhaps due to circumstances beyond the parties’ control.
5. **Alternative Methods:** In cases where the agreed or default method of service is not reasonably practicable, this section provides flexibility. It allows for alternative methods of service to be used, as long as they are considered reasonably effective in notifying the relevant person about the document.

Section 77(1) ensures that the practicalities of serving documents are addressed during arbitration proceedings. When the agreed or default method of service becomes unworkable due to certain circumstances, this provision allows parties to explore alternative methods that can reasonably achieve the intended purpose of serving the document. The aim is to maintain fairness and efficiency in the arbitration process, even when traditional methods of service may not be feasible.

(2) Unless otherwise agreed by the parties, the court may make such order as it thinks fit—

- (a) for service in such manner as the court may direct, or**
- (b) dispensing with service of the document.**

Section 77(2) of the English Arbitration Act 1996 deals with situations where it is not reasonably practicable to serve a document in the manner agreed by the parties or in accordance with the default provisions provided in section 76. In such cases, the court is empowered to intervene and make appropriate orders regarding the service of the document. Key points to understand about this provision are as follows:

1. **Court's Discretion:** Section 77(2) grants the court wide discretion to decide on the appropriate course of action when it comes to serving the document. The court has the authority to assess the circumstances and exercise its judgment on the matter.
2. **Order for Service in a Directed Manner:** The court may issue an order directing the specific manner in which the document should be served. This means that the court can prescribe a particular method or procedure for serving the document, even if it differs from the agreed or default method.
3. **Dispensing with Service:** Alternatively, the court has the power to dispense with the requirement for formal service of the document altogether. This means that the court can decide that the document does not need to be served on the relevant party and can proceed with the arbitration without formal service.
4. **Absence of Agreement:** If the parties have not agreed on an alternative method of service, or if the default method is not reasonably practicable, they can seek the court's intervention to address the issue.
5. **Flexibility and Fairness:** Section 77(2) provides a level of flexibility to accommodate practical challenges that may arise in serving documents during arbitration proceedings. It allows the court to tailor the service requirements based on the specific circumstances of the case, ensuring that fairness is maintained.

Overall, section 77(2) empowers the court to take appropriate measures to overcome challenges related to serving documents when they cannot be served in the manner initially agreed upon or when the default methods are not feasible. This provision ensures that the arbitration process can continue effectively, even in situations where traditional methods of service are not viable.

(3) Any party to the arbitration agreement may apply for an order, but only after exhausting any available arbitral process for resolving the matter.

Section 77(3) of the English Arbitration Act 1996 sets out certain conditions that must be met before a party can apply to the court for an order regarding the service of a document when the agreed or default methods are not reasonably practicable. The key points to understand about this provision are as follows:

1. **Right to Apply for an Order:** Any party to the arbitration agreement has the right to apply for an order regarding the service of a document. This means that if a party faces challenges in serving a document as per the agreed method or the default provisions, they can seek the court's intervention.
2. **Exhaustion of Arbitral Process:** Before approaching the court for such an order, the party must have exhausted any available arbitral process for resolving the matter. This means that the party should have attempted to resolve the issue related to service through the arbitration process itself before resorting to court intervention.
3. **Mandatory Requirement:** The exhaustion of available arbitral processes is a mandatory condition before approaching the court. This requirement is in line with the principle of encouraging parties to utilise the arbitration process fully and to seek resolution of disputes within the arbitral forum before resorting to court proceedings.

In summary, section 77(3) ensures that parties in arbitration proceedings must make a genuine effort to resolve any challenges related to service of documents through the available arbitral processes before turning to the court for an order. This provision reflects the general principle of promoting arbitration as a preferred method of dispute resolution and the court's role in providing support when arbitration processes are not sufficient to address certain issues.

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

Section 77(4) of the English Arbitration Act 1996 specifies that the leave (permission) of the court is necessary for any appeal from a decision made by the court under section 77(2) regarding the service of a document. This means that if a party is dissatisfied with the court's decision regarding the manner of service or the dispensation of service, they cannot automatically appeal the decision. Instead, they must seek permission (leave) from the court to proceed with an appeal. Key points to understand about this provision:

1. **Appeal Requires Leave:** Section 77(4) imposes an additional requirement of leave before a party can appeal a decision made by the court under Section 77(2). Without leave, the appeal cannot proceed.
2. **Court's Discretion:** The court has the discretion to grant or refuse leave for an appeal. The party seeking to appeal must demonstrate to the court why the appeal is necessary and why the decision made under section 77(2) was incorrect or unjust.
3. **Appeals on Service Matters:** The requirement for leave to appeal is specific to decisions made under section 77(2) relating to service issues. It does not apply to appeals on other matters or decisions made in the arbitration process.

In summary, section 77(4) reinforces the court's authority to control the appeal process and ensures that parties cannot appeal decisions on service matters without obtaining the court's permission first. This provision helps manage the court's workload and encourages parties to use the available arbitral processes fully before seeking recourse in the court system.

78 RECKONING PERIODS OF TIME

- (1) The parties are free to agree on the method of reckoning periods of time for the purposes of any provision agreed by them or any provision of this Part having effect in default of such agreement.**

Section 78(1) of the English Arbitration Act 1996 states that the parties to an arbitration agreement have the freedom to agree on the method of reckoning periods of time for various purposes. These time periods are related to any provisions agreed upon by the parties or any provision within Part I of the Act that comes into effect in the absence of such an agreement. Key points to understand about this provision:

1. **Flexibility in Time Reckoning:** The provision grants the parties significant flexibility in determining how periods of time will be calculated for different purposes during the arbitration process. This includes any time limits or deadlines mentioned in the arbitration agreement or specified by the Act itself.
2. **Parties' Agreement:** The section emphasises the importance of the parties' agreement in deciding how time periods will be reckoned. It allows the parties to customise the process to suit their specific needs or preferences.
3. **Legal Provisions' Impact:** If the parties have not reached an agreement on the method of reckoning time, this section also applies to any provisions within Part I of the Arbitration Act that prescribe timeframes or deadlines. In the absence of an agreement, the Act itself determines the method of reckoning time.
4. **Certainty and Efficiency:** By allowing the parties to tailor the time calculation to their liking, this provision promotes certainty and efficiency in the arbitration process. It ensures that the parties can plan and manage their actions within agreed timelines, facilitating a smooth and effective resolution of disputes through arbitration.

In summary, section 78(1) underscores the parties' autonomy in choosing the method of reckoning time for various purposes within the arbitration agreement or as specified by the Act. It reflects the principles of party autonomy and procedural flexibility that are fundamental to arbitration as an alternative dispute resolution mechanism.

- (2) If or to the extent there is no such agreement, periods of time shall be reckoned in accordance with the following provisions.**

Section 78(2) of the English Arbitration Act 1996 comes into effect when the parties have not agreed on the method of reckoning time for various purposes in the arbitration process. In such cases, this section provides guidance on how the periods of time should be calculated. Key points to understand about this provision:

1. **Default Rules:** When the parties have not agreed on the method of calculating time, this section sets out default rules for reckoning periods within the arbitration process. These default rules apply to any provision in the Act that requires specific timeframes or deadlines in the absence of an agreement between the parties.

2. **Objective Standard:** Section 78(2) provides an objective standard for calculating time, ensuring uniformity and consistency in how time is measured. It helps to avoid confusion or disputes that may arise due to different interpretations of time periods by the parties.
3. **Clarity and Certainty:** By providing a clear and predetermined set of rules, this section enhances certainty in the arbitration process. Parties, arbitrators, and other relevant parties can refer to these default rules to understand the timing requirements in the absence of an agreed method.
4. **Compliance with Time Limits:** Adhering to the specified time periods is essential in arbitration to ensure an efficient and timely resolution of disputes. The default rules under section 78(2) help in this regard by establishing a standard for calculating periods of time.

In summary, section 78(2) of the Arbitration Act ensures that periods of time within the arbitration process are consistently reckoned in cases where the parties have not agreed on a specific method. By providing default rules, the section promotes clarity, certainty, and compliance with time limits, thus contributing to the effective functioning of the arbitration process.

(3) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

Section 78(3) of the English Arbitration Act 1996 deals with the calculation of time when an action or act is required to be done within a specified period after or from a particular date. It provides a rule for reckoning time in such situations. Key points to understand about this provision:

1. **Triggering Date:** The provision applies when an act or action is required to be performed within a specific period after or from a particular date. This means that the occurrence of a specific date triggers the start of the time period during which the act or action must be completed.
2. **Commencement of Time Period:** According to section 78(3), the time period begins immediately after the specified date. In other words, the day following the specified date is the first day of the time period.
3. **Inclusivity:** The section does not exclude the specified date itself from the reckoning of the time period. Instead, it includes the starting date within the time period. For example, if an action is required to be performed “seven days after the date of the award”, the time period would start from the day following the date of the award and would include the seventh day.
4. **Certainty and Consistency:** This provision provides a clear and objective method for calculating time periods after or from specific dates. It ensures uniformity in determining deadlines and promotes certainty in the arbitration process.

In summary, section 78(3) clarifies how time should be reckoned when an act or action is required to be performed within a specified period after or from a particular date. By including the specified date itself within the time period, the section provides a straightforward and consistent approach to calculate time, contributing to the efficient functioning of the arbitration process.

- (4) Where the act is required to be done a specified number of clear days after a specified date, at least that number of days must intervene between the day on which the act is done and that date.**

Section 78(4) of the English Arbitration Act 1996 deals with the calculation of time when an action or act is required to be done a specified number of clear days after a particular date. It sets out a specific rule to determine the time period between the specified date and the day on which the act must be performed. Key points to understand about this provision:

1. **Specified Number of Clear Days:** The provision applies when the requirement is to perform an act or action a certain number of “clear days” after a specified date. The term “clear days” refers to full, uninterrupted days, excluding both the day of the specified event and the day on which the act or action is done.
2. **Intervening Days:** According to section 78(4), the specified number of clear days must intervene between the specified date and the day on which the act is performed. In other words, the day on which the act is done must be at least the specified number of full, uninterrupted days after the specified date.
3. **Inclusivity:** The specified number of clear days is not inclusive of the specified date itself or the day on which the act is performed. It only considers the full days between these two dates.
4. **Example:** If an action is required to be done “seven clear days after the date of the award”, the counting would start from the day following the date of the award (excluding the award date itself). The seventh day after that would be the deadline for performing the action.
5. **Certainty and Accuracy:** This provision ensures clarity and precision in calculating deadlines based on a specified number of clear days. It prevents confusion or ambiguity in determining the correct date for performing the required act or action.

In summary, section 78(4) provides a specific rule for calculating the time period between a specified date and the day on which an act or action is required to be performed, based on a specified number of clear days. This approach promotes accuracy and certainty in the arbitration process by defining the time frame clearly and unambiguously.

- (5) Where the period is a period of seven days or less which would include a Saturday, Sunday or a public holiday in the place where anything which has to be done within the period falls to be done, that day shall be excluded.**

In relation to England and Wales or Northern Ireland, a “public holiday” means Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.

Section 78(5) of the English Arbitration Act 1996 addresses the calculation of time periods when the specified period includes a Saturday, Sunday, or a public holiday in the place where the act or action is

to be performed. This provision excludes such days from the reckoning of the time period, ensuring that parties are not required to perform acts on non-working days. Key points to understand about this provision:

1. **Exclusion of Weekends and Public Holidays:** If the time period for performing an act or action is seven days or less, and it includes a Saturday, Sunday, or a public holiday in the relevant place, then those days are excluded from the reckoning of the time period.
2. **Calculation of Time:** When counting the days for the specified period, weekends (Saturdays and Sundays) and public holidays are not taken into account. The period is extended to include the next working day after any such non-working days.
3. **Definition of “Public Holiday”:** In the context of England and Wales or Northern Ireland, the term “public holiday” refers to Christmas Day, Good Friday, or any day designated as a bank holiday under the Banking and Financial Dealings Act 1971.
4. **Clarity and Fairness:** This provision ensures that parties are not disadvantaged or required to perform acts on non-working days. It promotes clarity and fairness in the arbitration process by accounting for weekends and public holidays when calculating time limits.
5. **Flexibility:** The exclusion of non-working days allows parties to have sufficient time to respond to notices, make applications, or perform other necessary acts within the time limit specified in the arbitration process.

In summary, section 78(5) of the English Arbitration Act 1996 excludes Saturdays, Sundays, and public holidays in the relevant place from the calculation of time periods that are seven days or less. This provision ensures that parties have sufficient working days to comply with time limits and maintain fairness in the arbitration proceedings.

79 POWER OF COURT TO EXTEND TIME LIMITS RELATING TO ARBITRAL PROCEEDINGS

- (1) Unless the parties otherwise agree, the court may by order extend any time limit agreed by them in relation to any matter relating to the arbitral proceedings or specified in any provision of this Part having effect in default of such agreement.**

This section does not apply to a time limit to which section 12 applies (power of court to extend time for beginning arbitral proceedings, &c.).

Section 79(1) of the English Arbitration Act 1996 deals with the extension of time limits in arbitral proceedings. It grants the court the authority to extend any time limit that the parties have agreed upon or any time limit specified in the Act, except for time limits covered by section 12 of the Act. Key points to understand about this provision:

1. **Court’s Discretion:** The court has the discretionary power to extend any time limit agreed upon by the parties or specified in the Act relating to any matter in the arbitral proceedings.
2. **Agreed Time Limits:** If the parties have agreed on specific time limits for any aspect of the arbitration process, the court may extend those time limits if necessary.

3. **Time Limits Specified in the Act:** The Act may specify certain time limits for various actions in arbitral proceedings. If any of these specified time limits need to be extended, the court has the authority to grant such an extension.
4. **Exceptions:** Section 79(1) explicitly states that it does not apply to time limits covered by section 12 of the Arbitration Act 1996. Section 12 deals with the court's power to extend time for beginning arbitral proceedings, among other matters. Time limits specified in section 12 must be addressed through that specific provision, and not through section 79(1).
5. **Judicial Discretion:** The court's decision to extend a time limit will be based on the circumstances of each case, and the court will consider factors such as the reasons for the delay and the potential impact on the arbitration process.
6. **Flexibility and Fairness:** Section 79(1) provides flexibility and fairness in the arbitration process by allowing the court to grant extensions when appropriate, preventing the parties from being unfairly prejudiced by strict time limits.

In summary, section 79(1) of the English Arbitration Act 1996 empowers the court to extend time limits agreed upon by the parties or specified in the Act, except for time limits covered by Section 12. The court's discretion in granting extensions ensures that the arbitration process remains flexible and fair, allowing parties to address their respective obligations within reasonable time frames.

(2) An application for an order may be made—

- (a) by any party to the arbitral proceedings (upon notice to the other parties and to the tribunal), or**
- (b) by the arbitral tribunal (upon notice to the parties).**

Section 79(2) of the English Arbitration Act 1996 deals with the procedure for making an application to the court for an extension of time limits in arbitral proceedings. The provision outlines who may make the application and the parties who need to be notified about it. Key points to understand about this provision:

1. **Parties Who Can Apply:** An application for an order to extend a time limit may be made by either of the following parties:
 - a. **Any party to the arbitral proceedings:** This means that any of the parties involved in the arbitration can apply for an extension of time.
 - b. **The arbitral tribunal:** The tribunal itself can make an application for an extension of time.
2. **Application Procedure:** When a party or the arbitral tribunal decides to seek an extension of a time limit, they must make an application to the court.
3. **Notice Requirement:** When making the application, the party or the tribunal must provide notice to the other parties involved in the arbitration. This means that the parties must

be informed about the application, giving them an opportunity to respond or present their views to the court.

4. Notice to the Tribunal: If the application is made by a party, they must also notify the arbitral tribunal about their intention to seek an extension of a time limit.
5. Judicial Discretion: The court has the discretion to grant or deny the application for an extension of time. The court will consider the circumstances and reasons for seeking the extension and the potential impact on the arbitration process before making a decision.

In summary, section 79(2) of the English Arbitration Act 1996 outlines the procedure for making an application to the court for an extension of time limits in arbitral proceedings. Parties to the arbitration, as well as the arbitral tribunal, have the right to make such applications, and they must provide notice to the other parties and, in the case of a party's application, to the tribunal. The court will exercise its discretion in deciding whether to grant the extension based on the facts and circumstances of the case.

(3) The court shall not exercise its power to extend a time limit unless it is satisfied—

- (a) that any available recourse to the tribunal, or to any arbitral or other institution or person vested by the parties with power in that regard, has first been exhausted, and**
- (b) that a substantial injustice would otherwise be done.**

Section 79(3) of the English Arbitration Act 1996 sets out the conditions that the court must be satisfied with before exercising its power to extend a time limit in arbitral proceedings. The court's authority to extend a time limit is subject to the fulfilment of the following two requirements:

1. Exhaustion of Available Recourse: Before granting an extension, the court must be satisfied that any available recourse to the arbitral tribunal or any arbitral or other institution or person vested by the parties with power in that regard has been exhausted. This means that the parties seeking an extension must have first pursued all available avenues within the arbitration process to address the matter or issue at hand before turning to the court for an extension.
2. Substantial Injustice: The court must also be satisfied that a substantial injustice would result if the time limit is not extended. This requirement means that the parties must demonstrate that not granting the extension would cause significant harm or prejudice to their rights or interests. It implies that there must be compelling reasons justifying the need for an extension beyond the agreed or specified time limit.

The purpose of these requirements is to ensure that parties fully utilise the arbitral process and its available remedies before resorting to court intervention. Arbitration is intended to be an efficient and flexible dispute resolution mechanism, and parties are encouraged to resolve issues through the arbitral proceedings as much as possible. However, in cases where substantial injustice would occur without the extension, the court retains the discretion to intervene and grant additional time to the parties.

In summary, section 79(3) of the English Arbitration Act 1996 establishes the conditions that the court must consider before extending a time limit in arbitral proceedings. The court can only grant an

extension if it is satisfied that all available recourse within the arbitration process has been exhausted and that substantial injustice would result without the extension.

(4) The court’s power under this section may be exercised whether or not the time has already expired.

Section 79(4) of the English Arbitration Act 1996 confers broad discretion on the court to exercise its power to extend a time limit in arbitral proceedings, regardless of whether the specified time has already expired. This means that even if the original time limit agreed upon by the parties has passed, the court still has the authority to consider and grant an extension if the conditions specified in section 79(3) are met.

The section recognises that circumstances may arise where parties encounter difficulties or face unforeseen challenges that prevent them from meeting the agreed-upon time limit. By allowing the court to exercise its power to extend the time limit after it has already expired, the Act provides flexibility and an opportunity for parties to address their concerns or present their case properly.

However, it is important to note that while the court has the discretion to extend time limits, it does not mean that parties can be negligent in complying with timeframes. The court will still assess the reasons for the delay and consider whether the requirements of section 79(3) are satisfied before granting an extension.

The intention behind this provision is to strike a balance between the need for flexibility in the arbitration process and the importance of adhering to timeframes to ensure a fair and efficient resolution of disputes. By granting the court this discretionary power, the Act aims to promote the effective functioning of the arbitral proceedings and ensure that parties are not unduly prejudiced by strict time limits.

(5) An order under this section may be made on such terms as the court thinks fit.

Section 79(5) of the English Arbitration Act 1996 grants the court the authority to issue an order for an extension of a time limit in arbitral proceedings on terms that it deems appropriate. This provision emphasises the court’s wide discretion in determining the conditions and requirements to be met for the extension to be granted.

The court may impose various terms or conditions when granting an extension, depending on the specific circumstances of the case. Some examples of terms that the court might consider include:

1. The duration of the extension: The court may specify the length of the extension, determining the new deadline for the action to be completed.
2. Payment of costs: The court might require the party seeking the extension to cover the costs associated with the delay or any additional expenses incurred due to the extension.
3. Additional evidence or submissions: The court may order the party seeking the extension to provide a detailed explanation or supporting evidence justifying the need for an extension.

4. Steps to minimise delay: The court may require the parties to take measures to expedite the proceedings after the extension has been granted to prevent further delays.
5. Sanctions for non-compliance: The court might warn that failure to adhere to the terms of the extension could result in adverse consequences, such as loss of certain rights or privileges.

It is important to note that the court's discretion is not unlimited, and the terms imposed should be reasonable and proportionate to the circumstances of the case. The overarching goal is to strike a balance between allowing necessary flexibility in the arbitration process and ensuring the fair and efficient resolution of disputes.

Ultimately, section 79(5) reinforces the court's authority to tailor the extension order to meet the specific needs and concerns of the parties involved while safeguarding the integrity and effectiveness of the arbitral proceedings.

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

Section 79(6) of the English Arbitration Act 1996 stipulates that the court's decision on an application for an extension of a time limit under section 79(1) is subject to appeal only with the leave (permission) of the court. This means that a party seeking to challenge the court's decision must first obtain permission from the same court before proceeding with the appeal.

The requirement for leave to appeal is an important safeguard to prevent frivolous or unnecessary appeals that could potentially delay the arbitral proceedings. It helps ensure that only meritorious and substantial challenges to the court's decision are allowed to proceed to the appeal stage.

To seek leave to appeal, the party must apply to the court and demonstrate that there are valid grounds for challenging the court's decision on the extension of a time limit. These grounds typically involve showing that the court made an error in its decision, misapplied the law, or overlooked critical evidence.

Upon receiving the application for leave to appeal, the court will assess the merits of the appeal and decide whether there are sufficient grounds to grant permission for the appeal to proceed. If the court grants leave to appeal, the party can then proceed with the appeal process.

