

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.

Status: This is the original version (as it was originally enacted).

- (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.