

# How do I appoint an arbitrator?

by *Practical Law Arbitration*, with thanks to *Hughes Hubbard & Reed LLP* for their assistance on US law aspects

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*Some arbitration agreements require arbitrators to be chosen and appointed by the parties. But how do you actually go about appointing them? This Practice note provides an overview of the necessary steps for appointing an arbitrator, including the first approach to a potential arbitrator and confirmation of appointment.*

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This Note provides an overview of the steps that are involved in choosing and appointing an arbitrator. Arbitration agreements frequently require both parties to take steps to complete the appointment of a tribunal and where this is the case, it is paramount that parties comply with these steps. For example, the agreement may require the parties to agree on the identity of a sole arbitrator or to appoint one arbitrator each. The prime focus of this Note is to set out the steps counsel must take to appoint the tribunal, including the first approach to a potential arbitrator and confirmation of appointment. It provides links to more detailed discussion where appropriate.

For a concise list on the steps needed to approach, appoint, and confirm an arbitrator, see [Checklist, Appointing an arbitrator to an international arbitration](#). For an analysis of the remedies available under the English Arbitration Act 1996 (AA 1996) where your opponent fails to take the necessary steps, see [Practice note, Constituting a tribunal under the English Arbitration Act 1996](#). For a sample petition to appoint an arbitrator in US federal district court, see [Standard document, Petition to appoint an arbitrator \(federal\)](#).

## First step: check the contract

### What kind of tribunal?

It is essential that the parties to the arbitration agreement comply with the terms of the agreement that deal with the appointment and constitution of the tribunal. If they do not, there is a risk that the tribunal will not have substantive jurisdiction over the dispute and any award or decision that it makes may be vulnerable to challenge.

The first thing to check is the kind of tribunal the arbitration agreement requires. You must determine:

- How many arbitrators are to be appointed?
- In the case of a three-person tribunal, whether there is to be a chairperson or an umpire.
- What qualifications (if any) the tribunal must possess.

For further explanation, see [Practice note, Constituting a tribunal under the English Arbitration Act 1996](#).

### Who is to appoint?

Where the arbitration clause specifies that the arbitration is to be governed by a set of institutional rules, those rules typically provide for an appointment procedure. For example:

- In **International Chamber of Commerce (ICC)** arbitration, the ICC International Court of Arbitration (ICC Court) may either appoint arbitrators or "confirm" arbitrators nominated by the parties (see, for example, *Article 13, ICC Rules 2017 and 2021*).
- In **London Court of International Arbitration (LCIA)** arbitration, the LCIA Court is the sole appointing authority (see, for example, *Article 5, LCIA Rules 2014 and 2020*).
- In **International Centre for Dispute Resolution (ICDR)** arbitration, the case administrator may, at the request of any party, either appoint arbitrators or confirm arbitrators nominated by the parties by sending a notice and a copy of the ICDR Rules to the arbitrator(s) (see, for example, *Article 12, ICDR International Rules 2014; Article 13 ICDR International Rules 2021*). In cases no administered by the ICDR, the ICDR may, with party agreement, appoint or facilitate appointment of the tribunal (see *ICDR® Arbitrator Appointment Services*).
- In an ad hoc arbitration under the *Arbitration Rules* of the **United Nations Commission on International Trade Law (UNCITRAL)**, the parties usually agree that appointments should be made by a third party, often the LCIA, the ICC or the ICDR (see *Articles 6-8, UNCITRAL Arbitration Rules 2013*). The ICC and the American Arbitration Association (AAA), of which the ICDR is the international division, have published special rules governing the procedure for making these appointments (see *Rules of ICC as Appointing Authority*).

Where the arbitration is not governed by institutional rules, that is, in an **ad hoc** arbitration, and if there is a provision for appointments to be made by a third party, you must follow the applicable procedure (see *How to secure an appointment by a third party*). If your contract provides for the parties to make the necessary appointments, you must then take the required steps to make an appointment and ensure that all other parties do the same. For discussion of the remedies available under the AA 1996 where other parties default in making appointments, see *Practice note, Constituting a tribunal under the English Arbitration Act 1996*.

