



The Bar Council

Barristers in international arbitration

2022



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This brochure provides a brief introduction to:

- Key features of international arbitration – the challenges and opportunities it presents to disputing parties and their legal advisers;
- The advantages which barristers bring to international arbitration;
- Services provided by barristers in international arbitration;
- How to involve a barrister to assist in an international arbitration;

Introduction to barristers

Barristers are specialist advocates among the UK legal professions. The profession has existed for nearly 800 years. Barristers undergo a unique education and training programme in order to be able to present cases to a court in a way that is focused, rigorous and – above all – persuasive.

Barristers are also sought after to give specialist advice on complex issues that require expert judgement.

Barristers are generally independent, self-employed advocates. They practise from “chambers”, which are not law firms but associations of independent barristers who share certain overhead costs (e.g. a building and support staff). (Colloquially, barristers often refer to a chambers as a “set”, which refers to the set of rooms comprising the chambers). Barristers in the same chambers are fully independent of each other, and it is common to find barristers from the same chambers appearing against one another, on opposite sides of a case. Chambers are practiced in ensuring strict separation in administrative arrangements to ensure all parties’ confidentiality.

Reputable chambers can be found in most cities and major towns in England and Wales. Many leading chambers are located in and near the Temple area of London, near the four Inns of Court, dating from

medieval times, which still administer important parts of barristers’ education and training. Today, some chambers also have premises outside the UK, e.g. in Singapore and Dubai.

There are about 17,100 barristers in total, about 13,600 of which are in independent practice. About 3,000 barristers are in employed practice (e.g. in law firms or government legal offices).

About 1,900 barristers have obtained the quality mark of King’s Counsel (KC – also referred to as “Silks”). This represents approximately 1% of the UK legal profession. To become a KC, a barrister must go through a rigorous and transparent selection process which evaluates their excellence in advocacy, as well as certain additional requirements (leadership and working with others, ethics, and commitment to diversity of the legal profession).



Introduction to international arbitration

International arbitration is the leading choice of businesses around the world for dispute resolution. When parties based in different countries do business together, they need a dispute resolution process that is fair, neutral and efficient. They value arbitration because it is:

- **Neutral** – usually the seat of arbitration and the arbitrators will be based in a different country from both parties;
- **Confidential** – arbitration proceedings are generally held in private and parties often agree to keep the proceedings and terms of the final resolution confidential;
- **Flexible** – allowing parties to choose and shape their own procedure;
- **Final** – with very limited rights of challenge or appeal;
- **Effective** – with arbitral awards widely and readily enforced under the New York Convention 1958.

Increasingly, disputing parties from around the world are using barristers from England and Wales to advise and represent them in international arbitrations.

Barristers are highly effective advocates and co-counsel in international arbitrations, because they:

- Have advocacy skills obtained through unique levels of training and experience;
- Are experienced in co-counselling with lawyers from many other jurisdictions (whether civil or common law) and in handling matters involving different applicable laws;
- Work on cases themselves, rather than using employees or associates;
- Generally charge lower fees (due to lower overheads) and have more flexible fee arrangements than law firms.



Key features of international arbitration

International arbitration is a diverse field. It is not the product of any one country or legal system, but has grown over centuries to provide a workable solution where legal relationships – especially of trade and commerce – cross jurisdictional and cultural boundaries.

While no country can claim international arbitration as its own, England and Wales are certainly one of the original and early ‘homes’ from which international arbitration grew. English and Welsh case law from the 1600s shows that arbitration was a familiar part of the trading scene in London from as early as 400 years ago. The practice of international arbitration today has been shaped by its evolution in England and Wales, among other centres of commerce.

Over time, different sectors and different regions of the world have evolved distinct approaches to arbitration.

