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## Administrative Arbitration: Conceptual Foundations, Scope, Procedures and the Protection of the Public Interest


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# ADMINISTRATIVE ARBITRATION: CONCEPTUAL FOUNDATIONS, SCOPE, PROCEDURES AND THE PROTECTION OF THE PUBLIC INTEREST

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**ABSTRACT**

The increasing complexity of public administration, the expansion of public-private partnerships, and the growing reliance on contractual arrangements between public authorities and private entities have intensified the need for effective mechanisms for resolving disputes involving public bodies. In this context, arbitration has emerged as a potentially valuable alternative to conventional judicial proceedings, particularly in disputes arising from public contracts, infrastructure projects, public procurement, and commercial activities undertaken by governmental entities. Nevertheless, the use of arbitration in the administrative sphere raises distinctive legal questions that cannot be addressed solely by reference to the principles governing ordinary commercial arbitration.

This article examines the conceptual foundations, legal nature, scope, and procedural framework of administrative arbitration, with particular emphasis on the tension between arbitral autonomy and the requirements of public law. It argues that the involvement of a public authority in a dispute does not, by itself, determine whether that dispute is arbitrable. Rather, arbitrability must be assessed by reference to the nature of the legal relationship, the subject matter of the dispute, the statutory powers of the public authority, and the public interests implicated in its resolution. The article further distinguishes between disputes concerning the contractual rights and financial obligations of public authorities, which may generally be suitable for arbitration subject to applicable law, and disputes concerning the exercise of sovereign regulatory powers, the validity of administrative acts, or matters reserved to public courts by legislation.

Adopting a comparative legal approach, the article examines the English arbitration framework, particularly the Arbitration Act 1996 as amended by the Arbitration Act 2025, the United States framework governing public contract disputes, and the international standards reflected in the UNCITRAL Model Law on International Commercial Arbitration and the 1958 New York Convention. It demonstrates that although arbitration can promote efficiency, technical expertise, procedural flexibility, and commercial certainty, its use in public disputes requires safeguards concerning consent, impartiality, transparency, jurisdiction, procedural fairness, and judicial supervision.

The article concludes that administrative arbitration should not be understood as a substitute for administrative justice or judicial review. Instead, it should be conceptualized as a complementary

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dispute-resolution mechanism whose legitimacy depends on maintaining a clear distinction between arbitrable private or contractual interests and non-delegable public-law responsibilities. A balanced legal framework can therefore reconcile the advantages of arbitration with the fundamental requirements of legality, accountability, and the protection of the public interest.

**Keywords:** Administrative Arbitration; Public Law; Arbitrability; Public Contracts; Public Authorities; Alternative Dispute Resolution; Public Interest; Judicial Review; Administrative Justice.

## 1. Introduction

The relationship between public administration and private actors has undergone substantial transformation. Contemporary governments increasingly rely on contractual arrangements, public procurement, infrastructure development, concessions, public-private partnerships, and other forms of cooperation with private entities to deliver public services and implement economic and social policies. These developments have expanded the range and complexity of disputes involving public authorities.

Traditional judicial proceedings remain an essential means of resolving disputes involving governmental bodies. However, litigation may sometimes involve considerable delay, procedural complexity, substantial costs, and difficulties associated with technically specialised disputes. These challenges have encouraged the development and use of alternative dispute resolution mechanisms, including negotiation, mediation, expert determination, and arbitration.

Among these mechanisms, arbitration occupies a distinctive position because it combines party autonomy with an adjudicative process in which an independent third party determines the dispute through an award. Unlike mediation, which ordinarily seeks to facilitate a consensual settlement, arbitration results in a determination that is generally binding upon the parties, subject to the applicable legal framework and available judicial remedies.

The application of arbitration to disputes involving public authorities, however, presents particular difficulties. Arbitration traditionally developed as a mechanism for resolving disputes arising from private legal relationships. Its fundamental principles include consent, party autonomy, confidentiality, procedural flexibility, and limited judicial intervention. Administrative law, by contrast, is concerned with the legality of public power, the protection of individual rights, administrative accountability, and the preservation of the public interest. These differences raise an important question: to what extent can a dispute involving a public authority be transferred from the ordinary judicial system to a private arbitral tribunal without undermining the principles governing public administration?

The difficulty is not simply whether a public authority may enter into an arbitration agreement. The more fundamental issue concerns the nature of the dispute that may legitimately be submitted to arbitration. A public authority may act in several legal capacities. It may enter into a commercial or contractual relationship, exercise statutory regulatory powers, issue administrative decisions, or perform functions connected with public services. The fact that these activities are undertaken by the same public institution does not mean that the disputes arising from them are necessarily subject to the same dispute-resolution regime.

