

# A Quick Reference Guide to Arbitration Procedures in the USA, England and Bermuda

	USA	ENGLAND	BERMUDA
Statute	Federal Arbitration Act of 1925	The Arbitration Act 1996	The Bermuda International Conciliation and Arbitration Act 1993 (incorporating the UNCITRAL Model Law)
Are Anti-Suit Injunctions Available?	Yes, although typically arbitration agreements are enforced by an application to dismiss the court proceeding	Yes, these are routinely granted to restrain court proceedings brought in breach of an arbitration clause	Yes, these are routinely granted to restrain court proceedings brought in breach of an arbitration clause
Can Arbitrators Rule on Jurisdiction?	Generally no, unless parties have agreed or if adopted rules permit	Yes, as a preliminary matter although there is an opportunity for further review by the supervising court	Yes, as a preliminary matter although there is an opportunity for further review by the supervising court
Must Arbitrators Be Independent/Neutral/ Impartial?	Yes unless agreed otherwise. Certain arbitration rules may permit non-neutral party-appointed arbitrators	Yes	Yes
What Is Procedure for Challenging/Removing Arbitrator?	General view is that courts lack jurisdiction to consider interlocutory challenges	An interlocutory application can be made to the court to remove an arbitrator, including for lack of impartiality or on basis of insufficient qualifications	Challenging party must file written challenge with the panel within 15 days. If challenge is rejected, an application to court for review can be made
Indemnification/Immunity of Arbitrators?	Generally yes but “hold harmless” agreements common	Yes	Yes
Are Ex Parte Communications with Arbitrators Permitted?	Yes, if expressly agreed – in some cases ex parte communications with party-appointees continue through to final hearing	No, unless purely administrative or – if parties agree – solely to discuss selection of third arbitrator / chair. Discussion of merits is prohibited.	No, unless purely administrative or – if parties agree – solely to discuss selection of third arbitrator / chair. Discussion of merits is prohibited.
Are “Honourable Engagement” Clauses Enforceable?	Yes	Yes	Yes
Are Arbitrations Confidential?	No, unless parties so stipulate	Yes	Yes
Is Security for Costs Available?	Generally yes	Yes	No
Is Consolidation of Proceedings Possible?	No, unless parties have expressly agreed	No, unless parties have expressly agreed	No, unless parties have expressly agreed
Are Formal Pleadings Common?	Yes, although not routine and tend to be less detailed than English-style pleadings	Yes	Yes but often less formal and detailed than English pleadings

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What Is Practice for Disclosure/ Discovery of Documents?	Generally broad discovery is sought by parties and allowed by arbitrators	Practice varies considerably according to nationality of arbitrators. English panels tend to adopt English court procedures or IBA Rules	Practice varies considerably according to nationality of arbitrators. Bermudian/English panels tend to adopt Bermuda court procedures or IBA rules
Do Parties File Written Witness Statements?	Generally no	Yes	Generally yes
Can Witnesses Be Deposed?	Yes	No	No
Is Discovery Available Against Third Parties?	Yes but there are practical limitations	Yes but there are significant practical limitations and US 1782 discovery is not available	Yes but there are significant practical limitations and US 1782 discovery is not available
What Rules of Evidence Apply?	Generally, formal rules of evidence do not apply	Unless agreed otherwise by the parties, the arbitrators determine whether to apply strict rules of evidence	Unless agreed otherwise by the parties, the arbitrators determine whether to apply strict rules of evidence
Are Arbitrators Required to Produce a Reasoned Award?	No unless parties agree or adopted rules require it	Yes	Yes
Do the Arbitrators Have Jurisdiction to Award Interest?	Generally pre-award interest may be awarded as allowed by applicable State law	Yes, both pre-award and post-award interest	Yes, both pre-award and post-award interest at simple or compound rates
Is the Losing Party Ordered to Pay the Winning Party's Legal Costs?	Generally no	Generally yes - agreements to prohibit costs shifting are unenforceable)	Generally yes - agreements to prohibit costs shifting are permitted
What Is the Scope of Parties' Rights of Appeal?	Narrow but limited rights of appeal do exist including for "manifest disregard for the law" and "complete irrationality"	Broad by international standards and includes right to appeal on points of law (unless right is expressly waived)	Very limited
Enforcement of Award?	New York Convention applies	New York Convention applies	New York Convention applies