Many arbitrations today are conducted through institutions such as the International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), Stockholm Chamber of Commerce (SCC), International Center for Dispute Resolution / American Arbitration Association (ICDR/AAA), Singapore International Arbitration Centre (SIAC), Hong Kong International Arbitration Centre, Cairo Regional Centre for International Commercial Arbitration (CRCICA), Regional Centre for International Commercial Arbitration Lagos (RCICAL), Asian International Arbitration Centre (AIAC) (Kuala Lumpur) and others.

That said, many business sectors have developed their own more specialised arbitration systems and rules, which resolve a high volume of cases and are well regarded by business users, e.g. GAFTA (Grain and Feed Trade Association), FOSFA (Federation of Oils, Seeds and Fats Association), the LMAA (London Maritime Arbitrators Association) for shipping disputes, and Bermuda Form arbitration (reinsurance).

For general commercial arbitrations the UNCITRAL (United Nations Commission on International Trade Law) arbitration rules have been a popular choice since the 1970s.

Increasingly, international arbitration is a specialised community where arbitrators, advocates and other professionals collaborate to improve the arbitration process, share best practice, and develop common standards and guidance. There is now an extensive body of 'soft law', rules which parties or tribunals may adopt or treat as guidance, and other 'best practice', which often plays an important role in arbitration procedure.

It is therefore vital to have advocates experienced in arbitrations under a range of different rules, who understand which approaches work best with different kinds of tribunal, and are familiar with rules, soft law, and other guidelines.

The international arbitration community has also been active in building up the capacity of new arbitration centres and arbitration practitioners in emerging jurisdictions around the globe. The English and Welsh Bar has been at the forefront of capacity-building, training and promoting the establishment of new arbitration centres joining this global community.



Advantages barristers bring to international arbitration

Barristers bring several key advantages to international arbitration, including:

- **Uniquely rigorous training.** It is extremely difficult and competitive to gain one of the highly sought-after training positions for the Bar (known as “pupillage”). Individuals who attain pupillage and then practice in a set of chambers have a strong intellectual background and have demonstrated their excellence to fellow barristers with more experience.
- **Proven quality.** Each individual barrister has their own practice. Any successful barrister will have developed their own individual reputation and client following.
- **Rigour and objectivity.** With their unique training and strict professional Code of Conduct, barristers are known for providing rigorous and objective advice. Their independence means that their advice is often more objective than law firms, and ensures that the strengths and weaknesses of the client’s case are kept constantly under review, as is the overall strategy and the potential to achieve a settlement.
- **Work is done personally.** Barristers are generally engaged as individuals. They cannot charge fees for work done by other individuals. This is very different from law firms, where partners often spend much time on marketing and use junior

associates to handle much of the legal work. With barristers, the client can have confidence that the barrister undertakes the work personally and does not delegate.

- **Flexibility to tailor the team to the case.** As noted above, barristers are independent and self-employed. In larger cases, it is often helpful to use a team of two or more barristers, and barristers’ independence means that the team can be built around the particular demands of the case. This is different from law firms, where a partner’s team are permanent salaried employees, so the firm will generally be looking to have the same whole team engaged whatever the case. Barristers are accustomed to working in teams, with different individuals each time.
- **Co-counselling without seeking a relationship with the lay client.** Barristers are usually engaged by other lawyers. Barristers mostly market their services to lawyers, seeking engagement on a ‘referral basis’, rather than to the lawyers’ business clients. A law firm can engage barristers and work with them as co-counsel, with the comfort of knowing that the barrister will not seek a relationship with the underlying client. Rather, the barrister hopes to build a relationship with the co-counsel law firm, to collaborate on other cases in future.
- **Cost effectiveness.** Barristers provide specialist and high-quality advice. Nonetheless, the fees they charge are usually very competitive and can be less than those charged by law firms, because barristers have significantly fewer overheads (e.g. office accommodation and staff) to cover.

