

SCHEDULE 1 SCOTTISH ARBITRATION RULES

PART 8

CHALLENGING AWARDS

Rule 67 Challenging an award: substantive jurisdiction M

- 67 (1) A party may appeal to the Outer House against the tribunal’s award on the ground that the tribunal did not have jurisdiction to make the award (a “jurisdictional appeal”).
- (2) The Outer House may decide a jurisdictional appeal by—
- (a) confirming the award,
 - (b) varying the award (or part of it), or
 - (c) setting aside the award (or part of it).
- (3) Any variation by the Outer House has effect as part of the tribunal’s award.
- (4) An appeal may be made to the Inner House against the Outer House’s decision on a jurisdictional appeal (but only with the leave of the Outer House).
- (5) Leave may be given by the Outer House only where it considers—
- (a) that the proposed appeal would raise an important point of principle or practice, or
 - (b) that there is another compelling reason for the Inner House to consider the appeal.
- (6) The Outer House’s decision on whether to grant such leave is final.
- (7) The Inner House’s decision on such an appeal is final.

Rule 68 Challenging an award: serious irregularity M

- 68 (1) A party may appeal to the Outer House against the tribunal’s award on the ground of serious irregularity (a “serious irregularity appeal”).
- (2) “Serious irregularity” means an irregularity of any of the following kinds which has caused, or will cause, substantial injustice to the appellant—
- (a) the tribunal failing 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,
 - (b) the tribunal acting outwith its powers (other than by exceeding its jurisdiction),
 - (c) the tribunal failing to deal with all the issues that were put to it,
 - (d) any arbitral appointments referee or other third party to whom the parties give powers in relation to the arbitration acting outwith powers,
 - (e) uncertainty or ambiguity as to the award’s effect,
 - (f) the award being—
 - (i) contrary to public policy, or

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- (ii) obtained by fraud or in a way which is contrary to public policy,
 - (g) an arbitrator having not been impartial and independent,
 - (h) an arbitrator having not treated the parties fairly,
 - (i) an arbitrator having been incapable of acting as an arbitrator in the arbitration (or there being justifiable doubts about an arbitrator’s ability to so act),
 - (j) an arbitrator not having a qualification which the parties agreed (before the arbitrator’s appointment) that the arbitrator must have, or
 - (k) any other irregularity in the conduct of the arbitration or in the award which is admitted by—
 - (i) the tribunal, or
 - (ii) any arbitral appointments referee or other third party to whom the parties give powers in relation to the arbitration.
- (3) The Outer House may decide a serious irregularity appeal by—
- (a) confirming the award,
 - (b) ordering the tribunal to reconsider the award (or part of it), or
 - (c) if it considers reconsideration inappropriate, setting aside the award (or part of it).
- (4) Where the Outer House decides a serious irregularity appeal (otherwise than by confirming the award) on the ground—
- (a) that the tribunal 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,
 - (b) that an arbitrator has not been impartial and independent, or
 - (c) that an arbitrator has not treated the parties fairly,
- it may also make such order as it thinks fit about any arbitrator’s entitlement (if any) to fees and expenses (and such an order may provide for the repayment of fees or expenses already paid to the arbitrator).
- (5) An appeal may be made to the Inner House against the Outer House’s decision on a serious irregularity appeal (but only with the leave of the Outer House).
- (6) Leave may be given by the Outer House only where it considers—
- (a) that the proposed appeal would raise an important point of principle or practice, or
 - (b) that there is another compelling reason for the Inner House to consider the appeal.
- (7) The Outer House’s decision on whether to grant such leave is final.
- (8) The Inner House’s decision on such an appeal is final.

Rule 69 Challenging an award: legal error D

- 69 (1) A party may appeal to the Outer House against the tribunal’s award on the ground that the tribunal erred on a point of Scots law (a “legal error appeal”).

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- (2) An agreement between the parties to disapply rule 51(2)(c) by dispensing with the tribunal's duty to state its reasons for its award is to be treated as an agreement to exclude the court's jurisdiction to consider a legal error appeal.