US Courts, applying the **Federal Arbitration Act** (FAA) (9 U.S.C. §§ 1-16, 201-208, 301-307), may designate an arbitrator if the agreement is silent or your opponent fails to take the necessary steps. For more information on the FAA, see *Practice Note, Understanding the Federal Arbitration Act*.

## How to secure an appointment by a third party

The procedure for securing an appointment by a third party varies according to the arbitration agreement and the institution concerned. Where the third party is the institution under the auspices of which the arbitration is being conducted, then the rules of that institution will set out the steps that need to be taken.

The New York City Bar Association's Arbitration Committee published a *Report, Arbitrator Appointment Procedures of Arbitral Institutions in Commercial Arbitrations*, which discusses practice and procedure before the AAA and the ICDR, the International Court of Arbitration of the ICC, the International Institute for Conflict Prevention and Resolution (CPR), JAMS, and the LCIA.

## Procedure in ICC arbitration

In an ICC arbitration, the arbitration is commenced by the service on the Secretariat of a Request (*Article 4.2, ICC Rules 2017* and *ICC Rules 2021*). The respondent then serves an Answer within 30 days (*Article 5.1, ICC Rules 2017 and 2021*). The procedure for the nomination of a tribunal and the appointment of the tribunal in an ICC arbitration differs depending on whether the parties have agreed to appoint a sole arbitrator or a three-member tribunal.

If the parties have agreed to a sole arbitrator, they may nominate an arbitrator by agreement within 30 days of the Request, failing which the ICC Court appoints an arbitrator (*Article 12.3, ICC Rules 2017 and 2021*). If three arbitrators are to be appointed, the parties must each nominate an arbitrator in their Request and Answer, respectively. The third arbitrator is nominated by the ICC Court unless there is an agreed procedure for nomination, in which case the appointment is subject to confirmation by the ICC Court (*Article 12.4, ICC Rules 2017 and 2021*).

All arbitrators nominated by the parties are subject to confirmation by the ICC Court. When appointing or confirming arbitrators, the ICC Court must consider the proposed arbitrator's nationality, residence, and other connections to any particular country (*Article 13.1, ICC Rules 2017 and 2021*). For a practical illustration, see [Case study, Commencing ICC arbitration \(2012, 2017 and 2021 Rules\)](#).

If the parties do not agree on the number of arbitrators, the ICC Court appoints a sole arbitrator, unless it considers that the circumstances of the case warrant the appointment of a three-person tribunal, in which case each of the parties nominates one arbitrator and the ICC Court appoints the third (*Articles 12.2 and 12.5, ICC Rules 2017 and 2021*).

Under the 2017 and 2021 Rules, the arbitrator must sign an extensive statement of "acceptance, availability, impartiality and independence" (*Article 11.2, ICC Rules 2017 and 2021*). The arbitrator must "disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality" (*Article 11.2, ICC Rules 2017 and 2021*). These requirements relating to the independence and impartiality of the arbitrator apply whether the arbitrator is appointed by the ICC Court or by the parties (see [Legal update, ICC to request arbitrators to disclose details of their availability and independence](#)).

For additional explanation on procedure under the ICC Rules 2017 and 2021, please see [Practice notes, ICC Arbitration \(2012 and 2017 Rules\): a step-by-step guide](#) and [ICC Arbitration \(2021 Rules\): a step-by-step guide](#).

## Procedure in LCIA arbitration (2014 and 2020 Rules)

In an LCIA arbitration, the arbitration is commenced by service of a Request on the LCIA Registrar (*Article 1.1, LCIA Rules 2014* and *2020*). The respondent then has 28 days in which to serve a Response (*Article 2.1, LCIA Rules 2014* and *2020*). "Promptly" after service of the Response (or, if no Response is served, after the expiry of 35 days (*Article 5.6, LCIA Rules 2014*) or 28 days (*Article 5.6, LCIA Rules 2020*) from the receipt by the Registrar of the Response), the LCIA Court appoints a tribunal.