Services provided by barristers in international arbitration

Lawyers and other clients around the world regularly use barristers to provide services in relation to international arbitration such as:

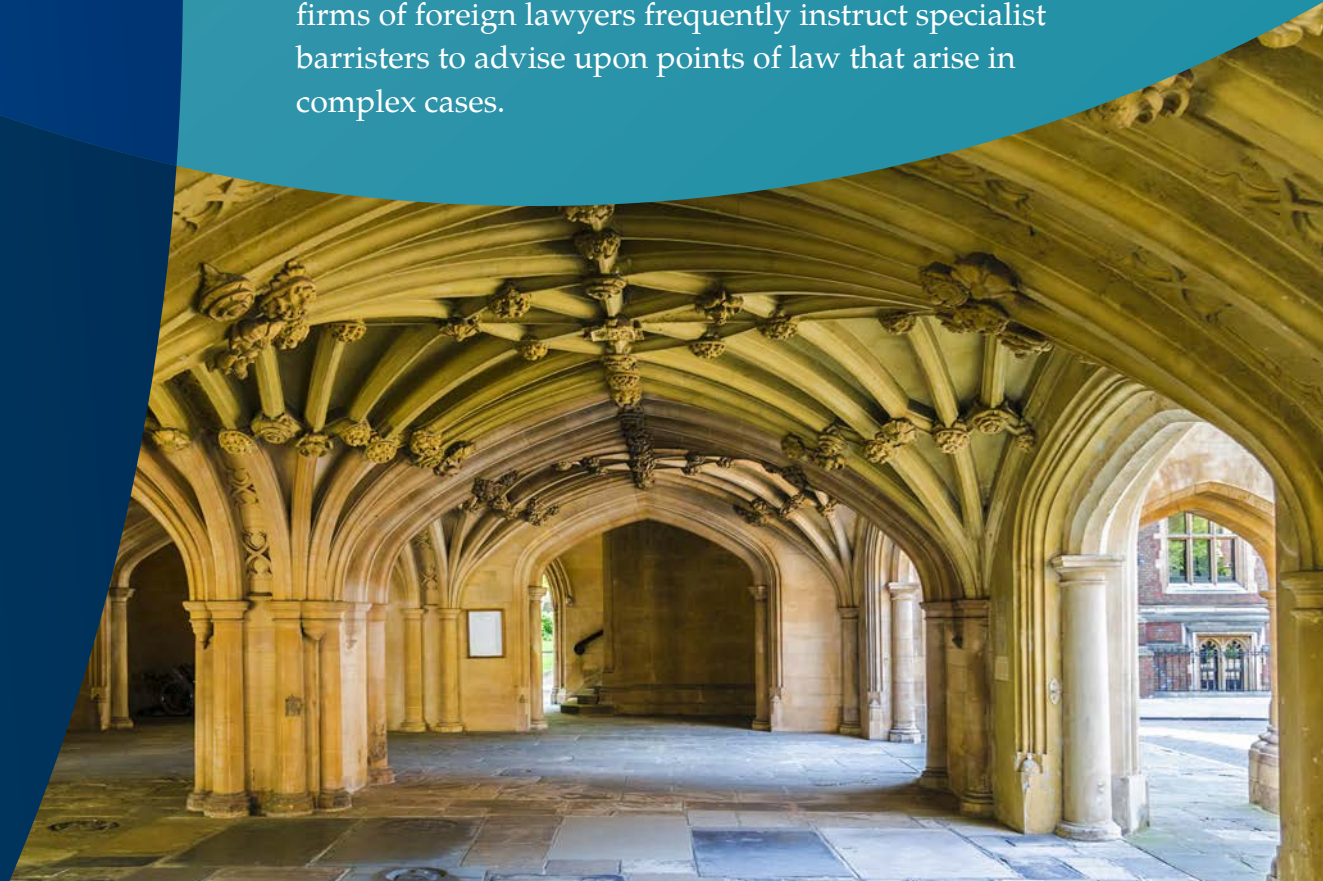
- Legal advice on a client's position, rights, risk exposure, and strategic options for dispute resolution;
- Guidance on how to make the most effective use of the arbitration procedures;
- Advice on who to nominate / appoint as an arbitrator;
- Drafting written statements of case and advocacy documents;
- Presenting the case orally at a hearing, including oral examination of witnesses and experts.