Accordingly, a distinction must be drawn between disputes concerning contractual rights and obligations, such as payment, construction, performance, compensation, and contractual interpretation, and disputes concerning the legality of administrative decisions, the exercise of regulatory powers, or the performance of functions that legislation reserves to public authorities or courts. The former may be suitable for arbitration where the applicable law permits it, whereas the latter may raise questions of non-arbitrability or fall within the exclusive jurisdiction of administrative courts.

The importance of this distinction is reflected in the academic debate concerning public-private arbitration. Brekoulakis and Devaney have highlighted the difficulties arising from the application of a predominantly private-law arbitration framework to disputes involving public authorities, particularly the insufficient consideration that may be given to public-interest concerns. Similarly, Henckels has examined the accountability implications of allowing arbitrators to determine disputes arising under government contracts, particularly where arbitral proceedings lack some of the transparency and institutional safeguards associated with judicial adjudication.

This article argues that administrative arbitration should be understood as a legally conditioned form of arbitration rather than an independent and universally applicable jurisdiction. Its legitimacy depends upon the existence of a valid legal basis, the arbitrability of the subject matter, the lawful authority of the public body to consent to arbitration, and the availability of appropriate safeguards to protect public interests.

The article addresses four principal questions:

1. What is the legal nature of administrative arbitration, and how can it be distinguished from administrative adjudication and other alternative dispute resolution mechanisms?
2. Which categories of disputes involving public authorities may be submitted to arbitration, and what legal limitations govern their arbitrability?
3. What procedural and institutional safeguards are necessary to ensure fairness, independence, and accountability in administrative arbitration?
4. What is the appropriate relationship between arbitral awards and judicial supervision, particularly where disputes involve public-law considerations?

To answer these questions, the article adopts a comparative legal methodology. It examines selected aspects of English law and United States law, while using the UNCITRAL Model Law and the New York Convention as international reference points. The comparative approach is intended to identify common principles and differences in the treatment of public authority disputes, rather than to suggest that the legal systems examined follow an identical model.

The article is organized into six sections. Following this introduction, Section Two examines the conceptual foundations and legal nature of administrative arbitration. Section Three analyses the scope of arbitrability in disputes involving public authorities. Section Four addresses the procedural framework and safeguards governing such arbitration. Section Five examines arbitral awards, enforcement, and judicial supervision. Section Six provides a comparative assessment and identifies the principal conditions necessary for a balanced administrative arbitration framework.

## 2. Conceptual Foundations and Legal Nature of Administrative Arbitration

### 2.1. Defining Administrative Arbitration

The expression "administrative arbitration" does not have a universally accepted legal definition. Its meaning varies according to the legal system, the nature of the dispute, and the statutory framework governing the participation of public authorities in arbitration.

In a broad analytical sense, administrative arbitration may be described as an arbitral process through which disputes arising from legal relationships involving public authorities are submitted, by virtue of a valid arbitration agreement or statutory authorization, to an independent arbitral tribunal for a binding determination.

This definition contains several essential elements.

First, the dispute must involve a public authority or arise from a legal relationship connected with the performance of a public function. Secondly, the dispute must concern a matter that is legally capable of being submitted to arbitration. Thirdly, the arbitral tribunal must derive its jurisdiction from a valid source of consent or legal authorization. Finally, the proceedings must comply with the procedural and substantive requirements imposed by the applicable law.

It is important, however, not to equate administrative arbitration with every form of dispute resolution undertaken within public administration. Administrative tribunals, statutory review bodies, internal grievance committees, mediation procedures, and disciplinary panels may all contribute to the resolution of administrative disputes, but they do not necessarily constitute arbitration.

The decisive distinction concerns the legal source of jurisdiction and the nature of the adjudicative authority. Arbitration ordinarily derives from an agreement to submit a defined dispute to an independent tribunal. Administrative adjudication, by contrast, derives from statutory authority and is exercised within a public institutional framework.

Consequently, an administrative tribunal does not become an arbitral tribunal merely because it determines disputes between citizens and governmental institutions. Equally, an arbitral tribunal does not become an administrative court merely because one of its parties is a public authority.

For the purposes of this article, administrative arbitration refers principally to arbitration involving public authorities in disputes arising from their contractual, commercial, or other legally arbitrable relationships. The expression is therefore used in a functional and analytical sense, rather than as a claim that all administrative disputes constitute a distinct category of arbitration under every national legal system.

### 2.2. The Legal Nature of Administrative Arbitration

The legal nature of administrative arbitration is characterized by the interaction of two legal dimensions: the private-law foundations of arbitration and the public-law status of the governmental party.

The private-law dimension is reflected in the requirement of consent, the existence of an arbitration agreement, the independence of the arbitral tribunal, and the binding nature of the award. These

elements distinguish arbitration from administrative decision-making exercised unilaterally by a public authority.

The public-law dimension arises because a governmental party does not enjoy unrestricted contractual freedom. Its legal capacity is determined by legislation, the principle of legality, public financial rules, administrative competence, and the obligation to act in the public interest.

