

# Recognition and Enforcement of Arbitral Awards under England Arbitration Act

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*In this regard, arbitration procedures in England have been actively used for a long time. In England, dispute resolution methods through arbitration have been developed centered on merchant groups such as guilds from the 16th century and have been actively used until today. However, the arbitration procedure also had the characteristics of the common law because there was no legislation related to arbitration.*

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*In the 'Arbitration Act 1889', two types of arbitration systems, 'common law arbitration' and 'statutory arbitration' coexisted.*

*However, in the arbitration procedure, according to the newly enacted 'Arbitration Act 1889', the arbitration agreement was binding from the time the arbitration agreement was reached. There was a way to select an arbitrator even if it was not explicitly stipulated in the arbitration agreement, and the arbitration award was quickly enforced. Arbitration under contract was preferred over common law arbitration, where withdrawal and revocation of awards were possible. However, in response to these provisions, the England courts considered the arbitration system to deprive the courts of jurisdiction, while a strengthened judicial review of arbitration procedures was done. In particular, England unified the arbitration-related laws, which had been scattered for a long time, adopted the model law, and enacted the 'Arbitration Act 1996'.*

*Under the recognition and enforcement of arbitral awards in 'Arbitration Act 1996', Section 66*

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*deals with the recognition and enforcement of arbitral awards and foreign arbitral awards, Section 2 of the 'Arbitration Act 1950' is inherited and used as it is. Second, it deals with the execution of arbitral awards under the New York Convention: Article 100 (New York Convention), Section 101 (Approval and Enforcement of Awards), Section 102 (Evidence Presented by a Party Seeking Recognition and Enforcement), and Section 103 (Provides Matters Concerning Rejection Recognition and Enforcement).*

Key Words : recognition and enforcement of arbitral awards, Arbitration Act 1996, order of leave, objection to substantive jurisdiction of tribunal, New York Convention, Geneva Convention, England Arbitration system

— < Contents > —

I. Introduction	III. Recognition and Enforcement of Foreign
II. Recognition and Enforcement of Arbitral	Arbitral Awards Under the International
Awards Not Under the International	Conventions
Conventions	IV. Conclusion
	References

## I . Introduction

England is a significant base for international trade in Europe, and its dispute resolution through arbitration is active. Therefore, due to its geographical relationship with the European continent, its settlement of trade transactions and disputes with European countries is one of its most essential tasks. In this regard, arbitration procedures in England have been actively used for a long time. In England, dispute resolution methods through arbitration have been developed centered on merchant groups such as guilds from the 16th century and have been actively used until today.<sup>1)</sup> However, the arbitration procedure also had the characteristics of the common law because there was no legislation related to arbitration. Therefore, arbitration based on common law was carried out until the first half of the 19th century. In the 'Arbitration Act of 1889', two arbitration systems 'arbitration based on common law' and 'arbitration based on statute law' coexisted. However, according to the newly enacted 'Arbitration

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1) For details on the development of the UK arbitration system, see Chun-Won Lee et al., "International Trends on Recognition and Enforcement of Arbitral Awards", Ministry of Justice, 2019, p. 73 et seq.

Act 1889', the arbitration agreement was binding from the time the arbitration agreement was concluded, there was a way to select an arbitrator even if it was not explicitly stipulated in the arbitration agreement, and the arbitration award was quickly enforced. Arbitration under contract was preferred over common law arbitration, where withdrawal and revocable awards were possible. However, in response to these provisions, the England courts considered the arbitration system to deprive the courts of jurisdiction, while a strengthened judicial review of arbitration procedures was done.<sup>2)</sup> In particular, England unified the arbitration-related laws, which had been scattered for a long time, adopted the model law, and enacted the 'Arbitration Act 1996'.<sup>3)4)</sup>

In particular, regarding the recognition and enforcement of arbitral awards under the 'Arbitration Act 1996', Section 66 of the Act provided for the 'Enforcement of the Award' and Part III the 'Recognition and Enforcement of the Foreign Arbitration Awards of Certain Foreign Awards'. The first was the Geneva Convention,<sup>5)</sup> which, following the contents of Part 2 of the 'Arbitration Act 1950', were inherited and used in Section 99. It secondly deals with the enforcement of arbitral awards under the New York Convention. For example, Section 100 or the New York Convention, Section 101 or the Recognition and Enforcement of Awards, Section 102 or the Evidence to be Produced by the Party Seeking Recognition or Enforcement, and Section 103 or the Refusal of Recognition or Enforcement were stipulated.

In particular, even though England considerably trades with Korea, research on England's arbitration system is lacking. Therefore, it would be helpful to examine the England arbitration law system and the England court's attitude to annulment of arbitration awards.

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2) Scott v Avery (1855) 5 HL Cas 811.

