Arbitration and Financial Institutions



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Arbitration reform in England will likely encourage arbitration of financial disputes and enhance London's attractiveness as an arbitration venue.

Financial institutions increasingly favour arbitration for resolving cross-border financial disputes, a trend poised to accelerate under the Arbitration Bill (the Bill), which proposes amendments to the English Arbitration Act 1996 (the Act). The Bill, which was introduced over the past year, aims to encourage arbitrators to summarily dismiss unmeritorious claims or defences, enhancing the efficiency of arbitration proceedings.

Financial institutions are already attracted to the unique benefits of arbitration. A 2016 survey by the ICC Task Force on Financial Institutions and International Arbitration highlighted that financial institutions are drawn to arbitration primarily because arbitration awards are more widely and easily enforceable than court judgments, thanks to the New York Convention. Additionally, the survey noted that financial institutions value the flexibility of arbitration procedures and the ability to appoint arbitrators with sector-specific expertise as significant advantages. Confidentiality and the finality of arbitration, with limited appeal options, are also attractive to financial institutions, according to the survey.



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Financial institutions value the ease of enforceability of arbitral awards across borders, as well as the flexibility of arbitration procedures and ability to appoint arbitrators with sector-specific expertise

These features, together with the United Kingdom's exit from the European Union's regime for the cross-border enforcement of court judgments within the EU, have contributed to the growing popularity of arbitration for financial-sector disputes in England. This trend is evident in the caseload of the London Court of International Arbitration (LCIA), where the banking and finance sector accounted for an average of 23% of cases between 2018 and 2023, making it the second most represented sector.[1]

Summary Dismissal

The perceived lack of availability of summary dismissal in arbitration has long been an impediment to the use of arbitration in the financial sector. The ICC Task Force survey noted that financial institutions often prefer state court proceedings for their ability to secure summary or default judgments early in the process. This feature is particularly important for financial disputes in which financial institutions may have claims that are relatively straightforward in terms of recovering a debt. While unmeritorious defences can be put forward to dispute such claims, financial institutions will often consider that those arguments can and should be dismissed at a summary stage.

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While summary dismissal is already generally available in arbitration, parties and tribunals seldom use it. The Act does not explicitly grant tribunals the power to summarily dismiss claims, but it does provide broad procedural discretion. Most major arbitration rules explicitly allow for summary dismissal,[2] yet arbitrators have been cautious, fearing challenges based on alleged due process violations.[3] This caution persists despite the fact that English courts have clarified that summary dismissal does not inherently violate due process.[4]

The Arbitration Bill's Proposed Introduction of a Statutory Power to Order Summary Dismissal

The Bill, soon to be voted on in Parliament, is expected to explicitly grant tribunals the power to make awards on a summary basis, applying the same "no real prospect of success" threshold used in English court proceedings.[5] This test would allow arbitral tribunals to draw on the rich body of case law interpreting and applying that standard used in court. The greater certainty afforded by this may encourage parties and tribunals to make greater use of summary judgment in arbitrations seated in London.

The Bill is expected to grant tribunals the explicit power to issue awards on a summary basis

This development will benefit financial institutions by combining the key advantages of arbitration — especially the global enforceability of awards under the New York Convention and the confidentiality of arbitration — with the ability to dismiss unmeritorious defences or counterclaims early on. More broadly, the Bill's provision on summary dismissal is expected to enhance London's attractiveness as an arbitration venue, offering significant time and cost savings.

1. Arbitration of banking and financial disputes, Practical Law UK Practice Note, p. 3; LCIA Annual Casework Report 2023, p. 8.
2. Article 22 ICC Rules 2021; Rule 29 SIAC Rules 2016; Article 43 HKIAC Rules 2024; Article 22.1(viii) LCIA Rules 2020; Article 35 P.R.I.M.E. Finance Rules 2022.
3. Law Commission, Programme of Law Reform 13th, p. 36, para. 4.53.
4. *Travis Coal Restructured Holdings LLC v. Essar Global Fund Ltd* [2014] EWHC 2510 (Comm).
5. Explanatory Notes, Arbitration Bill [HL] as introduced in the House of Lords on 18 July 2024 (HL Bill 1), p. 8.

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