A public authority therefore cannot necessarily exercise the same freedom as a private commercial entity when agreeing to arbitration. Its consent must be given by an authorized person or institution, within the limits of its legal powers, and in accordance with any statutory requirements governing public contracts and dispute resolution.

The distinction is particularly significant where the arbitration agreement concerns a contract concluded by a public authority. The validity of the underlying contract and the validity of the arbitration agreement may be governed by different legal considerations. Although the separability principle generally treats an arbitration clause as legally independent from the principal contract, this principle does not automatically resolve questions concerning the statutory competence of the public authority to agree to arbitration.

Accordingly, the legal nature of administrative arbitration cannot be determined exclusively by examining the identity of the parties. It must also take account of the legal character of the relationship and the extent to which the relevant rights and obligations are legally disposable.

**2.3. Distinguishing Administrative Arbitration from Administrative Adjudication**

A central conceptual difficulty is the tendency to use the expressions administrative arbitration and administrative adjudication interchangeably. Such an approach obscures important differences.

Administrative adjudication generally refers to the determination of disputes by administrative bodies or specialized tribunals exercising powers conferred by legislation. Their jurisdiction does not necessarily depend on the consent of the parties. Rather, it is established by statute and may include the determination of regulatory, licensing, disciplinary, employment, or social security matters.

Arbitration, on the other hand, is ordinarily founded upon an agreement between the parties or an express statutory mechanism permitting the referral of a dispute to arbitration.

The distinction may be summarized as follows:

| Criterion | Administrative arbitration | Administrative adjudication |
|---|---|---|
| Source of jurisdiction | Arbitration agreement or statutory authorization | Legislative or regulatory authority |
| Nature of decision-maker | Independent arbitral tribunal | Statutory administrative body or tribunal |
| Consent | Generally based on consent, subject to statutory exceptions | Not necessarily dependent on consent |

| | | |
|---|---|---|
| Subject matter | Legally arbitrable disputes | Matters assigned by legislation |
| Decision | Arbitral award | Administrative or tribunal decision |
| Judicial supervision | Governed by arbitration law and applicable public-law rules | Governed by the relevant statutory and judicial review framework |

This distinction is not merely terminological. It determines the legal basis of jurisdiction, the applicable procedural safeguards, the nature of the resulting decision, and the scope of judicial intervention.

**2.4. Administrative Arbitration and Other Alternative Dispute Resolution Mechanisms**

Administrative arbitration must also be distinguished from negotiation, mediation, conciliation, and expert determination.

Negotiation allows the parties to seek a mutually acceptable settlement without involving an independent adjudicator. Mediation introduces a neutral third party who facilitates communication and assists the parties in reaching an agreement, but ordinarily does not impose a binding determination.

Expert determination is generally concerned with resolving specific technical or professional issues through the assessment of an appointed expert. Its legal effect depends on the parties' agreement and the applicable law.

Arbitration differs because the arbitrator exercises adjudicative authority derived from the arbitration agreement or an applicable statutory framework. The resulting award is generally binding and may be enforceable through the courts.

These mechanisms should not be treated as interchangeable. The appropriate mechanism depends upon the nature of the dispute, the degree of consent available, the public interests involved, and the type of remedy required.

**2.5. The Rationale for Using Arbitration in the Administrative Sphere**

The increasing use of arbitration in disputes involving public authorities can be explained by several considerations.

First, public contracts frequently involve technical and commercially complex matters, particularly in construction, infrastructure, energy, transport, and procurement. Arbitrators with relevant professional expertise may be better positioned to assess specialised evidence and contractual practices.

Secondly, arbitration may provide procedural flexibility. The parties may select the applicable procedural rules, determine the place and language of proceedings, and adopt procedures suitable for the particular dispute, subject to mandatory legal requirements.

Thirdly, arbitration may provide greater predictability in contractual relationships, particularly in international projects where investors and contractors require a neutral forum for resolving disputes.

Fourthly, an effective arbitral process may reduce the burden on ordinary courts and provide a mechanism for resolving disputes without unnecessary procedural delay.

Nevertheless, these advantages should not be assumed to exist in every case. Arbitration can be expensive, lengthy, and procedurally complex. Moreover, its confidential character may create difficulties where disputes concern public expenditure, governmental accountability, or decisions affecting persons who are not parties to the arbitration.

The justification for administrative arbitration must therefore be assessed in light of both procedural efficiency and the public-law values that govern governmental action.

## 3. The Scope of Arbitrability in Disputes Involving Public Authorities

### 3.1. The Meaning and Importance of Arbitrability

Arbitrability refers to the legal capacity of a particular dispute to be resolved through arbitration. It is a fundamental requirement because party consent alone cannot necessarily confer arbitral jurisdiction over matters that the applicable law reserves to courts or other public institutions.

In disputes involving public authorities, arbitrability has an additional dimension. It requires consideration not only of the legal rights of the parties but also of the nature of the governmental function involved and the public interests that may be affected by the arbitral determination.