In this case, the England Supreme Court held that the arbitration agreement was valid, but the courts could review the arbitration award at any time and declare it null and void if there was an error in the application of the law. Therefore, it has been determined that the arbitration agreement cannot deprive the court of jurisdiction of legal matters.

3) The 'Arbitration Act 1996' (<https://www.legislation.gov.uk/ukpga/1996/23/contents>).

4) The 'Arbitration Act 1996' did not fully accept the model law, but it was evaluated that important provisions of the model law, such as party autonomy, were accepted as it is or with modifications (J. Lew, H. Bor, G. Fullelove, and J. Greenaway, Arbitration in England, with chapters on Scotland and Ireland, Kluwer Law International, 2013, para. 11).

5) 1923 Geneva Protocol on Arbitration Clauses and the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards.

## II. Recognition and Enforcement of Arbitral Awards Not Under the International Conventions

In an award where the place of arbitration is the United Kingdom, Wales, or Northern Ireland under the 'Arbitration Act 1996' (Section 2[1]),<sup>6)</sup> unless otherwise agreed by the parties, the award shall be conclusive and binding on the parties and all persons claiming through them. However, per the procedure stipulated by law, the award's validity can only be contested through appeal and retrial procedures (Section 58 [1]).<sup>7)</sup> Therefore, an arbitral award does not require a separate recognition procedure and goes through a specific procedure for execution.<sup>8)</sup>

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6) Arbitration Act 1996 § 2 Scope of application of provisions.

- (1) The provisions of this part apply where the seat of the arbitration is in England and Wales or Northern Ireland.
- (2) The following sections apply even if the seat of the arbitration is outside England and Wales or Northern Ireland or no seat has been designated or determined—
  - (a) Sections 9 to 11 (stay of legal proceedings, &c.), and
  - (b) Section 66 (enforcement of arbitral awards).
- (3) The powers conferred by the following sections apply even if the seat of the arbitration is outside England and Wales or Northern Ireland or no seat has been designated or determined—
  - (a) Section 43 (securing the attendance of witnesses), and
  - (b) Section 44 (court powers exercisable in support of arbitral proceedings), but the court may refuse to exercise any such power if, in the opinion of the court, the fact that the seat of the arbitration is outside England and Wales or Northern Ireland, or that when designated or determined the seat is likely to be outside England and Wales or Northern Ireland, makes it inappropriate to do so.
- (4) The court may exercise a power conferred by any provision of this part not mentioned in Subsection 2 or 3 for the purpose of supporting the arbitral process where—
  - (a) no seat of the arbitration has been designated or determined, and
  - (b) by reason of a connection with England and Wales or Northern Ireland the court is satisfied that it is appropriate to do so.
- (5) Section 7 (separability of Arbitration Agreement) and Section 8 (Death of a Party) apply where the law applicable to the arbitration agreement is the law of England and Wales or Northern Ireland even if the seat of the arbitration is outside England and Wales or Northern Ireland or has not been designated or determined.

7) Arbitration Act 1996 § 58 Effect of award.

- (1) Unless otherwise agreed by the parties, an award made by the tribunal pursuant to an arbitration agreement is final and binding both on the parties and on any persons claiming through or under them.
- (2) This does not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Part.

8) As for the recognition of an arbitral award, in principle, an arbitral award does not need to be approved by the court. It is mainly used to prevent duplication of incarceration. In this regard,

The 'Arbitration Act 1996' distinguishes between the (1) domestic arbitral awards and foreign arbitral awards not covered by international conventions, and (2) recognition and enforcement of arbitral awards to which international conventions apply concerning the recognition and enforcement of arbitral awards. It is unusual to bundle the matters related to the recognition and execution of foreign arbitral awards, to which international conventions do not apply, together with the regulations on the recognition and enforcement of domestic arbitral awards.

Any arbitral award may be enforced with the leave of the court. The leave at this time is not based on the method of individual litigation procedures. If no obstacles are claimed in the execution of the arbitral award, the content of the arbitral award is accepted, and the same status as the judgment is granted.

Concerning the enforcement of the arbitration award, "the case of the arbitral tribunal that the Geneva Conventions of 1950 apply" in 'Arbitration Act 1996' Part I, "the recognized recognition, enforcement, and case-law" in 'Arbitration Act 1996' Part II, and "the arbitral awards under the New York Convention for the recognition and enforcement of arbitral suit according to the general method of" 'Arbitration Act 1996' Part III (Arbitration Act 1996 Section 66[4] and 104) are involved.<sup>9)</sup> Therefore, once an arbitral award is made, it is possible to obtain an enforcement leave simply without going through a separate enforcement litigation procedure for execution.