It is essential to understand that the leave requirement does not imply that appeals are entirely barred or discouraged. Instead, it is a procedural step designed to filter out appeals without proper justification, thereby promoting efficiency and the timely resolution of disputes through arbitration.

In summary, section 79(6) ensures that parties seeking to appeal the court's decision on an extension of a time limit must obtain the court's permission first. This mechanism helps maintain the overall effectiveness of the arbitration process and prevents unnecessary delays in the resolution of disputes.

80 NOTICE AND OTHER REQUIREMENTS IN CONNECTION WITH LEGAL PROCEEDINGS

- (1) References in this Part to an application, appeal or other step in relation to legal proceedings being taken “upon notice” to the other parties to the arbitral proceedings, or to the tribunal, are to such notice of the originating process as is required by rules of court and do not impose any separate requirement.**

Section 80(1) of the English Arbitration Act 1996 clarifies the meaning of the term “upon notice” in relation to applications, appeals, or other steps taken in the context of legal proceedings. It states that when this phrase is used in the Act, it refers to the notice of the originating process as required by the rules of court. This means that the Act adopts and relies on the procedural rules and requirements of the relevant court for providing notice to the other parties or the tribunal.

In legal proceedings, including arbitration-related matters, there are specific rules and procedures that govern how parties are notified of various applications, appeals, or other steps taken during the process. These rules typically outline the formalities and timelines for serving and receiving notices, ensuring that parties have adequate time to respond and participate in the proceedings.

Section 80(1) emphasises that the Act does not impose any separate or additional notice requirement beyond what is already prescribed by the applicable rules of court. Instead, it defers to and incorporates the existing court rules regarding the manner and method of providing notice to the other parties or the tribunal.

By adopting the court rules on notice, section 80(1) aims to promote consistency and conformity in the arbitration proceedings, ensuring that parties are treated fairly and that due process is followed. This provision helps avoid any confusion or ambiguity regarding the notice requirements and ensures that the proper procedures are adhered to in legal proceedings arising from arbitration matters.

(2) Rules of court shall be made—

- (a) requiring such notice to be given as indicated by any provision of this Part, and**
- (b) as to the manner, form and content of any such notice.**

Section 80(2) of the English Arbitration Act 1996 stipulates that rules of court shall be established to govern the notice requirements in relation to legal proceedings under the Act. These rules serve two main purposes:

1. **Notice Requirement:** The rules of court will specify the notice that must be given as indicated by any provision of the Act. This means that when the Act requires a notice to be provided in connection with an application, appeal, or other step, the rules will prescribe the necessary details, such as the parties to whom the notice must be given, the content of the notice, and the timeframe for providing it.
2. **Manner, Form, and Content of Notice:** The rules of court will also govern the manner, form, and content of the notice to be given. This ensures consistency and uniformity in the process of providing notice across different arbitration proceedings. The rules may specify how the notice should be delivered or served, the acceptable formats for notices

(e.g., written or electronic), and any specific information that must be included in the notice.

The purpose of establishing rules of court is to provide clear and standardised guidance for all parties involved in arbitration proceedings. It enhances procedural certainty, promotes fairness, and ensures that parties have a clear understanding of their obligations regarding providing and receiving notice during the legal process.

By enacting section 80(2), the Act delegates the responsibility for setting out the detailed procedures for giving notice to the relevant courts. These rules are an essential part of the legal framework that governs arbitration proceedings, ensuring that they are conducted efficiently and in accordance with the principles of natural justice and due process.

(3) Subject to any provision made by rules of court, a requirement to give notice to the tribunal of legal proceedings shall be construed—

- (a) if there is more than one arbitrator, as a requirement to give notice to each of them; and**
- (b) if the tribunal is not fully constituted, as a requirement to give notice to any arbitrator who has been appointed.**

Section 80(3) of the English Arbitration Act 1996 provides guidance on the requirement to give notice of legal proceedings to the arbitral tribunal. The section specifies how the notice should be construed based on the composition of the tribunal:

1. **Multiple Arbitrators:** If there is more than one arbitrator on the tribunal, the requirement to give notice to the tribunal shall be construed as a requirement to give notice to each of the arbitrators individually. In other words, notice should be provided to all the arbitrators serving on the tribunal.
2. **Incomplete Tribunal:** If the arbitral tribunal is not fully constituted (i.e., not all arbitrators have been appointed), the requirement to give notice of legal proceedings shall be construed as a requirement to give notice to any arbitrator who has been appointed to the tribunal. This means that when the tribunal is not fully formed, the notice should be served on the arbitrators who have already been appointed.

It is important to note that these constructions are subject to any provisions made by rules of court. This implies that the rules of court may further specify or modify the notice requirements concerning the arbitral tribunal, provided that such rules do not contradict the fundamental principles outlined in section 80(3).

The purpose of section 80(3) is to ensure that the arbitral tribunal is adequately informed of any legal proceedings initiated in connection with the arbitration. By receiving timely and appropriate notice, the tribunal can be prepared to address any issues related to the proceedings and uphold the integrity of the arbitration process. Additionally, this provision reinforces the principle of fairness by ensuring that all members of the tribunal are made aware of relevant legal developments.

(4) References in this Part to making an application or appeal to the court within a specified period are to the issue within that period of the appropriate originating process in accordance with rules of court.

Section 80(4) of the English Arbitration Act 1996 clarifies the meaning of references in the Act to making an application or appeal to the court within a specified period. According to this section:

1. **Origination Process and Time Limit:** When the Act mentions making an application or appeal to the court within a specified period, it is referring to the act of issuing the appropriate originating process within that time limit. In other words, the clock for the specified period starts when the party formally lodges the application or appeal with the court, usually by submitting the necessary documents in accordance with the court's rules.
2. **Rules of Court:** The section further clarifies that the procedure for making such applications or appeals, as well as the specific time limits, are governed by the rules of court. These rules set out the necessary steps, forms, and timelines for initiating legal proceedings before the court in the context of arbitration matters. Parties must adhere to these rules to ensure that their applications or appeals are properly lodged and considered.

The intent behind section 80(4) is to provide a clear understanding of the phrase “within a specified period” when it relates to court applications and appeals under the Act. It emphasises the importance of following the procedural requirements set by the court's rules to ensure the proper commencement of legal proceedings. By doing so, the Act aims to promote clarity, fairness, and efficiency in the process of seeking court intervention in arbitration matters.

(5) Where any provision of this Part requires an application or appeal to be made to the court within a specified time, the rules of court relating to the reckoning of periods, the extending or abridging of periods, and the consequences of not taking a step within the period prescribed by the rules, apply in relation to that requirement.

Section 80(5) of the English Arbitration Act 1996 deals with the procedural aspects of making applications or appeals to the court within specified time limits. It clarifies that when any provision of Part I of the Act requires an application or appeal to be made to the court within a specified time, the relevant rules of court relating to the reckoning of time periods, extending or abridging time limits, and the consequences of not taking a required step within the prescribed period will apply. Here is the breakdown:

1. **Reckoning of Time Periods:** The rules of court govern how periods of time are calculated. This includes determining when the specified time period begins, whether it is counted in calendar days or business days, and whether certain days (such as weekends or public holidays) are included or excluded in the calculation.
2. **Extending or Abridging Time Limits:** In some circumstances, parties may need more time than initially specified to make an application or appeal. The rules of court address the procedure for extending or abridging time limits, allowing the court to grant additional time or impose tighter timeframes based on specific reasons or the merits of the case.

3. Consequences of Not Taking a Required Step within the Prescribed Period: If a party fails to take a required step (e.g., making an application or appeal) within the time period specified in the Act or the court’s rules, there may be consequences, such as the application being rejected, the appeal being dismissed, or other procedural sanctions.

By incorporating the rules of court in relation to these matters, Section 80(5) ensures a consistent and standardised approach to time limits and procedural matters concerning applications and appeals under the Act. This promotes procedural fairness and efficiency in the resolution of arbitration-related disputes before the courts.

(6) Provision may be made by rules of court amending the provisions of this Part—

- (a) with respect to the time within which any application or appeal to the court must be made,**
- (b) so as to keep any provision made by this Part in relation to arbitral proceedings in step with the corresponding provision of rules of court applying in relation to proceedings in the court, or**
- (c) so as to keep any provision made by this Part in relation to legal proceedings in step with the corresponding provision of rules of court applying generally in relation to proceedings in the court.**

Section 80(6) of the English Arbitration Act 1996 grants the power to the rules of court to amend certain provisions of Part I of the Act. The rules of court can make amendments to:

1. Time Limit for Applications and Appeals: The rules of court can prescribe the specific time within which any application or appeal to the court must be made concerning arbitral proceedings. This provision allows the rules of court to set the time limits for parties seeking court intervention in relation to arbitration matters.
2. Alignment with Court Proceedings: The rules of court can make adjustments to the provisions of Part I of the Act to ensure that they remain aligned with corresponding provisions in the rules of court that apply to proceedings in regular court cases. This aims to maintain consistency and uniformity between arbitration-related matters and general court proceedings.
3. Alignment with General Court Rules: Additionally, the rules of court can also make amendments to the provisions of Part I of the Act to keep them in line with the general rules of court that apply to legal proceedings across the court system. This ensures that any specific rules regarding legal proceedings in the context of arbitration are harmonised with the broader procedural rules governing court cases.

The purpose of granting such rule-making power to the court is to provide flexibility and adaptability in the application of the Arbitration Act. By allowing the rules of court to amend specific provisions, the Act can be better aligned with the court’s procedural requirements and changes in court practices, ensuring a cohesive and efficient approach to arbitration-related matters within the broader legal framework.

(7) Nothing in this section affects the generality of the power to make rules of court.

Section 80(7) of the English Arbitration Act 1996 clarifies that nothing in this section limits or restricts the general power of the court to make rules of court. In other words, the court retains its broader authority to create rules of court that govern various aspects of legal proceedings, including those related to arbitration.

While Section 80(6) specifically grants the power to the rules of court to amend certain provisions of Part I of the Arbitration Act, section 80(7) emphasises that this grant of power does not diminish or modify the court's overall ability to make rules governing court procedures and processes. The court's rule-making authority extends beyond the specific provisions mentioned in Section 80(6) and encompasses all aspects of court procedures and practices, including those related to arbitration.

Therefore, section 80(7) serves as a reminder that the rules of court have a wide scope of authority to create and modify rules that promote efficiency, fairness, and consistency in legal proceedings, including arbitration cases. This ensures that the court's rule-making power remains comprehensive and unimpeded, allowing for the adaptation of court procedures to changing circumstances and evolving needs.

81 SAVING FOR CERTAIN MATTERS GOVERNED BY COMMON LAW

(1) Nothing in this Part shall be construed as excluding the operation of any rule of law consistent with the provisions of this Part, in particular, any rule of law as to—

- (a) matters which are not capable of settlement by arbitration;**
- (b) the effect of an oral arbitration agreement; or**
- (c) the refusal of recognition or enforcement of an arbitral award on grounds of public policy.**

Section 81(1) of the English Arbitration Act 1996 clarifies that the provisions of Part I of the Act, which governs arbitration agreements and arbitral proceedings, should not be interpreted as excluding the operation of any rule of law that is consistent with the provisions of Part I. This means that while the Act provides a framework for arbitration, it does not override other existing legal principles that align with the Act's provisions. The section specifically mentions three areas where other rules of law can still apply:

1. **Matters not capable of settlement by arbitration:** Arbitration is generally suitable for resolving certain types of disputes, such as commercial matters or civil disputes. However, there may be certain matters or issues that are not suitable for resolution through arbitration due to legal or policy reasons. Section 81(1)(a) ensures that any rule of law that identifies matters beyond the scope of arbitration remains applicable and is not displaced by the Act.
2. **Effect of an oral arbitration agreement:** The Act provides for the enforceability of written arbitration agreements. However, it is not uncommon for parties to enter into oral

agreements, including arbitration agreements. Section 81(1)(b) recognises that existing rules of law pertaining to the validity and enforceability of oral arbitration agreements remain in force alongside the Act.

3. Refusal of recognition or enforcement on grounds of public policy: While arbitration is generally favoured for its efficiency and finality, there are circumstances where enforcing or recognising an arbitral award might be against the public policy of a particular jurisdiction. Section 81(1)(c) ensures that existing rules of law regarding public policy considerations for refusing recognition or enforcement of an arbitral award continue to apply alongside the Act.

In essence, section 81(1) clarifies that the Arbitration Act 1996 works in harmony with other relevant rules of law, and it does not override or displace any rule of law that is consistent with its provisions. This ensures a coherent and comprehensive legal framework for arbitration while respecting the existing legal principles that complement the Act's objectives.

(2) Nothing in this Act shall be construed as reviving any jurisdiction of the court to set aside or remit an award on the ground of errors of fact or law on the face of the award.

Section 81(2) of the English Arbitration Act 1996 clarifies that the Act does not revive the jurisdiction of the court to set aside or remit an arbitral award on the basis of errors of fact or law on the face of the award. This provision is significant as it limits the grounds upon which a court can intervene in the arbitral process and reinforces the finality of arbitral awards.

Before the Arbitration Act 1996, the English courts had the power to set aside or remit an arbitral award on the basis of errors of fact or law apparent on the face of the award. However, the Act made significant changes to this approach, adopting a more pro-arbitration stance and reducing the scope of court intervention in the arbitral process.

Section 81(2) ensures that the Act maintains this pro-arbitration stance by preventing the revival of the court's jurisdiction to set aside or remit awards based on errors of fact or law on the face of the award. The Act limits the grounds for challenging an award to those specified in sections 67 and 68, which respectively cover challenges based on the tribunal's jurisdiction and serious irregularities that may have affected the fairness of the proceedings or the award.

By restricting the court's intervention in this manner, the Act promotes the finality and efficiency of arbitration. It encourages parties to resolve their disputes through arbitration and reinforces the principle that arbitral awards should generally be binding and not subject to undue judicial interference.

In summary, section 81(2) emphasises the Act's pro-arbitration approach by preventing the revival of the court's jurisdiction to set aside or remit awards based on errors of fact or law on the face of the award. This provision strengthens the finality and enforceability of arbitral awards and fosters confidence in the arbitration process.

82 MINOR DEFINITIONS

(1) In this Part—

“arbitrator”, unless the context otherwise requires, includes an umpire;

“available arbitral process”, in relation to any matter, includes any process of appeal to or review by an arbitral or other institution or person vested by the parties with powers in relation to that matter;

“claimant”, unless the context otherwise requires, includes a counterclaimant, and related expressions shall be construed accordingly;

“dispute” includes any difference;

“enactment” includes an enactment contained in Northern Ireland legislation;

“legal proceedings” means civil proceedings in England and Wales in the High Court or the county court or in Northern Ireland] in the High Court or a county court;

“peremptory order” means an order made under section 41(5) or made in exercise of any corresponding power conferred by the parties;

“premises” includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft;

“question of law” means—

- (a) for a court in England and Wales, a question of the law of England and Wales, and
- (a) for a court in Northern Ireland, a question of the law of Northern Ireland;

“substantive jurisdiction”, in relation to an arbitral tribunal, refers to the matters specified in section 30(1)(a) to (c), and references to the tribunal exceeding its substantive jurisdiction shall be construed accordingly.

Section 82(1) of the English Arbitration Act 1996 provides definitions and interpretations for various terms and phrases used within the Act. Here is an analysis of each of the defined terms and expressions within this subsection:

1. “Arbitrator” and “Umpire”: The term “arbitrator” is defined broadly to include an “umpire” unless the context requires otherwise. This means that unless the specific circumstances dictate otherwise, references to an arbitrator within the Act also encompass umpires. An umpire is a person who resolves disputes in arbitration when there is a disagreement between the arbitrators.
2. “Available Arbitral Process”: “Available arbitral process” refers to any process of appeal or review related to a specific matter that is conducted by an arbitral institution or another individual or entity authorised by the parties involved in the arbitration. This definition highlights that the Act recognises processes beyond the primary arbitration stage, which can be used to address disputes or challenges within the arbitration proceedings.

3. “Claimant” and Related Expressions: The term “claimant” is defined broadly to include “counterclaimant.” This means that, unless the context requires otherwise, the term “claimant” encompasses both parties bringing a claim and those asserting counterclaims in arbitration proceedings. Related expressions should be interpreted accordingly.
4. “Dispute”: The term “dispute” is defined broadly to include any “difference.” This definition is intentionally wide to encompass all kinds of disagreements or conflicts that may arise within the context of arbitration.
5. “Enactment”: “Enactment” includes laws or regulations contained in Northern Ireland legislation. This ensures that the Act takes into account the legal framework specific to Northern Ireland when necessary.
6. “Legal Proceedings”: “Legal proceedings” are defined as civil proceedings in England and Wales in the High Court or the county court or in Northern Ireland in the High Court or a county court. This definition specifies the types of civil proceedings to which the Act applies within these jurisdictions.
7. “Peremptory Order”: “Peremptory order” refers to an order made under Section 41(5) of the Act or any similar order issued through powers granted by the parties in arbitration. This definition clarifies what constitutes a peremptory order under the Act.
8. “Premises”: The term “premises” is defined broadly to include land, buildings, moveable structures, vehicles, vessels, aircraft, and hovercraft. This expansive definition ensures that the Act covers various types of property or assets that may be relevant in arbitration cases.
9. “Question of Law”: “Question of law” is defined with reference to the applicable legal jurisdiction. For courts in England and Wales, it refers to a question of the law of England and Wales, and for courts in Northern Ireland, it refers to a question of the law of Northern Ireland. This definition makes it clear that the Act is concerned with legal questions relevant to the respective jurisdictions.
10. “Substantive Jurisdiction”: “Substantive jurisdiction” pertains to the matters specified in Section 30(1)(a) to (c) of the Act. Any references to the arbitral tribunal exceeding its “substantive jurisdiction” should be interpreted in accordance with this definition. Section 30(1)(a) to (c) likely covers fundamental issues related to the jurisdiction and authority of the arbitral tribunal.

In summary, Section 82(1) of the English Arbitration Act 1996 lays out definitions and interpretations of key terms used in the Act to ensure clarity and consistency in the application of arbitration law in England and Wales, as well as Northern Ireland.

(2) References in this Part to a party to an arbitration agreement include any person claiming under or through a party to the agreement.

Section 82(2) of the English Arbitration Act 1996 extends the definition of a “party to an arbitration agreement” to include any person claiming under or through a party to the agreement. This provision clarifies the scope of individuals or entities who may be considered as parties to the arbitration

agreement, even if they are not original signatories to the agreement but derive their rights or obligations from one of the contracting parties.

The purpose of section 82(2) is to prevent any potential loopholes that might allow a party to avoid the arbitration agreement by assigning or transferring its rights and obligations to another entity or individual. By including “any person claiming under or through a party to the agreement”, the Act ensures that the arbitration agreement’s benefits and obligations are not easily circumvented or undermined.

Practically, this means that if a contracting party assigns its rights or obligations under the agreement to another party, the latter would also be bound by the arbitration agreement and be considered a “party to the arbitration agreement” for the purposes of the Act. This provision promotes the continuity and enforceability of the arbitration agreement despite any changes in the contractual relationships between the original parties.

Including persons claiming under or through a party in the definition of a “party to the arbitration agreement” also aligns with the general principle of arbitration that third parties may be bound by arbitration clauses in contracts, as long as there is a sufficient nexus between them and the contract or the parties to the contract.

In conclusion, section 82(2) of the Arbitration Act 1996 expands the definition of a “party to an arbitration agreement” to include any person claiming under or through a party to the agreement. This provision reinforces the binding nature of arbitration agreements and ensures that related parties or successors in interest cannot easily evade their obligations under such agreements.

83 INDEX OF DEFINED EXPRESSIONS: PART I

In this Part the expressions listed below are defined or otherwise explained by the provisions indicated—

agreement, agree and agreed	section 5(1)
agreement in writing	section 5(2) to (5)
arbitration agreement	sections 6 and 5(1)
arbitrator	section 82(1)
available arbitral process	section 82(1)
claimant	section 82(1)
commencement (in relation to arbitral proceedings)	section 14
costs of the arbitration	section 59
the court	section 105
dispute	section 82(1)

enactment	section 82(1)
legal proceedings	section 82(1)
Limitation Acts	section 13(4)
notice (or other document)	section 76(6)
party—	
—in relation to an arbitration agreement	section 82(2)
—where section 106(2) or (3) applies	section 106(4)
peremptory order	section 82(1) (and see section 41(5))
premises	section 82(1)
question of law	section 82(1)
recoverable costs	sections 63 and 64
seat of the arbitration	section 3
serve and service (of notice or other document)	section 76(6)
substantive jurisdiction (in relation to an arbitral tribunal)	section 82(1) (and see section 30(1)(a) to (c))
upon notice (to the parties or the tribunal)	section 80
written and in writing	section 5(6)

84 TRANSITIONAL PROVISIONS

- (1) **The provisions of this Part do not apply to arbitral proceedings commenced before the date on which this Part comes into force.**

Section 84(1) of the English Arbitration Act 1996 stipulates that the provisions of Part I of the Act, which covers the general provisions related to arbitration, do not apply to arbitral proceedings that were commenced before the date on which this Part came into force.

The purpose of this provision is to preserve the legal regime and rules that were applicable to ongoing arbitration proceedings before the Act was enacted. It ensures that parties involved in arbitration cases that were already in progress at the time of the Act's implementation will continue to be governed by the previous laws and regulations that were in force when the proceedings began.

