

SCHEDULE 1 SCOTTISH ARBITRATION RULES

PART 3

GENERAL DUTIES

Rule 26 Confidentiality D

- 26 (1) Disclosure by the tribunal, any arbitrator or a party of confidential information relating to the arbitration is to be actionable as a breach of an obligation of confidence unless the disclosure—
- (a) is authorised, expressly or impliedly, by the parties (or can reasonably be considered as having been so authorised),
 - (b) is required by the tribunal or is otherwise made to assist or enable the tribunal to conduct the arbitration,
 - (c) is required—
 - (i) in order to comply with any enactment or rule of law,
 - (ii) for the proper performance of the discloser’s public functions, or
 - (iii) in order to enable any public body or office-holder to perform public functions properly,
 - (d) can reasonably be considered as being needed to protect a party’s lawful interests,
 - (e) is in the public interest,
 - (f) is necessary in the interests of justice, or
 - (g) is made in circumstances in which the discloser would have absolute privilege had the disclosed information been defamatory.
- (2) The tribunal and the parties must take reasonable steps to prevent unauthorised disclosure of confidential information by any third party involved in the conduct of the arbitration.
- (3) The tribunal must, at the outset of the arbitration, inform the parties of the obligations which this rule imposes on them.
- (4) “Confidential information”, in relation to an arbitration, means any information relating to—
- (a) the dispute,
 - (b) the arbitral proceedings,
 - (c) the award, or
 - (d) any civil proceedings relating to the arbitration in respect of which an order has been granted under section 15 of this Act,
- which is not, and has never been, in the public domain.