# **ARBITRATION (SCOTLAND) ACT 2010**

## **EXPLANATORY NOTES**

#### COMMENTARY ON SECTIONS

#### Scottish Arbitration Rules

#### Section 7 – Scottish Arbitration Rules

30. Schedule 1 to the Act sets out the Scottish Arbitration Rules in the form of a single code. The Rules govern every arbitration seated in Scotland and form part of the general law of Scotland in the same way as the body of the Act, and not as a matter of contract between the parties. Whether a provision is included in the body of the Act or the schedule is irrelevant to its status as statutory law. Section 7 is however subject to section 9 whereby parties can agree that a default rule does not apply. The arbitration agreement between the parties will always have to be considered together with the Act.

## Section 8 – Mandatory rules

- 31. The mandatory rules take precedence over any agreement between the parties which conflicts with those rules. If an arbitration is not conducted in accordance with the rules which apply to it (including the mandatory rules), the tribunal or arbitrator may, depending on the breach, be open to removal or dismissal (with potential consequences for their expenses), and an award may be liable to challenge.
- 32. The mandatory rules are listed in section 8. They are also identified in the Scottish Arbitration Rules in schedule 1 for the ease of the reader by an "**M**" at the end of the rule heading.

## Section 9 – Default rules

- 33. Parties are free to make their own arrangements, by agreement, on matters covered by the default rules. Only where there is no such agreement will the default rules apply. Default rules do not lose their statutory nature because they apply only in certain circumstances, for instance in the absence of contrary agreement by the parties.
- 34. Subsections (2) to (4) make detailed provision making clear that the parties can agree to vary any or all of the default rules, insofar as they agree to modify or disapply them. This can be done in the arbitration agreement or elsewhere, and at any time before or after the arbitration begins. Subsection (4) makes clear that inconsistent provision in the arbitration agreement or other document takes precedence, and that the parties can choose to adopt, for example, the UNCITRAL Model Law, UNCITRAL Arbitration Rules, the Chartered Institute of Arbitrators' Scottish Arbitration Code, industry standard rules or the procedural rules of other legal systems (subject to the mandatory Scottish Arbitration Rules which cannot be contracted out of).
- 35. The default rules are identified in the Scottish Arbitration Rules in schedule 1 for the ease of the reader by a "**D**" at the end of the rule heading.