

Arbitration under the Arbitration Act 1996

Aim:

To provide a clear outline of the principal issues relating to the legally binding resolution of conflict of laws disputes via arbitration under the Arbitration act 1996.

Objectives:

After carefully reading the following notes & other prescribed readings, you should be able to:

1. Discuss, orally and in writing, the considerations to be taken into account to determine the choice of law in the absence of an express choice having been made by the parties;
2. Explain the circumstances under which a stay of action under the 1996 Act may be granted; and
3. Explain what reasons could be upheld for refusing to enforce a foreign arbitral award.

Introduction

It is not a necessary prerequisite for the resolution of a dispute between corporations via arbitration that an arbitration agreement is a term of a pre-existing contract between the particular parties to the dispute. Indeed, there need be no pre-existing contract at all, let alone a contract of a commercial nature. Any dispute between corporations or, indeed, disputes other than those relating to the status of a natural person, for example, may be resolved by arbitration and be legally binding on the parties who have agreed to subject themselves to, and be bound by, arbitration.

If the parties to a dispute believe that the ability to choose an arbitrator they trust and in whom they have the utmost confidence, and the conducting of arbitration in private together with the anticipated savings in costs is mutually beneficial, then the general rule is that party autonomy prevails and arbitration becomes the method to resolve any ensuing dispute between them.

Given that arbitration is a legally binding process, however, and that it *may* be scrutinised by the courts, it is essential that the arbitration is conducted in accordance with rules of law: the process is not an informal one of mediation or conciliation nor is it merely a procedural stage destined to end in court action.

In essence, it is the *Arbitration Act 1996* that is the current source of law relating to the choice of law for the arbitration process and the enforcement of foreign arbitral awards.

International Commercial Arbitrations to be Determined, or Enforced, in England.

Whether party autonomy has prevailed in selecting arbitration and whether the arbitrator has detracted from the formalities of arbitration are just two of the questions that might have to be addressed if an enforceable arbitral award is to be made. Indeed, the questions are those that have been developed and refined from the common law, via the *Arbitration Act 1950 Part II*, the *Arbitration Acts of 1975 and 1979*, through to the *Arbitration Act 1996*. As many as five questions might have to be addressed before the arbitration process can proceed or a foreign award enforced, viz;

1. what choice of law governs the arbitration agreement;
2. what choice of law governs the arbitration process;
3. what choice of law will govern the resolution of the dispute by the arbitrator;
4. what impact does an arbitration agreement have on the jurisdiction of the English courts; and
5. what circumstances must prevail for a foreign arbitral award to be enforced in England?

1. The Law Governing an Arbitration Agreement

Neither the Brussels Convention nor the Rome Convention provides for arbitration agreements. The exclusion of arbitration agreements from the scope of the Rome Convention means that under English law the validity and construction of any arbitration agreement would have to be determined in accordance with its *proper law* as governed by the common law; i.e., the proper law is, basically, the common law equivalent of the applicable law under the Rome Convention. In essence, if the parties to the arbitration agreement have made an express choice of law to govern their agreement then it will generally prevail. The absence of an express choice will lead to an inference of the proper law being that of the seat of the arbitration, i.e., the place (country / law district) where the arbitration is centred. Failing both an express choice and an agreement providing for the seat of arbitration, the appropriate choice of law is that of the law of the country with which the arbitration process is most closely connected.

PRIVATE INTERNATIONAL LAW : CONFLICT OF LAWS

That the proper law of an arbitration agreement may differ from the law governing the procedural issues is acknowledged and accepted in English law as affirmed in the House of Lords decision in: *James Miller & Partners Ltd v. Whitworth Street Estates (Manchester) Ltd* [1970] AC 583.

2. The Law Governing the Arbitration Process

Two elements arise for discussion under this heading, viz; internal and external procedures. The *internal* procedure provides for the procedure to be followed in the arbitration process and for the powers of the arbitral tribunal in relation to the procedure. The *external* procedure is concerned with the powers of the court to support (via, for example, the appointment of an arbitrator, if necessary, and grant, say, a *Mareva injunction*) and supervise the arbitration process by, if necessary, setting aside the arbitral award if the arbitrator has acted *ultra vires*: s.67 *Arbitration Act 1996*.