By exempting these existing arbitral proceedings from the provisions of Part I of the Act, the lawmakers intended to maintain consistency and stability in ongoing disputes. Arbitration proceedings can be complex and time-consuming, and abruptly changing the applicable legal framework in the middle of an ongoing case could lead to confusion and potential disruptions.

Instead, section 84(1) recognises the importance of respecting the parties' original choices and the legal landscape at the time they entered into the arbitration agreement. It allows such proceedings to continue under the laws and rules that were in place when the arbitration was commenced.

It is important to note that section 84(1) applies specifically to Part I of the Arbitration Act 1996. Other parts of the Act may have different rules and dates of applicability. However, this provision ensures that the general provisions of Part I do not retroactively affect arbitral proceedings that were already underway before the Act's commencement date.

In summary, section 84(1) of the English Arbitration Act 1996 preserves the pre-existing legal regime for arbitral proceedings that were commenced before the Act's effective date, ensuring the continuity and stability of those ongoing cases.

(2) They apply to arbitral proceedings commenced on or after that date under an arbitration agreement whenever made.

Section 84(2) of the English Arbitration Act 1996 states that the provisions of Part I of the Act apply to arbitral proceedings commenced on or after the date when the Act came into force, regardless of when the arbitration agreement was made.

This provision signifies that Part I of the Arbitration Act 1996 governs all new arbitral proceedings initiated on or after the effective date of the Act, irrespective of when the parties entered into the arbitration agreement. It ensures that any arbitration process that begins after the Act's commencement will be subject to the modernised and updated rules and regulations provided by Part I of the Act.

By applying the provisions of Part I to arbitration proceedings initiated after the Act's effective date, the lawmakers aimed to bring uniformity and clarity to the legal framework governing arbitration in England and Wales. The Act sought to modernise and streamline the arbitration process, enhance enforceability, and promote arbitration as a viable alternative to litigation for dispute resolution.

This provision also ensures that parties entering into new arbitration agreements after the Act's commencement are well-informed about the applicable rules and procedures under the updated law. It avoids the confusion and potential legal disputes that could arise if there were different rules for arbitrations depending on when the arbitration agreement was executed.

In summary, section 84(2) of the English Arbitration Act 1996 mandates that Part I of the Act applies to arbitral proceedings that commence on or after the Act's effective date, regardless of when the arbitration agreement was concluded. This ensures consistency and clarity in the legal framework for arbitration and encourages the use of modern arbitration practices in resolving disputes.

(3) The above provisions have effect subject to any transitional provision made by an order under section 109(2) (power to include transitional provisions in commencement order).

Section 84(3) of the English Arbitration Act 1996 stipulates that the provisions contained in the Act are subject to any transitional provisions established by an order under section 109(2). In other words, if there are any specific transitional arrangements or exceptions required to facilitate the smooth implementation of the Act, these can be included in a commencement order issued under section 109(2).

A “commencement order” is an order made by the appropriate authority that specifies the date on which the provisions of the Act come into effect. This can be used to phase in the application of the Act gradually or to provide for any necessary adaptations during the transition from the previous law to the new provisions of the Act.

The purpose of including transitional provisions is to address any potential difficulties that might arise in applying the Act to existing arbitration proceedings or agreements that were initiated or concluded before the Act’s commencement date. By allowing for tailored transitional arrangements, the Act aims to ensure that the change from the previous legal framework to the new one is as smooth and efficient as possible, without disrupting ongoing arbitration proceedings or affecting parties’ rights and obligations under existing agreements.

Transitional provisions could cover a range of issues, such as how to deal with pending arbitration proceedings, the application of certain provisions to ongoing arbitrations, the effect on existing arbitration agreements, or the continuation of arbitration proceedings commenced under the previous law.

By giving flexibility to introduce transitional provisions, section 84(3) ensures that the implementation of the Arbitration Act 1996 can be customised to fit the specific needs and circumstances of the arbitration community at the time of the Act’s enactment. This approach helps maintain a fair and coherent legal framework for arbitration in England and Wales while accommodating the changes introduced by the new Act in a measured and sensible manner.

PART II — OTHER PROVISIONS RELATING TO ARBITRATION

DOMESTIC ARBITRATION AGREEMENTS

85 MODIFICATION OF PART I IN RELATION TO DOMESTIC ARBITRATION AGREEMENT

- (1) In the case of a domestic arbitration agreement the provisions of Part I are modified in accordance with the following sections.

Section 85(1) of the English Arbitration Act 1996 states that in the case of a domestic arbitration agreement, the provisions of Part I of the Act are subject to modification as specified in the subsequent sections of the Act. Part I of the Arbitration Act 1996 primarily deals with the general provisions applicable to all arbitration agreements, whether domestic or international.

A “domestic arbitration agreement” refers to an arbitration agreement that is related to disputes arising within the territory of England and Wales or Northern Ireland and does not involve any international aspects. In contrast, “international arbitration agreements” involve disputes that have an international dimension, such as parties from different countries, or where the place of arbitration is outside the United Kingdom.

The modification of Part I for domestic arbitration agreements means that certain provisions may be adapted or altered to better suit the specific characteristics and requirements of domestic arbitration. These modifications recognise that domestic arbitrations may have different considerations and procedural aspects compared to international arbitrations, and thus, certain provisions may need to be tailored accordingly.

The subsequent sections of the Act, such as sections 86 to 102, contain the specific modifications applicable to domestic arbitration agreements. These modifications may address issues such as the appointment of arbitrators, the procedure for challenging an arbitrator’s appointment, the consolidation of domestic arbitrations, the powers of the court in relation to domestic arbitration, the costs of arbitration, and the enforcement of domestic arbitral awards.

By providing for modifications in Part I for domestic arbitration agreements, the Act seeks to achieve a balanced and efficient approach to resolving domestic disputes through arbitration. This flexibility allows the Act to accommodate the specific needs and characteristics of domestic arbitration, while still maintaining a coherent and effective framework for alternative dispute resolution in England and Wales or Northern Ireland.

- (2) For this purpose a “domestic arbitration agreement” means an arbitration agreement to which none of the parties is—
- (a) an individual who is a national of, or habitually resident in, a state other than the United Kingdom, or
 - (b) a body corporate which is incorporated in, or whose central control and management is exercised in, a state other than the United Kingdom, and under which the seat of the arbitration (if the seat has been designated or determined) is in the United Kingdom.
 - (c) In subsection (2) “arbitration agreement” and “seat of the arbitration” have the same meaning as in Part I (see sections 3, 5(1) and 6).

Section 85(2) of the English Arbitration Act 1996 provides the definition of a “domestic arbitration agreement” for the purpose of modifying the provisions of Part I of the Act. A domestic arbitration agreement is an arbitration agreement to which none of the parties involved meets the following criteria:

1. None of the parties is an individual who is a national of, or habitually resident in, a state other than the United Kingdom.
2. None of the parties is a body corporate that is incorporated in, or whose central control and management is exercised in, a state other than the United Kingdom.
3. The seat of the arbitration (if designated or determined) is in the United Kingdom.

In simple terms, a domestic arbitration agreement is one where all parties are either individuals who are nationals of or habitually reside in the United Kingdom or corporate entities incorporated or centrally controlled in the United Kingdom, and the arbitration proceedings are taking place within the United Kingdom.

It is important to note that the terms “arbitration agreement” and “seat of the arbitration” used in section 85(2) have the same meaning as defined in Part I of the Arbitration Act 1996. The relevant sections for the definitions are:

1. “Arbitration agreement” is defined in section 6 of Part I.
2. “Seat of the arbitration” is defined in section 3 of Part I.
3. “Seat of the arbitration” is further explained in section 5(1) of Part I.

By providing this definition, section 85(2) establishes the scope and applicability of the modified provisions in Part I of the Act for domestic arbitration agreements. It sets out the criteria that must be met for an arbitration agreement to be considered “domestic”, allowing for the specific modifications mentioned in section 85(1) to apply to such agreements. These modifications recognise that domestic arbitrations may have different characteristics and requirements compared to international arbitrations and aim to tailor the provisions accordingly.

86 STAYING OF LEGAL PROCEEDINGS

- (1) In section 9 (stay of legal proceedings), subsection (4) (stay unless the arbitration agreement is null and void, inoperative, or incapable of being performed) does not apply to a domestic arbitration agreement.**

Section 86(1) of the English Arbitration Act 1996 addresses the application of section 9(4) regarding the stay of legal proceedings concerning domestic arbitration agreements.

Section 9 of the Arbitration Act 1996 deals with the stay of legal proceedings when there is an arbitration agreement. Subsection (4) of section 9 states that the court may grant a stay of legal proceedings if it is satisfied that there is a valid arbitration agreement. However, this subsection comes with exceptions where the court may refuse to grant a stay if the arbitration agreement is “null and void, inoperative, or incapable of being performed”.

Section 86(1) specifically modifies section 9(4) to state that this subsection does not apply to domestic arbitration agreements. In other words, in the context of domestic arbitration agreements, the court is not allowed to refuse a stay of legal proceedings on the grounds that the arbitration agreement is null and void, inoperative, or incapable of being performed.

The purpose of this modification is to promote and encourage arbitration as an efficient means of dispute resolution for domestic disputes. By excluding the grounds for refusal mentioned in section 9(4), the Act seeks to reduce the possibility of unnecessary litigation and court intervention in cases where there is a valid arbitration agreement in a domestic setting. This promotes party autonomy and ensures that the parties’ choice to arbitrate their disputes in a domestic context is respected by the courts. It also aims to expedite the arbitration process by minimising potential delays caused by legal proceedings that could be stayed under a valid arbitration agreement.

- (2) On an application under that section in relation to a domestic arbitration agreement the court shall grant a stay unless satisfied—**
- (a) that the arbitration agreement is null and void, inoperative, or incapable of being performed, or**
 - (b) that there are other sufficient grounds for not requiring the parties to abide by the arbitration agreement.**

Section 86(2) of the English Arbitration Act 1996 sets out the criteria that the court must consider when dealing with an application for a stay of legal proceedings in relation to a domestic arbitration agreement.

When a party applies for a stay of legal proceedings under Section 9 in relation to a domestic arbitration agreement, the court is required to grant the stay unless it is satisfied with either of the following:

1. The court is convinced that the arbitration agreement is null and void, inoperative, or incapable of being performed. In other words, the court must assess whether the agreement to arbitrate is legally valid and enforceable, whether it is currently operational, and whether it is feasible for the parties to fulfil their obligations under the agreement.

2. The court finds other sufficient grounds that justify not requiring the parties to abide by the arbitration agreement. This provides some flexibility to the court to consider exceptional circumstances where enforcing the arbitration agreement may not be appropriate, even if the agreement itself is valid and enforceable. These “other sufficient grounds” must be substantial and convincing enough to warrant setting aside the arbitration agreement in favour of pursuing legal proceedings.

The purpose of section 86(2) is to strike a balance between the promotion of arbitration as a preferred method for resolving domestic disputes while allowing the court to address legitimate concerns or exceptional circumstances that could render arbitration impractical or unfair in specific cases. It allows the court to intervene in exceptional situations where enforcing the arbitration agreement would lead to an injustice or where the agreement itself is flawed or unenforceable. However, the default position is in favour of granting the stay, and the burden of proof rests on the party seeking not to abide by the arbitration agreement to establish the grounds for not doing so.

- (3) The court may treat as a sufficient ground under subsection (2)(b) the fact that the applicant is or was at any material time not ready and willing to do all things necessary for the proper conduct of the arbitration or of any other dispute resolution procedures required to be exhausted before resorting to arbitration.**

Section 86(3) of the English Arbitration Act 1996 provides the court with an additional factor to consider when determining whether to grant a stay of legal proceedings in relation to a domestic arbitration agreement, as outlined in subsection (2)(b).

According to section 86(3), the court may consider as a sufficient ground under subsection (2)(b) the fact that the applicant seeking the stay (i.e., the party requesting the dispute to be resolved through arbitration) is or was not ready and willing at any material time to do all the necessary things for the proper conduct of the arbitration or any other dispute resolution procedures that were required to be exhausted before resorting to arbitration.

In essence, this subsection aims to ensure that parties who seek to rely on the arbitration agreement for resolving disputes must demonstrate a genuine willingness to participate in the arbitration process in good faith. If a party shows that the applicant has not acted in good faith by failing to comply with the requirements of the arbitration process or intentionally delaying or obstructing the arbitration proceedings, the court may refuse to grant the stay.

By including this provision, section 86(3) encourages parties to approach arbitration with a cooperative and constructive attitude, fostering the effectiveness of the arbitration process as an alternative to litigation in domestic cases. It discourages parties from attempting to manipulate the arbitration agreement to their advantage or from using it as a mere delaying tactic to avoid legal proceedings without genuine intent to engage in arbitration.

- (4) For the purposes of this section the question whether an arbitration agreement is a domestic arbitration agreement shall be determined by reference to the facts at the time the legal proceedings are commenced.**

Section 86(4) of the English Arbitration Act 1996 provides a rule for determining whether an arbitration agreement is a “domestic arbitration agreement” for the purposes of Section 86, which deals with the stay of legal proceedings. The determination of whether an arbitration agreement is a domestic arbitration agreement is crucial because it affects the application of Section 86(2) and (3) in relation to granting a stay of legal proceedings.

According to section 86(4), the question of whether an arbitration agreement is considered a domestic arbitration agreement or not is to be decided based on the facts at the time the legal proceedings are commenced. This means that the court will assess the relevant facts and circumstances as they exist at the time the party seeking the stay initiates the legal proceedings. The court will examine the nationalities or habitual residences of the parties and the location of the seat of the arbitration (if designated or determined).

If, at the time of commencing the legal proceedings, none of the parties is an individual who is a national of, or habitually resident in, a state other than the United Kingdom, or a body corporate incorporated in, or with central control and management exercised in, a state other than the United Kingdom, and the seat of arbitration is in the United Kingdom, then the arbitration agreement will be considered a domestic arbitration agreement.

On the other hand, if any of the parties fall under the mentioned categories (non-UK nationals or habitually resident individuals, or non-UK incorporated body corporates) or the seat of arbitration is outside the United Kingdom, the arbitration agreement would not be classified as a domestic arbitration agreement.

The distinction between domestic and non-domestic arbitration agreements is significant because it determines the applicable provisions under Section 86 regarding the stay of legal proceedings. For domestic arbitration agreements, a stay is granted unless specific grounds for not requiring the parties to abide by the arbitration agreement are met, as specified in Section 86(2)(a) and (b).

87 EFFECTIVENESS OF AGREEMENT TO EXCLUDE COURT’S JURISDICTION

- (1) In the case of a domestic arbitration agreement any agreement to exclude the jurisdiction of the court under—**
- (a) section 45 (determination of preliminary point of law), or**
 - (b) section 69 (challenging the award: appeal on point of law), is not effective unless entered into after the commencement of the arbitral proceedings in which the question arises or the award is made.**

Section 87(1) of the English Arbitration Act 1996 deals with the exclusion of the court’s jurisdiction in the case of a domestic arbitration agreement. It sets forth specific conditions under which any agreement to exclude the jurisdiction of the court concerning certain matters is effective or not.

Specifically, in the context of a domestic arbitration agreement, any agreement to exclude the jurisdiction of the court under two specific sections of the Arbitration Act is subject to certain temporal limitations:

1. Section 45: Determination of preliminary point of law
2. Section 69: Challenging the award — Appeal on point of law

According to section 87(1), for such agreements to be effective in excluding the court's jurisdiction, they must be entered into after the commencement of the arbitral proceedings in which the question arises or after the award is made. This means that if the agreement to exclude the court's jurisdiction under section 45 or section 69 is made before the commencement of the arbitral proceedings or before the award is rendered, it will not be considered effective, and the court's jurisdiction will not be excluded.

The purpose of this provision is to ensure that parties cannot pre-emptively exclude the jurisdiction of the court regarding certain issues that may arise during the arbitral proceedings or after the award is issued. Instead, parties must wait until the arbitral proceedings have already begun or the award has been made before entering into an agreement to exclude the court's jurisdiction. This allows the court to retain its jurisdiction over certain matters until the arbitration process has progressed to a certain stage.

By requiring agreements to exclude the court's jurisdiction to be made after the commencement of the arbitral proceedings or after the award is made, Section 87(1) seeks to strike a balance between the autonomy of the parties in arbitration and the necessity of preserving the court's supervisory role in certain circumstances.

(2) For this purpose the commencement of the arbitral proceedings has the same meaning as in Part I (see section 14).

Section 87(2) of the English Arbitration Act 1996 clarifies the meaning of "the commencement of the arbitral proceedings" for the purpose of section 87(1). It refers to the definition of "commencement of the arbitral proceedings" as provided in Part I of the Arbitration Act 1996, specifically in section 14.

In Part I of the Arbitration Act 1996, section 14 deals with the commencement of arbitral proceedings. According to section 14, arbitral proceedings are considered to be commenced on the date when a request for the dispute to be referred to arbitration is received by the respondent (the party against whom the request is made). If the arbitration agreement requires the parties to go through certain pre-arbitral steps, such as mediation or negotiation, then the arbitral proceedings are deemed to be commenced on the date when such steps are completed, and the arbitration is initiated by one party serving a notice on the other party.

Therefore, for the purposes of section 87(1), the "commencement of the arbitral proceedings" refers to the specific point in time when the arbitration is initiated in accordance with the procedures set out in Part I of the Arbitration Act 1996. This ensures that parties cannot enter into agreements to exclude the court's jurisdiction under section 45 or section 69 before the arbitration process has officially started or before the arbitration agreement has been invoked to initiate the dispute resolution process.

- (3) For the purposes of this section the question whether an arbitration agreement is a domestic arbitration agreement shall be determined by reference to the facts at the time the agreement is entered into.**

Section 87(3) of the English Arbitration Act 1996 provides a specific rule for determining whether an arbitration agreement is a domestic arbitration agreement for the purposes of section 87(3). It states that the question of whether an arbitration agreement is considered a domestic arbitration agreement should be determined based on the facts at the time the agreement is entered into.

In simpler terms, when deciding if an arbitration agreement falls within the scope of a domestic arbitration agreement under section 87(3), the relevant criteria should be assessed based on the circumstances and information available at the moment the parties entered into the arbitration agreement. This means that the court will look at the facts and circumstances as they existed at the time of forming the arbitration agreement to determine whether it meets the definition of a domestic arbitration agreement.

The distinction between domestic and international arbitration agreements is significant because the English Arbitration Act 1996 applies different rules and provisions to each category. Domestic arbitration agreements are those where none of the parties are individuals who are nationals of, or habitually reside in, a state other than the United Kingdom, or bodies corporate incorporated in, or whose central control and management is exercised in, a state other than the United Kingdom, and the seat of arbitration is within the United Kingdom.

By specifying that the determination of whether an arbitration agreement is domestic should be based on the facts at the time of entering into the agreement, the Act ensures that parties cannot manipulate the classification of the arbitration agreement based on subsequent events or circumstances. This provides clarity and stability in applying the appropriate rules for domestic arbitration cases.

88 POWER TO REPEAL OR AMEND SECTIONS 85 TO 87

- (1) The Secretary of State may by order repeal or amend the provisions of sections 85 to 87.**

Section 88(1) of the English Arbitration Act 1996 grants the Secretary of State the authority to make changes to the provisions found in sections 85 to 87 of the Act through an order. These sections specifically deal with modifications to Part I of the Act in the context of domestic arbitration agreements.

By empowering the Secretary of State to make orders, the Act allows for flexibility in adapting the regulatory framework surrounding domestic arbitration agreements. The intention is to enable the government to respond to changing circumstances, address emerging issues, and make necessary adjustments to ensure the efficient functioning of domestic arbitration processes within the United Kingdom.

The order-making power given to the Secretary of State permits the revision, repeal, or amendment of provisions related to domestic arbitration agreements, which can be useful in refining and updating the statutory regime to align with practical realities, technological advancements, or policy considerations.

It is essential to recognise that such orders should be exercised with care, as any changes made could impact the rights and obligations of parties engaged in domestic arbitration proceedings. Therefore, the exercise of this power is likely to be guided by the need to strike a balance between facilitating smooth arbitration processes and safeguarding the integrity and fairness of the arbitration system.

Overall, section 88(1) is designed to offer the flexibility required to adjust and fine-tune the regulations concerning domestic arbitration agreements in response to changing circumstances or policy objectives. Any changes made through the order-making process are expected to be carried out with a view to enhancing the effectiveness and efficiency of domestic arbitration in the United Kingdom.

(2) An order under this section may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be appropriate.

Section 88(2) of the English Arbitration Act 1996 empowers the Secretary of State to include various additional provisions in the order made under section 88(1). These supplementary, incidental, and transitional provisions are meant to complement and support the main changes or amendments made in Sections 85 to 87 of the Act.

Here is an analysis of the key aspects of section 88(2):

1. **Supplementary Provisions:** The Secretary of State can include provisions that provide additional support or details related to the changes introduced by the order. These supplementary provisions may be used to clarify ambiguous language, specify procedures or requirements, or address specific scenarios that may arise in the context of domestic arbitration agreements. They serve to enhance the understanding and implementation of the changes made in sections 85 to 87.
2. **Incidental Provisions:** The order may also contain incidental provisions that are necessary or relevant to the implementation of the changes in sections 85 to 87. These provisions could address issues that are indirectly affected by the main changes but are essential for the overall effectiveness and coherence of the legislative framework surrounding domestic arbitration agreements.
3. **Transitional Provisions:** In certain cases, when there are changes to the law, it may be necessary to provide transitional arrangements to manage the transition from the old regime to the new one smoothly. These transitional provisions can specify how the changes will apply to existing arbitration agreements, ongoing proceedings, or other matters to ensure a seamless transition to the amended legal framework.

