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# DISPUTE RESOLUTION DRAFTING IN COMPLEX CONTRACTS: RECENT LESSONS FROM THE ENGLISH COURTS

In complex commercial transactions, parties often enter into multiple, interrelated agreements, each negotiated at different stages and sometimes by different teams. Dispute resolution clauses may receive less attention in that process. Where such clauses are not carefully aligned across different agreements, issues can arise as to forum, procedure and enforceability – often surfacing only once a dispute has crystallised.

English courts decisions from last year reported below underscore the importance of drafting dispute resolution clauses. From overlapping arbitration agreements in sequential contracts to conflicting clauses in multi-document transactions and competing forums for security enforcement, these cases illustrate how ambiguity can lead to jurisdictional challenges, procedural irregularities, and costly delays. These decisions confirm that English courts will hold parties to their agreed structure and will not intervene *ex post* to remedy drafting flaws.

## I. CAFI – COMMODITY & FREIGHT INTEGRATORS DMCC V GTCS TRADING DMCC [2025] EWHC 1350 (COMM)

### *Facts*

The dispute arose from two contracts for the sale of a cargo of Russian wheat by GTCS (seller) to CAFI (buyer). The first contract contained a Grain and Feed Trade Association (GAFTA) arbitration clause. It applies to "[a]ny dispute arising out or under this contract".

Whilst the goods were en route to the discharge port, CAFI informed GTCS that US sanctions prevented payment and invoked a sanctions clause excusing performance. Following discussions, the parties entered into a second contract for the same cargo with an alternative price. The second contract also included a termination clause stating that the first contract was "terminated and considered void". The second contract was duly performed.

GTCS subsequently commenced GAFTA arbitration seeking damages for CAFI's alleged repudiatory breach of the first contract. The GAFTA First-Tier Tribunal dismissed the claim, holding that the termination clause extinguished rights and liabilities under the first contract and that GTCS had waived any damages claim by entering into the second contract. The GAFTA Appeal Board reversed on the ground that because the Tribunal had been appointed under the arbitration agreement contained in the first contract, it lacked jurisdiction to consider the effect of the termination clause. It held that entry into the second contract in and of itself did not amount to a waiver of rights under the first contract and awarded damages to GTCS.

CAFI challenged the award before the English Commercial Court. It argued principally that the Appeal Board was wrong to decline jurisdiction as the first contract's "arising out of or

under" clause was wide enough to encompass whether rights under the first contract had been waived or discharged by the second contract. In the alternative, CAFI contended that if the Board lacked jurisdiction to consider the second contract, it nonetheless exceeded its jurisdiction by determining liability and damages in a manner that depended on it, amounting to a serious irregularity and an error of law. The key issue before the Commercial Court was whether the GAFTA Appeal Board had jurisdiction to interpret the second contract and its termination clause, and if not, whether its award of damages amounted to an excess of jurisdiction, serious procedural irregularity, or error of law under the English Arbitration Act 1996.

***The Commercial Court's decision***

The Commercial Court set aside the portions of the award addressing the waiver issue and damages. The Court held that the Appeal Board wrongly treated the arbitration clauses in the two contracts as mutually exclusive. According to the Court, the arbitration clause in the first contract was broad enough to cover the was a dispute as to whether rights under the first contract had been waived or discharged by the second contract.

Having declined jurisdiction, the Appeal Board nonetheless determined liability and awarded damages. The Court held that this approach was impermissible. The central question was whether, by agreeing to the termination clause in the second contract, the parties had agreed to waive or extinguish any claim for damages under the first contract. That question had to be resolved before any determination of liability or quantum could properly be made. By determining damages while leaving that issue unresolved, the Appeal Board committed a serious procedural irregularity. In the alternative, the Court held that this waiver issue could not lawfully be decided without construing the second contract as a binding agreement and giving effect to its express terms.

***Key takeaways***

The CAFI judgment highlights the importance of precision in drafting and interpreting arbitration clauses in multi-contract transactions. Overlapping or competing arbitration clauses will not be treated as mutually exclusive unless the contractual language clearly requires that result.

Where later agreements are intended to vary, replace or extinguish rights under earlier contracts, the interaction between the dispute resolution clauses should be addressed expressly. Failing to do so can result in parallel proceedings, jurisdictional challenges and delay, with English courts enforcing the dispute resolution structure as drafted rather than attempting to reconcile inconsistencies.

## II. TECNICAS REUNIDAS SAUDIA FOR SERVICES & CONTRACTING CO LTD V PETROLEUM CHEMICALS AND MINING COMPANY LTD [2025] EWHC 1785 (COMM)

***Facts***

The dispute arose from a subcontract for works on a gas processing plant project in Saudi Arabia between Tecnicas and PCMC. The subcontract comprised multiple contractual documents, including a Purchase Order and General Terms and Conditions for Construction

Subcontracts (GTCCS), with the Purchase Order expressly stated to take precedence. The Purchase Order provided for arbitration in London under English law, without specifying any institution or rules, while the GTCCS contained a conflicting clause providing for ICC arbitration seated in Riyadh under Saudi law.

When a dispute arose, PCMC initially pursued proceedings in Saudi Arabia (which declined jurisdiction) before commencing an ICC arbitration. Tecnicas objected to the tribunal's jurisdiction on the basis that, pursuant to the agreed order of precedence, the arbitration agreement contained in the Purchase Order governed the parties' dispute resolution arrangements.

The ICC tribunal issued a partial award upholding its jurisdiction and held that the parties had agreed to ICC arbitration under the GTCCS but with the seat changed to London (rather than Riyadh).