Moreover, the Arbitration Act 1996 contains provisions which, firstly, aim to address the potentially conflicting issues of: (a) the country which is the seat of the arbitration having an input into the arbitral proceedings in order to ensure that a minimum standard of fairness is evidenced; and (b) respecting the party autonomy that underpins the consensual nature of the arbitration process. To these ends, s.2(1) of the *Arbitration Act 1996* provides that the Act *prima facie* applies to an arbitration that has its seat in England: the *prima facie* applicability indicating that the powers are discretionary and their exercise is to be considered in relation to the parties' connection with England.

Secondly, s.4 and *Schedule 1* of the Act divide provisions of the Act into mandatory and non-mandatory provisions. The court's supervisory powers are within the mandatory provisions notwithstanding they are discretionary powers, whereas s.4(2) and (3) provide that the non-mandatory provisions apply only to the extent that the parties to the arbitration have not made their own arrangements in respect, say, of the choice of law.

Whilst procedural provisions of the Act have no effect on arbitrations whose seat is abroad, provisions relating, *inter alia*, to the *staying of actions* brought in breach of arbitration agreements and *granting interim injunctions* are of universal application: ss.2(2) and 44.

3. The Choice of Law Governing Resolution of the Dispute

Clarkson & Hill 'note that: "It is well established that the arbitral tribunal is required to apply the choice of law rules of the seat of arbitration." The choice of law rules are now found in s.46 *Arbitration Act 1996*. S.46 provides for rules to deal with three different types of situation, viz;

- Where the parties have expressed a choice of law – here the basic principle is one of party autonomy (s.46(1)(a)) and *renvoi* is excluded: s.46(2);
- Where the parties have chosen 'other considerations' such as general principles common to each party's domicile or an equity clause requiring the dispute to be decided in terms of an equitable / fair resolution as opposed to using strict rules of law, for example; or
- Where the parties have failed to express a choice of law – in which case s.46(3) provides that 'the tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.' The significance of this last provision is that arbitrators are not *bound* to apply the same choice of law rules that courts would have to abide by: they have freedom to do so if they so wish; the choice is theirs.

There is little doubt that an arbitrator has to take into account the mandatory rules of the seat of the arbitration and/or the country in which the award will be enforced in order to avoid the award being legally ineffective by virtue of a serious irregularity or by being contrary to public policy: s.68 *Arbitration Act 1996*.

4. The Impact of an Arbitration Agreement of the Jurisdiction of the English Courts

Here, the focus is on the attitude of the courts to a party that has commenced litigation in breach of an arbitration clause. ss.5, 9 and 20 of the *Arbitration Act 1996* contain the essential provisions for determining whether a stay will be granted and may be dependent on the satisfaction of five conditions, viz;

¹ *Clarkson & Hill, Jaffey on the Conflict of Laws*, 2/e. London: Butterworths, 1997, p284

PRIVATE INTERNATIONAL LAW : CONFLICT OF LAWS

- i. Under s.5, the arbitration agreement must be in writing – a provision which is given a broad interpretation and may include: an agreement being evidenced in writing; and cases where the parties agree otherwise than in writing to terms which are in writing or to an agreement being recorded by any means; and this includes the oral acceptance of the terms of a standard form contract that contained an English arbitration clause: *Zambia Steel and Building Supplies v. Clark & Eaton* (1986).
- ii. That the legal proceedings are ‘in respect of a matter which under the agreement [between the parties] is to be referred to arbitration’: s.9(1). This means that: (a) the defendant cannot secure a stay unless the matter in dispute is within the jurisdiction of the arbitrator; (b) whether it is in dispute is a matter to be decided under the common law concept of the proper law of the arbitration agreement.
- iii. s.9(4) requires that the arbitration agreement is not ‘null and void, inoperative or incapable of being performed.’ This, also, is to be determined under its proper law.
- iv. Submission to the jurisdiction of the court via contesting a substantive claim disqualifies the defendant from a right to a stay: s.9(3).
- v. s.81(1)(a) requires that the subject-matter of the dispute must be capable of settlement by arbitration. This is not the case where third parties may be adversely affected – such as a creditor being disadvantaged by the winding-up of a company.