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Sung Joon-ho,

9) *The Clean Air Company v. Compu-Print Company Limited*, an English court, is not a Foreign Award under Chapter 2 of the Arbitration Act of 1950 with respect to the procedure for enforcing in England an arbitration award made in Taiwan, which is not a party to the New York Convention, nor a Foreign Award under the Arbitration Act of 1975. Although it is not a Convention Award, it is said that it is not at all strange that the Arbitration Act of 1950 decides whether to allow the execution of an arbitration award without pleadings and has the same effect as the final judgment of the court in the same way as a general domestic arbitration award. M. Kerr, "The Enforcement of a Taiwanese Arbitration Award", 1990, 6*ARB. Int.* 2. (Byeong-Geun Kang, "Amendment of Korean Arbitration Act and England Arbitration Act 1996", *Journal of Arbitration Studies* v.6, n.1, Korean Association Of Arbitration Studies(Kaas), 1996, p. 129).

## 1. Domestic Arbitral Awards and Foreign Arbitral Awards Not in Accordance With the New York Convention or the Geneva Conventions

Regarding the recognition and enforcement of domestic arbitral awards and foreign arbitration awards to which the New York Convention or Geneva Conventions do not apply, as stipulated in Section 66 in the 'Arbitration Act 1996', they may be enforced by a summary procedure, or it is stipulated that action on the award can be executed through judgment in court.<sup>10)</sup>

On the other hand, foreign arbitral awards to which the Geneva Conventions and New York Conventions apply are stipulated to be recognized and enforced under the requirements stipulated in each convention (Sections 99 to 103). However, even with arbitral awards to which the New York Convention applies, common law<sup>11)</sup> stipulated that it could be enforced according to Section 66 in the 'Arbitration Act 1996'(Section 104).<sup>12)</sup>

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10) Arbitration Act 1996 § 66 Enforcement of the award.

- (1) An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.
- (2) Where leave is so given, judgment may be entered in terms of the award.
- (3) Leave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award. The right to raise such an objection may have been lost (see Section 73).
- (4) Nothing in this section affects the recognition or enforcement of an award under any other enactment or rule of law, in particular under Part II of the M1Arbitration Act 1950 (enforcement of awards under Geneva Convention) or the provisions of Part III of this Act relating to the recognition and enforcement of awards under the New York Convention or by an action on the award.

11) The enforcement of common law arbitration award: ① There will be a valid arbitration agreement in accordance with the governing law of the arbitration agreement. ② It will be included in the scope of the arbitral tribunal duly organized and the subject dispute mediation arbitration agreement. ③ Determination intervention is done when the requirement of having additional jurisdiction is met.

12) Arbitration Act 1996 § 104 saving for other bases of recognition or enforcement.

Nothing in the preceding provisions of this part affects any right to rely upon or enforce a New York Convention Award at common law or under Section 66.

(1) Leave to Enforce an Arbitral Award

1) Leave of the Court for Enforcement of the Arbitral Award

An arbitration award under a valid arbitration agreement may be enforced with the court's leave, along with a judgment or decision of the court (Arbitration Act 1996 Section 66[1]). It does not depend on the place of arbitration of the arbitral award, and under this section, enforcement is granted in a generally simple manner of the arbitral award.<sup>13)</sup> Therefore, if the applicant for enforcement submits an arbitration agreement and an arbitration award or an application for execution leave attached with a certified copy to the court, the court does not go through the procedure of notifying the defendant (*ex parte*) and provides a relatively easy execution leave order (order of leave). By such leave order, it can be enforced like a court judgment or court order.<sup>14)</sup>

In this case, the enforcement order applies to the arbitral award itself, and it cannot be modified with content different from the award, such as including matters related to interest, not included in the arbitral award, and ordered to be executed. Approval at this time is not an order of the court itself and, accordingly, even if the party does not voluntarily implement the award, it cannot be said to reject the order of the court.

The arbitration award shall mean that the eventual decision and award or temporary intermediate judgment procedure command "arbitration awards made under the arbitration agreement" do not apply. However, enforcement is not always permitted for the final arbitral awards, and only some of them may be approved. The arbitral award may be enforced under the 'Arbitration Act 1996' Section 66[1]. In this case, the enforcement may be challenged and, therefore, even if the foreign court refuses to enforce it, it does not constitute a basis for the England court to refuse to enforce it. However, if the foreign court's refusal to execute is based on specific facts or laws, the

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13) *DALMIA DAIRY INDUSTRIES LTD. v. NATIONAL BANK OF PAKISTAN* [1978] 2 Lloyd's Rep. 223 :

The England Court of Appeal argued that it would be contrary to England's public policy for an England court to enforce an ICC award made in Switzerland between nationals of both countries at war (India and Pakistan), provided that both countries maintain friendly relations with the United Kingdom, has been rejected

*Lemenda Trading Co. Ltd. v. African Middle East Petroleum Co. Ltd.*, [1988] QB 448 (03 November 1987).

