



## Individuals, partnerships, unincorporated entities and insolvent parties

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# ASA Below 40 Seminar

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**Unusual and multiple parties in arbitration**

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**Individuals, partnerships, unincorporated entities and insolvent parties**

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# Outline

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- I. **Individuals**
- II. **Partnerships and Unincorporated Entities**
- III. **Insolvent Parties**

Individuals

# Situations Where Individuals Are Parties To Arbitration

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- **Situations in international arbitration**
- **Situations in domestic arbitration**

## Individuals – Practical Issues

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- **A number of advantages of arbitration are relevant to individuals, e.g.:**
  - Expertise of arbitrators
  - Choice of seat / place of arbitration
  - Confidentiality / Privacy / Non-public proceedings
- **However, arbitration may not be adapted to the situation of many individuals:**
  - Especially for “weak parties” – e.g. consumers and employees
  - May be used by the stronger parties to deter such parties from bringing claims

# Arbitration And Consumer Or Employment Law

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- **Consumer Law**

- Arbitration clauses in consumer contracts may fall foul of consumer legislation
- In the EU, protection by legislation and by the ECJ
- However, an arbitration clause might not always be considered unfair

- **Employment Law**

- Position in France
- Position in the UK
- Position in the US

## Class Arbitrations

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- **Class actions are an important feature in some legal systems**
- **Used to be rare, but the American Arbitration Association (AAA) is currently administering nearly 300 class arbitrations**
- **The position of the US courts has fluctuated over time**

# International Arbitration - Individuals In Investment Treaty Arbitration

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- **Individual have been investing directly or can be a shareholder in a company incorporated in the host state (if covered by the relevant investment treaty)**
- **Standing: key issues of nationality**
- **Conditions to invoke any protections provided by a bilateral investment treaty (BIT) or multilateral investment treaty (MIT)**

## Partnerships and Unincorporated Entities

# Many Types Of Partnerships And Unincorporated Entities

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- **Partnerships having the right to start proceedings**
- **Partnerships without the right to start proceedings**
- **Some types of associations**
- **Failed “corporations” or other entities**

# Partnerships As Parties To Arbitration

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- **Incorporated partnerships (with legal personality)**
- **Unincorporated partnerships (no legal personality)**
- **What if some partners refused to be joined to the proceedings?**

## Insolvent Parties

# Insolvency And Arbitration

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- **As in previous recessions, insolvency is affecting increasing numbers of individuals and companies, potentially parties to arbitration agreements or engaged in arbitration proceedings**
- **Insolvency can occur:**
  - Before an arbitration request has been filed
  - After arbitration proceedings have been initiated
- **Conflict between:**
  - Arbitration proceedings; and
  - Insolvency proceedings

# Practical Issues And Difficulties In Connection With Insolvency

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- **Arbitrability of disputes**
- **Enforcement Issues**
- **Other Practical Issues**