The question is therefore not simply whether a public authority has agreed to arbitration, but whether the particular dispute is legally capable of being resolved through that mechanism.

A distinction should be made between the arbitrability of contractual claims and the arbitrability of disputes concerning the exercise of sovereign powers.

### 3.2. Contractual Disputes Involving Public Authorities

Contractual disputes are among the most established areas in which arbitration may be used by public authorities.

Governmental entities frequently enter into contracts involving the supply of goods and services, construction projects, infrastructure development, consultancy, concessions, technology, and other commercial arrangements.

Disputes arising from these relationships may concern:

- Interpretation of contractual provisions.
- Delays in contractual performance.
- Non-payment or delayed payment.
- Variations and additional works.
- Contractual termination and compensation.
- Allocation of contractual risks.
- Technical defects and performance standards.
- Claims for damages arising from breach of contract.

Such disputes may be suitable for arbitration because they frequently concern contractual rights and obligations capable of determination through an adjudicative process.

However, the fact that a dispute arises from a public contract does not automatically establish its arbitrability. The applicable legislation may impose restrictions on arbitration agreements, require prior approval, establish exclusive jurisdiction for certain claims, or reserve particular decisions to specialised public bodies.

The legal capacity of the public authority to enter into the arbitration agreement must therefore be examined independently of the commercial nature of the contract.

### 3.3. Public Procurement and Infrastructure Disputes

Public procurement and infrastructure projects provide particularly relevant examples of disputes involving both public and private interests.

Such projects may involve complex contractual arrangements, substantial financial commitments, technical specifications, performance obligations, and long-term risk allocation. Arbitration may offer a suitable forum for determining claims concerning contractual interpretation, payment, delay, and construction performance.

Nevertheless, public procurement disputes may also involve issues that extend beyond the contractual relationship between the authority and the contractor. For example, challenges concerning the legality of a tender procedure, the equal treatment of bidders, conflicts of interest, or compliance with statutory procurement requirements may engage public-law obligations.

A distinction must therefore be drawn between disputes arising after the formation of a contract and challenges concerning the legality of the administrative process through which the contract was awarded.

The former may be arbitrable under the applicable law. The latter may fall within the jurisdiction of procurement review bodies or administrative courts.

This distinction is essential to avoid transforming arbitration into a mechanism through which public authorities may contract out of mandatory statutory obligations.

### 3.4. Disputes Concerning the Exercise of Regulatory and Sovereign Powers

A more difficult category concerns disputes arising from the exercise of regulatory or sovereign powers.

Public authorities may issue licences, impose penalties, regulate economic activities, enforce environmental standards, determine tax liabilities, exercise compulsory acquisition powers, and adopt other measures pursuant to statutory authority.

Such decisions are not necessarily equivalent to contractual obligations. They are often exercises of public power governed by mandatory legal rules and subject to specific procedures and remedies.

The submission of such disputes to arbitration may raise concerns about whether an arbitral tribunal can legitimately review or replace a decision that legislation assigns to a public authority or administrative court.

For example, an arbitral tribunal may be able to determine whether a governmental entity breached a contractual obligation by failing to provide a promised approval, where that issue falls within its jurisdiction. It does not follow, however, that the tribunal may exercise the statutory power to grant the approval itself or invalidate a regulatory decision reserved to a competent public authority or court.

The distinction between contractual consequences and the validity of sovereign acts should therefore remain central to the assessment of arbitrability.

### 3.5. The Public Interest as a Limiting Principle

The public interest is one of the principal considerations distinguishing disputes involving public authorities from ordinary commercial arbitration.

The public interest is not a general formula that automatically excludes arbitration. Rather, it requires a substantive assessment of the consequences of referring a particular dispute to arbitration.

Relevant considerations may include:

1. Whether the dispute concerns rights that the parties are legally entitled to dispose of.
2. Whether the arbitration would interfere with statutory responsibilities.
3. Whether the dispute affects the rights of third parties.
4. Whether the subject matter requires a uniform interpretation of public law.
5. Whether confidentiality would undermine legitimate requirements of transparency and accountability.
6. Whether the proposed arbitral remedy would exceed the legal powers of the public authority.
7. Whether the applicable legislation reserves the dispute to a particular judicial or administrative forum.

The public interest should thus operate as a structured legal consideration rather than an undefined objection to arbitration.

### 3.6. Consent and the Legal Capacity of Public Authorities

Consent is a fundamental requirement of arbitration. In the public sector, however, the validity of consent depends upon the legal capacity and authority of the governmental entity concerned.

A public authority may be subject to statutory limitations regarding the conclusion of contracts, the assumption of financial obligations, or the selection of dispute-resolution mechanisms.

Consequently, the existence of an arbitration clause in a public contract should not be treated as conclusive proof that the authority has validly consented to arbitration.