Tecnicas challenged the award under Section 67 of the English Arbitration Act 1996, arguing that the tribunal lacked substantive jurisdiction because the parties agreed only to ad hoc arbitration in London under English law. In Tecnicas' view, the governing clause was contained in the Purchase Order and and had express contractual precedence. The tribunal had therefore impermissibly combined elements from different contractual documents to construct a hybrid arbitration agreement.

***Key issue***

The key issue was which arbitration clause governed the dispute, given the conflicting provisions and the agreed order-of-precedence.

***The Commercial Court's decision***

The Commercial Court set aside the award.  holding that the tribunal lacked substantive jurisdiction. Applying the contract's order-of-precedence clause, the Court found that the Purchase Order prevailed over inconsistent terms in the GTCCS and noted that its arbitration clause provided for ad hoc arbitration in London under English law. The Court further rejected the tribunal's attempt to "pick and mix" elements from different documents to construct a hybrid ICC arbitration agreement. The court thus confirmed that where parties have expressly ranked their contractual documents, tribunals must give effect to that structure rather than attempt to reconcile inconsistencies after the event.

***Key takeaways***

The decision confirms that whether arbitration is institutional or ad hoc is a matter of substantive jurisdiction, and any inconsistency across contract documents can deprive a tribunal of jurisdiction altogether.

For clients using multi-document contracts – especially in construction and energy projects, this decision underlines the importance of ensuring consistent dispute resolution clauses across all documents.

## III. FH Holding Moscow Ltd. v. AO UniCredit Bank and another [2025] EWHC 3111 (Comm)

### *Facts*

The dispute arose from a facility agreement and a related mortgage agreement under which FH borrowed funds from AO and provided security to AO as mortgagee and security agent, respectively. The facility agreement was governed by English law and provided for arbitration under the VIAC Rules seated in Vienna, while the mortgage agreement was governed by Russian law and included an exclusive jurisdiction clause in favour of the Moscow Commercial Court.

After AO commenced foreclosure proceedings under the mortgage in Russia alleging an Event of Default, FH argued that disputes as to whether an Event of Default had occurred, and the amount of any outstanding indebtedness, fell within the scope of the VIAC arbitration agreement and should be determined in arbitration before any enforcement action could proceed. On that basis, FH sought an anti-suit injunction from the English Commercial Court to restrain the Moscow proceedings. In the alternative, FH contended that the Russian proceedings were vexatious and oppressive.

### *Key issues*

The key issues were whether AO's Russian execution proceedings breached the VIAC arbitration clause or were vexatious and oppressive, and whether the English court had jurisdiction to intervene.

### *The Commercial Court's decision*

The Court judged that it was not satisfied that there was a high probability that the enforcement proceedings breached the facility agreement's arbitration agreement and therefore refused to order the anti-suit injunction. The Court reasoned that, although the issue of whether an event of default had occurred fell within the scope of both the arbitration clause and the jurisdiction clause, the parties had expressly provided in the mortgage agreement that execution should be pursued through judicial proceedings and that disputes should be resolved through those proceedings and not through arbitration. Read as a whole, the mortgage contemplated that disputes arising in the context of security enforcement, including disputes as to default, would be resolved within those judicial proceedings rather than through a prior arbitral determination.

The Court also rejected the alternative argument that the Moscow proceedings were vexatious and oppressive. The Court emphasised the requirements of comity and held that the English court lacked a sufficient interest in the matter to justify interference with the Russian court's processes. In doing so, it contrasted the limited connection with England, namely that the facility agreement was governed by English law, with the overwhelmingly Russian nexus, including enforcement proceedings brought by a Russian bank, concerning Russian real estate, owned by a Cyprus company operating exclusively in Russia, under a Russian-law mortgage containing an exclusive Russian jurisdiction clause.

Finally, the Court held that the English court lacked jurisdiction over AO, as the claim for an anti-suit injunction was not "in respect of" the facility agreement, which was governed by English law, but rather the arbitration agreement which was governed by Austrian law.

Applying the principle of separability, the Court held that English jurisdiction could not be founded indirectly on the governing law of the main contract where the arbitration agreement was governed by a different law.

***Key takeaways***

Where a financing structure deliberately allocates arbitration for the facility agreement and local court proceedings for security enforcement, English courts will generally hold parties to that allocation. An arbitration clause will not, without clear wording, prevent enforcement proceedings in the agreed security forum, even where those proceedings turn on issues such as default that also fall within the scope of the arbitration agreement.

The decision also confirms that anti-suit injunctions are exceptional relief. Courts will require a high degree of certainty that foreign proceedings breach the arbitration agreement and will be slow to intervene where the dispute has a strong connection to a foreign jurisdiction. Parties should therefore ensure that arbitration clauses and security enforcement provisions are aligned and explicit about whether disputes concerning default, acceleration and enforcement are intended to be arbitrated or determined by the enforcement court.

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For any inquiry or questions regarding the content of this newsletter, please contact us.

## Related Professionals

**Chris Mainwaring-Taylor**
Senior Foreign Attorney (England & Wales)
**T** 82.2.3404.7630
**E** c.mainwaringtaylor@bkl.co.kr

**Yoon Jeong Park**
Senior Foreign Attorney (England & Wales)
**T** 82.2.3404.7596
**E** yoonjeong.park@bkl.co.kr

**Sangchul Kim**
Partner
**T** 82.2.3404.6404
**E** sangchul.kim@bkl.co.kr