Generally, barristers undertaking international arbitration work have extensive past experience of all the above, which they bring to bear in the case to the client's advantage.

Beyond their work as advocates, it is also common for barristers to be engaged as an independent expert witness on English or Welsh (or, if appropriate, other UK) law.

Finally, a substantial number of barristers also accept appointments to sit as arbitrators and are experienced in doing so.

Some barristers develop highly specialised practices in which they become leading experts on some of the most difficult legal issues. English and Welsh solicitors and firms of foreign lawyers frequently instruct specialist barristers to advise upon points of law that arise in complex cases.



Facts and figures

UK



is the largest legal services market in Europe (valued at **£36.8bn** in 2019) and accounts for 7% of global services fee revenue

Research by HWF (2020) showed London to be the **most trusted arbitration centre for resolving international shipping disputes**

3 years in a row

 **100%**

of cases in the Financial List in 2021 were international in nature & 2/3(+) of cases in the Commercial Court were international in nature



Matters arising from arbitration made up

25%

of claims issued in the **English Commercial Court** in 2020/21

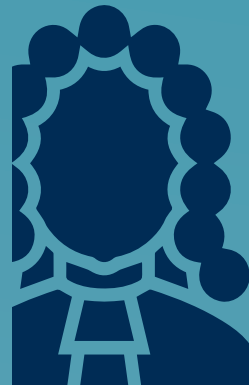


53%

of the LCIA Court's appointments were of **British arbitrators**

27%

of the world's 320 legal jurisdictions use **English common law**



London

is the world's preferred centre for arbitration with over

43,000

civil disputes (in 2020) resolved through arbitration, mediation, or adjudication



How to involve a barrister to assist in an international arbitration

Involving a barrister

A non-UK law firm (and, for that matter, a non-UK lay client, such as a business) can directly instruct a barrister to assist in an international arbitration. There is no requirement to involve an English or Welsh law firm in order to engage a barrister.

For larger cases, it may be desirable and cost-effective to engage a team of barristers.

The first step is to identify an individual barrister, or a chambers, with a reputation in the relevant field. This guide provides a short list of commercial chambers known for their international arbitration work, with details of the fields in which their barristers tend to specialise (see pages 22–23 and 26–35). Legal directories such as Legal 500 and Chambers and Partners provide a wider range of barrister options based upon requirements.

All chambers have clerks or practice managers who assist in managing barristers' work-flow and diaries. The profession of clerk is a long-established institution of the English and Welsh Bar. Far from being merely administrative assistants, clerks are generally very experienced and knowledgeable about their barristers' practices, and therefore very useful professionals when it comes to identifying a suitable barrister for a particular case. Clients can speak to clerks confidentially and seek frank

comments and recommendations about different barristers in the chambers.

In the past, clerks handled all aspects of a barrister's engagement, but today it is very common for lawyers and clients to approach barristers directly. For more information, please visit:

www.directaccessportal.co.uk

Barristers' fees

Barristers' fees will depend on a range of factors such as their seniority and reputation, the nature of the work involved, and the size and importance of the dispute. Barristers can be (and often are) engaged on an hourly rate basis, but it is also common to agree fixed or capped fees for particular tasks. Fee arrangements are often tailored to the particular circumstances of a case, so that they can take account of the needs and funding arrangements of the client.