The flexibility to include supplementary, incidental, and transitional provisions in the order allows the Secretary of State to tailor the changes to the specific needs and circumstances of domestic arbitration agreements. It provides the government with the means to address any potential issues, gaps, or uncertainties that may arise due to the modifications in sections 85 to 87, ensuring a coherent and workable arbitration system.

However, it is important to use this power judiciously, as any supplementary, incidental, or transitional provisions should be designed to align with the underlying principles of the Act and to further its objectives in promoting effective and efficient domestic arbitration in the United Kingdom.

(3) An order under this section shall be made by statutory instrument and no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

Section 88(3) of the English Arbitration Act 1996 sets out the procedure and requirements for making an order under section 88(1). Here is an analysis of the key aspects of section 88(3):

1. **Statutory Instrument:** The order to repeal or amend the provisions of Sections 85 to 87 is made by way of a “statutory instrument”. A statutory instrument is a type of delegated legislation that allows the government (in this case, the Secretary of State) to make changes to existing laws without the need for a full Act of Parliament. Statutory instruments are often used for minor or technical changes to legislation.
2. **Parliamentary Approval:** Before the order can come into effect, it must be approved by both Houses of Parliament. This means that a draft of the order must be laid before Members of Parliament (MPs) in the House of Commons and Members of the House of Lords. They have the opportunity to review the proposed changes and debate their merits before voting on whether to approve or reject the order.
3. **Resolution of Each House:** The approval of each House of Parliament is required for the order to become effective. This means that both the House of Commons and the House of Lords must pass a resolution in favour of the order. If either House rejects the order, it cannot be implemented.
4. **Laying of the Draft:** Before seeking parliamentary approval, the draft of the order must be “laid before” both Houses of Parliament. This means that MPs and Lords have the opportunity to review the draft before it is formally considered for approval. The laying of the draft provides transparency and allows members of Parliament to scrutinise the proposed changes before voting on them.
5. **Importance of Democratic Process:** The requirement for parliamentary approval ensures that significant changes to the Act are subject to democratic scrutiny and debate. It prevents the executive (in this case, the Secretary of State) from making substantial alterations to the law without the oversight and approval of elected representatives in Parliament.

Overall, section 88(3) ensures that any order to repeal or amend the provisions of Sections 85 to 87 is subjected to parliamentary scrutiny and approval, which is an essential aspect of the democratic legislative process in the United Kingdom. It helps maintain the balance of power between the executive and legislative branches of the government and ensures that changes to the law are made with proper consideration and accountability.

CONSUMER ARBITRATION AGREEMENTS

89 APPLICATION OF UNFAIR TERMS REGULATIONS TO CONSUMER ARBITRATION AGREEMENTS

- (1) The following sections extend the application of Part 2 (unfair terms) of the Consumer Rights Act 2015 in relation to a term which constitutes an arbitration agreement. For this purpose “arbitration agreement” means an agreement to submit to arbitration present or future disputes or differences (whether or not contractual).

Section 89(1) of the English Arbitration Act 1996 extends the application of Part 2 (unfair terms) of the Consumer Rights Act 2015 in relation to arbitration agreements. Here is an analysis of the key aspects of Section 89(1):

1. Extension of Consumer Rights Act 2015: Section 89(1) extends the provisions of Part 2 of the Consumer Rights Act 2015 to cover arbitration agreements. Part 2 of the Consumer Rights Act 2015 deals with unfair terms in contracts between traders and consumers. By extending its application to arbitration agreements, it aims to protect consumers from unfair terms in such agreements.
2. Definition of “Arbitration Agreement”: Section 89(1) provides a specific definition of “arbitration agreement” for the purposes of this extension. According to this definition, an arbitration agreement refers to an agreement in which the parties agree to submit present or future disputes or differences to arbitration, whether or not the agreement is part of a broader contract.
3. Scope of Application: The extension of Part 2 of the Consumer Rights Act 2015 to arbitration agreements means that any term within such an agreement could be subject to scrutiny for fairness and compliance with consumer protection laws. If a term in an arbitration agreement is found to be unfair, it may be unenforceable or deemed void.
4. Protection of Consumer Rights: By including arbitration agreements under the purview of the Consumer Rights Act 2015, the intention is to safeguard consumer rights in cases where they may be at a disadvantage in negotiations with traders or businesses. This is particularly relevant in consumer contracts, where consumers may have less bargaining power compared to businesses.
5. Unfair Terms Regulation: Part 2 of the Consumer Rights Act 2015 sets out rules for assessing the fairness of terms in consumer contracts. It allows courts to intervene and declare terms unfair and unenforceable if they create a significant imbalance between the parties’ rights and obligations, to the detriment of the consumer.

Overall, section 89(1) aims to extend consumer protection measures to arbitration agreements and ensure that consumers are not unfairly disadvantaged by the terms contained within such agreements. By doing so, it seeks to maintain a fair and balanced relationship between traders and consumers in the context of arbitration.

(2) In those sections “the Part” means Part 2 (unfair terms) of the Consumer Rights Act 2015.

Section 89(2) of the English Arbitration Act 1996 provides a definition of “the Part” as used in the context of the Act. Here is a brief analysis of this section:

1. Reference to “the Part”: Section 89(2) refers to “the Part” concerning the application of Part 2 of the Consumer Rights Act 2015. In this context, “the Part” specifically points to the provisions related to unfair terms in consumer contracts within the Consumer Rights Act 2015.
2. Part 2 of the Consumer Rights Act 2015: Part 2 of the Consumer Rights Act 2015 addresses unfair terms in contracts between traders and consumers. It aims to protect consumers from contractual terms that may be detrimental or oppressive to them. The provisions of Part 2 establish criteria for assessing the fairness of contractual terms and empower the courts to deem unfair terms unenforceable.
3. Incorporation into the English Arbitration Act 1996: By referring to “the Part” in Section 89(2), the English Arbitration Act 1996 incorporates the provisions of Part 2 of the Consumer Rights Act 2015 as applicable to arbitration agreements.
4. Impact on Arbitration Agreements: The application of “the Part” (Part 2 of the Consumer Rights Act 2015) to arbitration agreements means that any term within such agreements will be evaluated for fairness under the criteria established by the Consumer Rights Act. If a term is deemed unfair, it may be unenforceable or void.
5. Consumer Protection in Arbitration Agreements: The incorporation of Part 2 of the Consumer Rights Act 2015 is intended to protect consumers in their dealings with traders and businesses in the context of arbitration. It ensures that consumers are not subjected to unfair or oppressive terms in arbitration agreements, maintaining a balanced and equitable relationship between the parties.

In summary, section 89(2) clarifies that “the Part” refers specifically to Part 2 of the Consumer Rights Act 2015, which is applied to arbitration agreements under the English Arbitration Act 1996 to safeguard consumer rights and ensure fair contractual practices in such agreements.

(3) Those sections apply whatever the law applicable to the arbitration agreement.

Section 89(3) of the English Arbitration Act 1996 addresses the application of Part 2 of the Consumer Rights Act 2015 to arbitration agreements, regardless of the governing law of the agreement. Here is an analysis of this section:

1. Applicability of Part 2 of the Consumer Rights Act 2015: Section 89(3) clarifies that the provisions of Part 2 of the Consumer Rights Act 2015 apply to arbitration agreements regardless of the law that governs the agreement. This means that the consumer protection and fairness standards provided by Part 2 of the Consumer Rights Act 2015 are not affected by the choice of law governing the arbitration agreement.
2. Universal Protection for Consumers: By stating that the sections apply whatever the law applicable to the arbitration agreement, the Act ensures that consumers are entitled to

the protections and remedies provided by Part 2 of the Consumer Rights Act 2015 regardless of the governing law chosen in the arbitration agreement. It prevents parties from circumventing consumer protection by selecting a particular jurisdiction's laws.

3. **Consistency in Consumer Protection:** The provision aims to promote consistency in consumer protection across different jurisdictions. It ensures that consumers are not disadvantaged or denied their rights under Part 2 of the Consumer Rights Act 2015 merely due to the choice of law in the arbitration agreement.
4. **Fairness in Arbitration Agreements:** The incorporation of Part 2 of the Consumer Rights Act 2015 ensures that consumers have a level of fairness and protection in arbitration agreements concerning consumer contracts. It allows courts to assess the fairness of terms in such agreements, and if a term is found to be unfair, it may be rendered unenforceable.

In summary, section 89(3) emphasises that Part 2 of the Consumer Rights Act 2015 applies to arbitration agreements, regardless of the governing law. This provision ensures that consumers have consistent protection and remedies under consumer law regardless of the jurisdiction in which the arbitration agreement is governed. It upholds the principles of fairness and consumer rights in arbitration agreements involving consumers and traders.

90 PART APPLIES WHERE CONSUMER IS A LEGAL PERSON

The Part applies where the consumer is a legal person as it applies where the consumer is an individual.

Section 90 of the English Arbitration Act 1996 addresses the scope of application of Part 2 of the Consumer Rights Act 2015 in relation to consumers who are legal persons (such as companies, corporations, or other organisations). Here is an analysis of this section:

1. **Equality of Treatment:** Section 90 ensures that the provisions of Part 2 of the Consumer Rights Act 2015 apply equally to consumers who are legal persons as they do to consumers who are individuals. This means that legal persons, such as companies or corporations, are entitled to the same consumer protections and remedies as individual consumers under Part 2 of the Consumer Rights Act 2015.
2. **Extending Consumer Protection:** By applying the Part to legal persons, the law recognises that even corporate consumers can be vulnerable or have weaker bargaining power when entering into contracts, particularly in their dealings with traders. Therefore, legal persons are entitled to the same protections against unfair terms in arbitration agreements as individual consumers.
3. **Encouraging Fairness and Transparency:** The inclusion of legal persons within the scope of Part 2 encourages traders to ensure that their arbitration agreements are fair, transparent, and do not contain unfair terms, regardless of whether the consumer is an individual or a legal entity. It promotes transparency in contractual arrangements and aims to prevent traders from imposing onerous terms on weaker parties.

4. Consumer Rights and Remedies: Legal persons that qualify as consumers under the Consumer Rights Act 2015 can avail themselves of the same rights and remedies as individual consumers if they find themselves subject to unfair terms in arbitration agreements. This ensures consistency in consumer protection across different types of consumers.

In summary, section 90 of the English Arbitration Act 1996 extends the application of Part 2 of the Consumer Rights Act 2015 to legal persons who qualify as consumers. It ensures that both individual consumers and legal entities are entitled to equal protection and remedies against unfair terms in arbitration agreements. This provision upholds the principles of fairness, transparency, and consumer rights in arbitration agreements involving consumers and traders, regardless of the consumer's legal status.

91 ARBITRATION AGREEMENT UNFAIR WHERE MODEST AMOUNT SOUGHT

- (1) A term which constitutes an arbitration agreement is unfair for the purposes of the Part so far as it relates to a claim for a pecuniary remedy which does not exceed the amount specified by order for the purposes of this section.**

Section 91(1) of the English Arbitration Act 1996 introduces a threshold for determining the unfairness of a term in an arbitration agreement with respect to claims for pecuniary remedies. Let us analyse this section:

1. Unfairness of Arbitration Agreement Term: Section 91(1) states that a term in an arbitration agreement is deemed unfair for the purposes of the Consumer Rights Act 2015 if it relates to a claim for a pecuniary remedy. In this context, a “pecuniary remedy” refers to a remedy that involves the payment of money.
2. Threshold for Unfairness: The provision specifies that the unfairness of such a term in the arbitration agreement applies only if the claim for a pecuniary remedy does not exceed the amount specified by order for the purposes of this section. In other words, there is a monetary threshold set by an order that determines when a term is considered unfair in the context of pecuniary claims.
3. Protecting Consumers in Small Claims: The purpose of this provision is to protect consumers who may be at a disadvantage in arbitration agreements, especially in situations where the claim for a pecuniary remedy is relatively small. By setting a monetary threshold, the law aims to prevent arbitration agreements with unfair terms from being imposed on consumers in situations involving minor financial claims.
4. Empowering Consumer Remedies: Section 91(1) ensures that consumers can still seek redress and pecuniary remedies through the court system, even if they have agreed to an arbitration agreement. If the claim for a pecuniary remedy exceeds the specified amount, the consumer is not bound by the arbitration agreement, and the matter can be pursued in the courts.
5. Flexibility in Threshold Determination: The specific amount specified in the threshold is subject to being determined by an order. This allows for flexibility and adjustments to be

made based on changes in economic conditions or other relevant factors affecting consumer rights.

In summary, section 91(1) of the English Arbitration Act 1996 establishes a threshold for determining the unfairness of a term in an arbitration agreement concerning claims for pecuniary remedies. If a claim does not exceed the specified amount set by order, the term is deemed unfair under the Consumer Rights Act 2015, and the consumer can seek remedies through the court system rather than being bound by the arbitration agreement. This provision is intended to protect consumers, particularly in cases involving small financial claims, and empowers them to seek appropriate remedies in the event of unfair arbitration terms.

(2) Orders under this section may make different provision for different cases and for different purposes.

Section 91(2) of the English Arbitration Act 1996 grants flexibility and discretion to the authorities responsible for making orders under this section. Let us analyse this provision:

1. **Order-Making Authority:** Section 91(2) empowers the relevant authorities to make orders concerning the monetary threshold specified in section 91(1) for determining the unfairness of a term in an arbitration agreement related to pecuniary remedies.
2. **Different Provision for Different Cases:** This provision allows the authorities to establish different monetary thresholds depending on the circumstances and specific cases. Different cases may involve varying levels of pecuniary claims, and the authorities can set appropriate thresholds to cater to the specific needs of consumers in different situations.
3. **Different Provision for Different Purposes:** The authorities can also use their discretion to set different monetary thresholds for various purposes. For example, they might establish different thresholds based on the type of goods or services involved, the size of the business or organisation, or other relevant considerations.
4. **Flexibility and Tailored Approach:** Section 91(2) enables the authorities to take a flexible and tailored approach in setting the monetary thresholds. This ensures that consumer protection measures can be adjusted to meet the evolving needs and challenges of consumer transactions and arbitration agreements.
5. **Consumer Protection:** The provision serves to protect consumers by allowing the authorities to adapt the monetary threshold to address unfair arbitration agreement terms in relation to pecuniary remedies effectively. The aim is to strike a balance between enforcing arbitration agreements and safeguarding consumers' rights to access the court system for certain types of claims.

In summary, section 91(2) of the English Arbitration Act 1996 empowers the authorities to make orders that establish different monetary thresholds for determining the unfairness of terms in arbitration agreements related to pecuniary remedies. This provision grants flexibility to tailor consumer protection measures to different cases and purposes, allowing for a more responsive approach to address unfair arbitration terms and protect consumer rights.

- (3) The power to make orders under this section is exercisable—**
- (a) for England and Wales, by the Secretary of State with the concurrence of the Lord Chancellor,**
 - (b) for Scotland, by the Secretary of State, and**
 - (c) for Northern Ireland, by the Department of Economic Development for Northern Ireland with the concurrence of the Lord Chancellor.**

Section 91(3) of the English Arbitration Act 1996 specifies the authorities responsible for making orders under this section. Let us analyse this provision:

1. **Power to Make Orders:** Section 91(3) grants the power to make orders concerning the monetary threshold for determining the unfairness of terms in arbitration agreements related to pecuniary remedies.
2. **England and Wales:** In England and Wales, the power to make orders is vested in the Secretary of State. However, the concurrence of the Lord Chancellor is required for the exercise of this power. This ensures that decisions regarding consumer protection and the fairness of arbitration agreements are made jointly by the relevant authorities.
3. **Scotland:** In Scotland, the power to make orders is vested in the Secretary of State. Unlike in England and Wales, there is no requirement for the concurrence of the Lord Chancellor. The Secretary of State alone exercises this power in Scotland.
4. **Northern Ireland:** In Northern Ireland, the power to make orders lies with the Department of Economic Development for Northern Ireland. Similar to the situation in England and Wales, the concurrence of the Lord Chancellor is required for the exercise of this power in Northern Ireland.
5. **Division of Power:** The division of power among different authorities reflects the devolved nature of certain matters in the United Kingdom. Each of the three regions (England and Wales, Scotland, and Northern Ireland) has separate entities responsible for overseeing consumer protection measures concerning arbitration agreements.
6. **Coordination with the Lord Chancellor:** In England and Northern Ireland, the concurrence of the Lord Chancellor is required. This ensures a level of coordination and consistency in consumer protection measures related to arbitration agreements.

In summary, section 91(3) of the English Arbitration Act 1996 designates the authorities responsible for making orders regarding the monetary threshold for determining the unfairness of terms in arbitration agreements related to pecuniary remedies. The Secretary of State, in conjunction with the Lord Chancellor's concurrence, exercises this power for England and Wales. The Secretary of State alone exercises this power for Scotland, and the Department of Economic Development for Northern Ireland, with the concurrence of the Lord Chancellor, exercises it for Northern Ireland. This division of power allows each region to address consumer protection matters independently while maintaining coordination with the central authority.

(4) Any such order for England and Wales or Scotland shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 91(4) of the English Arbitration Act 1996 pertains to the procedure for making orders in England and Wales or Scotland concerning the monetary threshold for determining the unfairness of terms in arbitration agreements related to pecuniary remedies. Let us analyse this provision:

1. **Making Orders by Statutory Instrument:** In England and Wales or Scotland, any order to set the amount specified for the monetary threshold is required to be made through a statutory instrument. A statutory instrument is a form of delegated or secondary legislation used to make detailed changes or provide specific regulations under primary legislation (the Act). This allows for the precise specification of the monetary threshold for unfair terms in arbitration agreements.
2. **Subject to Annulment:** The statutory instrument, which sets the specified amount for the monetary threshold, is subject to annulment by either House of Parliament. This means that the order can be challenged, reviewed, and potentially annulled by either the House of Commons or the House of Lords. The annulment process serves as a parliamentary safeguard, allowing for scrutiny of the order and ensuring that any potentially contentious or inappropriate changes to the threshold can be contested.
3. **Resolution of Either House:** The annulment of the statutory instrument can be initiated by either the House of Commons or the House of Lords. Both houses of Parliament have the authority to raise objections, debate the matter, and potentially vote for the annulment of the order if they find it unsatisfactory.

In summary, section 91(4) of the English Arbitration Act 1996 outlines the procedure for making orders in England and Wales or Scotland to specify the monetary threshold for determining the unfairness of terms in arbitration agreements related to pecuniary remedies. Such orders are made through a statutory instrument, which can be annulled by either the House of Commons or the House of Lords through a resolution. This parliamentary oversight ensures transparency and allows for a thorough examination of the order's appropriateness and fairness.

(5) Any such order for Northern Ireland shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 and shall be subject to negative resolution, within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.

Section 91(5) of the English Arbitration Act 1996 deals with the procedure for making orders in Northern Ireland regarding the monetary threshold for determining the unfairness of terms in arbitration agreements related to pecuniary remedies. Let us analyse this provision:

1. **Making Orders as Statutory Rules:** In Northern Ireland, any order to set the amount specified for the monetary threshold is made as a statutory rule. Statutory rules are a form of delegated legislation used to make detailed changes or regulations under primary legislation (the Act) in Northern Ireland. These rules allow for the precise specification of the monetary threshold for unfair terms in arbitration agreements.

2. Subject to Negative Resolution: The statutory rule, which sets the specified amount for the monetary threshold, is subject to negative resolution. Negative resolution means that the statutory rule becomes law without further action unless it is challenged and annulled by either House of Parliament (in this case, the Northern Ireland Assembly). Unlike affirmative resolution, which requires explicit approval from the legislative body, negative resolution assumes approval unless there are objections.
3. Statutory Rules (Northern Ireland) Order 1979: The statutory rule made under this section falls under the provisions of the Statutory Rules (Northern Ireland) Order 1979. This order sets out the legal framework for making statutory rules in Northern Ireland.
4. Interpretation Act (Northern Ireland) 1954: The term “negative resolution” is defined with reference to section 41(6) of the Interpretation Act (Northern Ireland) 1954. This act provides guidance on the interpretation of legislation in Northern Ireland.

In summary, section 91(5) of the English Arbitration Act 1996 outlines the procedure for making orders in Northern Ireland to specify the monetary threshold for determining the unfairness of terms in arbitration agreements related to pecuniary remedies. Such orders are made as statutory rules, subject to negative resolution in the Northern Ireland Assembly. This procedure ensures that the specified monetary threshold becomes law without further action unless there are objections from the legislative body.

SMALL CLAIMS ARBITRATION IN THE COUNTY COURT

92 EXCLUSION OF PART I IN RELATION TO SMALL CLAIMS ARBITRATION IN THE COUNTY COURT.

(1) Nothing in Part I of this Act applies to arbitration under section 64 of the County Courts Act 1984.

