



# Arbitration Act 1996

## 1996 CHAPTER 23

### PART I

#### ARBITRATION PURSUANT TO AN ARBITRATION AGREEMENT

##### *The arbitral proceedings*

#### **33 General duty of the tribunal.**

- (1) The tribunal shall—
  - (a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent, and
  - (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.
- (2) The tribunal shall comply with that general duty in conducting the arbitral proceedings, in its decisions on matters of procedure and evidence and in the exercise of all other powers conferred on it.

#### **34 Procedural and evidential matters.**

- (1) It shall be for the tribunal to decide all procedural and evidential matters, subject to the right of the parties to agree any matter.
- (2) Procedural and evidential matters include—
  - (a) when and where any part of the proceedings is to be held;
  - (b) the language or languages to be used in the proceedings and whether translations of any relevant documents are to be supplied;
  - (c) whether any and if so what form of written statements of claim and defence are to be used, when these should be supplied and the extent to which such statements can be later amended;

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- (d) whether any and if so which documents or classes of documents should be disclosed between and produced by the parties and at what stage;
  - (e) whether any and if so what questions should be put to and answered by the respective parties and when and in what form this should be done;
  - (f) whether to apply strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion, and the time, manner and form in which such material should be exchanged and presented;
  - (g) whether and to what extent the tribunal should itself take the initiative in ascertaining the facts and the law;
  - (h) whether and to what extent there should be oral or written evidence or submissions.
- (3) The tribunal may fix the time within which any directions given by it are to be complied with, and may if it thinks fit extend the time so fixed (whether or not it has expired).

### **35 Consolidation of proceedings and concurrent hearings.**

- (1) The parties are free to agree—
- (a) that the arbitral proceedings shall be consolidated with other arbitral proceedings, or
  - (b) that concurrent hearings shall be held,
- on such terms as may be agreed.
- (2) Unless the parties agree to confer such power on the tribunal, the tribunal has no power to order consolidation of proceedings or concurrent hearings.

### **36 Legal or other representation.**

Unless otherwise agreed by the parties, a party to arbitral proceedings may be represented in the proceedings by a lawyer or other person chosen by him.

#### **Annotations:**

#### **Modifications etc. (not altering text)**

- C1** Power to apply conferred (31.1.1997) by 1966 c. 41, s. 3 (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 24**) (with s. 81(2)); S.I. 1996/3146, **art. 3**
- C2** Power to apply conferred (31.1.1997) by 1988 c. 8, s. 6(1) (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 49**) (with s. 81(2)); S.I. 1996/3146, **art. 3** (with art. 4, **Sch. 2**)

### **37 Power to appoint experts, legal advisers or assessors.**

- (1) Unless otherwise agreed by the parties—
- (a) the tribunal may—
    - (i) appoint experts or legal advisers to report to it and the parties, or
    - (ii) appoint assessors to assist it on technical matters,
 and may allow any such expert, legal adviser or assessor to attend the proceedings; and

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- (b) the parties shall be given a reasonable opportunity to comment on any information, opinion or advice offered by any such person.
- (2) The fees and expenses of an expert, legal adviser or assessor appointed by the tribunal for which the arbitrators are liable are expenses of the arbitrators for the purposes of this Part.

### **38 General powers exercisable by the tribunal.**

- (1) The parties are free to agree on the powers exercisable by the arbitral tribunal for the purposes of and in relation to the proceedings.
- (2) Unless otherwise agreed by the parties the tribunal has the following powers.
- (3) The tribunal may order a claimant to provide security for the costs of the arbitration.

This power shall not be exercised on the ground that the claimant is—

- (a) an individual ordinarily resident outside the United Kingdom, or
  - (b) a corporation or association incorporated or formed under the law of a country outside the United Kingdom, or whose central management and control is exercised outside the United Kingdom.
- (4) The tribunal may give directions in relation to any property which is the subject of the proceedings or as to which any question arises in the proceedings, and which is owned by or is in the possession of a party to the proceedings—
    - (a) for the inspection, photographing, preservation, custody or detention of the property by the tribunal, an expert or a party, or
    - (b) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property.
  - (5) The tribunal may direct that a party or witness shall be examined on oath or affirmation, and may for that purpose administer any necessary oath or take any necessary affirmation.
  - (6) The tribunal may give directions to a party for the preservation for the purposes of the proceedings of any evidence in his custody or control.