For advocacy work – especially preparing for and representing clients at major hearings – barristers will almost always charge a “brief fee”. This will be payable somewhat in advance of the hearing, reflecting the fact that if the barrister accepts an instruction for one hearing, they are unlikely to be able to accept any other cases in that period. Usually, the brief fee covers the expected preparation time plus the first day of the hearing, with subsequent days of the hearing being paid at a daily rate (traditionally called “refreshers”). The terminology may seem a little obscure, but what it amounts to is that the client agrees to pay the barrister for the time spent preparing and appearing at the hearing, usually based on the barrister’s normal hourly rate. Barristers have been at the forefront of the development of international arbitration practice, not just in the UK but in many jurisdictions around the world, often through providing training and capacity-building assistance in emerging jurisdictions. A fair, transparent and efficient system of dispute resolution is essential in order to make legal rights effective and ensure that the rule of law is a reality. Much has changed over the world since the Inns of Court began organising moots and training new barristers nearly 800 years ago, but in today’s globalised world the need for a rigorous and highly ethical legal profession is more pressing than ever. We are proud that the Bar continues to play a leading role in the growth of international arbitration, and we hope this short introduction provides information that helps increase the connectedness of the legal profession across borders.



Chambers specialising in international arbitration

This table provides an overview of some of the chambers specialising in international arbitration, providing details of the fields in which their barristers tend to specialise.

	Aviation and travel	Construction	Energy	Financial and banking	Insurance and reinsurance	Intellectual property-related claims	Inter-state disputes, ICSID and investment	IT and telecommunication	Joint venture and company disputes	Professional negligence	Shipping and commodities	Sports	General commercial disputes
2 Temple Gardens	●	●			●					●		●	●
39 Essex Chambers	●	●	●		●		●			●	●	●	●
4 Pump Court	●	●	●	●	●	●	●	●	●	●	●	●	●
4 Stone Buildings				●					●	●			●
9 Stone Buildings				●					●	●			●
Atkin Chambers		●	●		●			●		●	●		●
Blackstone Chambers			●	●	●	●	●	●	●	●		●	●
Brick Court Chambers	●		●	●	●	●	●	●	●	●	●	●	●
Falcon Chambers													●
Fountain Court Chambers	●	●	●	●	●	●	●	●	●	●	●	●	●
Gatehouse Chambers		●	●	●	●				●	●	●		●
One Essex Court	●	●	●	●	●	●	●	●	●	●	●	●	●
Serle Court			●	●	●	●	●	●	●	●	●	●	●
Wilberforce Chambers		●	●	●				●	●	●		●	●

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International commercial litigation and arbitration

Construction and engineering

Energy and natural resources

Infrastructure and PFI/PPP

IT and telecommunications

Shipbuilding and offshore construction

Transport

“A commanding stature in the market as a result of both the depth of its expertise and the strength of its advocacy.”

Chambers and Partners UK Bar Guide 2022

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Investment treaty cases - including ICSID, UNCITRAL and SCC cases acting both on behalf of investors and states in sectors such as real estate, energy, telecommunications and finance

International commercial arbitration - acting both as counsel and arbitrators under all the major arbitration rules, often working in multiple languages, in sectors including energy, telecommunications, hospitality, banking, shareholder disputes, general contractual and commercial disputes

Cases in the courts - concerning all key sections of the Arbitration Act, including challenges for lack of substantive jurisdiction (s. 67), serious irregularity (s. 68), error on a point of law (s. 69), complex enforcement proceedings and associated freezing injunctions, as well as applications for interim measures in support of arbitration proceedings - including cases reaching the Supreme Court and Privy Council on issues of state immunity, the law governing arbitration agreements, and public policy