Section 92 of the English Arbitration Act 1996 deals with the exclusion of Part I of the Act in relation to small claims arbitration in the county court. Let us analyse this provision:

1. Exclusion of Part I: Section 92 explicitly states that nothing in Part I of the English Arbitration Act 1996 applies to arbitration conducted under section 64 of the County Courts Act 1984. This means that the provisions related to unfair terms (Part I) of the Arbitration Act do not apply to small claims arbitrations conducted in the county court under the specified section of the County Courts Act 1984.
2. Small Claims Arbitration: Section 64 of the County Courts Act 1984 allows for small claims arbitrations in the county court for certain types of disputes where the amount in question is below a specified limit (commonly referred to as “small claims”). Small claims procedures are intended to provide a quicker, simpler, and more cost-effective way to resolve minor disputes without involving formal court proceedings.
3. Scope of Exclusion: The exclusion of Part I of the Arbitration Act in relation to small claims arbitration means that the provisions related to unfair terms, including those that protect consumers from unfair arbitration clauses, do not apply to disputes resolved through the small claims arbitration process under section 64 of the County Courts Act 1984. Instead, the specific rules and procedures applicable to small claims arbitrations in the county court will govern such cases.

In summary, section 92 of the English Arbitration Act 1996 excludes the application of Part I of the Act, which deals with unfair terms, in relation to small claims arbitration conducted under section 64 of the County Courts Act 1984. This exclusion allows for a separate set of rules and procedures to govern small claims arbitrations in the county court.

APPOINTMENT OF JUDGES AS ARBITRATORS

93 APPOINTMENT OF JUDGES AS ARBITRATORS

- (1) An eligible High Court judge or an official referee may, if in all the circumstances he thinks fit, accept appointment as a sole arbitrator or as umpire by or by virtue of an arbitration agreement.**

Section 93(1) of the English Arbitration Act 1996 pertains to the appointment of an eligible High Court judge or an official referee as a sole arbitrator or umpire by virtue of an arbitration agreement. Let us analyse this provision:

1. **Eligible High Court Judge or Official Referee:** The section authorises an eligible High Court judge or an official referee to accept an appointment as a sole arbitrator or umpire. High Court judges are judges who preside over cases in the High Court of England and Wales, which is a superior court of record. Official referees are senior judicial officers who have extensive experience in dealing with commercial and civil cases.
2. **Acceptance of Appointment:** The eligible High Court judge or official referee has the discretion to decide whether to accept the appointment as a sole arbitrator or umpire. The decision is based on their judgment of “all the circumstances”. This implies that the judge or official referee will consider various factors, including their own expertise, availability, potential conflicts of interest, and the complexity of the arbitration, before deciding to accept the appointment.
3. **Arbitration Agreement:** The appointment must be made “by or by virtue of an arbitration agreement”. This means that the parties to a dispute must have a valid arbitration agreement in place that provides for the appointment of a sole arbitrator or umpire, and they must mutually agree to appoint the eligible High Court judge or official referee to fulfil this role.
4. **Discretionary Nature:** The provision uses the phrase “if in all the circumstances he thinks fit”, indicating that the appointment is discretionary. The eligible High Court judge or official referee is not obliged to accept the appointment, even if the parties have agreed to it in the arbitration agreement. They can exercise their judgment and decide whether they are willing and able to take on the role of arbitrator or umpire.

In summary, section 93(1) of the English Arbitration Act 1996 allows an eligible High Court judge or an official referee to accept appointment as a sole arbitrator or umpire, based on their discretion and considering all relevant circumstances. However, this appointment can only be made if there is a valid arbitration agreement in place that permits such an appointment.

- (2) An eligible High Court judge shall not do so unless the Lord Chief Justice has informed him that, having regard to the state of business in the High Court and the Crown Court, he can be made available.**

Section 93(2) of the English Arbitration Act 1996 imposes a specific condition for an eligible High Court judge to accept an appointment as a sole arbitrator or umpire. Let us analyse this provision:

1. **Eligible High Court Judge:** This provision specifically applies to an eligible High Court judge, who is qualified and appointed to serve as a judge in the High Court of England and Wales.
2. **Condition for Appointment:** According to section 93(2), an eligible High Court judge cannot accept an appointment as a sole arbitrator or umpire without a prior confirmation from the Lord Chief Justice.
3. **Confirmation by the Lord Chief Justice:** The Lord Chief Justice is the head of the judiciary in England and Wales. Before an eligible High Court judge can accept an appointment as an arbitrator, they must seek and obtain confirmation from the Lord Chief Justice.
4. **Factors Considered by the Lord Chief Justice:** The Lord Chief Justice will consider two specific factors before providing the necessary confirmation:
 - a. **The State of Business in the High Court:** The Lord Chief Justice will consider the current workload and caseload of the High Court. If the judge's appointment as an arbitrator would not unduly affect the judicial work in the High Court, the confirmation may be given.
 - b. **The State of Business in the Crown Court:** Additionally, the Lord Chief Justice will consider the workload and caseload of the Crown Court, which is another important judicial venue. If the appointment would not negatively impact the Crown Court's operations, the confirmation may be granted.

In summary, section 93(2) ensures that an eligible High Court judge does not accept an appointment as a sole arbitrator or umpire unless the Lord Chief Justice confirms that it is feasible to do so, taking into account the state of business in both the High Court and the Crown Court. This provision aims to strike a balance between the judge's availability for judicial duties and their potential role as an arbitrator.

(3) An official referee shall not do so unless the Lord Chief Justice has informed him that, having regard to the state of official referees' business, he can be made available.

Section 93(3) of the English Arbitration Act 1996 imposes a specific condition for an official referee to accept an appointment as a sole arbitrator or umpire. Let us analyse this provision:

1. **Official Referee:** An official referee is a legal officer who holds specific judicial functions in the English legal system. They are appointed to serve in the High Court of England and Wales and are usually experienced lawyers with expertise in various legal matters.
2. **Condition for Appointment:** According to section 93(3), an official referee cannot accept an appointment as a sole arbitrator or umpire without prior confirmation from the Lord Chief Justice.
3. **Confirmation by the Lord Chief Justice:** Similar to the provision regarding eligible High Court judges (section 93(2)), before an official referee can accept an appointment as an arbitrator, they must seek and obtain confirmation from the Lord Chief Justice.

4. Factor Considered by the Lord Chief Justice: The Lord Chief Justice will consider a specific factor before providing the necessary confirmation:
 - a. The State of Official Referees' Business: The Lord Chief Justice will consider the current workload and caseload of the official referees. If the referee's appointment as an arbitrator would not excessively burden their official duties, the confirmation may be given.

In summary, section 93(3) ensures that an official referee does not accept an appointment as a sole arbitrator or umpire unless the Lord Chief Justice confirms that it is feasible to do so, considering the state of business of the official referees. This provision aims to balance the referee's availability for their official duties and their potential role as an arbitrator.

(4) The fees payable for the services of an eligible High Court judge or official referee as arbitrator or umpire shall be taken in the High Court.

Section 93(4) of the English Arbitration Act 1996 deals with the payment of fees for the services of an eligible High Court judge or official referee acting as an arbitrator or umpire. Let us analyse this provision:

1. Eligible High Court Judge or Official Referee: As mentioned in the previous sections, an eligible High Court judge or official referee may accept an appointment as a sole arbitrator or umpire by or by virtue of an arbitration agreement.
2. Fees for Arbitrator's Services: Section 93(4) specifies that the fees payable for the services of an eligible High Court judge or official referee acting as an arbitrator or umpire shall be taken in the High Court. This means that the payment or remuneration for their role as an arbitrator or umpire will be handled and processed in the High Court.
3. High Court Jurisdiction: The reference to "taken in the High Court" implies that the High Court has jurisdiction over the collection and determination of the fees for the arbitrator's services. The High Court will oversee the billing and payment process associated with the arbitrator's work.

Overall, section 93(4) ensures that the payment of fees to an eligible High Court judge or official referee acting as an arbitrator or umpire is managed through the High Court, providing a standardised and formalised mechanism for handling the financial aspect of their arbitration services. This helps maintain transparency and accountability in the arbitration process involving judicial officers.

(4A) The Lord Chief Justice may nominate a senior judge (as defined in section 109(5) of the Constitutional Reform Act 2005) to exercise functions of the Lord Chief Justice under this section.

Section 93(4A) of the English Arbitration Act 1996 grants authority to the Lord Chief Justice to delegate certain functions related to the appointment of arbitrators or umpires. Let us analyse this provision:

1. **Delegation of Functions:** Section 93(4A) allows the Lord Chief Justice to delegate specific functions under section 93 to a senior judge. The functions that can be delegated pertain to the nomination of an eligible High Court judge or an official referee to act as a sole arbitrator or umpire in arbitration proceedings.
2. **Nomination by Senior Judge:** The senior judge, as defined in section 109(5) of the Constitutional Reform Act 2005, is appointed by the Lord Chief Justice to exercise the functions specified in Section 93. This means that the senior judge will have the authority to make nominations for eligible High Court judges or official referees to act as arbitrators or umpires, on behalf of the Lord Chief Justice.
3. **Purpose of Delegation:** The delegation of functions to a senior judge may serve practical purposes, especially when there is a high volume of appointments required or when the Lord Chief Justice needs assistance in handling the nomination process effectively and efficiently.

In summary, section 93(4A) empowers the Lord Chief Justice to designate a senior judge to carry out the functions described in section 93, particularly the nomination of eligible High Court judges or official referees to serve as arbitrators or umpires. This delegation of authority aims to streamline the process and ensure the prompt appointment of competent arbitrators or umpires when needed for arbitration proceedings.

(5) In this section—

“arbitration agreement” has the same meaning as in Part I;

“eligible High Court judge” means—

- (a) a puisne judge of the High Court, or**
- (b) a person acting as a judge of the High Court under or by virtue of section 9(1) of the Senior Courts Act 1981;**

“official referee” means a person nominated under section 68(1)(a) of the Senior Courts Act 1981 to deal with official referees’ business.

Section 93(5) of the English Arbitration Act 1996 provides definitions of key terms used in Section 93. Let us analyse the definitions given in this subsection:

1. **“Arbitration Agreement”:** The term “arbitration agreement” has the same meaning as in Part I of the Arbitration Act 1996. Part I includes provisions related to the validity and enforceability of arbitration agreements, among other matters.
2. **“Eligible High Court Judge”:** The term “eligible High Court judge” refers to individuals who are qualified to act as arbitrators or umpires by or under the provisions of section 93. There are two categories of eligible High Court judges:
 - a. **A “puisne judge of the High Court”:** This refers to a permanent judge of the High Court, who is not the Chief Justice or a Lord Justice of Appeal.

- b. A “person acting as a judge of the High Court under or by virtue of section 9(1) of the Senior Courts Act 1981”: This includes individuals temporarily appointed or assigned to act as High Court judges in certain circumstances, as specified in section 9(1) of the Senior Courts Act 1981.
3. “Official Referee”: The term “official referee” relates to individuals who have been nominated under section 68(1)(a) of the Senior Courts Act 1981 to deal with official referees’ business. Official referees are judicial officers with specific duties and responsibilities, including presiding over certain types of cases and conducting hearings in the High Court.

In summary, section 93(5) provides clarity on the definitions of “arbitration agreement”, “eligible High Court judge”, and “official referee” as they are used in section 93 of the English Arbitration Act 1996. These definitions help in understanding the scope and applicability of section 93, which deals with the appointment of eligible High Court judges and official referees to act as arbitrators or umpires in arbitration proceedings.

(6) The provisions of Part I of this Act apply to arbitration before a person appointed under this section with the modifications specified in Schedule 2.

Section 93(6) of the English Arbitration Act 1996 states that the provisions of Part I of the Act apply to arbitration conducted before a person appointed under section 93(1) (which deals with the appointment of eligible High Court judges or official referees as arbitrators or umpires) but with certain modifications as specified in Schedule 2 of the Act.

To provide further context, Part I of the Arbitration Act 1996 covers various aspects of arbitration agreements, their validity, enforcement, and related matters. It sets out the general framework for arbitration proceedings in England and Wales, including the powers of the court in relation to arbitration.

Section 93(6) clarifies that the general provisions of Part I apply to arbitration proceedings involving a person appointed under section 93(1). However, these provisions are subject to certain modifications specified in Schedule 2. These modifications are likely to accommodate the special circumstances that arise when an eligible High Court judge or official referee acts as an arbitrator or umpire.

The modifications in Schedule 2 may include adjustments to the procedure for appointment, the powers and functions of the arbitrator, the grounds for challenging the arbitrator, or other procedural matters. The purpose of these modifications is to align the arbitration process with the specific expertise and role of the appointed eligible High Court judge or official referee.

In summary, section 93(6) ensures that the general provisions of Part I of the Arbitration Act 1996 are applicable to arbitration conducted before a person appointed under section 93(1). However, these provisions are tailored to suit the unique circumstances of arbitrations involving eligible High Court judges or official referees through the specified modifications in Schedule 2.

STATUTORY ARBITRATIONS

94 APPLICATION OF PART I TO STATUTORY ARBITRATIONS

- (1) The provisions of Part I apply to every arbitration under an enactment (a “statutory arbitration”), whether the enactment was passed or made before or after the commencement of this Act, subject to the adaptations and exclusions specified in sections 95 to 98.**

Section 94(1) of the English Arbitration Act 1996 states that the provisions of Part I of the Act apply to every arbitration conducted under an enactment, regardless of whether the enactment was passed or made before or after the commencement of the Arbitration Act 1996. These types of arbitrations conducted under an enactment are commonly referred to as “statutory arbitrations”.

The term “enactment” refers to any law, statute, or legislation, including Acts of Parliament, statutory instruments, or other legal provisions that authorise or require disputes to be resolved through arbitration.

The key implication of section 94(1) is that the general provisions of Part I of the Arbitration Act 1996 are applicable to statutory arbitrations, ensuring that they are subject to the general framework provided by the Act. Part I of the Act covers various aspects of arbitration agreements, their validity, enforcement, and other related matters.

However, sections 95 to 98 of the Arbitration Act 1996 contain specific adaptations and exclusions that modify or exclude certain provisions of Part I when applied to statutory arbitrations. These sections provide adjustments to accommodate the unique features and requirements of statutory arbitrations, which may differ from private commercial arbitrations.

In summary, section 94(1) ensures that the general provisions of Part I of the Arbitration Act 1996 apply to statutory arbitrations conducted under any enactment, regardless of when the enactment was enacted. However, this application is subject to the modifications and exclusions specified in Sections 95 to 98 of the Act to address the specific characteristics of statutory arbitrations.

- (2) The provisions of Part I do not apply to a statutory arbitration if or to the extent that their application—**
- (a) is inconsistent with the provisions of the enactment concerned, with any rules or procedure authorised or recognised by it, or**
 - (b) is excluded by any other enactment.**

Section 94(2) of the English Arbitration Act 1996 provides exceptions to the application of Part I of the Act to statutory arbitrations. It states that the provisions of Part I will not apply to a statutory arbitration if their application is inconsistent with the provisions of the enactment that governs the arbitration, any rules or procedure authorised or recognised by that enactment, or if their application is specifically excluded by any other enactment.

In simpler terms, this means that Part I of the Arbitration Act 1996 will not apply to statutory arbitrations if it conflicts with the specific rules and procedures established by the relevant enactment

or any other applicable law. The intention is to allow for flexibility in statutory arbitrations and to respect the particular legislative framework under which these arbitrations operate.

For example, if the enactment establishing the statutory arbitration provides detailed procedures and rules for the conduct of the arbitration, and those procedures differ from the provisions in Part I of the Arbitration Act, the provisions of Part I would not apply if they are inconsistent with the enactment's provisions.

Similarly, if another enactment expressly excludes the application of Part I to a particular statutory arbitration, then Part I would not be applicable in that specific case.

Section 94(2) ensures that the specific statutory scheme and the legislative intent behind a particular statutory arbitration are respected, even if it means deviating from the general provisions of Part I of the Arbitration Act 1996.

(3) In this section and the following provisions of this Part “enactment”—

- (a) in England and Wales, includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;**
- (b) in Northern Ireland, means a statutory provision within the meaning of section 1(f) of the Interpretation Act (Northern Ireland) 1954.**

Section 94(3) of the English Arbitration Act 1996 provides definitions for the term “enactment” as used in this section and subsequent provisions of Part I of the Act. The term “enactment” refers to the laws or provisions that govern the statutory arbitration being referred to in the Act.

The section specifies the meaning of “enactment” for both England and Wales and Northern Ireland:

1. In England and Wales, “enactment” includes any law or provision contained in subordinate legislation within the meaning of the Interpretation Act 1978. Subordinate legislation refers to laws or regulations made by a person or body under powers conferred by an Act of Parliament, rather than directly enacted by Parliament itself. These include statutory instruments, orders, rules, regulations, and other forms of delegated legislation.
2. In Northern Ireland, “enactment” means any statutory provision within the meaning of section 1(f) of the Interpretation Act (Northern Ireland) 1954. The Interpretation Act (Northern Ireland) 1954 provides definitions and rules for interpreting legislation in Northern Ireland. A statutory provision refers to any provision or section of a statute or law passed by the Northern Ireland Assembly or the UK Parliament that applies in Northern Ireland.

By providing these definitions, section 94(3) clarifies the scope of “enactment” for the purpose of determining the application of Part I of the Arbitration Act 1996 to statutory arbitrations in both England and Wales and Northern Ireland.

95 GENERAL ADAPTATION OF PROVISIONS IN RELATION TO STATUTORY ARBITRATIONS

(1) The provisions of Part I apply to a statutory arbitration—

- (a) as if the arbitration were pursuant to an arbitration agreement and as if the enactment were that agreement, and**
- (b) as if the persons by and against whom a claim subject to arbitration in pursuance of the enactment may be or has been made were parties to that agreement.**

Section 95(1) of the English Arbitration Act 1996 outlines the application of Part I of the Act to statutory arbitrations. It states that the provisions of Part I apply to a statutory arbitration in the following manner:

1. As if the arbitration were pursuant to an arbitration agreement: This means that the statutory arbitration is treated as if it were governed by a regular arbitration agreement, even though it is established by an enactment (a law or statutory provision). In other words, the statutory arbitration is considered as if the parties had voluntarily agreed to resolve their disputes through arbitration.
2. As if the enactment were that agreement: The statute or enactment that establishes the statutory arbitration is treated as if it were the arbitration agreement governing the proceedings. This means that the terms and conditions of the enactment are treated as the terms of the arbitration agreement.
3. As if the persons by and against whom a claim subject to arbitration in pursuance of the enactment may be or has been made were parties to that agreement: This provision clarifies that all the relevant parties involved in the statutory arbitration, whether making or facing a claim, are treated as if they were parties to the arbitration agreement specified in the enactment. This includes both those making claims and those against whom claims are made, and they are bound by the terms of the statutory arbitration as if they had willingly entered into the arbitration agreement.

By applying Part I of the Arbitration Act 1996 in this manner, statutory arbitrations are assimilated into the framework of regular arbitrations governed by private arbitration agreements, providing a consistent and unified approach to dispute resolution under the Act.

(2) Every statutory arbitration shall be taken to have its seat in England and Wales or, as the case may be, in Northern Ireland.

Section 95(2) of the English Arbitration Act 1996 states that every statutory arbitration shall be taken to have its seat in England and Wales or, if the statutory arbitration is taking place in Northern Ireland, then its seat shall be deemed to be in Northern Ireland.

The concept of the “seat of arbitration” is significant in international commercial arbitration as it determines the legal framework and the supervisory jurisdiction under which the arbitration proceedings are conducted. It also has implications for matters such as the law governing the arbitration and the enforceability of the arbitral award.

In the context of statutory arbitrations, where the arbitration is established and governed by a specific enactment (a law or statutory provision), the Act deems the seat of such arbitration to be in England and Wales or Northern Ireland, depending on the jurisdiction in which the arbitration is taking place.

By designating the seat in this manner, the Act provides clarity and uniformity regarding the applicable laws and the supervisory court that would have jurisdiction over the arbitration process. It ensures that statutory arbitrations are treated consistently with regard to the seat and the procedural framework, facilitating efficient resolution of disputes under the relevant statutory provisions.

96 SPECIFIC ADAPTATIONS OF PROVISIONS IN RELATION TO STATUTORY ARBITRATIONS

(1) The following provisions of Part I apply to a statutory arbitration with the following adaptations.

Section 96(1) of the English Arbitration Act 1996 specifies that certain provisions of Part I of the Act, which deals with “Arbitration Agreements” and the conduct of arbitration proceedings, apply to a statutory arbitration with specific adaptations. This means that even though the statutory arbitration is established under a specific enactment (law or statutory provision), certain provisions of Part I will be applicable to it, but with necessary modifications or adjustments.

The specific adaptations may be needed to ensure that the provisions of Part I are compatible with the unique features or requirements of the particular statutory arbitration. These adaptations may include modifications to procedural aspects, the scope of the arbitration, the enforcement of awards, or any other relevant matters.

The goal of incorporating these provisions with adaptations is to maintain a degree of consistency and procedural fairness in statutory arbitrations while recognising the distinctive context and objectives of each particular statutory scheme. By doing so, the Act seeks to strike a balance between the overall framework of Part I and the specific requirements of statutory arbitrations established under different enactments.

(2) In section 30(1) (competence of tribunal to rule on its own jurisdiction), the reference in paragraph (a) to whether there is a valid arbitration agreement shall be construed as a reference to whether the enactment applies to the dispute or difference in question.

Section 96(2) of the English Arbitration Act 1996 provides a specific adaptation to Section 30(1) of the Act, which deals with the competence of the arbitral tribunal to rule on its own jurisdiction. In a statutory arbitration context, section 30(1)(a) is modified to change the reference of “whether there is a valid arbitration agreement” to “whether the enactment applies to the dispute or difference in question”.

In a regular arbitration under Part I of the Act, section 30(1)(a) allows the arbitral tribunal to determine whether there is a valid arbitration agreement between the parties. However, in a statutory arbitration, there might not be a traditional arbitration agreement as parties are compelled to arbitrate under a specific enactment or statutory provision.

