

Can you appeal an international arbitration award?

By Elizabeth Wain

Introduction

A key feature of arbitration that makes it an attractive form of dispute resolution is that awards are final and binding. Parties typically agree that the arbitral award will be binding and enforceable, with limited grounds for challenge under applicable law.

While the ability to appeal an award is generally limited, this article explores the extent to which international arbitration awards can be appealed and the legal framework governing such appeals.

Is there a Right to Appeal in International Arbitration?

In general, there is no right to appeal an international arbitration award. Unlike court judgments, arbitral awards are not typically subject to appellate review on the merits. As noted above, parties typically choose arbitration as they desire a final and binding decision, and therefore a right to appeal would be contrary to this key tenet of arbitration.

While dependent on the applicable arbitration rules, most arbitration rules, such as those of the ICC, SIAC, LCIA or ICSID do not allow parties to appeal an arbitration award. Likewise, the arbitration laws in most countries do not permit appeal of arbitral awards.

Challenging or Setting Aside an Arbitral Award

Although parties are not usually able to make a formal appeal, most legal systems provide limited grounds upon which an arbitral award can be challenged or set aside by a court in the seat of the arbitration. It is, however, important to distinguish between an appeal and challenge or set-aside. An appeal will entail the review of the merits of the case, whereas a challenge or set-aside focuses on whether the arbitration was properly conducted under the applicable law.

Approaches in Different Jurisdictions

A. United States

In the United States, the Federal Arbitration Act (FAA) does not permit the appeal of an award. Indeed, in certain cases, the Courts have sanctioned parties or counsel who have sought to undermine arbitral finality by attempting to revisit the merits of a dispute during enforcement proceedings.¹ According to the US Supreme Court, it is the arbitrator's construction of the contract that was bargained for, and the *"arbitrator's construction holds, however good, bad, or ugly"*.²

The FAA provides for the setting aside of awards on certain statutory grounds, as listed in section 10 of the FAA. The grounds to set aside an international arbitration award are, however, extremely limited, including "[w]here the award was procured by corruption, fraud, or undue means," "evident partiality or corruption in the arbitrators," "[w]here the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced, and "[w]here the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made."

B. The United Kingdom

The Arbitration Act 1996 permits limited appeal to the High Courts of England and Wales under section 69, but only where the parties have not excluded such right by agreement. Section 69 appeals are relatively unusual because parties often exclude the right to appeal on a question of law, and further, the threshold for permission to appeal is set very high. Before granting leave to appeal, the Court must be satisfied, among other things, that the decision of the tribunal on the question of law is "obviously wrong" (section 69(3)(c)(i)), or that the question is one of "general public importance" and the decision on this question is at least open to "serious doubt" (section 69(3)(c)(ii)).

¹ See *Lynch v. Whitney*, 419 F. App'x 826, 839 (10th Cir. 2011); *B.L. Harbert Intern., LLC v. Hercules Steel Co.*, 441 F.3d 905, 913-14 (11th Cir. 2006).

² *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 573 (2013)

For those arbitral proceedings commenced after 1 August 2025, the Arbitration Act 2025 will apply. While the Arbitration Act 1996 remains the primary source of arbitration law in the U.K., the new Act incorporates a series of incremental changes, including the scope of the 28-day limitation period for appeals.

C. Singapore

An arbitral award is final and binding under Singapore law pursuant to section 19B of the International Arbitration Act and section 44 of the Arbitration Act. For domestic arbitrations governed by the Arbitration Act, unless the right to appeal is excluded by agreement, a party may appeal to the Singapore courts on a question of law arising out of an award with the agreement of all the other parties to the proceedings or with leave of court. The permission of the Court of Appeal is required for any appeal from a decision of the High Court to grant or refuse leave to appeal. The Court of Appeal may give permission to appeal only if the question of law before it is one of general importance or one that for some other special reason should be considered by the Court of Appeal.

Otherwise, arbitral awards can be set aside on limited grounds by Singapore courts under the International Arbitration Act and the Arbitration Act.

Optional Appellate Mechanisms

Some institutions have started incorporating optional appellate arbitration mechanisms for parties interested in including appellate review. Such processes typically will consist of appointing a separate arbitral tribunal to consider the appeal. For example, ICDR's Optional Appellate Rules enable parties to appeal using a standardized process. Similarly, CPR's Arbitration Appeal Procedure and JAMS Optional Arbitration Procedure provide appellate arbitration mechanisms, when agreed by the parties. However, enforceability of such mechanisms may be uncertain, and for such reason, their use remains limited in practice.

Conclusion

International arbitration awards are generally final and cannot be appealed in the traditional sense. Limited grounds for challenge may exist, depending on the legal framework and the seat of arbitration, but these are typically aimed at challenging or

setting aside an award as a result of procedural irregularities or violations or public policy.

For such reason, parties should be cognizant of the limitations on post-award review when choosing arbitration.