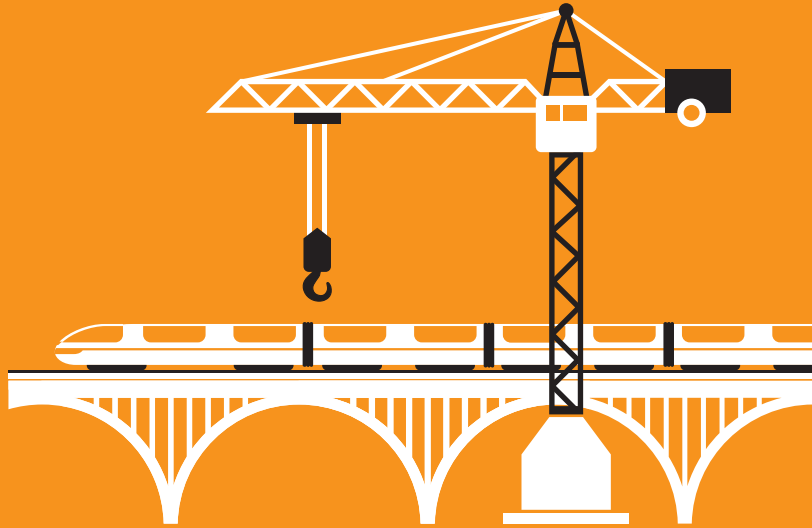
Brick Court Chambers

7-8 Essex Street, London WC2R 3LD
United Kingdom

+44 (0)20 7379 3550
clerks@brickcourt.co.uk
www.brickcourt.co.uk



Falcon Chambers



“Renowned for the quality of its barristers, they remain the premier property set.”

Chambers UK Guide 2022

For further information please call Chambers Director, Edith A Robertson or John Stannard, Senior Clerk on 020 7353 2484 email: clerks@falcon-chambers.com
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- Arbitration and mediation
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LEGAL 500

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LEGAL 500

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Contact: Chambers Director, Jason Housden

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“One Essex Court is unquestionably the leading set for high value and complex disputes.”

Legal 500 2022

It is “truly a leading set with deep and broad expertise. Its barristers’ skills are remarkable.”

Chambers UK Bar 2022

“It has one of the strongest teams around for arbitration, commercial and banking. It’s where you go when you want the best of the best.”

Legal 500 2022

One Essex Court is praised for its ‘good strength in depth for international arbitration’, with the ability to provide ‘the right team for any case’.

Legal 500 2022

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Temple London EC4Y 9AR
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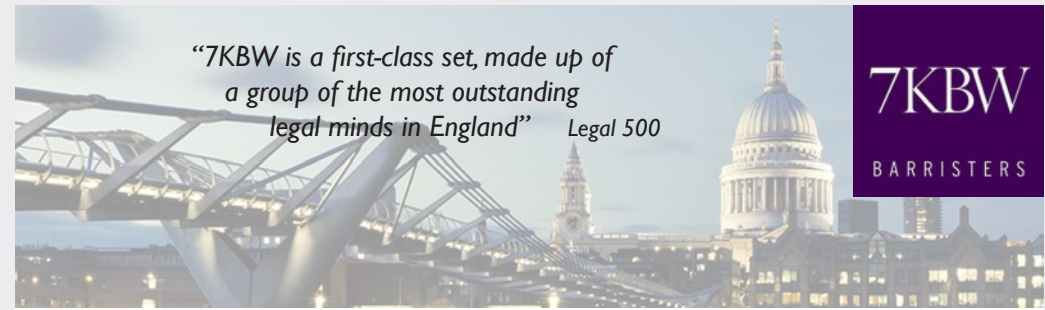
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Chambers UK Bar

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LONDON - SINGAPORE



“Fountain Court Chambers is a notable force in arbitration proceedings, whose barristers handle the full range of international disputes.”

Chambers & Partners

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BARRISTERS

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SILKS

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JUNIORS

About the Bar Council

This guide is published by the Bar Council of England and Wales. We represent and, through the independent Bar Standards Board (BSB), regulate over 17,100 barristers in self-employed and employed practice. The Bar Council promotes:

- The Bar’s high quality specialist advocacy and advisory services;
- Fair access to justice for all;
- The highest standards of ethics, equality and diversity across the profession; and
- The development of business opportunities for barristers at home and abroad.

For more information about the Bar Council, please visit

www.barcouncil.org.uk



The Bar Council

www.barcouncil.org.uk

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