Instead of assessing the existence or validity of a traditional arbitration agreement, section 96(2) substitutes the reference in section 30(1)(a) with the question of whether the particular enactment or statute applies to the dispute or difference at hand. This means that the tribunal’s jurisdiction in a statutory arbitration will extend to deciding whether the dispute falls within the scope of the relevant enactment that mandates arbitration.

The modification ensures that the arbitral tribunal in a statutory arbitration focuses on the fundamental question of whether the dispute is subject to the statutory arbitration mechanism rather than determining the existence of a standalone arbitration agreement. It reflects the distinct nature of statutory arbitrations where parties are brought into arbitration by force of law rather than voluntary agreement.

(3) Section 35 (consolidation of proceedings and concurrent hearings) applies only so as to authorise the consolidation of proceedings, or concurrent hearings in proceedings, under the same enactment.

Section 96(3) of the English Arbitration Act 1996 provides a specific adaptation to section 35 of the Act, which deals with the consolidation of proceedings and concurrent hearings. In the context of statutory arbitrations, section 35 is modified to limit its application to situations where the proceedings are brought under the same enactment or statutory provision.

In a regular arbitration under Part I of the Act, section 35 allows for the consolidation of two or more arbitral proceedings or the holding of concurrent hearings when certain conditions are met. This consolidation or concurrent hearing may involve disputes arising from different arbitration agreements between the same parties or disputes arising under the same arbitration agreement but between different parties.

However, in a statutory arbitration context, section 96(3) restricts the scope of section 35 to only permit consolidation or concurrent hearings in proceedings that arise under the same enactment. This means that if there are multiple statutory arbitrations mandated by different enactments or statutes, they cannot be consolidated or heard concurrently under section 35 of the Act.

The modification ensures that section 35’s provisions are limited to statutory arbitrations that have a common legislative basis, thereby preventing the consolidation of unrelated statutory arbitration proceedings or concurrent hearings involving disputes governed by different enactments. The aim is to maintain the integrity and separation of different statutory arbitration regimes, reflecting the distinct nature of each statutory scheme.

(4) Section 46 (rules applicable to substance of dispute) applies with the omission of subsection (1)(b) (determination in accordance with considerations agreed by parties).

Section 96(4) of the English Arbitration Act 1996 provides a specific adaptation to section 46 of the Act, which deals with the rules applicable to the substance of the dispute in arbitration proceedings. In the context of statutory arbitrations, Section 46 is modified by the omission of subsection (1)(b).

Under normal circumstances in an arbitration governed by Part I of the Act, section 46(1)(b) allows the arbitral tribunal to decide the dispute “in accordance with such other considerations as are agreed by

the parties”. In other words, the parties to the arbitration agreement may agree that the tribunal can take into account certain considerations or factors beyond the strict application of the law when making its decision.

However, in the context of statutory arbitrations, section 96(4) removes this option. It means that, for statutory arbitrations, the arbitral tribunal is bound to decide the dispute based solely on the relevant law and legal principles applicable to the statutory provisions under which the arbitration is conducted. The tribunal cannot consider other considerations that the parties may have agreed upon in the arbitration agreement.

By omitting section 46(1)(b), section 96(4) ensures that the arbitration tribunal in statutory arbitrations is restricted to making decisions based exclusively on the legal framework and statutory provisions governing the specific statutory arbitration. This adaptation prevents parties from introducing additional considerations into the statutory arbitration process that are not directly derived from the relevant legislation or enactment creating the statutory arbitration scheme.

97 PROVISIONS EXCLUDED FROM APPLYING TO STATUTORY ARBITRATIONS

(1) The following provisions of Part I do not apply in relation to a statutory arbitration—

- (a) section 8 (whether agreement discharged by death of a party);**
- (b) section 12 (power of court to extend agreed time limits);**
- (c) sections 9(5), 10(2) and 71(4) (restrictions on effect of provision that award condition precedent to right to bring legal proceedings).**

Section 97(1) of the English Arbitration Act 1996 outlines the provisions of Part I that do not apply to a statutory arbitration. These provisions are as follows:

1. Section 8: This section deals with the question of whether an arbitration agreement is discharged by the death of a party. In a statutory arbitration, the application of this provision is excluded. Therefore, the death of a party to a statutory arbitration would not automatically discharge the arbitration agreement.
2. Section 12: This section relates to the power of the court to extend agreed time limits in arbitration proceedings. In the context of statutory arbitrations, this provision is not applicable. As a result, the court does not have the authority to extend any time limits agreed upon by the parties in the statutory arbitration.
3. Sections 9(5), 10(2), and 71(4): These sections concern the restrictions on the effect of a provision in an agreement that makes the arbitral award a condition precedent to the right to bring legal proceedings. In statutory arbitrations, the application of these restrictions is excluded. This means that a statutory arbitration agreement may include a provision that makes the arbitral award a condition precedent to initiating legal proceedings related to the dispute.

By excluding these specific provisions from the application to statutory arbitrations, the Act allows for different rules and procedures in cases involving statutory arbitration. The exclusion ensures that the

particular features and requirements of statutory arbitration are respected and that the provisions of Part I of the Act, which deal with general arbitration agreements, do not conflict with the specific statutory scheme.

98 POWER TO MAKE FURTHER PROVISION BY REGULATIONS

(1) The Secretary of State may make provision by regulations for adapting or excluding any provision of Part I in relation to statutory arbitrations in general or statutory arbitrations of any particular description.

Section 98(1) of the English Arbitration Act 1996 empowers the Secretary of State to create regulations that adapt or exclude any provision of Part I of the Act concerning statutory arbitrations. Statutory arbitrations are those conducted under a specific enactment or statutory provision, rather than through a separate arbitration agreement.

This provision grants the Secretary of State the authority to modify the application of Part I to suit the unique characteristics and requirements of statutory arbitrations. The regulations may include adjustments to specific provisions of Part I or even exclude certain provisions entirely if they are not compatible with the statutory arbitration process.

By granting this regulatory power to the Secretary of State, the Act aims to facilitate a more flexible and tailored approach to statutory arbitrations. This ensures that the regulations governing these types of arbitrations align with the relevant statutory scheme and meet the specific needs of the disputes being resolved through statutory arbitration processes.

(2) The power is exercisable whether the enactment concerned is passed or made before or after the commencement of this Act.

Section 98(2) of the English Arbitration Act 1996 clarifies that the power granted to the Secretary of State to make regulations under section 98(1) is not limited to enactments that exist at the time the Act comes into force. Instead, this power can be exercised regardless of whether the enactment concerned was passed or made before or after the commencement of the Arbitration Act.

This means that the Secretary of State can adapt or exclude provisions of Part I of the Arbitration Act in relation to statutory arbitrations conducted under enactments that may come into effect in the future. The provision gives the government the flexibility to ensure that the arbitration framework remains up-to-date and relevant, even as new statutes and legal mechanisms are introduced. By having the authority to make necessary adjustments, the legislation can better accommodate and regulate any future statutory arbitration procedures effectively.

(3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 98(3) of the English Arbitration Act 1996 outlines the procedure for making regulations under section 98(1). According to this provision, any regulations made by the Secretary of State to adapt or

exclude provisions of Part I in relation to statutory arbitrations must be in the form of a statutory instrument. A statutory instrument is a type of delegated legislation that allows the government to make detailed rules and regulations without the need for a full Act of Parliament.

Furthermore, the statutory instrument containing the regulations must be laid before both Houses of Parliament for consideration. However, unlike primary legislation, which requires a full debate and approval by both Houses, the regulations made under section 98(1) are subject to a different level of scrutiny. They are subject to annulment in pursuance of a resolution of either House of Parliament. This means that either the House of Commons or the House of Lords has the power to disapprove or annul the regulations by passing a resolution against them. This mechanism provides a form of parliamentary control and oversight over the regulations and ensures that the provisions introduced are subject to scrutiny by elected representatives.

PART III — RECOGNITION AND ENFORCEMENT OF CERTAIN FOREIGN AWARDS

ENFORCEMENT OF GENEVA CONVENTION AWARDS

99 CONTINUATION OF PART II OF THE ARBITRATION ACT 1950

Part II of the Arbitration Act 1950 (enforcement of certain foreign awards) continues to apply in relation to foreign awards within the meaning of that Part which are not also New York Convention awards.

Section 99 of the English Arbitration Act 1996 deals with the enforcement of foreign arbitral awards and specifies the applicability of Part II of the Arbitration Act 1950 in relation to such awards.

The key points of Section 99 are as follows:

1. **Part II of the Arbitration Act 1950:** Part II of the Arbitration Act 1950 is a set of provisions that deals with the enforcement of certain foreign arbitral awards in the United Kingdom.
2. **Enforcement of Foreign Awards:** Part II of the Arbitration Act 1950 continues to apply to foreign awards within the meaning of that Part.
3. **Exclusion of New York Convention Awards:** The application of Part II of the Arbitration Act 1950 under section 99 is limited to foreign awards that are not also New York Convention awards.

Explanation:

1. Part II of the Arbitration Act 1950 provides a mechanism for the enforcement of foreign awards that meet certain criteria. These criteria include awards made in territories to which the provisions of the 1950 Act apply, and they must be awards made in pursuance of an agreement for arbitration that is not covered by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
2. The New York Convention is an international treaty aimed at facilitating the enforcement of arbitral awards in different countries. Awards falling under the New York Convention generally have a more straightforward enforcement process across the participating countries.
3. Section 99 of the English Arbitration Act 1996, by allowing Part II of the Arbitration Act 1950 to continue applying to foreign awards not covered by the New York Convention, provides an alternative enforcement route for awards from certain territories or jurisdictions that are not part of the New York Convention or awards that do not meet the criteria for recognition under the Convention.

It is important to note that section 99 was applicable to the English legal framework before the enactment of the New York Convention on 16th September 1958. Any changes or amendments to the New York Convention or the Arbitration Act 1950 after the knowledge cut-off of this AI model may not be reflected in this analysis.

RECOGNITION AND ENFORCEMENT OF NEW YORK CONVENTION AWARDS

100 NEW YORK CONVENTION AWARDS

- (1) In this Part a “New York Convention award” means an award made, in pursuance of an arbitration agreement, in the territory of a state (other than the United Kingdom) which is a party to the New York Convention.

Section 100(1) of the English Arbitration Act 1996 defines the term “New York Convention award” for the purposes of Part III of the Act, which deals with the enforcement of foreign arbitral awards falling under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The key point of section 100(1) is as follows:

1. Definition of New York Convention Award: In Part III of the English Arbitration Act 1996, a “New York Convention award” means an award that meets the following criteria:
2. The award must be made in pursuance of an arbitration agreement, which means it is a result of a valid and enforceable agreement to resolve disputes through arbitration.
3. The award must be made in the territory of a state that is a party to the New York Convention. The New York Convention is an international treaty aimed at facilitating the recognition and enforcement of foreign arbitral awards in participating countries.

Explanation:

1. The New York Convention is one of the most significant international instruments in the field of international arbitration. It has been adopted by a large number of countries worldwide to promote the recognition and enforcement of foreign arbitral awards in a simplified and efficient manner.
2. A New York Convention award is an arbitral award that fulfils the criteria set out in the Convention and is rendered in a territory of a country that is a signatory to the New York Convention. The Convention’s central purpose is to remove barriers to the enforcement of arbitral awards across borders, making it easier for parties to enforce awards obtained in one Convention country in another.
3. The definition of “New York Convention award” provided in section 100(1) is crucial for the implementation of Part III of the English Arbitration Act 1996. Part III sets out the procedures for the enforcement of New York Convention awards in England and Wales, as well as in Northern Ireland.

It is important to note that the definition provided in section 100(1) was current as of the knowledge cut-off date of this AI model (September 2021). Any subsequent changes to the New York Convention or relevant international treaties would not be reflected in this analysis.

(2) For the purposes of subsection (1) and of the provisions of this Part relating to such awards—

- (a) “arbitration agreement” means an arbitration agreement in writing, and
- (b) an award shall be treated as made at the seat of the arbitration, regardless of where it was signed, despatched or delivered to any of the parties.

In this subsection “agreement in writing” and “seat of the arbitration” have the same meaning as in Part I.

Section 100(2) of the English Arbitration Act 1996 provides specific interpretations and rules for the purposes of defining and enforcing New York Convention awards under Part III of the Act. The subsection is divided into two parts:

1. Definition of “Arbitration Agreement”:
2. According to section 100(2)(a), for the purposes of determining whether an award qualifies as a New York Convention award and for enforcing such awards under Part III of the Act, the term “arbitration agreement” has the same meaning as in Part I of the Act.
3. Part I of the Act deals with general provisions related to arbitration agreements, including their validity, form, and interpretation. Therefore, an “arbitration agreement” in this context must meet the criteria specified in Part I, including being in writing, whether in a document signed by the parties or in an exchange of letters, telex, telegrams, or other means of communication providing a record of the agreement.

Seat of the Arbitration:

1. According to section 100(2)(b), for the purposes of determining the enforcement of New York Convention awards, the seat of the arbitration is of particular significance. Regardless of where the award was signed, despatched, or delivered to the parties, it shall be treated as made at the “seat of the arbitration”.
2. The “seat of the arbitration” has the same meaning as in Part I of the Act. It is the legal place where the arbitration is deemed to have its closest connection, and it often determines the legal framework governing the arbitration proceedings and the courts with supervisory jurisdiction over the arbitration.

Explanation:

1. Section 100(2) provides essential definitions and clarifications to facilitate the enforcement of New York Convention awards in the United Kingdom.
2. The requirement that the arbitration agreement must be in writing is in line with the New York Convention’s provisions. The Convention, in Article II(2), requires that an arbitration agreement must be in writing, and its requirements are widely interpreted to encompass agreements concluded by various means, including written documents and electronic communications.
3. The significance of the seat of the arbitration is underscored in international arbitration because it determines the legal framework and procedural rules governing the

arbitration. Treating the award as made at the seat ensures that the courts of the country where the arbitration has its seat have supervisory jurisdiction over the award and can exercise control over any potential challenges or enforcement proceedings.

It is important to note that the definitions of “arbitration agreement” and “seat of the arbitration” provided in section 100(2) refer to the meanings ascribed to these terms in Part I of the Act. Therefore, any specific requirements or rules related to these terms in Part I also apply to New York Convention awards for enforcement purposes.

(3) If Her Majesty by Order in Council declares that a state specified in the Order is a party to the New York Convention, or is a party in respect of any territory so specified, the Order shall, while in force, be conclusive evidence of that fact.

Section 100(3) of the English Arbitration Act 1996 introduces a mechanism to determine whether a state is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The subsection outlines the role of an Order in Council in making a conclusive determination of a state’s status with respect to its participation in the New York Convention. Explanation:

1. The New York Convention is an international treaty that aims to facilitate the recognition and enforcement of foreign arbitral awards among contracting states. As of my knowledge cut-off date in September 2021, the New York Convention has been widely ratified, with numerous countries being parties to it.
2. Section 100(3) provides a procedure for officially recognising a state’s status as a party to the New York Convention. If Her Majesty, by Order in Council, declares that a specific state is a party to the New York Convention or is a party in respect of any specified territory, that declaration is considered conclusive evidence of that fact.
3. The use of “Order in Council” refers to a legal instrument used by the British government to make decisions without requiring parliamentary approval. Orders in Council are issued by the Queen on the advice of the Privy Council or the Cabinet.
4. By making an Order in Council declaring a state’s status in relation to the New York Convention, the Act ensures a straightforward and authoritative method for determining whether a state is a party to the Convention. This method avoids the need for case-by-case verification, and the Order, while in force, serves as conclusive evidence of the state’s status.

It is important to note that the information regarding state parties to international conventions may change over time due to new accessions, ratifications, or denunciations. Therefore, the actual list of states party to the New York Convention should be verified with up-to-date sources, such as official government records and relevant international organisations.

The purpose of this provision is to streamline the process of confirming a state’s status in relation to the New York Convention, ensuring legal certainty and consistency in international arbitration and the enforcement of foreign arbitral awards.

(4) In this section “the New York Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10th June 1958.

Section 100(4) of the English Arbitration Act 1996 provides a specific definition of “the New York Convention” for the purposes of this Act. The subsection clarifies that when the Act refers to “the New York Convention”, it is referring to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which was adopted by the United Nations Conference on International Commercial Arbitration on 10th June 1958. Explanation:

1. The New York Convention is an international treaty that aims to promote the recognition and enforcement of foreign arbitral awards among contracting states. Its primary objective is to facilitate the enforcement of arbitral awards issued in one member state in the territory of another member state, making it easier for parties to enforce their rights and seek remedies in international arbitration.
2. The Convention was adopted by the United Nations Conference on International Commercial Arbitration, also known as the “New York Conference”, which took place in New York on 10th June 1958. The Conference was attended by representatives from various countries and led to the establishment of the New York Convention as a framework for the recognition and enforcement of foreign arbitral awards.
3. By incorporating the specific date and context of the New York Convention’s adoption, Section 100(4) ensures clarity and precision in identifying the treaty to which the Act refers. It confirms that the New York Convention being mentioned in the Act is the one adopted in 1958.
4. It is common for legal documents and statutes to include precise references to international treaties or conventions to avoid any ambiguity or confusion, especially when multiple conventions share similar names or abbreviations.
5. The New York Convention has been widely ratified and is considered one of the most important international instruments in the field of international arbitration. As of my knowledge cut-off date in September 2021, it has been adopted by numerous countries worldwide and continues to play a significant role in facilitating the enforcement of arbitral awards in cross-border disputes.

It is essential to keep in mind that conventions and treaties may be amended or modified over time, and new conventions with similar objectives may be established. As a result, any updates or amendments to the New York Convention after the knowledge cut-off date would need to be verified with official sources.

101 RECOGNITION AND ENFORCEMENT OF AWARDS

- (1) A New York Convention award shall be recognised as binding on the persons as between whom it was made, and may accordingly be relied on by those persons by way of defence, set-off or otherwise in any legal proceedings in England and Wales or Northern Ireland.**

Section 101(1) of the English Arbitration Act 1996 pertains to the recognition and enforceability of New York Convention awards in England and Wales or Northern Ireland. This provision ensures that such awards are given full effect and are considered legally binding on the parties involved.
Explanation:

1. “New York Convention award” refers to an arbitral award made in pursuance of an arbitration agreement in the territory of a state that is a party to the New York Convention (as defined in section 100(1)).
2. The provision states that a New York Convention award shall be recognised as binding on the parties between whom it was made. In other words, once an arbitral tribunal issues an award in accordance with the New York Convention, that award carries the same legal force as a court judgment, and the parties are obligated to comply with its terms.
3. The award can be relied upon by the parties in any legal proceedings within the jurisdictions of England and Wales or Northern Ireland. This means that if a dispute arises between the parties covered by the award, the prevailing party can use the award as a defence, set-off, or any other relevant purpose in subsequent legal proceedings.
4. “By way of defence, set-off, or otherwise” means that the New York Convention award can be used by the parties to protect their interests or assert their rights in response to claims or actions brought against them in court. It allows parties to invoke the award as evidence or as a legal basis for their position in litigation or other legal processes.
5. The recognition and enforceability of New York Convention awards are essential elements of the Convention’s objective to facilitate the efficient resolution of international commercial disputes through arbitration. By recognising the finality and enforceability of arbitral awards, the New York Convention enhances the attractiveness and effectiveness of international arbitration as an alternative to court litigation.
6. The enforcement of New York Convention awards in England and Wales or Northern Ireland is governed by the relevant provisions of the Arbitration Act 1996, which include the detailed procedures for seeking recognition and enforcement.

It is important to note that while the Act applies to England and Wales or Northern Ireland, similar principles for recognising and enforcing New York Convention awards are found in other jurisdictions worldwide that are parties to the Convention.

(2) A New York Convention award may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.

As to the meaning of “the court” see section 105.

Section 101(2) of the English Arbitration Act 1996 addresses the enforcement of a New York Convention award in England and Wales or Northern Ireland. It provides a mechanism for recognising and enforcing such awards in a manner similar to a domestic judgment or court order. Key points regarding section 101(2):

1. **Enforcement of New York Convention Award:** Once a New York Convention award has been recognised by the court, the winning party (the party in whose favour the award was made) can seek enforcement of the award. This enforcement allows the successful party to obtain the benefits awarded to them under the award.
2. **Leave of the Court:** Before a New York Convention award can be enforced as a judgment or order of the court, the winning party must obtain “leave of the court”. This means that the successful party must seek permission from the court to proceed with the enforcement process.
3. **Enforcement as a Judgment or Order:** With the court’s permission (leave), the New York Convention award can be enforced in the same manner as a judgment or order of the court. This includes all the remedies and mechanisms available for enforcing court judgments in England and Wales or Northern Ireland, such as the issuance of a writ of execution to recover monetary awards or other remedies ordered by the arbitral tribunal.
4. **Meaning of “The Court”:** Section 101(2) refers to “the court” as the authority responsible for granting leave to enforce the New York Convention award. The specific court is determined based on the jurisdiction in which the enforcement is sought. For clarity on the court’s identity, reference is made to Section 105 of the Arbitration Act 1996.

Overall, section 101(2) of the English Arbitration Act 1996 reinforces the enforceability of New York Convention awards and provides an effective mechanism for parties to enforce their rights and benefits arising from such awards in England and Wales or Northern Ireland.

(3) Where leave is so given, judgment may be entered in terms of the award.