Stay of legal proceedings.

- 9(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.
- 9(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.
- 9(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.
- 9(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.
- 9(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.

5. Enforcing a Foreign Arbitral Award and Resisting an Award

In essence, the most significant of the arbitration awards that may be enforced in England and Wales are those that may be enforced under the *Arbitration Act 1996*. Enforcement is dependent on the award being a ‘New York convention award’; that it is an agreement in writing; and that the award was made at the seat of the arbitration – regardless of where it was signed: ss.53 and 100.

Enforcement may be *refused* for any one of *eight* grounds provided for under Act but for no other reason: i.e., the grounds are exhaustive and refusal of enforcement has no basis outside the Act. The grounds are set out in s103(2) Arbitration Act 1996, mirroring the text of the New York Convention 1957.

Recognition and enforcement of New York Convention awards

New York Convention awards.

- 100(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.
- 100(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.

PRIVATE INTERNATIONAL LAW : CONFLICT OF LAWS

Recognition and enforcement of awards.

- 101(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.
- 101(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.
- 101(3) Where leave is so given, judgment may be entered in terms of the award.

Evidence to be produced by party seeking recognition or enforcement.

- 102(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.
- 102(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.

Refusal of recognition or enforcement.

- 103(1) Recognition or enforcement of a New York Convention award shall not be refused except in the following cases.
- 103(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.
- 103(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.
- 103(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.
- 103(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.

Saving for other bases of recognition or enforcement.

104. 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.

PRIVATE INTERNATIONAL LAW : CONFLICT OF LAWS

The seat of the arbitration.

3. 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.

Separability of arbitration agreement.

7. 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.

Whether agreement discharged by death of a party.

- 8(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.
- 8(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.

Competence of tribunal to rule on its own jurisdiction.

- 30(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.
- 30(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.

Objection to substantive jurisdiction of tribunal.

- 31(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.
- 31(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.
- 31(3) The arbitral tribunal may admit an objection later than the time specified in subsection (1) or (2) if it considers the delay justified.
- 31(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.
- 31(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).

Determination of preliminary point of jurisdiction.

- 32(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).

PRIVATE INTERNATIONAL LAW : CONFLICT OF LAWS

- 31(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.
- 31(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.
- 31(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.
- 31(5) Unless the court gives leave, no appeal lies from a decision of the court whether the conditions specified in subsection (2) are met.
- 31(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.

Rules applicable to substance of dispute.

- 46(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.
- 46(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.
- 46(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.

Challenging the award: substantive jurisdiction.

- 67(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).
- 67(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.
- 67(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.
- 67(4) The leave of the court is required for any appeal from a decision of the court under this section.

Challenging the award: serious irregularity.

- 68(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).

PRIVATE INTERNATIONAL LAW : CONFLICT OF LAWS

- 68(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.
- 68(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.
- 68(4) The leave of the court is required for any appeal from a decision of the court under this section.

Appeal on point of law.

- 69(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.
- 69(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).
- 69(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.
- 69(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.
- 69(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.

PRIVATE INTERNATIONAL LAW : CONFLICT OF LAWS

- 69(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.
- 69(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.
- 69(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.

Challenge or appeal: supplementary provisions.

- 70(1) The following provisions apply to an application or appeal under section 67, 68 or 69.
- 70(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).
- 70(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.
- 70(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.
- 70(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.
- 70(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.
- 70(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.
- 70(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.

Challenge or appeal: effect of order of court.

- 71(1) The following provisions have effect where the court makes an order under section 67, 68 or 69 with respect to an award.
- 71(2) Where the award is varied, the variation has effect as part of the tribunal's award.

PRIVATE INTERNATIONAL LAW : CONFLICT OF LAWS

- 71(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.
- 71(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.

Miscellaneous Saving for rights of person who takes no part in proceedings.

- 72(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.
- 72(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.

Loss of right to object.

- 73(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.
- 73(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.