An arbitrator may not be appointed by the LCIA Court unless and until the arbitrator has filed and furnished to the Registrar a written summary of his or her qualifications and professional positions, an agreement to fee rates that conform to the LCIA Schedule of Costs and a written declaration stating:

- Whether there are any circumstances currently known to the arbitrator that are likely to give rise, in the mind of any party, to any justifiable doubts as to his or her impartiality or independence and if so, specifying in full such circumstances in the declaration.

- Whether he or she is ready, willing, and able to devote sufficient time, diligence, and industry to ensure the expeditious and efficient conduct of the arbitration.

(Article 5.4, LCIA Rules 2014 and 2020.)

For a detailed explanation of the LCIA arbitration procedure under the 2014 and 2020 Rules, see [Practice notes, LCIA arbitration \(2014 Rules\): a step-by-step guide](#) and [LCIA arbitration \(2020 Rules\): a step-by-step guide](#).

## Procedure in ICDR arbitration

In an ICDR arbitration, the arbitration is commenced by service of written notice to the administrator and the respondent (Article 2.1, ICDR Rules 2014 and 2021). The claimant may also initiate the arbitration through the Administrator's online filing system (Article 2.1, ICDR Rules). The respondent has 30 days from the date the administrator receives the notice of arbitration to submit a written statement of defence (Articles 2.2 and 3.1, ICDR Rules) and respond to any proposals the claimant made to the number of arbitrators (Article 3.4, ICDR Rules). The administrator may extend this time limit if he or she considers an extension justified (Article 3.5, ICDR Rules).

If the parties have not agreed on the number of arbitrators, one arbitrator is appointed unless the administrator determines that three arbitrators are warranted by the size, complexity, or circumstances of the case (Article 11, ICDR Rules 2014; Article 12 ICDR Rules 2021).

The ICDR procedures permit parties to agree to any procedure for appointing arbitrators (Article 12.1, ICDR Rules 2014; Article 13.1, ICDR Rules 2021) and they may mutually designate arbitrators without the administrator's involvement (Article 12.2, ICDR Rules 2014; Article 13.2, ICDR Rules 2021). However, if the parties have not agreed on this procedure within 45 days after the commencement of the arbitration or if the appointments are not made within the time limits of the agreed procedure, the administrator appoints and designates the presiding arbitrator at any party's written request (Article 12.3, ICDR Rules 2014; Article 13.3, ICDR Rules 2021). The administrator must invite consultation with the parties and may appoint nationals of a country other than that of any of the parties (Article 12.4, ICDR Rules 2014; Article 13.4, ICDR Rules 2021). If there are multiple claimants or respondents, the administrator may appoint all the arbitrators unless the parties have agreed otherwise no later than 45 days after commencement of the arbitration (Article 12.5, ICDR Rules 2014; Article 13.5, ICDR Rules 2021).

For a detailed explanation of the ICDR arbitration procedure under the 2014 and 2021 Rules, see [ICDR Arbitration: A Step-by-Step Guide](#).

## Procedure in ad hoc arbitration where ICC acts as appointing party

In [ad hoc arbitrations](#) where the parties have agreed that the ICC is to appoint the tribunal, appointments are carried out by a special committee of the ICC Court.

In an arbitration under the UNCITRAL Arbitration Rules, the ICC Court produces a list of at least three potential candidates, which the parties must place in order of preference, deleting any arbitrators who are unacceptable to them. The ICC Court then makes its selection using the completed lists (Article 3.2, Rules of ICC as appointing authority).

In a non-UNCITRAL ad hoc arbitration, the ICC Court simply selects an arbitrator (Article 4).

The parties may challenge the appointment in either case. Challenges are determined by a Special Plenary Session of the ICC Court ([Articles 3.5](#) and [4.3](#)).

## Procedure in ad hoc arbitration where LCIA acts as appointing party

In ad hoc arbitrations where the parties have agreed that the LCIA is to appoint the tribunal, the LCIA Court makes the appointments.