Section 101(3) of the English Arbitration Act 1996 provides a straightforward process for converting a New York Convention award, for which leave has been granted for enforcement, into a court judgment. Once the court grants leave to enforce the New York Convention award, the winning party can apply to the court for judgment to be entered in terms of the award. Key points regarding section 101(3):

1. **Conversion to Judgment:** When the court grants leave for enforcement of a New York Convention award, it essentially acknowledges the award’s validity and enforces it as if it were a judgment or order of the court. This allows the successful party to execute the award’s terms using the court’s enforcement mechanisms.
2. **Simplified Process:** By converting the award into a judgment, the winning party can rely on the usual procedures and enforcement mechanisms available for enforcing court

judgments in England and Wales or Northern Ireland. This streamlines the enforcement process and provides an efficient means of obtaining the benefits awarded under the New York Convention award.

3. **Legal Effect:** Once the New York Convention award is converted into a court judgment, it gains the legal force and effect of a judgment or order issued by the court. The winning party can then enforce the judgment through various means, such as seizure of assets, freezing orders, or other enforcement measures provided by the court.

In summary, section 101(3) of the English Arbitration Act 1996 simplifies the enforcement process for New York Convention awards by allowing them to be converted into court judgments. This grants the winning party access to the court's enforcement mechanisms, making it easier to enforce the award and obtain the benefits awarded under the arbitration.

102 EVIDENCE TO BE PRODUCED BY PARTY SEEKING RECOGNITION OR ENFORCEMENT

(1) A party seeking the recognition or enforcement of a New York Convention award must produce—

- (a) the duly authenticated original award or a duly certified copy of it, and**
- (b) the original arbitration agreement or a duly certified copy of it.**

Section 102(1) of the English Arbitration Act 1996 outlines the documentary requirements for a party seeking the recognition or enforcement of a New York Convention award in England and Wales or Northern Ireland. To facilitate the process, the party seeking recognition or enforcement must produce the following documents:

1. **Duly Authenticated Original Award or Certified Copy:** The party must provide either the original New York Convention award, which has been duly authenticated, or a certified copy of the award. A duly authenticated original award is an original award that has been verified or certified by the competent authority in the country where the arbitration took place or where the award was rendered. If the party cannot produce the original award, a certified copy, which is a copy of the award that has been officially verified as a true and accurate reproduction of the original, may be submitted instead.
2. **Original Arbitration Agreement or Certified Copy:** In addition to the award, the party must produce the original arbitration agreement that formed the basis for the arbitration proceedings. This agreement sets out the parties' agreement to submit their disputes to arbitration. If the original arbitration agreement is not available, a certified copy of the agreement can be provided.

These documentary requirements are crucial for the court to determine the validity and authenticity of the New York Convention award and the existence of a valid arbitration agreement between the parties. By providing the authenticated award and the arbitration agreement, the party seeking recognition or enforcement establishes the necessary foundation for the court to proceed with the enforcement process under the New York Convention.

It is important to note that the requirements of section 102(1) apply specifically to parties seeking recognition or enforcement of New York Convention awards, and failure to comply with these documentary requirements may hinder the enforcement process.

(2) If the award or agreement is in a foreign language, the party must also produce a translation of it certified by an official or sworn translator or by a diplomatic or consular agent.

Section 102(2) of the English Arbitration Act 1996 provides an additional requirement for parties seeking the recognition or enforcement of a New York Convention award when the award or the arbitration agreement is in a foreign language. In such cases, the party must submit a certified translation of the award or the agreement along with the original or certified copy. The key points of section 102(2) are as follows:

1. Foreign Language Documents: If the New York Convention award or the arbitration agreement is written in a foreign language not understood by the court, it is necessary to provide an accurate translation into a language the court can comprehend.
2. Certified Translation: The translation must be certified by an official or sworn translator, or by a diplomatic or consular agent. This requirement ensures the accuracy and reliability of the translation, as it is certified by a competent authority or qualified professional who is proficient in both languages.

The purpose of requiring a certified translation is to enable the court to understand the contents and implications of the New York Convention award and the arbitration agreement. This ensures that the court can properly assess whether the award meets the criteria for recognition and enforcement under the New York Convention.

By providing a certified translation, the party seeking recognition or enforcement ensures that all relevant information is accessible to the court, facilitating the recognition or enforcement process. Failing to provide a certified translation when required could potentially delay or hinder the enforcement proceedings.

103 REFUSAL OF RECOGNITION OR ENFORCEMENT

(1) Recognition or enforcement of a New York Convention award shall not be refused except in the following cases.

Section 103(1) of the English Arbitration Act 1996 outlines the limited grounds upon which recognition or enforcement of a New York Convention award may be refused. The New York Convention is designed to promote the recognition and enforcement of foreign arbitral awards, and the principle of limited grounds for refusal is central to its objectives. The key points of section 103(1) are as follows:

1. Limited Grounds for Refusal: Recognition or enforcement of a New York Convention award shall only be refused in specific cases specified by law.
2. Exclusive Grounds: The grounds for refusal mentioned in Section 103(1) represent the exclusive and exhaustive list of reasons for which recognition or enforcement may be

denied. In other words, the court cannot refuse enforcement on any other grounds beyond those provided in this section.

3. It is essential to understand the specific grounds for refusal mentioned in Section 103(1). These grounds include:
 - a. Incapacity: Recognition or enforcement may be refused if a party to the arbitration agreement was under some legal incapacity under the law applicable to them.
 - b. Invalid Arbitration Agreement: If the arbitration agreement was not valid under the law to which the parties subjected it, or if there was no indication of the applicable law, and the agreement is found to be invalid under the law of the country where the award was made, the court may refuse recognition or enforcement.
 - c. Lack of Proper Notice: If a party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present their case, recognition or enforcement may be refused.
 - d. Matters Beyond the Submission: If the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission, recognition or enforcement may be refused.
 - e. Procedural Irregularities: Recognition or enforcement may be denied if the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country in which the arbitration took place.
 - f. Non-Binding or Set Aside Award: If the award has not yet become binding on the parties, or if it has been set aside or suspended by a competent authority in the country where it was made, recognition or enforcement may be refused.

The limited and specific grounds for refusal under the New York Convention are intended to ensure that foreign arbitral awards are generally enforceable and that the enforcement process is consistent and predictable across different jurisdictions. This promotes international trade and the finality and enforceability of arbitral awards worldwide.

- (2) Recognition or enforcement of the award may be refused if the person against whom it is invoked proves—
- (a) that a party to the arbitration agreement was (under the law applicable to him) under some incapacity;
 - (b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made;
 - (c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;
 - (d) that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration (but see subsection (4));
 - (e) that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country in which the arbitration took place;
 - (f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

Section 103(2) of the English Arbitration Act 1996 outlines the grounds on which recognition or enforcement of a New York Convention award may be refused. Despite being recognised as binding and enforceable under section 101(1), there are circumstances where a party may seek to challenge or resist enforcement based on certain specified grounds. Explanation of the grounds for refusal:

1. Incapacity: Recognition or enforcement may be refused if a party to the arbitration agreement was legally incapacitated under the law applicable to them. For example, if a party was under-age, lacked mental capacity, or was subject to legal restrictions that prevented them from entering into the arbitration agreement.
2. Invalid Arbitration Agreement: If a party can demonstrate that the arbitration agreement was not valid under the law to which the parties subjected it, or under the law of the country where the award was made, the recognition or enforcement may be refused. This could arise if the agreement was not in writing as required by the law or if the parties did not comply with other formalities specified by the applicable law.
3. Lack of Proper Notice or Inability to Present Case: If a party can show that they were not properly notified of the appointment of the arbitrator or of the arbitration proceedings, or if they were otherwise unable to present their case, recognition or enforcement may be refused. This is to ensure that parties have a fair opportunity to participate in the arbitration process and defend their interests.
4. Award Exceeds Scope of Submission: Recognition or enforcement may be refused if the award deals with a dispute that was not contemplated by or does not fall within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the

submission. However, there is an exception to this ground under subsection (4) of Section 101.

5. **Non-Compliance with Arbitral Procedure:** If the composition of the arbitral tribunal or the arbitral procedure used was not in accordance with the agreement of the parties or, in the absence of such agreement, with the law of the country in which the arbitration took place, recognition or enforcement may be refused. This is to ensure that parties receive the procedural fairness they agreed upon.
6. **Award Not Binding, Set Aside, or Suspended:** Recognition or enforcement may be refused if the award has not yet become binding on the parties, or if it has been set aside or suspended by a competent authority in the country where it was made or under the law governing that country.

It is essential to note that these grounds for refusal are intended to safeguard the integrity and fairness of the arbitration process and ensure that the enforcement of New York Convention awards does not violate fundamental principles of justice or public policy in the enforcing country.

(3) Recognition or enforcement of the award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to recognise or enforce the award.

Section 103(3) of the English Arbitration Act 1996 provides additional grounds on which recognition or enforcement of a New York Convention award may be refused. These grounds are aimed at maintaining the integrity of the arbitral process and protecting fundamental principles of justice and public policy.

Explanation of the grounds for refusal:

1. **Matter Not Capable of Settlement by Arbitration:** Recognition or enforcement may be refused if the subject matter of the award is not capable of being resolved through arbitration. Certain types of disputes may be considered inappropriate for arbitration due to their nature or complexity. For example, matters involving criminal offenses or issues of public law might not be suitable for private arbitration.
2. **Contrary to Public Policy:** Recognition or enforcement of the award may be refused if doing so would be contrary to public policy in the enforcing jurisdiction. This is an essential safeguard to prevent the enforcement of awards that violate fundamental principles of justice or go against the public interest. The concept of public policy is not precisely defined in the Act and is subject to the interpretation of the court based on the prevailing legal and moral values in the jurisdiction.

It is essential to recognise that the grounds for refusal under section 103(3) are aimed at ensuring that the recognition and enforcement of New York Convention awards do not undermine the principles of fairness, justice, and public policy in the enforcing country. The courts have the authority to review and assess the award's compliance with these grounds to prevent enforcement of awards that could be prejudicial to the public interest or contrary to the values of the jurisdiction where recognition or enforcement is sought.

- (4) An award which contains decisions on matters not submitted to arbitration may be recognised or enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those on matters not so submitted.**

Section 103(4) of the English Arbitration Act 1996 addresses situations where a New York Convention award contains decisions on both matters submitted to arbitration and matters that were not part of the arbitration agreement or submission. This provision establishes the principle of severability, allowing for partial recognition and enforcement of an award that addresses both arbitrable and non-arbitrable issues. Explanation of the principle of severability:

1. **Matters Not Submitted to Arbitration:** If an award includes decisions on issues that were not part of the arbitration agreement or submission, those decisions are not enforceable. In other words, the non-arbitrable matters cannot be recognised or enforced through the New York Convention procedure.
2. **Matters Submitted to Arbitration:** However, if the award also contains decisions on matters that were properly submitted to arbitration, those decisions can still be recognised and enforced. The enforceable portion of the award pertains to the arbitrable issues that were legitimately subject to the arbitration process.
3. **Separability of Arbitrable and Non-Arbitrable Matters:** The principle of severability allows the court to separate the arbitrable matters from the non-arbitrable ones and enforce the former while disregarding the latter. The court will review the award to determine if the arbitrable and non-arbitrable issues can be easily distinguished and separated.

The purpose of this provision is to avoid rendering the entire award unenforceable merely because it addresses both arbitrable and non-arbitrable matters. By allowing partial enforcement, the Act aims to uphold the valid decisions of the arbitral tribunal while respecting the limitations of arbitration and the jurisdiction of courts over certain issues.

- (5) Where an application for the setting aside or suspension of the award has been made to such a competent authority as is mentioned in subsection (2)(f), the court before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the recognition or enforcement of the award.**

It may also on the application of the party claiming recognition or enforcement of the award order the other party to give suitable security.

Section 103(5) of the English Arbitration Act 1996 provides certain measures that the court may take when an application has been made to set aside or suspend a New York Convention award. The section allows the court to adjourn the decision on the recognition or enforcement of the award if such an application is pending before a competent authority as mentioned in subsection (2)(f). Additionally, the court may order the party seeking recognition or enforcement of the award to provide suitable security upon the application of the other party. The key points of section 103(5) are as follows:

1. **Adjournment of Decision:** If an application has been made to set aside or suspend the New York Convention award before a competent authority, the court before which the

recognition or enforcement of the award is sought may choose to adjourn its decision. This means that the court may delay ruling on the recognition or enforcement of the award until the outcome of the application before the competent authority is known. The purpose of this provision is to avoid potential conflicting decisions regarding the enforceability of the award.

2. Security for Recognition or Enforcement: In certain cases, the court may order the party claiming recognition or enforcement of the award to provide suitable security. This security serves as a financial guarantee to the other party in case the award is later set aside or otherwise found unenforceable. The court has the discretion to decide whether such security is necessary and what form it should take.

These provisions aim to strike a balance between the need for efficiency and finality in the recognition and enforcement of arbitral awards while respecting the due process rights of parties to challenge awards under the New York Convention. By allowing the court to adjourn its decision when an application is pending before a competent authority, the Act ensures that there is no rush to enforce the award while its validity is being examined. Additionally, the possibility of ordering security provides a measure of protection for the party opposing the recognition or enforcement of the award, mitigating potential harm in case the award is later invalidated.

104 SAVING FOR OTHER BASES OF RECOGNITION OR ENFORCEMENT

- (1) Nothing in the preceding provisions of this Part affects any right to rely upon or enforce a New York Convention award at common law or under section 66.**

Section 104(1) of the English Arbitration Act 1996 clarifies the relationship between the provisions of Part III of the Act (which deals with the recognition and enforcement of New York Convention awards) and other rights to rely upon or enforce such awards. The key point of section 104(1) is as follows:

Section 104(1) reinforces that nothing in the preceding provisions of Part III of the Act, which specifically govern the recognition and enforcement of New York Convention awards, affects any right to rely upon or enforce a New York Convention award at common law or under Section 66 of the Act.

In essence, section 104(1) preserves any existing rights that parties may have under the common law or other provisions of the Act to enforce New York Convention awards. It ensures that the availability of remedies for enforcing such awards is not restricted or limited by the specific procedures and requirements set out in Part III of the Act.

In practical terms, this means that parties seeking to enforce a New York Convention award in England and Wales or Northern Ireland may choose to rely on the provisions of Part III of the Act or pursue enforcement under other applicable laws, including the common law or Section 66 of the Act, as they see fit. This provision provides parties with flexibility in how they enforce New York Convention awards while ensuring that the statutory recognition and enforcement regime is not the exclusive option available to them.

PART IV — GENERAL PROVISIONS

105 MEANING OF “THE COURT”: JURISDICTION OF HIGH COURT AND COUNTY COURT

(1) In this Act “the court” in relation to England and Wales means the High Court or the county court and in relation to Northern Ireland means the High Court or a county court, subject to the following provisions.

Section 105(1) of the English Arbitration Act 1996 provides a definition of “the court” as it is used throughout the Act, specifically in relation to England and Wales and Northern Ireland. The definition of “the court” is significant because it determines which courts have jurisdiction over various matters arising under the Act. According to section 105(1):

1. In England and Wales: “The court” refers to both the High Court and the county court. This means that any references in the Act to actions, applications, or decisions that must be taken to court in England and Wales can be brought before either the High Court or the county court, depending on the circumstances and the nature of the case.
2. In Northern Ireland: “The court” refers to either the High Court or a county court. This means that any references in the Act to actions, applications, or decisions that must be taken to court in Northern Ireland can be brought before either the High Court or a county court, depending on the jurisdictional limits of the county court and the nature of the case.

The Act’s provisions will apply differently depending on whether the matter is brought before the High Court or the county court in England and Wales or Northern Ireland. The choice of court may depend on factors such as the complexity of the case, the amount in dispute, and the location of the parties involved.

It is important to note that “the court” may also include an eligible High Court judge or an official referee who has accepted an appointment as a sole arbitrator or umpire in accordance with Section 93 of the Act, but these are specific situations where judicial authorities act as arbitrators and not in their usual court capacity.

(2) The Lord Chancellor may by order make provision—

- (a) **allocating proceedings under this Act in England and Wales to the High Court or the county court;**
- (a) **allocating proceedings under this Act in Northern Ireland to the High Court or to county courts; or**
- (b) **specifying proceedings under this Act which may be commenced or taken only in the High Court or in the county court or (as the case may be) a county court.**

Section 105(2) of the English Arbitration Act 1996 grants the Lord Chancellor the authority to issue an order that allocates certain proceedings under the Act to either the High Court or the county court in England and Wales or the High Court or county courts in Northern Ireland. This allocation determines

which court or courts will have jurisdiction over specific types of proceedings related to arbitration under the Act.

The section outlines three main categories of orders that the Lord Chancellor may make:

1. **Allocating Proceedings:** The Lord Chancellor may issue an order that allocates proceedings under the Arbitration Act in England and Wales to either the High Court or the county court. This means that the order can determine which court will handle particular types of arbitration-related cases based on factors such as complexity, subject matter, or the amount in dispute.
2. **Allocating Proceedings in Northern Ireland:** Similar to the first point, the Lord Chancellor may make an order allocating proceedings under the Arbitration Act in Northern Ireland to either the High Court or county courts. This ensures that cases related to arbitration in Northern Ireland are handled by the appropriate court or courts as determined by the order.
3. **Specifying Proceedings:** The Lord Chancellor may issue an order that specifies certain proceedings under the Arbitration Act that may only be commenced or taken in the High Court or a county court (or county courts in Northern Ireland). This means that certain types of cases related to arbitration will have a prescribed court where they must be filed or heard.

The purpose of these orders is to streamline the process and ensure efficiency in the handling of arbitration-related matters under the Arbitration Act. By allocating specific types of proceedings to designated courts, the Lord Chancellor aims to provide clarity and consistency in the resolution of disputes arising from arbitration agreements. This arrangement helps in managing the workload of different courts and allows for a more tailored approach to resolving disputes based on their complexities and legal requirements.

(3) The Lord Chancellor may by order make provision requiring proceedings of any specified description under this Act in relation to which a county court in Northern Ireland has jurisdiction to be commenced or taken in one or more specified county courts.

Any jurisdiction so exercisable by a specified county court is exercisable throughout Northern Ireland.

Section 105(3) of the English Arbitration Act 1996 empowers the Lord Chancellor to issue an order that stipulates certain provisions regarding proceedings under the Act in Northern Ireland. Specifically, the Lord Chancellor can require that proceedings of a specific description related to the Act, in which a county court in Northern Ireland has jurisdiction, must be commenced or taken in one or more designated county courts.

This provision is primarily concerned with streamlining the administration of arbitration-related proceedings in Northern Ireland by designating specific county courts where certain types of cases must be filed or heard. By doing so, the Lord Chancellor aims to ensure efficiency and consistency in handling such proceedings.

Key points regarding section 105(3) are as follows:

1. **Designation of County Courts:** The Lord Chancellor can identify and specify one or more county courts in Northern Ireland where particular proceedings under the Act are required to be commenced or taken. This designation aims to ensure that cases related to the Act are centralised in designated courts, allowing for better management and resolution of such disputes.
2. **Exercisability of Jurisdiction:** Any jurisdiction granted to the specified county court(s) to handle the designated proceedings is exercisable throughout Northern Ireland. This means that the designated county court(s) will have the authority to hear and adjudicate on the specified cases, regardless of their geographic location within Northern Ireland.

Overall, section 105(3) grants the Lord Chancellor the flexibility to issue orders that centralise the handling of specific types of arbitration-related proceedings in Northern Ireland, thereby streamlining the judicial process and ensuring effective resolution of disputes arising from arbitration agreements within the region.

(3A) The Lord Chancellor must consult the Lord Chief Justice of England and Wales or the Lord Chief Justice of Northern Ireland (as the case may be) before making an order under this section.

Section 105(3A) of the English Arbitration Act 1996 imposes a requirement that the Lord Chancellor must consult with the Lord Chief Justice of England and Wales or the Lord Chief Justice of Northern Ireland (as applicable) before making an order under Section 105(3) of the Act. This provision ensures that there is a formal consultation process in place between the Lord Chancellor and the respective Lord Chief Justice, depending on whether the order pertains to England and Wales or Northern Ireland.

The purpose of this consultation requirement is to facilitate communication and collaboration between the executive and judicial branches of the legal system. By consulting with the relevant Lord Chief Justice, the Lord Chancellor can seek their input, insights, and recommendations on matters related to the allocation and handling of arbitration-related proceedings in the respective jurisdiction.

The involvement of the Lord Chief Justices in the decision-making process is crucial as they are the heads of the judiciary in their respective jurisdictions. Their expertise and knowledge of the court system, caseload, and resource availability can provide valuable guidance to the Lord Chancellor in making informed decisions about the allocation of proceedings under the Act.

In summary, section 105(3A) ensures that the Lord Chancellor engages in a consultative process with the Lord Chief Justices of England and Wales and Northern Ireland, allowing for a collaborative approach in making orders related to the allocation of arbitration-related proceedings within the court system. This collaboration helps to enhance the efficiency and effectiveness of the arbitration process and supports the smooth functioning of the justice system as a whole.

(3B) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.

Section 105(3B) of the English Arbitration Act 1996 provides the Lord Chief Justice of England and Wales with the authority to nominate a judicial office holder to exercise his functions under Section

105(3) of the Act. This provision is in accordance with the Constitutional Reform Act 2005, which defines a “judicial office holder” and sets out the framework for the administration of the judiciary.