Rule 70 Legal error appeals: procedure etc. M

- 70 (1) This rule applies only where rule 69 applies.
- (2) A legal error appeal may be made only—
- (a) with the agreement of the parties, or
 - (b) with the leave of the Outer House.
- (3) Leave to make a legal error appeal may be given only if the Outer House is satisfied—
- (a) that deciding the point will substantially affect a party's rights,
 - (b) that the tribunal was asked to decide the point, and
 - (c) that, on the basis of the findings of fact in the award (including any facts which the tribunal treated as established for the purpose of deciding the point), the tribunal's decision on the point—
 - (i) was obviously wrong, or
 - (ii) where the court considers the point to be of general importance, is open to serious doubt.
- (4) An application for leave is valid only if it—
- (a) identifies the point of law concerned, and
 - (b) states why the applicant considers that leave should be granted.
- (5) The Outer House must determine an application for leave without a hearing (unless satisfied that a hearing is required).
- (6) The Outer House's determination of an application for leave is final.
- (7) Any leave to appeal expires 7 days after it is granted (and so any legal error appeal made after then is accordingly invalid unless made with the agreement of the parties).
- (8) The Outer House may decide a legal error appeal by—
- (a) confirming the award,
 - (b) ordering the tribunal to reconsider the award (or part of it), or
 - (c) if it considers reconsideration inappropriate, setting aside the award (or part of it).
- (9) An appeal may be made to the Inner House against the Outer House's decision on a legal error appeal (but only with the leave of the Outer House).
- (10) Leave may be given by the Outer House only where it considers—
- (a) that the proposed appeal would raise an important point of principle or practice, or
 - (b) that there is another compelling reason for the Inner House to consider the appeal.
- (11) The Outer House's decision on whether to grant such leave is final.
- (12) The Inner House's decision on such an appeal is final.

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Rule 71 Challenging an award: supplementary M

- 71 (1) This rule applies to—
- (a) jurisdictional appeals,
 - (b) serious irregularity appeals, and
 - (c) where rule 69 applies to the arbitration, legal error appeals,
- and references to “appeal” are to be construed accordingly.
- (2) An appeal is competent only if the appellant has exhausted any available arbitral process of appeal or review (including any recourse available under rule 58).
- (3) No appeal may be made against a provisional award.
- (4) An appeal must be made no later than 28 days after the later of the following dates—
- (a) the date on which the award being appealed against is made,
 - (b) if the award is subject to a process of correction under rule 58, the date on which the tribunal decides whether to correct the award, or
 - (c) if there has been an arbitral process of appeal or review, the date on which the appellant was notified of the result of that process.

A legal error appeal is to be treated as having been made for the purposes of this rule if an application for leave is made.

- (5) An application for leave to appeal against the Outer House’s decision on an appeal must be made no later than 28 days after the date on which the decision is made (and any such leave expires 7 days after it is granted).
- (6) An appellant must give notice of an appeal to the other party and the tribunal.
- (7) The tribunal may continue with the arbitration pending determination of an appeal against a part award.
- (8) The Outer House (or the Inner House in the case of an appeal against the Outer House’s decision) may—
- (a) order the tribunal to state its reasons for the award being appealed in sufficient detail to enable the Outer House (or Inner House) to deal with the appeal properly, and
 - (b) make any other order it thinks fit with respect to any additional expenses arising from that order.
- (9) Where the Outer House (or the Inner House in the case of an appeal against the Outer House’s decision) decides an appeal by setting aside the award (or any part of it), it may also order that any provision in an arbitration agreement which prevents the bringing of legal proceedings in relation to the subject-matter of the award (or that part of it) is void.
- (10) The Outer House (or the Inner House in the case of an appeal against the Outer House’s decision) may—
- (a) order an appellant (or an applicant for leave to appeal) to provide security for the expenses of the appeal (or application), and
 - (b) dismiss the appeal (or application) if the order is not complied with.
- (11) But such an order may not be made only on the ground that the appellant (or applicant)—
- (a) is an individual who ordinarily resides outwith the United Kingdom, or

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- (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.
- (12) The Outer House (or the Inner House in the case of an appeal against the Outer House’s decision) may—
 - (a) order that any amount due under an award being appealed (or any associated provisional award) must be paid into court or otherwise secured pending its decision on the appeal (or the application for leave to appeal), and
 - (b) dismiss the appeal (or application) if the order is not complied with.
- (13) An appeal to the Inner House against any decision of the Outer House under this rule may be made only with the leave of the Outer House.
- (14) An application for leave to appeal against such a decision must be made no later than 28 days after the date on which the decision is made (and any such leave expires 7 days after it is granted).
- (15) Leave may be given by the Outer House only where it considers—
 - (a) that the proposed appeal would raise an important point of principle or practice, or
 - (b) that there is another compelling reason for the Inner House to consider the appeal.
- (16) The Outer House’s decision on whether to grant such leave is final.
- (17) A decision of the Inner House under this rule (including any decision on an appeal against a decision by the Outer House) is final.

Rule 72 Reconsideration by tribunal M

- 72 (1) Where the Outer House or, as the case may be, the Inner House decides a serious irregularity appeal or a legal error appeal by ordering the tribunal to reconsider its award (or any part of it), the tribunal must make a new award in respect of the matter concerned (or confirm its original award) by no later than—
- (a) in the case of a decision by the Outer House—
 - (i) where the decision is appealed, the day falling 3 months after the appeal (or, as the case may be, the application for leave to appeal) is dismissed or abandoned,
 - (ii) where the decision is not appealed, the day falling 3 months after the decision is made, or
 - (iii) such other day as the Outer House may specify,
 - (b) in the case of a decision by the Inner House—
 - (i) the day falling 3 months after the decision is made, or
 - (ii) such other day as the Inner House may specify.
- (2) These rules apply in relation to the new award as they apply in relation to the appealed award.