If the arbitration is governed by the UNCITRAL Arbitration Rules, the parties may request the LCIA Court to produce a list of potential candidates from which the tribunal is appointed, either by agreement or by the list procedure described above. Otherwise, the LCIA Court simply chooses a tribunal and appoints it. The parties may make submissions on the suitability (or otherwise) of any proposed candidate.

## Procedure in ad hoc arbitration where ICDR acts as appointing party

In ad hoc arbitrations where the parties have agreed that the ICDR is to appoint the tribunal, appointments are made by the administrator.

## Procedure in other cases

In other cases, an arbitration agreement may simply provide that a named third party should appoint the tribunal. In that case, the proper course is to write to that third party (copied to all other parties) requesting the appointment to be made. For a sample letter and drafting notes, see [Standard document, Request letter to third party appointor to appoint sole arbitrator](#).

It is common for parties in ad hoc arbitrations to rely on the [UNCITRAL Arbitration Rules](#). Under those rules, if the parties have not agreed on an appointing authority, and if certain conditions are met, then a party may request the Secretary General of the Permanent Court of Arbitration (PCA) to designate an appointing authority ([Article 6\(2\)](#)) (see also [Redfern and Hunter, paras 4.46-4.48](#))

## How to appoint your own arbitrator

If the contract requires you to appoint your own arbitrator, you must go through the following steps:

- Choosing or agreeing to an arbitrator.
- Performing pre-appointment checks.
- Appointing the arbitrator.

## Choosing an arbitrator

If you are entitled to choose an arbitrator, or where the contract requires that an arbitrator be agreed to, it is vital that you ensure that the arbitrator appointed is the best available candidate from your point of view. The identity of the arbitrator may have a substantial influence not only on the eventual outcome of the proceedings, but also on the length, cost, and overall character of the arbitration. See also *Redfern and Hunter*, [paras 4.50-4.72](#).

See also [Checklist, Resources to help you find an arbitrator](#), which provides a collection of resources to assist parties in finding and selecting an arbitrator.

### Draw up a behind-the-scenes shortlist

After checking the arbitration agreement for any qualifications or other requirements that may apply to the arbitrator(s), you should draw up a list of potential candidates for appointment. Research the expertise and background of everybody on your list. You may also consider inviting a potential arbitrator to a pre-appointment interview, but do not compromise the impartiality of the candidate by discussing any of the merits of the dispute. (For a fuller discussion on choice of arbitrators and pre-appointment interviews, see [Practice note, Selection of party-nominated arbitrators](#).) (See also *Redfern and Hunter*, [paras 4.72-4.74](#).)

### Agreed appointments: suggesting candidates to your opponent

If the arbitration agreement requires all parties to agree to the identity of the arbitrator, both sides must address this subject. This can be a delicate task and must be approached carefully. There is always a risk that a suitable arbitrator will be rejected by one party merely because he or she has been suggested by the other party.

The usual procedure for agreeing on an arbitrator involves each party suggesting three possible candidates for appointment to the other. Unfortunately, it is common in practice for each side to reject the other side's nominees, which then excludes six potentially suitable candidates. Therefore, before you embark on this procedure, you should consider meeting with your opponent (or their counsel) to discuss whether any suitable candidate can be identified. This is a less confrontational procedure and may in practice yield an appointment that pleases both sides. You should keep a written summary of the discussions and ensure that it is agreed on and signed by both parties to avoid future disputes about what was said.

If you are unable to secure an agreement through face-to-face discussions, then it is usually worth sending a letter suggesting a choice of arbitrators for agreement. Although this is unlikely to lead to an agreed appointment, it usually provides a basis for an application to the court for the appointment. You should set out their names, qualifications and backgrounds, and state very briefly why they would be suitable to hear and determine the dispute. If your opponent rejects your suggested choices, it is probably worth asking them to explain why. This will give you some material to work with should an application to court be necessary.