The England court distinguishes between public order based on universal moral principles and pure domestic public order. There was no question of violation of order.

14) *Chun-Won Lee et al.*, *op. cit.*, p. 75.

relevant grounds may be invoked as the basis for refusal of execution. Therefore, it cannot be brought to the England courts for the same reason.

According to the 'Arbitration Act 1996', the execution of an enforcement order, like any other type of judgment, could be demanded for suspension of execution. The right to request such suspension of execution has not changed, and it can be exercised if there is an ongoing procedure between the parties, including counterclaims or objections to the award. However, general provisions, including guarantees for adjudication, are available until the pleadings are completed.

An objection under 'Arbitration Act 1996' Section 103[5] is similar to an objection according to Sections 67, 68, or 69 against the domestic arbitral award and objection under Section 70[7] and the foreign arbitral award.<sup>15)</sup>

## 2) Judgment of the Same Court as the Content of the Arbitral Award

The content of the arbitral award, not a court judgment, may be permitted to be enforced like a court judgment. In this case, the court's judgment shall be under the contents of the arbitral award.

Thus, for example, if an arbitral award specifies payment within a fixed period and the judgment is rendered after the period has expired, the judgment will still specify the payment due date required by the date indicated in the award (Arbitration Act 1996 Section 66[2]).

## (2) Refusal to Leave to Enforce an Arbitral Award

### (a) Refusal to Leave to Enforce Based on the Violation of Jurisdiction of the Tribunal

The court cannot authorize the execution of the arbitral award when the enforced party asserts and proves that the arbitral award has violated the jurisdiction of the arbitral award. This is a compulsory provision, and when the party to be executed proves it, the court must, if necessary, reject the party's application for enforcement (Arbitration Act 1996 Section 66 [3]).<sup>16)</sup> Accordingly, the enforcement of arbitral awards

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15) Robert Markin/ Hakeem Seriki, *Arbitration Act 1996*, Fifth Edition, informa Law, 2014, p. 262.

16) A. Tweeddale & K. Tweeddale, *Arbitration of Commercial Disputes*, Oxford University Press, 2005,

made in violation of jurisdiction is not permitted unless the parties lose their right of defense regarding the violation of jurisdiction of the tribunal.

However, if, although the arbitration award violates jurisdiction and the party to be enforced knew or should have known of the violation of jurisdiction, participates in the proceedings without a defense of the violation of tribunal jurisdiction, the respondent is deemed to have waived its right to defend under Section 31<sup>17)</sup> and Section 73<sup>18)</sup> of the 'Arbitration Act 1996.'

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para 30.26.

17) Arbitration Act 1996 § 31 Objection to substantive jurisdiction of tribunal.

- (1) An objection that the arbitral tribunal lacks substantive jurisdiction at the outset of the proceedings must be raised by a party not later than the time he takes the first step in the proceedings to contest the merits of any matter in relation to which he challenges the tribunal's jurisdiction. A party is not precluded from raising such an objection by the fact that he has appointed or participated in the appointment of an arbitrator.
- (2) Any objection during the course of the arbitral proceedings that the arbitral tribunal is exceeding its substantive jurisdiction must be made as soon as possible after the matter alleged to be beyond its jurisdiction is raised.
- (3) The arbitral tribunal may admit an objection later than the time specified in Subsection 1 or 2 if it considers the delay justified.
- (4) Where an objection is duly taken to the tribunal's substantive jurisdiction and the tribunal has power to rule on its own jurisdiction, it may—
  - (a) rule on the matter in an award as to jurisdiction, or
  - (b) deal with the objection in its award on the merits. If the parties agree which of these courses the tribunal should take, the tribunal shall proceed accordingly.
- (5) The tribunal may in any case, and shall if the parties so agree, hold proceedings whilst an application is made to the court under Section 32 (determination of preliminary point of jurisdiction).

18) Arbitration Act 1996 § 73 loss of right to object

- (1) If a party to arbitral proceedings takes part, or continues to take part in the proceedings without making, either forthwith or within such time as is allowed by the arbitration agreement or the tribunal or by any provision of this Part, any objection where—
  - (a) the tribunal lacks substantive jurisdiction,
  - (b) the proceedings have been improperly conducted,
  - (c) there has been a failure to comply with the arbitration agreement or with any provision of this part, or
  - (d) there has been any other irregularity affecting the tribunal or the proceedings, he may not raise that objection later, before the tribunal or the court, unless he shows that, at the time he took part or continued to take part in the proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection.
  - (e) there has been a failure to comply with the arbitration agreement or with any provision of this part, or
  - (f) there has been any other irregularity affecting the tribunal or the proceedings, he may not raise that objection later, before the tribunal or the court, unless he shows that, at the time he took part or continued to take part in the proceedings, he did not know and could not