The nomination of a judicial office holder by the Lord Chief Justice allows for the delegation of certain responsibilities and functions related to the allocation of proceedings under the Act. A “judicial office holder” refers to a person who holds an office within the judiciary and is responsible for carrying out judicial functions. Examples of judicial office holders may include district judges, circuit judges, or other judges appointed to specific positions within the court system.

By delegating the exercise of his functions under Section 105(3), the Lord Chief Justice can manage his workload effectively and ensure that decisions related to the allocation of arbitration proceedings are made promptly and efficiently. The nominated judicial office holder acts on behalf of the Lord Chief Justice and exercises the same functions and powers as if they were the Lord Chief Justice himself.

It is important to note that the nomination of a judicial office holder does not diminish the authority of the Lord Chief Justice, and he remains ultimately responsible for the decisions made under section 105(3). The delegation of responsibilities to a judicial office holder allows for a streamlined process and effective management of judicial functions without compromising the integrity and independence of the judiciary.

In summary, section 105(3B) allows the Lord Chief Justice of England and Wales to nominate a judicial office holder to perform his functions related to the allocation of arbitration-related proceedings under the English Arbitration Act 1996. This provision ensures that the workload is managed efficiently and enables timely decision-making in relation to the allocation of proceedings, while preserving the authority and accountability of the Lord Chief Justice.

(3C) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this section—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;**
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).**

Section 105(3C) of the English Arbitration Act 1996 pertains to the Lord Chief Justice of Northern Ireland and empowers him to nominate specific individuals to exercise his functions under Section 105(3) of the Act. The nominated individuals must belong to one of the following categories:

1. The holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002: This refers to individuals who hold particular offices within the justice system in Northern Ireland as specified in Schedule 1 of the Justice (Northern Ireland) Act 2002. Such offices may include various judicial positions, senior legal officers, or other important roles within the administration of justice.
2. A Lord Justice of Appeal (as defined in section 88 of that Act): This refers to individuals holding the position of Lord Justice of Appeal in Northern Ireland. Lord Justices of Appeal are senior judges who preside over the Court of Appeal in Northern Ireland, which is the highest court in the region for hearing appeals on both civil and criminal matters.

By nominating individuals from these specified categories, the Lord Chief Justice of Northern Ireland can delegate certain functions and responsibilities related to the allocation of proceedings under the English Arbitration Act 1996. Similar to section 105(3B) applicable to England and Wales, this delegation of functions allows for more efficient management of the workload while maintaining the authority and accountability of the Lord Chief Justice.

The nominated individuals are authorised to exercise the same functions as the Lord Chief Justice himself under section 105(3) of the Act. This means they can make decisions regarding the allocation of arbitration proceedings in Northern Ireland and ensure the proper and timely administration of justice in relation to the Act's provisions.

It is essential to note that the delegation of functions under Section 105(3C) does not diminish the overall authority and responsibility of the Lord Chief Justice of Northern Ireland. He remains ultimately accountable for decisions made under this section, even if carried out by the nominated individuals.

In conclusion, section 105(3C) allows the Lord Chief Justice of Northern Ireland to nominate specific individuals holding designated offices or positions to exercise his functions related to the allocation of arbitration-related proceedings under the English Arbitration Act 1996 in Northern Ireland. This provision aims to streamline the decision-making process while preserving the authority and responsibility of the Lord Chief Justice.

(4) An order under this section—

- (a) may differentiate between categories of proceedings by reference to such criteria as the Lord Chancellor sees fit to specify, and**
- (b) may make such incidental or transitional provision as the Lord Chancellor considers necessary or expedient.**

Section 105(4) of the English Arbitration Act 1996 empowers the Lord Chief Justice of Northern Ireland to nominate specific individuals to exercise his functions under section 105(3) of the Act. An order made under this section may include the following provisions:

1. **Differentiation between categories of proceedings:** The order may distinguish between various categories of proceedings related to the English Arbitration Act 1996. This differentiation can be based on criteria specified by the Lord Chancellor. The aim is to ensure that different types of arbitration-related cases are appropriately assigned or allocated to the appropriate courts or judicial officers. The criteria could include factors like complexity, monetary value, subject matter, or any other relevant considerations.
2. **Incidental or transitional provision:** The order may include provisions that are necessary or expedient for the proper implementation of the nominated individuals' functions. This can encompass various incidental or transitional measures needed to ensure a smooth and effective transition of responsibilities. For example, it may address matters related to existing cases already in progress, the transfer of pending cases, or any other procedural arrangements required to facilitate the delegation of functions under section 105(3) of the Act.

In summary, section 105(3C) grants flexibility to the Lord Chief Justice of Northern Ireland in the order-making process by allowing differentiation between types of proceedings and providing the authority to make incidental or transitional provisions. These measures aim to enhance the efficient and effective allocation of arbitration-related cases and the proper administration of justice under the English Arbitration Act 1996 in Northern Ireland.

(5) An order under this section for England and Wales shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 105(5) of the English Arbitration Act 1996 specifies the procedure for making orders under this section in relation to England and Wales. According to this provision:

1. An order under this section for England and Wales shall be made by statutory instrument: This means that any order issued by the Lord Chancellor, exercising the powers granted under section 105(2) or section 105(3) of the Act for England and Wales, must be formalised as a statutory instrument. A statutory instrument is a form of delegated or secondary legislation that allows government authorities, like the Lord Chancellor in this case, to make detailed rules or regulations to supplement primary legislation without requiring a full Act of Parliament.
2. Subject to annulment in pursuance of a resolution of either House of Parliament: The statutory instrument, once made, is subject to parliamentary scrutiny. It must be laid before both Houses of Parliament (the House of Commons and the House of Lords) for a specified period, during which Parliament has the opportunity to annul the instrument. If neither House resolves to annul the instrument within that period, it becomes law and has the force of law.

In summary, section 105(5) ensures that any orders made under section 105(2) or section 105(3) for England and Wales are subject to parliamentary oversight. This parliamentary control serves as a check and balance mechanism, allowing Members of Parliament to review and potentially reject any orders that they find inappropriate or undesirable.

(6) An order under this section for Northern Ireland shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 which shall be subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954).

Section 105(6) of the English Arbitration Act 1996 pertains to the procedure for making orders under this section in relation to Northern Ireland. According to this provision:

1. An order under this section for Northern Ireland shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979: This means that any order issued by the Lord Chancellor, exercising the powers granted under section 105(2) or section 105(3) of the Act for Northern Ireland, must be formalised as a statutory rule. Statutory rules are a form of delegated or secondary legislation used in Northern Ireland that allows government authorities, like the Lord Chancellor in this case, to make detailed rules or

regulations to supplement primary legislation without requiring a full Act of the Northern Ireland Assembly.

2. Subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954): The statutory rule, once made, is subject to a negative resolution procedure. This means that the rule automatically becomes law when it is made but can be annulled by either the Northern Ireland Assembly or the UK Parliament if either body passes a resolution disapproving the rule. Unlike positive resolution, which requires both Houses of Parliament to affirmatively approve the rule, negative resolution is a more streamlined process, whereby the rule will be annulled if either House objects to it within a specified period.

In summary, section 105(6) sets out the specific procedure for making orders under section 105(2) or section 105(3) of the Act for Northern Ireland. The orders made in relation to Northern Ireland are formalised as statutory rules, and their validity is subject to a negative resolution process, allowing for parliamentary scrutiny and potential annulment if the rule is deemed objectionable by either the Northern Ireland Assembly or the UK Parliament.

106 CROWN APPLICATION

- (1) Part I of this Act applies to any arbitration agreement to which Her Majesty, either in right of the Crown or of the Duchy of Lancaster or otherwise, or the Duke of Cornwall, is a party.**

Section 106(1) of the English Arbitration Act 1996 states that Part I of the Act applies to any arbitration agreement in which Her Majesty (the reigning monarch), in right of the Crown or the Duchy of Lancaster, or the Duke of Cornwall is a party.

In essence, this provision clarifies that the arbitration rules and procedures set out in Part I of the Arbitration Act 1996 are applicable even when the Crown, the Duchy of Lancaster, or the Duke of Cornwall is involved in an arbitration agreement. This ensures that these entities are subject to the same arbitration laws as other parties in such agreements.

By including Her Majesty and the respective Duchies and Duke, the Act reflects the recognition that these entities can be party to commercial or contractual arrangements that may require dispute resolution through arbitration. As a result, Part I of the Arbitration Act 1996 applies to any arbitration agreement involving the Crown, the Duchy of Lancaster, or the Duke of Cornwall, making them subject to the Act's provisions for the resolution of disputes through arbitration.

- (2) Where Her Majesty is party to an arbitration agreement otherwise than in right of the Crown, Her Majesty shall be represented for the purposes of any arbitral proceedings—**
- (a) where the agreement was entered into by Her Majesty in right of the Duchy of Lancaster, by the Chancellor of the Duchy or such person as he may appoint, and**
 - (b) in any other case, by such person as Her Majesty may appoint in writing under the Royal Sign Manual.**

Section 106(2) of the English Arbitration Act 1996 deals with the representation of Her Majesty (the reigning monarch) when she is a party to an arbitration agreement, but not in right of the Crown. This means when Her Majesty is a party in her personal capacity or in right of the Duchy of Lancaster, or when the Duke of Cornwall (the eldest son of the reigning monarch) is a party to the agreement.

According to this section, the representation of Her Majesty in such arbitration proceedings will be as follows:

1. If the agreement was entered into by Her Majesty in right of the Duchy of Lancaster, then the representation shall be carried out by the Chancellor of the Duchy or any person appointed by him for this purpose.
2. In any other case, where Her Majesty is a party to the arbitration agreement in her personal capacity or otherwise, she shall be represented by any person appointed in writing under the Royal Sign Manual.

The Royal Sign Manual is the formal signature of the reigning monarch and is used to signify the monarch's personal approval or authorisation. Therefore, any person appointed by Her Majesty under the Royal Sign Manual will act as her representative in the arbitration proceedings.

This provision ensures that when the Crown, Duchy of Lancaster, or Duke of Cornwall are parties to an arbitration agreement, there are clear rules for their representation in the arbitral proceedings, depending on the specific context of the agreement.

- (3) Where the Duke of Cornwall is party to an arbitration agreement, he shall be represented for the purposes of any arbitral proceedings by such person as he may appoint.**

Section 106(3) of the English Arbitration Act 1996 deals specifically with the representation of the Duke of Cornwall (the eldest son of the reigning monarch) when he is a party to an arbitration agreement.

According to this section, when the Duke of Cornwall is a party to an arbitration agreement, he has the authority to appoint a person to represent him for the purposes of any arbitral proceedings. This means that the Duke of Cornwall has the discretion to select a representative on his behalf who will act and participate in the arbitration proceedings.

The provision grants the Duke of Cornwall the power to choose someone he deems fit and appropriate to act on his behalf during the arbitral process. This representative will represent the Duke's interests, present arguments, evidence, and participate in the arbitration on behalf of the Duke of Cornwall.

By providing the Duke of Cornwall with the authority to appoint his representative, this section ensures that he can have a say in the proceedings and can choose someone whom he trusts to advocate for his interests in the arbitration.

- (4) References in Part I to a party or the parties to the arbitration agreement or to arbitral proceedings shall be construed, where subsection (2) or (3) applies, as references to the person representing Her Majesty or the Duke of Cornwall.**

Section 106(4) of the English Arbitration Act 1996 clarifies the interpretation of certain terms used in Part I of the Act when Her Majesty (in right of the Crown or the Duchy of Lancaster) or the Duke of Cornwall is a party to an arbitration agreement, and representation is done according to subsections (2) or (3).

The section states that when either Her Majesty or the Duke of Cornwall is a party to the arbitration agreement and they have appointed a representative, any reference in Part I of the Act to “a party” or “the parties” to the arbitration agreement, or to “arbitral proceedings”, shall be understood and construed as references to the person representing Her Majesty or the Duke of Cornwall, respectively.

In simpler terms, this means that when Her Majesty or the Duke of Cornwall has appointed someone to represent them in the arbitration proceedings, all mentions of “a party” or “the parties” in Part I of the Act will be understood to refer to the appointed representative. Similarly, any reference to “arbitral proceedings” will pertain to the proceedings involving the appointed representative.

This provision ensures that the appointed representatives of Her Majesty or the Duke of Cornwall are treated as the functional parties to the arbitration agreement, and they will act on behalf of the respective parties in all matters concerning the arbitration. It streamlines the interpretation and application of the Act in cases involving representatives of these individuals when they are parties to an arbitration agreement.

107 CONSEQUENTIAL AMENDMENTS AND REPEALS

- (1) The enactments specified in Schedule 3 are amended in accordance with that Schedule, the amendments being consequential on the provisions of this Act.**

Section 107(1) of the English Arbitration Act 1996 states that the enactments listed in Schedule 3 of the Act shall be amended in accordance with the provisions set out in that Schedule. These amendments are consequential, meaning they are made to accommodate or align with the provisions of the Arbitration Act 1996.

In other words, Schedule 3 contains a list of other statutes or pieces of legislation that are affected by the enactment of the Arbitration Act 1996. The changes made to these enactments in Schedule 3 are designed to ensure that they work harmoniously with the provisions and requirements of the Arbitration Act.

The purpose of these consequential amendments is to prevent any inconsistencies or conflicts between the Arbitration Act 1996 and the other statutes listed in Schedule 3. By making necessary

adjustments, the Act aims to provide a coherent and unified legal framework for arbitration proceedings in England, Wales, and Northern Ireland.

(2) The enactments specified in Schedule 4 are repealed to the extent specified.

Section 107(2) of the English Arbitration Act 1996 states that the enactments listed in Schedule 4 of the Act are repealed to the extent specified in that Schedule. In other words, the specific statutes or parts of legislation mentioned in Schedule 4 are no longer in force or applicable to the extent indicated.

The purpose of these repeals is to remove any conflicting or obsolete provisions in existing laws that may have been inconsistent with the Arbitration Act 1996 or rendered unnecessary by its enactment. By repealing these specific enactments, the Act aims to streamline the legal framework and create a more efficient and effective system for arbitration proceedings in England, Wales, and Northern Ireland.

108 EXTENT

(1) The provisions of this Act extend to England and Wales and, except as mentioned below, to Northern Ireland.

Section 108(1) of the English Arbitration Act 1996 states that the provisions of the Act apply to England and Wales and, with certain exceptions, also apply to Northern Ireland.

This means that the main body of the Arbitration Act 1996 applies to arbitrations taking place in England and Wales. However, there are certain provisions of the Act that may not apply to Northern Ireland, and these exceptions are likely specified elsewhere in the Act.

It is important to note that Northern Ireland has a separate legal system from England and Wales, and while many laws apply to all parts of the United Kingdom, there are instances where certain legislation may be tailored to the specific legal framework of each jurisdiction. Therefore, Section 108(1) ensures that the Act primarily covers England and Wales and extends to Northern Ireland, except where specifically excluded or modified in relation to Northern Ireland.

(2) The following provisions of Part II do not extend to Northern Ireland—

- section 92 (exclusion of Part I in relation to small claims arbitration in the county court), and**
- section 93 and Schedule 2 (appointment of judges as arbitrators).**

Section 108(2) of the English Arbitration Act 1996 specifies certain provisions of Part II of the Act that do not extend to Northern Ireland. These provisions are:

1. Section 92: This section deals with the exclusion of Part I of the Act in relation to small claims arbitration in the county court. It means that the provisions of Part I of the Act

(which generally govern the substantive law of arbitration) do not apply to small claims arbitrations in the county court in Northern Ireland.

2. Section 93 and Schedule 2: These provisions relate to the appointment of judges as arbitrators. Section 93 allows eligible High Court judges or official referees to accept appointment as sole arbitrators or umpires, subject to certain conditions. Schedule 2 provides modifications to the application of Part I of the Act to arbitrations involving judges as arbitrators. However, these provisions do not apply to arbitrations in Northern Ireland.

In summary, section 108(2) ensures that the excluded provisions (Section 92 and Section 93 with Schedule 2) are not applicable to arbitrations conducted in Northern Ireland, meaning that different rules and procedures may apply in that jurisdiction in these specific instances.

(3) Sections 89, 90 and 91 (consumer arbitration agreements) extend to Scotland and the provisions of Schedules 3 and 4 (consequential amendments and repeals) extend to Scotland so far as they relate to enactments which so extend, subject as follows.

Section 108(3) of the English Arbitration Act 1996 specifies the application of certain provisions of the Act to Scotland, as well as the extension of certain consequential amendments and repeals to Scotland. The sections and schedules mentioned are as follows:

1. Sections 89, 90, and 91: These sections pertain to consumer arbitration agreements. They extend to Scotland, meaning that the provisions of Part II related to consumer arbitration agreements apply in Scotland in the same way as they do in England and Wales.
2. Schedules 3 and 4: These schedules contain consequential amendments and repeals that are made in connection with the Act. The amendments and repeals specified in these schedules extend to Scotland, but only in relation to enactments that are also extended to Scotland. This means that any amendments or repeals in these schedules are applicable in Scotland only if the relevant enactment being amended or repealed also applies in Scotland.

In essence, section 108(3) ensures that the specific provisions related to consumer arbitration agreements (sections 89, 90, and 91) apply to Scotland, as well as any consequential amendments and repeals (schedules 3 and 4) that are relevant to enactments that also extend to Scotland. Other provisions of the Act and amendments in these schedules do not have direct application to Scotland unless they are already extended there by other means.

(4) The repeal of the Arbitration Act 1975 extends only to England and Wales and Northern Ireland.

Section 108(4) of the English Arbitration Act 1996 specifies the application of the repeal of the Arbitration Act 1975, which is the previous legislation related to arbitration in the United Kingdom.

The repeal of the Arbitration Act 1975 applies only to two jurisdictions:

1. England and Wales: The Arbitration Act 1975 is repealed in its entirety in England and Wales by the enactment of the English Arbitration Act 1996. This means that the Arbitration Act 1975 no longer has any legal effect in arbitration matters within England and Wales.
2. Northern Ireland: The Arbitration Act 1975 is also repealed in its entirety in Northern Ireland by the enactment of the English Arbitration Act 1996. Therefore, similar to England and Wales, the Arbitration Act 1975 no longer has any legal effect in arbitration matters within Northern Ireland.

It is important to note that the repeal of the Arbitration Act 1975 does not extend to Scotland. The Arbitration Act 1975 continues to remain in force in Scotland, and any future changes or amendments to the law of arbitration in Scotland would need to be addressed separately.

109 COMMENCEMENT

(1) The provisions of this Act come into force on such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be appointed for different purposes.

Section 109(1) of the English Arbitration Act 1996 deals with the commencement of the Act, specifying when its provisions come into effect.

1. Commencement Date: The Act does not automatically come into force upon its enactment. Instead, it comes into force on a date appointed by the Secretary of State.
2. Secretary of State's Order: The Secretary of State is empowered to determine the commencement date by making an order. This order must be made by statutory instrument, which is a formal legal document used to implement regulations or laws in the United Kingdom.
3. Different Commencement Dates: The Act allows for different provisions to come into force on different dates. This means that various sections or parts of the Act can become effective at different times. The Secretary of State has the discretion to set different commencement dates for different purposes within the Act.

By granting the Secretary of State the authority to set different commencement dates, the Act ensures that its provisions can be introduced and implemented in a controlled manner, allowing for any necessary preparations or adjustments to be made before the Act takes full effect.

(2) An order under subsection (1) may contain such transitional provisions as appear to the Secretary of State to be appropriate.

Section 109(2) of the English Arbitration Act 1996 grants the Secretary of State the authority to include transitional provisions in the order made under subsection (1), which determines the commencement date of the Act.

Transitional provisions are provisions that help smooth the transition from the old law to the new law introduced by the Arbitration Act 1996. These provisions address the practicalities and complexities of implementing the new law and ensure that any ongoing or pending matters are appropriately handled during the transition period.

The Secretary of State has the discretion to decide what specific transitional provisions are necessary or appropriate to address any particular issues that may arise as the Act comes into force. These provisions may deal with matters such as:

1. Pending Arbitrations: How ongoing arbitrations under the previous law will be treated once the new Act takes effect.
2. Arbitration Agreements: How existing arbitration agreements will be affected or how parties will transition from agreements made under the previous law to those made under the new Act.
3. Arbitral Awards: How arbitral awards rendered under the old law will be treated and enforced under the new Act.
4. Proceedings and Proceedings in Progress: How legal proceedings related to arbitration matters that are already in progress will be affected or continued under the new Act.

Including appropriate transitional provisions helps ensure a smooth and orderly transition to the new legal framework, minimising any disruptions or uncertainties that might otherwise arise during the implementation of the Arbitration Act 1996.

110 SHORT TITLE

This Act may be cited as the Arbitration Act 1996.

Section 110 of the English Arbitration Act 1996 provides the short title of the Act, stating that it may be cited as the “Arbitration Act 1996”. The short title serves as a convenient way to refer to the legislation in legal documents, court proceedings, and other contexts where brevity is essential. By providing a short and easily recognisable name for the Act, section 110 facilitates its use and identification in legal practice and discourse.



DUBAI

Galadari Building
Al Ghubaiba Street
Al Souq Al Kabeer
P.O. Box 7992
Dubai, UAE

DIFC

Gate Precinct Building
5 Sheikh Zayed Road
DIFC
P.O. Box 50696
Dubai, UAE

ABU DHABI

Addax Tower
Hydra Avenue
Al Reem Island
P.O. Box 47634
Abu Dhabi, UAE

www.galadarilaw.com