If the letter does not lead to any agreement, or if it is simply ignored, then the *lex arbitri* (the law of the seat of the arbitration) may provide remedies. For example:

- The AA 1996 provides for a basic procedure for the appointment of the tribunal where the parties are unable to agree on a procedure. It requires the service of a formal request by one party for the appointment of the arbitrator

on the other party (under [section 16](#)), following which the parties must then make their appointment within the time limits specified by the AA 1996. If the parties are unable, following the service of such a formal notice, to constitute the tribunal, the court may, on the application of one of the parties, make directions as to the appointment of the tribunal. For further discussion, see [Practice note, Constituting a tribunal under the English Arbitration Act 1996](#).

- In the US, the FAA provides for application to the courts for relief by either party ([9 U.S.C. §§ 5, 206 and 208](#)). In cases governed by the [Panama Convention](#) ([9 U.S.C. §§ 301-07](#)), three arbitrators are appointed unless the parties agree otherwise ([9 U.S.C. § 303](#); [Article 3, Panama Convention](#); [Article 5, Rules of Procedure of the Inter-American Commercial Arbitration Commission \(the IACAC Rules\)](#)).

For further information, see [Redfern and Hunter, paras 4.42-4.45](#).

### Checking availability and terms of appointment

After drawing up a list of possible candidates, you now need to check their availability and willingness to act (see also [Redfern and Hunter, para 4.72](#)). The timing of this approach can be quite important. Where you are attempting to agree to a sole arbitrator, it is usually better to postpone these checks until after you have secured an agreement in principle with your opponent on the identity of an arbitrator. Any "behind-the-scenes" contact between one party and the arbitrator usually arouses suspicions and leads to the rejection of the proposed arbitrator. Once you have agreed on a potential candidate, you can approach the person jointly to inquire about his or her availability and terms of appointment.

Where the arbitration agreement requires each party to appoint its own arbitrator, there is no advantage to waiting. You should make your checks as soon as possible, with a view to securing the best available appointee.

The approach to the arbitrator can be made by an informal telephone call in the first instance, to be followed up by a letter. Check the following points:

- Whether the possible candidate has the capacity to undertake the arbitration over the coming months (or in a large case, years). Make a realistic estimate of the likely length of the arbitration (assuming that it runs its full course) and ensure that the arbitrator will have sufficient time.
- Whether the arbitrator is willing to act. Arbitrators are not obliged to accept appointments, and you may find that one or more of the candidates on your list simply does not wish to accept the proposed appointment.
- The arbitrator's fees. Ask the arbitrator to explain how they will charge fees for the arbitration; for example, whether any fee is payable on appointment and what the hourly rate is after that. This should be made as clear as possible at the outset. If the arbitrator's answers to your queries are unclear, ask for clarification. However, usually arbitrators will let you set a schedule of standard rates.
- The terms of appointment. These are the terms on which the arbitrator is willing to accept an appointment. Some arbitrators have their own terms of appointment; others may accept appointment on institutional terms, for example, the London Maritime Arbitrators Association (LMAA) [terms](#). The terms of appointment may deal with matters including entitlement to fees, immunity from suit and the consequences of resignation.

It is vital that you do not discuss the merits of the dispute with the proposed arbitrator at any time. You should also ensure that you make your inquiries as quickly as possible, to ensure that the best arbitrators are not engaged by your opponent.

For a sample pre-appointment inquiry letter to an arbitrator, see [Standard document, Appointments: Letter to proposed arbitrator and drafting notes](#).

## Making the appointment

Having chosen an arbitrator and satisfied yourself of their availability and willingness to act, you must next make the appointment. The steps to be taken depend on whether the appointment is an agreed appointment or a unilateral appointment. However, in each case, you must ensure that the following requirements are satisfied:

- The arbitrator is requested to accept the appointment in relation to a particular dispute.
- The arbitrator has signalled his or her acceptance of appointment in relation to that dispute.
- The arbitrator's acceptance of appointment has been communicated to the other party to the arbitration.

The appointment is not complete until all three requirements are satisfied. Until that time, the appointing party is entitled to change its mind and revoke the request to accept appointment. However, once the arbitrator's acceptance of appointment has been communicated to the other party, the appointment is complete and cannot be revoked.