#### **Annotations:**

##### **Modifications etc. (not altering text)**

- C3** Power to apply conferred (31.1.1997) by 1966 c. 41, s. 3 (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 24**) (with s. 81(2)); S.I. 1996/3146, art. 3 (with art. 4, Sch. 2)
- C4** Power to apply conferred (31.1.1997) by 1988 c. 8, s. 6(1) (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 49**) (with S. 81(2)); S.I. 1996/3146, art. 3 (with art. 4, Sch. 2)

### **39 Power to make provisional awards.**

- (1) The parties are free to agree that the tribunal shall have power to order on a provisional basis any relief which it would have power to grant in a final award.
- (2) This includes, for instance, making—
  - (a) a provisional order for the payment of money or the disposition of property as between the parties, or

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- (b) an order to make an interim payment on account of the costs of the arbitration.
- (3) Any such order shall be subject to the tribunal’s final adjudication; and the tribunal’s final award, on the merits or as to costs, shall take account of any such order.
- (4) Unless the parties agree to confer such power on the tribunal, the tribunal has no such power.

This does not affect its powers under section 47 (awards on different issues, &c.).

**Annotations:**

**Modifications etc. (not altering text)**

- C5 Power to apply conferred (31.1.1997) by 1966 c. 41, s. 3 (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 24**) (with s. 81(2)); S.I. 1996/3146, **art. 3** (with **art. 4**, **Sch. 2**)
- C6 Power to apply conferred (31.1.1997) by 1988 c. 8, s. 6(1) (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 49**) (with s. 81(2)); S.I. 1996/3146, **art. 3** (with **art. 4**, **Sch. 2**)

**40 General duty of parties.**

- (1) The parties shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.
- (2) This includes—
  - (a) complying without delay with any determination of the tribunal as to procedural or evidential matters, or with any order or directions of the tribunal, and
  - (b) where appropriate, taking without delay any necessary steps to obtain a decision of the court on a preliminary question of jurisdiction or law (see sections 32 and 45).

**Annotations:**

**Modifications etc. (not altering text)**

- C7 Power to apply conferred (31.1.1997) by 1966 c. 41, s. 3 (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 24**) (with s. 81(2)); S. I. 1996/3146, **art. 3** (with **art. 4**, **Sch. 2**)
- C8 Power to apply conferred (31.1.1997) by 1988 c. 8, s. 6(1) (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 49**) (with s. 81(2)); S.I. 1996/3146, **art. 3** (with **art. 4**, **Sch. 2**)

**41 Powers of tribunal in case of party’s default.**

- (1) The parties are free to agree on the powers of the tribunal in case of a party’s failure to do something necessary for the proper and expeditious conduct of the arbitration.
- (2) Unless otherwise agreed by the parties, the following provisions apply.
- (3) If the tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim and that the delay—
  - (a) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim, or
  - (b) has caused, or is likely to cause, serious prejudice to the respondent, the tribunal may make an award dismissing the claim.

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- (4) If without showing sufficient cause a party—
- (a) fails to attend or be represented at an oral hearing of which due notice was given, or
  - (b) where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions,
- the tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on his behalf, and may make an award on the basis of the evidence before it.
- (5) If without showing sufficient cause a party fails to comply with any order or directions of the tribunal, the tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the tribunal considers appropriate.
- (6) If a claimant fails to comply with a peremptory order of the tribunal to provide security for costs, the tribunal may make an award dismissing his claim.
- (7) If a party fails to comply with any other kind of peremptory order, then, without prejudice to section 42 (enforcement by court of tribunal's peremptory orders), the tribunal may do any of the following—
- (a) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order;
  - (b) draw such adverse inferences from the act of non-compliance as the circumstances justify;
  - (c) proceed to an award on the basis of such materials as have been properly provided to it;
  - (d) make such order as it thinks fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

**Annotations:**

**Modifications etc. (not altering text)**

- C9** Power to apply conferred (31.1.1997) by 1966 c. 41, s. 3 (as substituted by 1996 c. 23, s. 107(1), **Sch. 3**, para. 24) (with s. 81(2)); S. I. 1996/3146, art. 3 (with art. 4, Sch. 2)
- C10** Power to apply conferred (31.1.1997) by 1988 c. 8, s. 6(1) (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 49** (with s. 81(2)); S.I. 1996/3146, art. 3 (with art. 4, **Sch. 2**)

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