(b) Refusal to Leave to Enforce for Other Reasons

The refusal to enforce the award is not necessarily limited to grounds set forth in Section 66[1] of the 'Arbitration Act 1996. As a signatory to the New York Convention, Section 103 of the 'Arbitration Act 1996' stipulates that England may refuse to grant leave for enforcement even if there are grounds for refusal to approve or enforce it.<sup>19)</sup> In addition, in this Section of 'Arbitration Act 1996' draft legislation, other provisions that could be refused to be enforced were included, including a comprehensive provision called "arbitration award in violation of public order." However, all of these reasons for refusal of enforcement were deleted, leave only the reasons for refusal of enforcement due to the violation of jurisdiction.<sup>20)</sup> However, under the reservation provisions for matters subject to the common law are stipulated in Section 81. The provisions of this Part are governed by the rules of law for disputes that cannot be resolved by arbitration, the rules of law on the effect of an oral arbitration agreement, and public policy. The statutory principle regarding the recognition or refusal to enforce an arbitral award cannot be excluded (Arbitration Act 1996 Section 81).<sup>21)</sup> Therefore, in the enforcement of the arbitral award, it is possible to refuse to enforce the award if the award is found to be contrary to these principles.

Accordingly, if the arbitral award is not enforceable due to severe flaws in form or substantive content, or if the execution of the award is contrary to public order, the

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with reasonable diligence have discovered the grounds for the objection.

(2) Where the arbitral tribunal rules that it has substantive jurisdiction and a party to arbitral proceedings who could have questioned that ruling—

- (a) by any available arbitral process of appeal or review, or
- (b) by challenging the award, does not do so, or does not do so within the time allowed by the arbitration agreement or any provision of this part, he may not object later to the tribunal's substantive jurisdiction on any ground which was the subject of that ruling.

19) A. Tweedale & K. Tweedale, *op. cit.*, para 30,27.

20) DAC Supplementary Report, para 32. Public policy issues are referred to in the notes to Section 81 and 103.

21) Arbitration Act 1996 § 81 Saving for certain matters governed by common law.

(1) Nothing in this part shall be construed as excluding the operation of any rule of law consistent with the provisions of this part, in particular, any rule of law as to—

- (a) matters which are not capable of settlement by arbitration;
  - (b) the effect of an oral arbitration agreement; or
  - (c) the refusal of recognition or enforcement of an arbitral award on grounds of public policy.
- (2) Nothing in this Act shall be construed as reviving any jurisdiction of the court to set aside or remit an award on the ground of errors of fact or law on the face of the award.

court may refuse to permit the execution of the award.<sup>22)</sup> Even if there is no possibility of arbitration or if the arbitral award is enforced, it is likely to affect the rights of a third party unduly, and the court may not permit the enforcement. However, this is only in exceptional cases.<sup>23)</sup> In addition, the award must be based on a legitimate arbitration agreement. Accordingly, an arbitration agreement must be reached in writing as provided for in the 'Arbitration Act 1996'.<sup>24)</sup> Accordingly, if the arbitration agreement had been completed orally rather than by a written agreement, the arbitration award based on the arbitration agreement may be refused to be enforced.

### **III. Recognition and Enforcement of Foreign Arbitral Awards Under the International Conventions**

The 'Arbitration Act 1996' distinguishes between foreign arbitral awards to which international conventions apply and foreign arbitration awards to which international

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22) *Abouloff v Oppenheimer & Co* (1882) 10 QBD 295

In this case, although allegations of fraud were made in foreign court proceedings, even if such claims were not accepted, the British court was not bound by the judgment of the foreign court and held that it could examine whether the trial was fraudulent from the beginning. This is known as the *Abouloff Rule*, but this principle still holds true today, regardless of whether or not the House of Lords could not make a claim of fraud in a foreign court proceedings which judged that it could be done.

*Interdesco SA v Nullifire Ltd* [1992] 1 Lloyd's Rep 180.

Article 29 of the Brussels Convention states: "In no case may a foreign trial be examined as to its substance." It also stipulates the principle of substantive review restrictions, and regulations that are contextually 'foreign trial by fraud' cases of this principle applying the Brussels Convention. In this case, *Abouloff* rules reasons do not apply, and the defendant ruled that the England court could not proceed with a hearing on the matter that had been tried by alleging fraud in a foreign trial. However, since the foreign court did not judge the newly discovered evidence of fraud after the foreign trial was concluded, it did not violate the principle of prohibition of substantive reexamination.

