

## SCHEDULE 1 SCOTTISH ARBITRATION RULES

### PART 1

#### COMMENCEMENT AND CONSTITUTION OF TRIBUNAL ETC.

##### *Rule 1 Commencement of arbitration D*

- 1 An arbitration begins when a party to an arbitration agreement (or any person claiming through or under such a party) gives the other party notice submitting a dispute to arbitration in accordance with the agreement.

##### *Rule 2 Appointment of tribunal D*

- 2 An arbitration agreement need not appoint (or provide for appointment of) the tribunal, but if it does so provide it may—
- (a) specify who is to form the tribunal,
  - (b) require the parties to appoint the tribunal,
  - (c) permit another person to appoint the tribunal, or
  - (d) provide for the tribunal to be appointed in any other way.

##### *Rule 3 Arbitrator to be an individual M*

- 3 Only an individual may act as an arbitrator.

##### *Rule 4 Eligibility to act as arbitrator M*

- 4 An individual is ineligible to act as an arbitrator if the individual is—
- (a) aged under 16, or
  - (b) an incapable adult (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4)).

##### *Rule 5 Number of arbitrators D*

- 5 Where there is no agreement as to the number of arbitrators, the tribunal is to consist of a sole arbitrator.

##### *Rule 6 Method of appointment D*

- 6 The tribunal is to be appointed as follows—
- (a) where there is to be a sole arbitrator, the parties must appoint an eligible individual jointly (and must do so within 28 days of either party requesting the other to do so),
  - (b) where there is to be a tribunal consisting of two or more arbitrators—
    - (i) each party must appoint an eligible individual as an arbitrator (and must do so within 28 days of the other party requesting it to do so), and

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- (ii) where more arbitrators are to be appointed, the arbitrators appointed by the parties must appoint eligible individuals as the remaining arbitrators.

**Rule 7 Failure of appointment procedure *M***

- 7 (1) This rule applies where a tribunal (or any arbitrator who is to form part of a tribunal) is not, or cannot be, appointed in accordance with—
- (a) any appointment procedure set out in the arbitration agreement (or otherwise agreed between the parties), or
  - (b) rule 6.
- (2) Unless the parties otherwise agree, either party may refer the matter to an arbitral appointments referee.
- (3) The referring party must give notice of the reference to the other party.
- (4) That other party may object to the reference within 7 days of notice of reference being given by making an objection to—
- (a) the referring party, and
  - (b) the arbitral appointments referee.
- (5) If—
- (a) no such objection is made within that 7 day period, or
  - (b) the other party waives the right to object before the end of that period,
- the arbitral appointments referee may make the necessary appointment.
- (6) Where—
- (a) a party objects to the arbitral appointments referee making an appointment,
  - (b) an arbitral appointments referee fails to make an appointment within 21 days of the matter being referred, or
  - (c) the parties agree not to refer the matter to an arbitral appointments referee,
- the court may, on an application by any party, make the necessary appointment.
- (7) The court’s decision on whom to appoint is final.
- (8) Before making an appointment under this rule, the arbitral appointments referee or, as the case may be, the court must have regard to—
- (a) the nature and subject-matter of the dispute,
  - (b) the terms of the arbitration agreement (including, in particular, any terms relating to appointment of arbitrators), and
  - (c) the skills, qualifications, knowledge and experience which would make an individual suitable to determine the dispute.
- (9) Where an arbitral appointments referee or the court makes an appointment under this rule, the arbitration agreement has effect as if it required that appointment.

**Rule 8 Duty to disclose any conflict of interests *M***

- 8 (1) This rule applies to—
- (a) arbitrators, and

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- (b) individuals who have been asked to be an arbitrator but who have not yet been appointed.
- (2) An individual to whom this rule applies must, without delay disclose—
- (a) to the parties, and
  - (b) in the case of an individual not yet appointed as an arbitrator, to any arbitral appointments referee, other third party or court considering whether to appoint the individual as an arbitrator,
- any circumstances known to the individual (or which become known to the individual before the arbitration ends) which might reasonably be considered relevant when considering whether the individual is impartial and independent.

*Rule 9 Arbitrator's tenure* **D**

- 9 An arbitrator's tenure ends if—
- (a) the arbitrator becomes ineligible to act as an arbitrator (see rule 4),
  - (b) the tribunal revokes the arbitrator's appointment (see rule 10),
  - (c) the arbitrator is removed by the parties, a third party or the Outer House (see rules 11 and 12),
  - (d) the Outer House dismisses the tribunal of which the arbitrator forms part (see rule 13), or
  - (e) the arbitrator resigns (see rule 15) or dies (see rule 79).

