

# ARBITRATION (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Introductory*

#### *Section 1 – Founding principles*

18. *Section 1* sets out the founding principles of the Act. The purpose of the founding principles is to inform and steer the interpretation and application of the provisions of the Act. The principles reflect the principles found in the Arbitration Act 1996. The founding principles are not ranked; therefore there is no hierarchy of principles.
19. The first founding principle establishes fairness and impartiality as the standards by which disputes are to be resolved by arbitration. It is also part of this principle that resolution of the dispute is to be effected without unnecessary delay and without incurring unnecessary expense.
20. Although much of the code set out in the Scottish Arbitration Rules and in the Act is made up of rules which will only apply in the absence of agreement between the parties, the second founding principle reinforces the idea that parties are to be free to decide themselves on procedures for the resolution of their disputes, subject only to public interest safeguards.
21. The third principle is that the court should not intervene in the arbitration process except as provided by the Act. This principle will assist the courts to limit unnecessary intervention. The court should only intervene if it is necessary to support the arbitration process, for example to get the process back on track or by enforcing orders by the arbitrator.

#### *Section 2 – Key terms*

22. *Section 2* explains certain important terms used in the Act. These include:
  - “*Arbitration*” – The Act and Scottish Arbitration Rules will apply to domestic arbitration, cross-border arbitration between parties in the different jurisdictions of the UK and international arbitrations whose seat is in Scotland. Section 10 (suspending legal proceedings) and section 12 (enforcement) also extend more widely.
  - “*Dispute*” – The definition is inclusive rather than exclusive and may include disputes other than the kinds mentioned. A “dispute” for the purposes of the Act generally and section 10 on the suspension (or “sisting”) of legal proceedings in particular, includes a refusal to accept a claim, for instance even if it can be claimed that the matters in question are indisputable or beyond dispute. It also includes any other difference, contractual or otherwise.

#### *Section 3 – Seat of arbitration*

23. As noted at paragraph 8 above, the seat of an arbitration is the country in which an arbitration is based from which the legal system which ultimately governs the

*These notes relate to the Arbitration (Scotland) Act 2010  
(asp 1) which received Royal Assent on 5 January 2010*

arbitration is drawn. It may affect the procedures to be adopted in the arbitration, for instance for an arbitration seated in Scotland under the Act the mandatory Scottish Arbitration Rules will apply. The Act provides that the seat may be designated by the parties, an institution or individual where authorised explicitly by the parties or by the arbitral tribunal. The seat of the arbitration may also be determined, for instance, by the courts according to the rules of private international law.

24. Choosing to arbitrate in Scotland in accordance with the Act does not affect the substantive law used to decide the dispute itself, for instance it does not mean that it must be determined in accordance with Scots law.