The following questions may arise:

- Does the authority possess statutory competence to enter into the arbitration agreement?
- Was the agreement concluded by an official or representative with the necessary authority?
- Were mandatory approval or procurement requirements satisfied?
- Does the relevant legislation expressly prohibit or restrict arbitration?
- Does the dispute fall within the scope of the arbitration clause?
- Is the arbitration agreement consistent with applicable public policy?

These questions demonstrate that administrative arbitration requires a more careful examination of the legal capacity of the governmental party than may ordinarily be necessary in a purely private commercial relationship.

**4. Procedures and Safeguards in Administrative Arbitration**

**4.1. The Commencement of Arbitration Proceedings**

The commencement of administrative arbitration ordinarily follows the general principles governing arbitration agreements.

An arbitration agreement may take the form of an arbitration clause incorporated into a public contract or a separate submission agreement concluded after a dispute has arisen.

The agreement should identify the legal relationship to which it applies and the disputes that may be referred to arbitration. It should also address the applicable arbitration rules, the seat of arbitration, the language of proceedings, and the method of appointing arbitrators.

In the public sector, additional requirements may be necessary to establish that the agreement was lawfully authorised and that the relevant public authority has complied with any statutory conditions.

The UNCITRAL Model Law provides a useful international reference point. Article 7 recognises an arbitration agreement as an agreement to submit existing or future disputes arising from a defined legal relationship to arbitration. Articles 16 and 18 address the tribunal's competence to rule on its jurisdiction and the equal treatment of parties.

**4.2. The Appointment and Independence of Arbitrators**

The independence and impartiality of arbitrators are essential to the legitimacy of any arbitral process. Their importance is particularly significant when one party is a public authority.

An arbitrator should possess the necessary legal or technical expertise and should remain independent from the parties, their representatives, and any institution capable of exerting improper influence over the proceedings.

The appointment procedure should provide equal opportunities for the parties to participate in constituting the tribunal, subject to the applicable law and arbitration rules.

Where the dispute involves complex administrative or regulatory matters, professional expertise may be particularly valuable. Nevertheless, technical competence cannot replace the requirement of independence.

Disclosure obligations are also important. Arbitrators should disclose circumstances that may reasonably give rise to doubts concerning their impartiality or independence.

**4.3. Procedural Fairness and Equality of Arms**

Procedural fairness is a fundamental requirement of administrative arbitration.

Both parties should have a reasonable opportunity to present their cases, submit evidence, challenge the opposing party's arguments, and respond to the issues raised during the proceedings.

The public authority should not enjoy procedural advantages merely because it represents the state or exercises governmental functions. Equally, the private party should not be permitted to use arbitration to circumvent mandatory legal requirements applicable to the public authority.

The principle of equality of arms requires that the parties be treated fairly throughout the proceedings, taking account of any relevant differences in their legal and practical positions.

In this respect, section 33 of the English Arbitration Act 1996 imposes a general duty on arbitral tribunals to act fairly and impartially, giving each party a reasonable opportunity to present its case and deal with the case of the opposing party.

**4.4. Transparency and Confidentiality**

One of the most important difficulties in administrative arbitration concerns the relationship between confidentiality and governmental transparency.

Confidentiality is traditionally regarded as one of the attractive features of commercial arbitration. It may protect commercially sensitive information, encourage candid negotiations, and prevent the unnecessary disclosure of business information.

However, public authorities are accountable for the use of public resources and the exercise of public powers. The outcome of arbitration may affect public expenditure, public services, government policy, or the interests of persons who were not parties to the proceedings.

For this reason, confidentiality should not automatically be applied to all disputes involving public authorities without considering the nature of the information and the public interests involved.

A balanced approach may distinguish between:

- Commercially sensitive information that legitimately requires protection.
- Personal or confidential information protected by law.
- Information relating to public expenditure and governmental accountability.
- Decisions that may have broader regulatory or public-policy consequences.

The applicable law may also require disclosure or publication in particular circumstances.

Accordingly, transparency requirements should be determined by reference to the legal framework governing the public authority and the nature of the dispute, rather than by assuming that all administrative arbitration proceedings must be either fully confidential or entirely public.

**4.5. Evidence and Technical Expertise**

Administrative disputes may involve highly specialised technical evidence. Construction, engineering, environmental regulation, financial assessment, infrastructure management, and public procurement are examples of areas in which technical expertise may be essential.

Arbitral tribunals may therefore benefit from expert evidence, specialised procedural arrangements, and the appointment of independent experts where permitted by the applicable rules.

However, the use of expert evidence must remain subject to procedural fairness. Both parties should have an opportunity to examine relevant evidence and challenge expert conclusions.

### 4.6. Interim Measures and the Protection of Public Interests

Interim measures may be necessary to preserve the rights of the parties or prevent serious harm while arbitration is pending.

Examples include measures designed to preserve evidence, protect contractual assets, maintain the status quo, or prevent the dissipation of property.

In disputes involving public authorities, however, interim relief may affect public services, public infrastructure, or the exercise of statutory responsibilities.