23) D. Sutton, J. Gilland M. Gearing, *Russell on Arbitration*, Sweet & Maxwell, 2007, para 8-005.

24) Arbitration Act 1996 § 6 Definition of Arbitration Agreement.

- (1) In this part an "arbitration agreement" means an agreement to submit to arbitration present or future disputes (whether they are contractual or not).
- (2) The reference in an agreement to a written form of arbitration clause or to a document containing an arbitration clause constitutes an arbitration agreement if the reference is such as to make that clause part of the agreement.

conventions do not apply for the recognition and enforcement of foreign arbitration awards. The procedures for the recognition and enforcement of foreign arbitral awards to which international conventions apply *mutatis mutandis* have accepted the contents of each convention. Accordingly, Sections 100 to 104 of the 'Arbitration Act 1996' follow the grounds for refusal of recognition and enforcement under the New York Convention if the place of arbitration is a country that is a contracting party to the New York Convention and foreign arbitration awards to which the New York Convention applies are binding on the parties under 'Arbitration Act 1996'...(Section 101(1)).

## 1. Foreign Arbitral Award Under the New York Convention

The provisions after Section 100 of the Arbitration Act 1996 set forth the recognition and enforcement of arbitral awards under the New York Convention. Accordingly, for arbitral awards made in countries that are members of the New York Convention, the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" adopted at the 10th UNCITRAL Session in 1958 (New York Convention) shall be referenced. In this case, the commencement of the arbitration procedure shall be based on a written arbitration agreement, and the resulting arbitration award shall be deemed to have been made at the place of arbitration, regardless of where the arbitration award is sent place.<sup>25)</sup>

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25) Arbitration Act 1996 § 100 New York Convention awards.

- (1) In this part, a "New York Convention award" means an award made, in pursuance of an arbitration agreement, in the territory of a state (other than the United Kingdom) which is a party to the New York Convention.
- (2) For the purposes of Subsection 1 and of the provisions of this part relating to such awards—
  - (a) "arbitration agreement" means an arbitration agreement in writing, and
  - (b) an award shall be treated as made at the seat of the arbitration, regardless of where it was signed, dispatched or delivered to any of the parties. In this subsection, "agreement in writing" and "seat of the arbitration" have the same meaning as in Part I.
- (3) If Her Majesty by Order in Council declares that a state specified in the Order is a party to the New York Convention, or is a party in respect of any territory so specified, the Order shall, while in force, be conclusive evidence of that fact.
- (4) In this section "the New York Convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on June 10, 1958.

(1) Recognition and Enforcement of Arbitral Awards

An arbitral award under the New York Convention shall be binding on the parties. Such binding force shall also remain valid in England, Wales, and Northern Ireland under this Act, and therefore the award may be invoked in defense, set-off, or otherwise in proceedings in England, Wales, and Northern Ireland. In addition, foreign arbitration awards under the New York Convention are also subject to courts of England.<sup>26)</sup> With the leave of the court, it is enforced in the same way as the court's

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26) Arbitration Act 1996 § 105 Meaning of "the court": jurisdiction of high court and county court.

- (1) In this Act, "the court" in relation to England and Wales means the high court or the county court and in relation to Northern Ireland means the high court or a county court, subject to the following provisions.
- (2) The Lord Chancellor may by order make provision—
  - (za) allocating proceedings under this Act in England and Wales to the High Court or the county court;
    - (a) allocating proceedings under this Act in Northern Ireland to the High Court or to county courts; or
    - (b) specifying proceedings under this Act which may be commenced or taken only in the High Court or in [F4 the county court or (as the case may be) a county court.
  - (3) The Lord Chancellor may by order make provision requiring proceedings of any specified description under this Act in relation to which a county court in Northern Ireland has jurisdiction to be commenced or taken in one or more specified county courts. Any jurisdiction so exercisable by a specified county court is exercisable throughout... Northern Ireland.
  - (3A) The Lord Chancellor must consult the Lord Chief Justice of England and Wales or the Lord Chief Justice of Northern Ireland (as the case may be) before making an order under this section.
  - (3B) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in Section 109(4) of the Constitutional Reform Act (2005) to exercise his functions under this section.
  - (3C) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this section—
    - (a) The holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002
    - (b) Lord Justice of Appeal (as defined in Section 88 of that Act).
- (4) An order under this section—
  - (a) May differentiate between categories of proceedings by reference to such criteria as the Lord Chancellor sees fit to specify, and
  - (b) May make such incidental or transitional provision as the Lord Chancellor considers necessary or expedient.
- (5) An order under this section for England and Wales shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) An order under this section for Northern Ireland shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) or Order 1979 which shall be subject to negative

judgment.<sup>27)</sup> In this case, the necessary documents must be submitted following the procedure stipulated by law.<sup>28)</sup>

(2) Saving for Other Bases of Recognition or Enforcement

Nothing in this Part shall limit a party's right to invoke or enforce an award under the New York Convention under common law principles or Section 66 in 'Arbitration Act 1996'.<sup>29)</sup>

(3) Refusal to Recognize and Enforce Arbitral Awards Under the New York Convention

In this part, a "New York Convention award" means an award made, pursuant to an arbitration agreement, in the territory of a state (other than the United Kingdom) that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.<sup>30)</sup>

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resolution (within the meaning of Section 41[6] of the Interpretation Act (Northern Ireland, 1954).