*Rule 10 Challenge to appointment of arbitrator* **D**

- 10 (1) A party may object to the tribunal about the appointment of an arbitrator.
- (2) An objection is competent only if—
- (a) it is made on the ground that the arbitrator—
    - (i) is not impartial and independent,
    - (ii) has not treated the parties fairly, or
    - (iii) does not have a qualification which the parties agreed (before the arbitrator's appointment) that the arbitrator must have,
  - (b) it states the facts on which it is based,
  - (c) it is made within 14 days of the objector becoming aware of those facts, and
  - (d) notice of it is given to the other party.
- (3) The tribunal may deal with an objection by confirming or revoking the appointment.
- (4) If the tribunal fails to make a decision within 14 days of a competent objection being made, the appointment is revoked.

*Rule 11 Removal of arbitrator by parties* **D**

- 11 (1) An arbitrator may be removed—
- (a) by the parties acting jointly, or
  - (b) by any third party to whom the parties give power to remove an arbitrator.
- (2) A removal is effected by notifying the arbitrator.

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*Rule 12 Removal of arbitrator by court M*

- 12 The Outer House may remove an arbitrator if satisfied on the application by any party—
- (a) that the arbitrator is not impartial and independent,
  - (b) that the arbitrator has not treated the parties fairly,
  - (c) that the arbitrator is incapable of acting as an arbitrator in the arbitration (or that there are justifiable doubts about the arbitrator’s ability to so act),
  - (d) that the arbitrator does not have a qualification which the parties agreed (before the arbitrator’s appointment) that the arbitrator must have,
  - (e) that substantial injustice has been or will be caused to that party because the arbitrator has failed to conduct the arbitration in accordance with—
    - (i) the arbitration agreement,
    - (ii) these rules (in so far as they apply), or
    - (iii) any other agreement by the parties relating to conduct of the arbitration.

*Rule 13 Dismissal of tribunal by court M*

- 13 The Outer House may dismiss the tribunal if satisfied on the application by a party that substantial injustice has been or will be caused to that party because the tribunal has failed to conduct the arbitration in accordance with—
- (a) the arbitration agreement,
  - (b) these rules (in so far as they apply), or
  - (c) any other agreement by the parties relating to conduct of the arbitration.

*Rule 14 Removal and dismissal by court: supplementary M*

- 14 (1) The Outer House may remove an arbitrator, or dismiss the tribunal, only if—
- (a) the arbitrator or, as the case may be, tribunal has been—
    - (i) notified of the application for removal or dismissal, and
    - (ii) given the opportunity to make representations, and
  - (b) the Outer House is satisfied—
    - (i) that any recourse available under rule 10 has been exhausted, and
    - (ii) that any available recourse to a third party who the parties have agreed is to have power to remove an arbitrator (or dismiss the tribunal) has been exhausted.
- (2) A decision of the Outer House under rule 12 or 13 is final.
- (3) The tribunal may continue with the arbitration pending the Outer House’s decision under rule 12 or 13.

*Rule 15 Resignation of arbitrator M*

- 15 (1) An arbitrator may resign (by giving notice of resignation to the parties and any other arbitrators) if—
- (a) the parties consent to the resignation,
  - (b) the arbitrator has a contractual right to resign in the circumstances,
  - (c) the arbitrator’s appointment is challenged under rule 10 or 12,

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- (d) the parties disapply or modify rule 34(1) (expert opinions) after the arbitrator is appointed, or
  - (e) the Outer House has authorised the resignation.
- (2) The Outer House may authorise a resignation only if satisfied, on an application by the arbitrator, that it is reasonable for the arbitrator to resign.
- (3) The Outer House’s determination of an application for resignation is final.

*Rule 16 Liability etc. of arbitrator when tenure ends M*

- 16 (1) Where an arbitrator’s tenure ends, the Outer House may, on an application by any party or the arbitrator concerned, make such order as it thinks fit—
- (a) about the arbitrator’s entitlement (if any) to fees and expenses,
  - (b) about the repaying of fees or expenses already paid to the arbitrator,
  - (c) where the arbitrator has resigned, about the arbitrator’s liability in respect of acting as an arbitrator.
- (2) The Outer House must, when considering whether to make an order in relation to an arbitrator who has resigned, have particular regard to whether the resignation was made in accordance with rule 15.
- (3) The Outer House’s determination of an application for an order is final.

*Rule 17 Reconstitution of tribunal D*

- 17 (1) Where an arbitrator’s tenure ends, the tribunal must be reconstituted—
- (a) in accordance with the procedure used to constitute the original tribunal, or
  - (b) where that procedure fails, in accordance with rules 6 and 7.
- (2) It is for the reconstituted tribunal to decide the extent, if any, to which previous proceedings (including any award made, appointment by or other act done by the previous tribunal) should stand.
- (3) The reconstituted tribunal’s decision does not affect a party’s right to object or appeal on any ground which arose before the tribunal made its decision.

*Rule 18 Arbitrators nominated in arbitration agreements D*

- 18 Any provision in an arbitration agreement which specifies who is to be an arbitrator ceases to have effect in relation to an arbitration when the specified individual’s tenure as an arbitrator for that arbitration ends.