

## SCHEDULE 1 SCOTTISH ARBITRATION RULES

### PART 7

#### ARBITRATION EXPENSES

##### *Rule 59 Arbitration expenses D*

- 59 “Arbitration expenses” means—
- (a) the arbitrators' fees and expenses for which the parties are liable under rule 60,
  - (b) any expenses incurred by the tribunal when conducting the arbitration for which the parties are liable under rule 60,
  - (c) the parties' legal and other expenses, and
  - (d) the fees and expenses of—
    - (i) any arbitral appointments referee, and
    - (ii) any other third party to whom the parties give powers in relation to the arbitration,for which the parties are liable under rule 60.

##### *Rule 60 Arbitrators' fees and expenses M*

- 60 (1) The parties are severally liable to pay to the arbitrators—
- (a) the arbitrators' fees and expenses, including—
    - (i) the arbitrators' fees for conducting the arbitration,
    - (ii) expenses incurred personally by the arbitrators when conducting the arbitration, and
  - (b) expenses incurred by the tribunal when conducting the arbitration, including—
    - (i) the fees and expenses of any clerk, agent, employee or other person appointed by the tribunal to assist it in conducting the arbitration,
    - (ii) the fees and expenses of any expert from whom the tribunal obtains an opinion,
    - (iii) any expenses in respect of meeting and hearing facilities, and
    - (iv) any expenses incurred in determining recoverable arbitration expenses.
- (2) The parties are also severally liable to pay the fees and expenses of—
- (a) any arbitral appointments referee, and
  - (b) any other third party to whom the parties give powers in relation to the arbitration.
- (3) The amount of fees and expenses payable under this rule and the payment terms are—
- (a) to be agreed by the parties and the arbitrators or, as the case may be, the arbitral appointments referee or other third party, or
  - (b) failing such agreement, to be determined by the Auditor of the Court of Session.
- (4) Unless the Auditor of the Court of Session decides otherwise—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the amount of any fee is to be determined by the Auditor on the basis of a reasonable commercial rate of charge, and
  - (b) the amount of any expenses is to be determined by the Auditor on the basis that a reasonable amount is to be allowed in respect of all reasonably incurred expenses.
- (5) The Auditor of the Court of Session may, when determining the amount of fees and expenses, order the repayment of any fees or expenses already paid which the Auditor considers excessive (and such an order has effect as if it was made by the court).
- (6) This rule does not affect—
- (a) the parties' liability as between themselves for fees and expenses covered by this rule (see rules 62 and 65), or
  - (b) the Outer House's power to make an order under rule 16 (order relating to expenses in cases of arbitrator's resignation or removal).

*Rule 61 Recoverable arbitration expenses D*

- 61 (1) The following arbitration expenses are recoverable—
- (a) the arbitrators' fees and expenses for which the parties are liable under rule 60,
  - (b) any expenses incurred by the tribunal when conducting the arbitration for which the parties are liable under rule 60, and
  - (c) the fees and expenses of any arbitral appointments referee (or any other third party to whom the parties give powers in relation to the arbitration) for which the parties are liable under rule 60.
- (2) It is for the tribunal to—
- (a) determine the amount of the other arbitration expenses which are recoverable, or
  - (b) arrange for the Auditor of the Court of Session to determine that amount.
- (3) Unless the tribunal or, as the case may be, the Auditor decides otherwise—
- (a) the amount of the other arbitration expenses which are recoverable must be determined on the basis that a reasonable amount is to be allowed in respect of all reasonably incurred expenses, and
  - (b) any doubt as to whether expenses were reasonably incurred or are reasonable in amount is to be resolved in favour of the person liable to pay the expenses.

*Rule 62 Liability for recoverable arbitration expenses D*

- 62 (1) The tribunal may make an award allocating the parties' liability between themselves for the recoverable arbitration expenses (or any part of those expenses).
- (2) When making an award under this rule, the tribunal must have regard to the principle that expenses should follow a decision made in favour of a party except where this would be inappropriate in the circumstances.
- (3) Until such an award is made (or where the tribunal chooses not to make such an award) in respect of recoverable arbitration expenses (or any part of them), the parties are, as between themselves, each liable—
- (a) for an equal share of any such expenses for which the parties are liable under rule 60, and

(b) for their own legal and other expenses.

(4) This rule does not affect—

- (a) the parties' several liability for fees and expenses under rule 60, or
- (b) the liability of any party to any other third party.

*Rule 63 Ban on pre-dispute agreements about liability for arbitration expenses M*

63 Any agreement allocating the parties' liability between themselves for any or all of the arbitration expenses has no effect if entered into before the dispute being arbitrated has arisen.

*Rule 64 Security for expenses D*

64 (1) The tribunal may—

- (a) order a party making a claim to provide security for the recoverable arbitration expenses or any part of them, and
- (b) if that order is not complied with, make an award dismissing any claim made by that party.

(2) But such an order may not be made only on the ground that the party—

- (a) is an individual who ordinarily resides outwith the United Kingdom, or
- (b) is a body which is—
  - (i) incorporated or formed under the law of a country outwith the United Kingdom, or
  - (ii) managed or controlled from outwith the United Kingdom.

*Rule 65 Limitation of recoverable arbitration expenses D*

65 (1) A provisional or part award may cap a party's liability for the recoverable arbitration expenses at an amount specified in the award.

(2) But an award imposing such a cap must be made sufficiently in advance of the expenses to which the cap relates being incurred, or the taking of any steps in the arbitration which may be affected by the cap, for the parties to take account of it.

*Rule 66 Awards on recoverable arbitration expenses D*

66 An expenses award (under rule 62 or 65) may be made together with or separately from an award on the substance of the dispute (and these rules apply in relation to an expenses award as they apply to an award on the substance of the dispute).