27) Arbitration Act 1996 § 101 Recognition and Enforcement of Awards.

(1) A New York Convention award shall be recognised as binding on the persons as between whom it was made, and may accordingly be relied on by those persons by way of defense, set-off, or otherwise in any legal proceedings in England and Wales or Northern Ireland.

(2) A New York Convention award may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect. As to the meaning of "the court" see Section 105.

(3) Where leave is so given, judgment may be entered in terms of the award.

28) Arbitration Act 1996 § 102 Evidence to be Produced by Party Seeking Recognition or Enforcement.

(1) A party seeking the recognition or enforcement of a New York Convention award must produce—

(a) the duly authenticated original award or a duly certified copy of it, and

(b) the original arbitration agreement or a duly certified copy of it.

(2) If the award or agreement is in a foreign language, the party must also produce a translation of it certified by an official or sworn translator or by a diplomatic or consular agent.

29) Arbitration Act 1996 § 104 Saving for Other Bases of Recognition or Enforcement.

Nothing in the preceding provisions of this part affects any right to rely upon or enforce a New York Convention award at common law or under Section 66.

30) Arbitration Act 1996 § 100 New York Convention Awards.

(1) In this part a "New York Convention award" means an award made, in pursuance of an arbitration agreement, in the territory of a state (other than the United Kingdom) which is a party to the New York Convention.

(2) For the purposes of Subsection (1) and of the provisions of this part relating to such awards—

The Court recognition or enforcement of the award may be refused if the person against whom it is invoked proves (a) that a party to the arbitration agreement was (under the law applicable to him) under some incapacity; (b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made; (c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; (d) that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration (but see Subsection 4); (e) that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country in which the arbitration took place; (f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made. The court may refuse to recognize or enforce the arbitral award if the award concerns any matter that cannot be settled by arbitration or if it would be contrary to public policy to recognize or enforce it.

The court may recognize or enforce an award that contains decisions on matters not submitted to arbitration to the extent that it contains decisions on matters submitted to arbitration that can be separated from those not so submitted. Where an application for the setting aside or suspension of the award has been made to such a competent authority as mentioned in Subsection (2f) of the 'Arbitration Act 1996', the court, before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the recognition or enforcement of the award. It may also apply to the party claiming the recognition or enforcement of the award order for the other party

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- (a) "arbitration agreement" means an arbitration agreement in writing, and
  - (b) an award shall be treated as made at the seat of the arbitration, regardless of where it was signed, dispatched or delivered to any of the parties. In this subsection, "agreement in writing" and "seat of the arbitration" have the same meaning as in Part I.
  - (3) If Her Majesty by Order in Council declares that a state specified in the Order is a party to the New York Convention, or is a party in respect of any territory so specified, the Order shall, while in force, be conclusive evidence of that fact.
  - (4) In this section "the New York Convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on June 10, 1958.

to give suitable security.<sup>31)</sup>

## 2. Foreign Arbitral Awards Following the Geneva Conventions

In Section 99 of the 'Arbitration Act 1996', the provisions of Part II of the 'Arbitration Act 1950' apply *mutatis mutandis* to enforce the foreign arbitral awards under the Geneva Conventions (Arbitration Act 1996 Section 99).<sup>32)</sup> In particular, the requirements for the recognition and enforcement of foreign awards are stipulated in

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31) Arbitration Act 1996 § 103 Refusal of Recognition or Enforcement.

- (1) Recognition or enforcement of a New York Convention award shall not be refused except in the following cases.
- (2) Recognition or enforcement of the award may be refused if the person against whom it is invoked proves—
  - (a) that a party to the arbitration agreement was (under the law applicable to him) under some incapacity;
  - (b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made;
  - (c) that a party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;
  - (d) that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration (see Subsection 4);
  - (e) that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country in which the arbitration took place;
  - (f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.
- (3) Recognition or enforcement of the award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to recognise or enforce the award.
- (4) An award which contains decisions on matters not submitted to arbitration may be recognised or enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those on matters not so submitted.
- (5) Where an application for the setting aside or suspension of the award has been made to such a competent authority as is mentioned in Subsection (2)(f), the court before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the recognition or enforcement of the award. It may also on the application of the party claiming recognition or enforcement of the award order the other party to give suitable security.

