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PROSPECTIVE

## SCHEDULE 1 SCOTTISH ARBITRATION RULES

### PART 9

#### MISCELLANEOUS

##### *Rule 73 Immunity of tribunal etc. M*

- 73 (1) Neither the tribunal nor any arbitrator is liable for anything done or omitted in the performance, or purported performance, of the tribunal's functions.
- (2) This rule does not apply—
- (a) if the act or omission is shown to have been in bad faith, or
  - (b) to any liability arising from an arbitrator's resignation (but see rule 16(1)(c)).
- (3) This rule applies to any clerk, agent, employee or other person assisting the tribunal to perform its functions as it applies to the tribunal.

##### *Rule 74 Immunity of appointing arbitral institution etc. M*

- 74 (1) An arbitral appointments referee, or other third party who the parties ask to appoint or nominate an arbitrator, is not liable—
- (a) for anything done or omitted in the performance, or purported performance, of that function (unless the act or omission is shown to have been in bad faith), or
  - (b) for the acts or omissions of—
    - (i) any arbitrator whom it nominates or appoints, or
    - (ii) the tribunal of which such an arbitrator forms part (or any clerk, agent or employee of that tribunal).
- (2) This rule applies to an arbitral appointments referee's, or other third party's, agents and employees as it applies to the referee or other third party.

##### *Rule 75 Immunity of experts, witnesses and legal representatives M*

- 75 Every person who participates in an arbitration as an expert, witness or legal representative has the same immunity in respect of acts or omissions as the person would have if the arbitration were civil proceedings.

##### *Rule 76 Loss of right to object M*

- 76 (1) A party who participates in an arbitration without making a timeous objection on the ground—
- (a) that an arbitrator is ineligible to act as an arbitrator,
  - (b) that an arbitrator is not impartial and independent,

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- (c) that an arbitrator has not treated the parties fairly,
  - (d) that the tribunal does not have jurisdiction,
  - (e) that the arbitration has not been conducted 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,
  - (f) that the arbitration has been affected by any other serious irregularity,
- may not raise the objection later before the tribunal or the court.
- (2) An objection is timeous if it is made—
- (a) as soon as reasonably practicable after the circumstances giving rise to the ground for objection first arose,
  - (b) by such later date as may be allowed by—
    - (i) the arbitration agreement,
    - (ii) these rules (in so far as they apply),
    - (iii) the other party, or
  - (c) where the tribunal considers that circumstances justify a later objection, by such later date as it may allow.
- (3) This rule does not apply where the party shows that it did not object timeously because it—
- (a) did not know of the ground for objection, and
  - (b) could not with reasonable diligence have discovered that ground.
- (4) This rule does not allow a party to raise an objection which it is barred from raising for any reason other than failure to object timeously.

*Rule 77 Independence of arbitrator M*

- 77 For the purposes of these rules, an arbitrator is not independent in relation to an arbitration if—
- (a) the arbitrator's relationship with any party,
  - (b) the arbitrator's financial or other commercial interests, or
  - (c) anything else,
- gives rise to justifiable doubts as to the arbitrator's impartiality.

*Rule 78 Consideration where arbitrator judged not to be impartial and independent D*

- 78 (1) This rule applies where—
- (a) an arbitrator is removed by the Outer House under rule 12 on the ground that the arbitrator is not impartial and independent,
  - (b) the tribunal is dismissed by the Outer House under rule 13 on the ground that it has failed to comply with its duty to be impartial and independent, or
  - (c) the tribunal's award (or any part of it) is returned to the tribunal for reconsideration, or is set aside, on either of those grounds (see rule 68).
- (2) Where this rule applies, the Outer House must have particular regard to whether an arbitrator has complied with rule 8 when it is considering whether to make an order under rule 16(1) or 68(4) about—

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- (a) the arbitrator's entitlement (if any) to fees or expenses,
- (b) repaying fees or expenses already paid to the arbitrator.

*Rule 79 Death of arbitrator M*

79 An arbitrator's authority is personal and ceases on death.

*Rule 80 Death of party D*

- 80 (1) An arbitration agreement is not discharged by the death of a party and may be enforced by or against the executor or other representative of that party.
- (2) This rule does not affect the operation of any law by virtue of which a substantive right or obligation is extinguished by death.