The tribunal and the competent court must therefore consider the potential consequences of interim measures for both parties and the public interest.

The availability and scope of such measures depend on the applicable arbitration law and the relevant procedural framework.

## 5. Arbitral Awards, Enforcement and Judicial Supervision

### 5.1. The Nature and Legal Effect of the Arbitral Award

The arbitral award represents the principal outcome of the arbitration process. It determines the issues submitted to the tribunal and establishes the legal consequences for the parties.

In disputes involving public authorities, the award may address contractual liability, financial compensation, payment obligations, interpretation of contractual provisions, or other remedies within the tribunal's jurisdiction.

However, the tribunal's authority is limited by the arbitration agreement and the applicable law. It cannot assume statutory powers that belong exclusively to a public authority or court merely because such powers are relevant to the dispute.

The distinction between contractual remedies and public-law remedies is therefore essential.

For example, an arbitral tribunal may determine that a public authority has breached a contractual obligation and award compensation, provided that the claim is arbitrable. It does not automatically follow that the tribunal may annul a regulatory decision or issue an administrative licence.

### 5.2. Enforcement Against Public Authorities

The enforcement of arbitral awards involving public authorities may raise specific legal issues.

Although public authorities may be bound by valid arbitration agreements, enforcement against governmental entities may be subject to rules concerning public assets, budgetary procedures, statutory immunities, and the execution of judgments against the state.

The existence of a binding arbitral award should therefore be distinguished from the practical and legal conditions governing its enforcement.

In international arbitration, the New York Convention provides an important framework for the recognition and enforcement of foreign arbitral awards. Nevertheless, recognition and enforcement remain subject to the limited grounds for refusal contained in Article V of the Convention, including

incapacity, invalidity of the arbitration agreement, procedural defects, excess of jurisdiction, non-arbitrability, and public policy.

The Convention does not, by itself, eliminate questions concerning sovereign immunity or the legal status of particular governmental assets.

**5.3. Judicial Supervision and the Limits of Arbitral Autonomy**

Judicial supervision is necessary to preserve the legal legitimacy of arbitration. However, excessive judicial intervention may undermine the efficiency and finality that arbitration seeks to provide.

The appropriate approach is to distinguish between review of the merits of the dispute and judicial intervention on recognised legal grounds.

Courts may be required to determine whether a valid arbitration agreement exists, whether the tribunal acted within its jurisdiction, whether procedural fairness was respected, and whether the award is affected by grounds for setting aside or refusing enforcement.

The English Arbitration Act 1996 reflects this approach. Section 67 provides a mechanism for challenging an award on the basis of substantive jurisdiction, while section 68 permits challenges for serious irregularity causing substantial injustice. Section 69 provides a limited route for appeals on questions of law, subject to statutory conditions.

These mechanisms demonstrate that arbitral autonomy is not absolute. It operates within a legal framework that preserves judicial control over jurisdictional and procedural legality.

**5.4. The Relationship Between Arbitration and Judicial Review**

A particularly important issue concerns the relationship between arbitration and judicial review.

Judicial review is concerned with the legality of public decision-making. It enables courts to examine whether public authorities have acted within their legal powers, followed the required procedures, and complied with applicable legal principles.

Arbitration, by contrast, determines disputes within the jurisdiction conferred upon the arbitral tribunal.

These mechanisms therefore serve different functions.

The existence of an arbitration agreement should not automatically prevent judicial review where the dispute concerns the exercise of public powers or the legality of administrative action that cannot lawfully be submitted to arbitration.

Equally, the availability of judicial review should not necessarily displace arbitration in respect of contractual disputes that are validly arbitrable.

The relationship between the two mechanisms should consequently be governed by the nature of the claim, the legal source of the disputed obligation, and the remedies sought.

### 5.5. Public Policy and the Setting Aside of Arbitral Awards

Public policy provides an additional safeguard in disputes involving public authorities.

An award may raise public-policy concerns where it requires a party to perform an unlawful act, undermines mandatory statutory provisions, or conflicts with fundamental principles of the legal system.

However, public policy should not be used as a general means of reopening the merits of an arbitral dispute or avoiding contractual obligations merely because a governmental party is dissatisfied with the result.

A balanced approach requires a clear distinction between genuine violations of fundamental legal principles and ordinary disagreements concerning the tribunal's interpretation of contractual or legal provisions.

## 6. Comparative Perspectives on Administrative Arbitration

### 6.1. The English Legal Framework

English law provides an important framework for examining arbitration involving public authorities.

The Arbitration Act 1996 establishes the general legal framework for arbitration seated in England and Wales and Northern Ireland. Section 1 identifies three foundational principles: fair resolution by an impartial tribunal without unnecessary delay or expense; party autonomy subject to safeguards necessary in the public interest; and limited judicial intervention.

The reference to safeguards necessary in the public interest is particularly relevant to public-private arbitration. It demonstrates that party autonomy is not conceived as an unlimited principle.