## Notice requesting arbitrator to accept appointment

### Who sends the notice?

If the tribunal consists of a sole arbitrator to be appointed by agreement, the notice requesting him to accept appointment should be sent jointly. In practice, this can be done by one party permitting the other to write to the arbitrator.

If each party must appoint its own arbitrator, then the notices should be sent by each party to its proposed arbitrator.

### What should the notice state?

The notice should be set out in writing, either in a letter form or in a more formal notice. You should include a copy of the arbitration agreement and any applicable contract. It is important to draft the notice carefully because the arbitrator's jurisdiction will depend on the scope of the request. For example:

- If you refer only to "contractual" claims in your request, and the arbitrator accepts appointment on those terms, it would not be possible to introduce any tort claims into the reference.
- Similarly, if you limit the scope of the reference to "disputes arising out of the delivery of [x] on [date]", you would not be entitled to bring into the reference any disputes arising out of other deliveries under the same contract.

Therefore, it is usually advisable to make the terms of the notice as broad as possible, to ensure that the arbitrator has jurisdiction to determine all possible disputes. If arbitrators in the same tribunal have accepted appointment in respect of differently defined disputes, this can raise difficult issues concerning the exact scope of the tribunal's jurisdiction. The tribunal will probably have jurisdiction only in respect of those disputes that are common to the appointment of all members.

For sample requests with covering letters and drafting note, see:

- [Standard document, Appointment of party-nominated arbitrator: covering letter and drafting notes.](#)
- [Standard document, Joint appointment of sole arbitrator under the English Arbitration Act 1996: covering letter and drafting notes.](#)

## Arbitrator's acceptance of appointment

The arbitrator typically accepts the appointment in writing. The acceptance usually refers to any terms of appointment. You should verify that these terms correspond with those conveyed to you before making the appointment. If they do not, immediately find out why.

Sometimes the arbitrator will already have accepted appointment orally, in which case it is permissible to write to the arbitrator to confirm the appointment that was already made.

## Communicating acceptance of appointment to parties

If both parties send the request jointly, the arbitrator's letter accepting appointment should be copied to both parties. If not, you must ensure that your opponent is notified immediately so the appointment is completed.

Similarly, if you have appointed an arbitrator unilaterally, you should communicate the arbitrator's acceptance of appointment to your opponent as soon as possible.

## Post-appointment

### Effect of appointment

If the tribunal is to be a sole arbitrator, then it is fully constituted as soon as the appointment of the chosen arbitrator is completed. The tribunal is immediately entitled to exercise any of its procedural powers.

However, in the case of a tribunal consisting of more than one arbitrator the position is less straightforward. The tribunal is not complete until the specified number of arbitrators has been appointed under the arbitration agreement. Until that happens, the tribunal has no power to act. However, if you require remedies such as freezing injunctions before the tribunal is fully constituted, national courts may be able to step in and assist. For example:

- Under the AA 1996, the court can grant interim relief in these circumstances (for further discussion of the English court's supportive powers for this, see [Practice note, Supportive powers of the English courts: an overview](#)).
- Under the FAA, courts may grant interim relief in these circumstances. However, a few US courts have held that they lack power to grant interim relief where the underlying dispute is subject to an arbitration agreement governed by the [New York Convention](#) (for more information, see [Practice Note, Interim, Provisional and Conservatory Measures in US Arbitration](#)).

An increasing number of the leading arbitral institutional rules now include provisions for the appointment of emergency arbitrators. Emergency arbitrators enable parties to obtain urgent relief before the tribunal is constituted and without having to go to court. For more information, see [Practice note, Emergency arbitrators in international arbitration](#).

