

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

	USA	ENGLAND	BERMUDA	CANADA
Statute	Federal Arbitration Act of 1925	The Arbitration Act 1996	The Bermuda International Conciliation and Arbitration Act 1993 (incorporating the UNCITRAL Model Law)	Commercial Arbitration Act, 1985 (based on the UNCITRAL Model Law) in addition, nine of the ten provinces and all three of the territories have enacted statutes based on the 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	Yes, although Canadian courts will generally expect that a stay or other termination first be sought and denied in the foreign court proceeding
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	Yes, as a preliminary matter or in a final award, although there is an opportunity for reconsideration 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	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	Generally speaking, challenges are to be made to the arbitral panel and, if unsuccessful at first instance, then to the supervising court
Indemnification/Immunity of Arbitrators?	Generally yes but “hold harmless” agreements common	Yes	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.	Any ex parte communication which gives rise to a reasonable apprehension of bias will be sufficient ground for the courts to set aside an award and/or stay ongoing arbitral proceedings
Are "Honourable Engagement" Clauses Enforceable?	Yes	Yes	Yes	Likely yes
Are Arbitrations Confidential?	No, unless parties so stipulate	Yes	Yes	Generally no (except in B.C. and Quebec), unless the parties agree to it or the governing arbitral institution's rule require it
Is Security for Costs Available?	Generally yes	Yes	No	Yes
Is Consolidation of Proceedings Possible?	No, unless parties have expressly agreed	No, unless parties have expressly agreed	No, unless parties have expressly agreed	No, unless parties have expressly agreed or the supervising court orders it
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	Yes
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	IBA Rules are frequently used. As a guide to the expectations of Canadian panels, civil procedure in Canada tends toward relatively broad documentary discovery.
Do Parties File Written Witness Statements?	Generally no	Yes	Generally yes	Generally yes
Can Witnesses Be Deposed?	Yes	No	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	Very limited and exceptional, rarely sought or obtained
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	Unless agreed otherwise by the parties, the arbitrators determine whether to apply strict rules of evidence and in so doing often refer to the IBA Rules
Are Arbitrators Required to Produce a Reasoned Award?	No unless parties agree or adopted rules require it	Yes, unless the parties have agreed otherwise	Yes, unless the parties have agreed otherwise	Yes, unless the parties have agreed otherwise
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	Yes, both pre-award and post-award interest

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	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	Very limited
Enforcement of Award?	New York Convention applies	New York Convention applies	New York Convention applies	New York Convention applies provided that the legal relationship is commercial