Section 33 imposes a general duty of fairness and impartiality on the tribunal. Sections 67 and 68 establish mechanisms for challenging awards on jurisdictional and serious-irregularity grounds.

The Arbitration Act 2025 introduced amendments to the 1996 framework, including the insertion of section 6A concerning the law applicable to an arbitration agreement. Under this provision, the applicable law is generally the law expressly chosen by the parties for the arbitration agreement or, in the absence of such express choice, the law of the seat. The Act entered into force in relevant part on 1 August 2025.

These reforms are important for the certainty of arbitration agreements, particularly in international transactions. However, they do not remove the need to examine the statutory authority of a public body to enter into arbitration or the arbitrability of the underlying dispute.

The English framework should therefore be understood as providing general arbitration rules rather than a comprehensive and separate statutory regime governing all disputes involving public authorities.

Academic analysis has identified a potential gap in the treatment of public-interest concerns within the conventional framework of commercial arbitration. Brekoulakis and Devaney argue that the

private-law orientation of English arbitration law may insufficiently address the distinctive public-interest implications of disputes involving public bodies.

This criticism suggests that the application of ordinary arbitration rules to public-private disputes may require additional safeguards, particularly concerning transparency, public accountability, and the protection of interests beyond those of the immediate parties.

**6.2. The United States Legal Framework**

The United States provides a different institutional approach to the resolution of disputes involving governmental entities.

The Federal Arbitration Act establishes a general legal framework for arbitration agreements involving commerce. However, disputes arising from federal government contracts are also governed by specialised statutory arrangements.

The Contract Disputes Act 1978 establishes procedures for resolving specified disputes arising from federal procurement contracts. These procedures generally involve an initial decision by the contracting officer, followed by an appeal to an agency board of contract appeals or an action before the United States Court of Federal Claims.

This mechanism should not be confused with private arbitration. The boards exercise statutory adjudicative authority, and their jurisdiction derives from legislation rather than solely from an arbitration agreement.

The distinction is significant because it demonstrates that the United States does not treat all disputes involving government contracts as matters to be referred to arbitration.

The Administrative Dispute Resolution Act 1996 also promotes the use of alternative dispute resolution within federal agencies, including negotiation and mediation, subject to statutory conditions and exceptions.

The American framework therefore illustrates the coexistence of contractual dispute-resolution mechanisms, statutory adjudication, and alternative dispute resolution. The applicable mechanism depends upon the nature of the dispute and the relevant legislative provisions.

This model highlights the importance of distinguishing between arbitration based on consent and adjudication exercised pursuant to statutory authority.

**6.3. International Standards: UNCITRAL and the New York Convention**

International arbitration standards provide a further reference point for assessing disputes involving public authorities.

The UNCITRAL Model Law on International Commercial Arbitration, adopted in 1985 and amended in 2006, establishes a comprehensive framework addressing arbitration agreements, tribunal jurisdiction, procedural fairness, interim measures, judicial assistance, and the recognition and enforcement of awards.

Article 1 defines the scope of the Model Law by reference to international commercial arbitration. Article 5 limits judicial intervention to cases provided for by the Law. Article 7 addresses arbitration agreements, Article 16 recognises the competence of the tribunal to rule on its own jurisdiction, and Article 18 establishes equal treatment of the parties.

The Model Law is primarily concerned with international commercial arbitration. It should not be interpreted as a universal instrument authorising the arbitration of every dispute involving a public authority.

Similarly, the 1958 New York Convention provides an international framework for recognising arbitration agreements and enforcing foreign arbitral awards.

Article II requires recognition of written arbitration agreements falling within the Convention, while Article V identifies limited grounds upon which recognition and enforcement may be refused. These include incapacity or invalidity of the arbitration agreement, procedural irregularities, decisions exceeding the scope of the arbitration agreement, non-arbitrability under the law of the enforcing state, and conflict with public policy.

These provisions demonstrate that international arbitration is supported by principles of enforcement and party autonomy, while retaining safeguards for fundamental legal requirements.

### 6.4. Comparative Assessment

The comparison of English and American approaches reveals that the use of arbitration in disputes involving public authorities cannot be understood through a single institutional model.

The English framework provides general arbitration rules based on party autonomy, procedural fairness, and limited judicial intervention. Its application to public-private disputes raises questions concerning the adequacy of existing public-interest safeguards.

The United States framework, by contrast, demonstrates the importance of specialised statutory mechanisms for resolving federal government contract disputes, particularly through contracting officers, boards of contract appeals, and the Court of Federal Claims.

International instruments provide common procedural principles but do not eliminate the authority of national legal systems to determine the arbitrability of particular disputes.

The comparative analysis therefore supports three conclusions.

First, the involvement of a public authority does not automatically exclude arbitration.

Secondly, the legal capacity of the authority and the arbitrability of the subject matter must be established under the applicable law.