32) Arbitration Act 1996 § 99 Continuation of Part II of the Arbitration Act 1950.

Part II of the Arbitration Act 1950 (enforcement of certain foreign awards) continues to apply in relation to foreign awards within the meaning of that part which is not also New York Convention awards.

Section 37 of the 'Arbitration Act 1950' and the conditions for the enforcement of foreign arbitral awards (Arbitration Act 1950 Section 37).<sup>33)</sup>

### (1) Positive Requirements for the Enforcement of Arbitral Awards

In order for a foreign arbitral award to be enforceable in England under this part of the Act, it must have (a) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed; (b) been made by the tribunal provided for in the agreement or constituted in a manner agreed upon by the parties; (c) been made in conformity with the law governing the arbitration procedure; (d) become final in the country in which it was made; (e) been in respect of a matter which may lawfully be referred to arbitration under the law of England. Finally, the enforcement thereof must not be contrary to the public policy or the law of England (Arbitration Act of 1950 Section 37[1]).

### (2) Passive Requirements for Enforcement of Arbitral Awards

Subject to the provisions of this subsection, a foreign arbitral award shall not be enforceable in England under part of this Act if the court dealing with the case is

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33) Arbitration Act 1950 § 37 Conditions for Enforcement of Foreign Awards.

- (1) In order that a foreign award may be enforceable under this part of the Act, it must have—
  - (a) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed;
  - (b) been made by the tribunal provided for in the agreement or constituted in a manner agreed upon by the parties;
  - (c) been made in conformity with the law governing the arbitration procedure;
  - (d) become final in the country in which it was made;
  - (e) been in respect of a matter which may lawfully be referred to arbitration under the law of England, and the enforcement thereof must not be contrary to the public policy or the law of England.
- (2) Subject to the provisions of this subsection, a foreign award shall not be enforceable under this part of this Act if the court dealing with the case is satisfied that—
  - (a) the award has been annulled in the country in which it was made; or
  - (b) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity and was not properly represented; or
  - (c) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration:  
Provided that, if the award does not deal with all the questions referred, the court may, if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the court may think fit.

satisfied that (a) the award has been annulled in the country in which it was made, or (b) the parties against whom the award was enforced were not given notice of the arbitration proceedings in sufficient time to enable them to present their case, was under some legal incapacity and was not adequately represented; or (c) the award did not deal with all the questions submitted or contained decisions on matters beyond the scope of the agreement for arbitration. If the award does not deal with all the questions referred, the court may, if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the court may think fit (Arbitration Act 1950 Section 37[2]).

### (3) Objections to Enforcement of Arbitral Awards

When the party seeking for a court's refusal to enforce the foreign arbitral award proves that the requirements stipulated in (a), (b), and (c) in 'Arbitration Act 1950' Section 37[1] are not met, that there are other grounds for a refusal to execute, or that the award may be refused enforcement when it fails to meet the requirements set out in (b) and (c) of Paragraph 2 in this section, it is entitled to challenge the validity of the award as long as the court deems it appropriate. In addition, the court may delay the proceedings for a considerable period while the parties take the necessary measures regarding the annulment of the award in the competent court (Arbitration Act 1950 Section 37[3]).

### (4) Analysis

As seen above, the Geneva Conventions require an arbitral award to be final in the awarding country. It caused the inconvenience of having to request the execution judgment again from the enforcement country. In addition to these problems, after the New York Convention was enacted, as significant countries worldwide joined the New York Convention, it became rare to seek the enforcement of the Geneva Conventions.

## IV. Conclusion

England is a country where dispute resolution is actively carried out through arbitration, and knowledge and experience in arbitration have been accumulated due to the long history of arbitration. The courts also respect it. In addition, the 'Arbitration Act 1996' has a legal provision that meets the global standard for the unification of arbitration procedures by incorporating the New York Convention into domestic arbitration law. 'The Arbitration Act 1996' divides foreign arbitration awards into those which do not comply with international conventions and those under international conventions.

At first, the recognition and enforcement of foreign arbitration awards that are not following international conventions are determined under the requirements of Section 66 and 104 of the England Arbitration Act. In addition, foreign arbitral awards according to international conventions are approved and enforced with the court's permission unless there is a particular reason for foreign arbitral awards conforming to the New York Convention. According to the Geneva Conventions, arbitral awards shall be approved and enforced according to the requirements of section 99 of the 'Arbitration Act 1996', which applies *mutatis mutandis* section 37 of the 'Arbitration Act 1950'. Nevertheless, the issues related to public order and the common law tradition will be a very important issue in the recognition and enforcement of arbitral awards.

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