

Role of Courts in Arbitration

Panel

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Topics

- ARIAS
- Comparative ARIAS US vs France/Germany/UK
- Courts role in controlling arbitration
- Reinsurance update
- Future reinsurance claims

Arias Arbitrations: Europe (incl. UK)/US comparisons

	EUROPE (incl UK)	US
I. The Arbitrators		
Selection Process	Limited beauty parades, no discussion of issues. Appointment process not usually controversial.	Parties interview potential party-appointed arbitrators for their views on the issues. Appointment of umpire often time-consuming and sometimes controversial.
Qualifications	Active/retired underwriters/ market people/lawyers. Often lawyers or retired judges.	Most require some past or present affiliation with an insurer or reinsurer.
The Role of the Party-Appointed Arbitrator	Strictly neutral. Party-appointed arbitrator is not advocate for appointer.	Party-appointed arbitrator often expected to advocate for appointing party.
II. Arbitration Procedure		
Ex Parte Communications with Party-Arbitrators	No ex parte.	Allowed until parties agree or panel decides they should cease.
Security for Costs	UK Arbitrators can in certain circumstances order security for Respondent's legal costs.	Rarely done, if ever.
Security for Award	Not available.	Panel may order security for award in certain circumstances.

Arias Arbitrations: Europe (incl. UK)/US comparisons

	EUROPE (incl UK)	US
II. Arbitration Procedure Cont'd		
Discovery	Limited to documents, depositions very unlikely.	Document and Deposition common.
Confidentiality	Confidential	Subject to Agreements between parties
Importance of "the Law," including Choice of Law	Arbitrators obliged to apply the law/Honourable engagement	Arbitrations frequently relieve arbitrators of duty to follow the law.
Involvement of the Courts during the Arbitration	UK Appeals	Very limited other than to confirm interim awards of security.
III. The Award		
Reasoned Awards	Yes, unless parties agree otherwise.	Briefer; becoming more common
Punitive Damages	Not available	Rarely, although arbitrators do have power to award them
Winning Party's Costs	UK Generally awarded (amount typically 70-80%) France/Germany - unlikely	Parties generally bear their own costs unless arbitration agreement provides otherwise.

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Recent English Reinsurance Judgments

- WR Berkley v Axa and Others
- Deep Sky Leasing v Fidelis
- Tyson v GIC Re
- RSA v Equitas
- Unipol v Covea
- Markel v Gen Re
- Hamilton (Lloyd's Syndicate) v Afghan Global Insurance
- Premia Re v AmTrust
- Tyson v Partner Re
- AerCap v AIG

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