## What should the arbitrator do following appointment?

Following acceptance of the appointment, arbitrators should take the following steps to ensure the arbitration runs smoothly:

- The arbitrators should check, and clarify if necessary, the scope of their jurisdiction. They should ensure that they have a copy of the contract between the parties and (if separate) the arbitration agreement. Any possible issues relating to the scope of the tribunal's jurisdiction or powers should be raised as early as possible.
- If not already done, the arbitrators should seek confirmation that their acceptance of appointment has been communicated to the other party to the arbitration, completing the appointment.
- If the tribunal consists of more than one arbitrator, the party-appointed arbitrator should seek details of the identity of the other co-arbitrator. It is usually advisable to consult with the co-arbitrator(s) to ensure that the scope of the reference contained in their appointments is consistent. If there is any discrepancy (for example, if one party has sought to refer tortious claims, but the other party has limited the scope of the appointment), parties should raise this immediately. Although the matter is not entirely clear, in this type of case the tribunal's jurisdiction would be limited to those matters that all parties had sought to refer (see [What should the notice state?](#) above).

## Challenges

Some institutional rules incorporate provisions for challenging appointments. For example, the ICC Rules permit challenges within 30 days of the notification of appointment. The challenge is determined by the ICC Court ([Article 14, ICC Rules 2017 and 2021](#)).

Under the LCIA Rules 2014 and 2020, Article 10(1) provides that an arbitrator may be challenged by any party if circumstances exist that give rise to “justifiable doubts” as to his or her impartiality or independence.

For detailed discussion about challenges under the ICC and LCIA Rules, see [Redfern and Hunter, paras 4.109-4.113](#).

Under the ICDR International Arbitration Rules, a party may challenge the appointment of an arbitrator within 15 days after being notified of the appointment or after learning of circumstances that give rise to the challenge (*Article 14, ICDR Rules 2014; Article 15, ICDR Rules 2021*). The administrator has sole discretion to decide a challenge (*Article 14.3, ICDR Rules 2014; Article 15.3 ICDR Rules 2021*), unless the parties or the challenged arbitrator agree that the challenged arbitrator should withdraw (*Article 14.3, ICDR Rules 2014; Article 15.3 ICDR Rules 2021*).

National laws generally provide for the removal of arbitrators (usually on the grounds of lack of impartiality or independence) rather than challenges to appointments. This is discussed further in *Redfern and Hunter*, [paras 4.102-4.105](#).

For example, in the US, the FAA incorporates by reference the Panama Convention, which in turn incorporates the Inter-American Commercial Arbitration Commission (IACAC) Rules (see [9 U.S.C. §§ 301-307](#); *Article 3, Panama Convention*) as a default source of arbitration procedures. The IACAC Rules provide for challenges to IACAC arbitrators if circumstances give rise to justifiable doubts about the arbitrator's impartiality or independence (*Articles 10-12, IACAC Rules*).

In England, Wales and Northern Ireland, there is no procedure for challenging appointments under the AA 1996. The only possible remedy is removal of the arbitrator under section 24 (for example, on the ground that the arbitrator does not possess the qualifications required by the arbitration agreement) (see [Case study, Application to remove arbitrator under section 24 English Arbitration Act 1996](#)).

In the US, the FAA does not provide a process for challenging the appointment of the arbitrator(s) before the award has been made. As a result, US courts generally do not consider interlocutory challenges to an arbitrator's appointment (see *AVIC Int'l USA, Inc. v. Tang Energy Grp., Ltd.*, 614 F. App'x 218 (5th Cir. 2015); *In re Sussex*, 781 F.3d 1065 (9th Cir. 2015); and *Marc Rich & Co. v. Transmarine Seaways Corp.*, 443 F. Supp. 386, 388 (S.D.N.Y. 1978); Restatement (Third) U.S. Law of Int'l Comm. Arb. § 3.2 PFD (2019)). After the award is made, an arbitrator can be challenged through a proceeding to confirm or vacate the award (Restatement (Third) U.S. Law of Int'l Comm. Arb. § 4.18 PFD (2019)).

For an overview of, and practical guidance on, how to challenge an arbitrator under different institutional rules and national jurisdictions, as well as the different grounds on which arbitrator challenges may be brought, see [Practice note, Challenges to arbitrators](#) and *Redfern and Hunter*, [paras 4.109-4.116](#).