*Rule 81 Unfair treatment D*

81 A tribunal (or arbitrator) who treats any party unfairly is, for the purposes of these rules, to be deemed not to have treated the parties fairly.

*Rule 82 Rules applicable to umpires M*

- 82 (1) The following rules apply in relation to an umpire appointed under rule 30 (or otherwise with the agreement of the parties) as they apply in relation to an arbitrator or, as the case may be, the tribunal—
- rule 4
  - rule 8
  - rules 10 to 14
  - rule 24
  - rule 26
  - rules 59, 60 and 61(1)
  - rule 68
  - rule 73
  - rules 76 to 79
- (2) But the parties are, in so far as those rules are not mandatory rules, free to modify or disapply the way in which those rules would otherwise apply to an umpire.

*Rule 83 Formal communications D*

- 83 (1) A “formal communication” means any application, award, consent, direction, notice, objection, order, reference, request, requirement or waiver made or given or any document served—
- (a) in pursuance of an arbitration agreement,
  - (b) for the purposes of these rules (in so far as they apply), or
  - (c) otherwise in relation to an arbitration.
- (2) A formal communication must be in writing.
- (3) A formal communication is made, given or served if it is—
- (a) hand delivered to the person concerned,

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- (b) sent to the person concerned by first class post in a properly addressed envelope or package—
    - (i) in the case of an individual, to the individual's principal place of business or usual or last known abode,
    - (ii) in the case of a body corporate, to the body's registered or principal office, or
    - (iii) in either case, to any postal address designated for the purpose by the intended recipient (such designation to be made by giving notice to the person giving or serving the formal communication), or
  - (c) sent to the person concerned in some other way (including by email, fax or other electronic means) which the sender reasonably considers likely to cause it to be delivered on the same or next day.
- (4) A formal communication which is sent by email, fax or other electronic means is to be treated as being in writing only if it is legible and capable of being used for subsequent reference.
- (5) A formal communication is, unless the contrary is proved, to be treated as having been made, given or served—
- (a) where hand delivered, on the day of delivery,
  - (b) where posted, on the day on which it would be delivered in the ordinary course of post, or
  - (c) where sent in any other way described above, on the day after it is sent.
- (6) The tribunal may determine that a formal communication—
- (a) is to be delivered in such other manner as it may direct, or
  - (b) need not be delivered,
- but it may do so only if satisfied that it is not reasonably practicable for the formal communication to be made, given or served in accordance with this rule (or, as the case may be, with any contrary agreement between the parties).
- (7) This rule does not apply in relation to any application, order, notice, document or other thing which is made, given or served in or for the purposes of legal proceedings.

*Rule 84 Periods of time D*

84

- Periods of time are to be calculated for the purposes of an arbitration as follows—
- (a) where any act requires to be done within a specified period after or from a specified date or event, the period begins immediately after that date or, as the case may be, the date of that event, and
  - (b) where the period is a period of 7 days or less, the following days are to be ignored—
    - (i) Saturdays and Sundays, and
    - (ii) any public holidays in the place where the act concerned is to be done.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act applied (temp.) by 1990 c. 16 s. 15B(18) (as inserted) by 2015 asp 1 s. 33
- Act applied (with modifications) (temp.) by 2014 c. 1 s. 16(4)
- Act applied by 2003 c. 21, Sch. 3A para. 107 (as inserted) by 2017 c. 30 Sch. 1
- Act power to amend conferred by 2014 c. 1 s. 16(5)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 1 rule 1 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 2 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 3 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 4 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 5 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 6 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 7 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 8 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 9 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 10 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 11 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 12 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 13 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 14 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 15 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 16 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 17 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 18 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 19 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 20 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 21 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 22 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 23 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 24 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 25 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 26 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 27 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 28 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 29 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 30 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 31 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 32 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 33 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 34 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 35 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 36 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 37 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 38 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 39 coming into force by S.S.I. 2010/195 art. 2
- Sch. 1 rule 40 coming into force by S.S.I. 2010/195 art. 2

