

## SCHEDULE 1 SCOTTISH ARBITRATION RULES

### PART 5

#### POWERS OF COURT IN RELATION TO ARBITRAL PROCEEDINGS

##### *Rule 41 Referral of point of law D*

- 41 The Outer House may, on an application by any party, determine any point of Scots law arising in the arbitration.

##### *Rule 42 Point of law referral: procedure etc. M*

- 42 (1) This rule applies only where an application is made under rule 41.
- (2) Such an application is valid only if—
- (a) the parties have agreed that it may be made, or
  - (b) the tribunal has consented to it being made and the court is satisfied—
    - (i) that determining the question is likely to produce substantial savings in expenses,
    - (ii) that the application was made without delay, and
    - (iii) that there is a good reason why the question should be determined by the court.
- (3) The tribunal may continue with the arbitration pending determination of the application.
- (4) The Outer House's determination of the question is final (as is any decision by the Outer House as to whether an application is valid).

##### *Rule 43 Variation of time limits set by parties D*

- 43 The court may, on an application by the tribunal or any party, vary any time limit relating to the arbitration which is imposed—
- (a) in the arbitration agreement, or
  - (b) by virtue of any other agreement between the parties.

##### *Rule 44 Time limit variation: procedure etc. M*

- 44 (1) This rule applies only where an application for variation of time limit is made under rule 43.
- (2) Such a variation may be made only if the court is satisfied—
- (a) that no arbitral process for varying the time limit is available, and
  - (b) that someone would suffer a substantial injustice if no variation was made.
- (3) It is for the court to determine the extent of any variation.
- (4) The tribunal may continue with the arbitration pending determination of an application.

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*Status: This is the original version (as it was originally enacted).*

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- (5) The court's decision on whether to make a variation (and, if so, on the extent of the variation) is final.

*Rule 45 Court's power to order attendance of witnesses and disclosure of evidence M*

- 45 (1) The court may, on an application by the tribunal or any party, order any person—
- (a) to attend a hearing for the purposes of giving evidence to the tribunal, or
  - (b) to disclose documents or other material evidence to the tribunal.
- (2) But the court may not order a person to give any evidence, or to disclose anything, which the person would be entitled to refuse to give or disclose in civil proceedings.
- (3) The tribunal may continue with the arbitration pending determination of an application.
- (4) The court's decision on whether to make an order is final.

*Rule 46 Court's other powers in relation to arbitration D*

- 46 (1) The court has the same power in an arbitration as it has in civil proceedings—
- (a) to appoint a person to safeguard the interests of any party lacking capacity,
  - (b) to order the sale of any property in dispute in the arbitration,
  - (c) to make an order securing any amount in dispute in the arbitration,
  - (d) to make an order under section 1 of the Administration of Justice (Scotland) Act 1972 (c. 59),
  - (e) to grant warrant for arrestment or inhibition,
  - (f) to grant interdict (or interim interdict), or
  - (g) to grant any other interim or permanent order.
- (2) But the court may take such action only—
- (a) on an application by any party, and
  - (b) if the arbitration has begun—
    - (i) with the consent of the tribunal, or
    - (ii) where the court is satisfied that the case is one of urgency.
- (3) The tribunal may continue with the arbitration pending determination of the application.
- (4) This rule applies—
- (a) to arbitrations which have begun,
  - (b) where the court is satisfied—
    - (i) that a dispute has arisen or might arise, and
    - (ii) that an arbitration agreement provides that such a dispute is to be resolved by arbitration.
- (5) This rule does not affect—
- (a) any other powers which the court has under any enactment or rule of law in relation to arbitrations, or
  - (b) the tribunal's powers.