Thirdly, the protection of public interests requires a framework that preserves the distinction between contractual disputes and matters involving the exercise of sovereign powers.

## 7. Conclusion and Recommendations

Administrative arbitration occupies an increasingly important position in the discussion of contemporary administrative justice and alternative dispute resolution. The expansion of public-

private contractual relationships, the complexity of government projects, and the growing need for effective dispute-resolution mechanisms have encouraged the use of arbitration in disputes involving public authorities.

Nevertheless, administrative arbitration cannot be treated as an unrestricted extension of ordinary commercial arbitration. The involvement of public authorities introduces legal considerations that arise from the principle of legality, statutory competence, governmental accountability, and the protection of the public interest.

The analysis demonstrates that the decisive issue is not simply whether a public authority may agree to arbitration, but whether the particular dispute is legally capable of being submitted to an arbitral tribunal. Contractual disputes concerning payment, performance, compensation, and contractual interpretation may be suitable for arbitration, subject to the applicable statutory framework. By contrast, disputes concerning the exercise of sovereign powers, the legality of regulatory decisions, or matters reserved to administrative courts may require a different form of judicial or statutory review.

The comparative examination of English and United States law further demonstrates that different legal systems may adopt different institutional approaches. English law relies on a general arbitration framework that recognises party autonomy while preserving public-interest safeguards. The United States provides specialised statutory procedures for federal government contract disputes, illustrating that public-sector dispute resolution may operate through mechanisms other than arbitration.

The international framework established by UNCITRAL and the New York Convention reinforces the importance of arbitration agreements, procedural fairness, tribunal jurisdiction, and the recognition and enforcement of awards. However, these instruments do not remove the need to examine national rules concerning arbitrability and public policy.

On the basis of this analysis, the following recommendations may be advanced:

1. **Clarification of the legal concept:** National legislation and legal scholarship should distinguish clearly between administrative arbitration, administrative adjudication, judicial review, and other alternative dispute resolution mechanisms.
2. **Identification of arbitrable disputes:** Legislatures should establish clear criteria for determining which disputes involving public authorities may be submitted to arbitration, with particular attention to contractual and commercial disputes.
3. **Protection of statutory competence:** Public authorities should enter into arbitration agreements only where they possess the necessary legal authority and have complied with applicable approval and procedural requirements.
4. **Preservation of judicial jurisdiction:** Arbitration should not displace the jurisdiction of administrative courts over matters that legislation reserves to judicial review or other mandatory public-law procedures.
5. **Strengthening procedural safeguards:** Arbitration involving public authorities should ensure independence, impartiality, equality of arms, procedural fairness, and appropriate disclosure obligations.

6. **Balancing transparency and confidentiality:** The confidentiality of arbitration should be reconciled with the public authority's obligations of accountability and transparency, particularly where public funds or broader public interests are involved.
7. **Improving enforcement mechanisms:** National legal frameworks should clarify the conditions under which arbitral awards may be enforced against public entities while respecting applicable rules concerning public assets and sovereign immunity.

Ultimately, the legitimacy of administrative arbitration depends on achieving an appropriate balance between procedural efficiency and the constitutional and administrative principles governing public power. Arbitration should complement, rather than replace, the mechanisms of administrative justice. Its value lies in providing an effective means of resolving disputes that are legally capable of arbitration while preserving the fundamental requirements of legality, accountability, and the public interest.

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**References**

**A. Legislation and International Instruments**

1. Arbitration Act 1996 (UK), as amended by the Arbitration Act 2025.
2. Arbitration Act 2025 (UK), c. 4.
3. Federal Arbitration Act, 9 USC §§ 1–16.
4. Contract Disputes Act 1978, 41 USC §§ 7101–7109.
5. Administrative Dispute Resolution Act 1996, 5 USC §§ 571–584.
6. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).
7. UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006.

**B. Books**

1. Born GB, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021).
2. Craig P, *Administrative Law* (9th edn, Sweet & Maxwell 2021).
3. Elliott M and Thomas R, *Public Law* (5th edn, Oxford University Press 2024).
4. Lew JDM, Mistelis LA and Kröll SM, *Comparative International Commercial Arbitration* (Kluwer Law International 2003).
5. Redfern A and Hunter M, *Law and Practice of International Commercial Arbitration* (7th edn, Oxford University Press 2023).

**C. Journal Articles**

1. Brekoulakis S and Devaney M, 'Public-Private Arbitration and the Public Interest under English Law' (2017) 80(1) *The Modern Law Review* 22–56. https://doi.org/10.1111/1468-2230.12241.
2. Henckels C, 'Arbitration under Government Contracts and Government Accountability' (2022) 50(3) *Federal Law Review* 404–418. https://doi.org/10.1177/0067205X221107407.
3. 'Role of Public Policy in the Arbitrability of Disputes under US and English Law' (2023) 26(1) *International Arbitration Law Review* 72–87.