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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 205**

**Act of Sederunt (Rules of the Court of Session  
Amendment No. 4) (Miscellaneous) 2010**

**Arbitration**

**10.**—(1) The Rules are amended in accordance with the following subparagraphs.

(2) For Part IX of Chapter 62 (recognition and enforcement of arbitral awards under the Model Law on International Commercial Arbitration) substitute—

**“PART IX**

**ENFORCEMENT OF ARBITRAL AWARDS UNDER THE  
NEW YORK CONVENTION ON THE RECOGNITION AND  
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS**

**Interpretation and application of this Part**

**62.56.**—(1) In this Part—

“the 2010 Act” means the Arbitration (Scotland) Act 2010(1);

“the Convention” means the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards;

“Convention award” means an award made in pursuance of a written arbitration agreement in a territory of a state (other than the United Kingdom) which is a party to the Convention.

(2) This Part applies to an application under section 19 of the 2010 Act (recognition and enforcement of New York Convention awards).

**Applications for enforcement of a Convention award**

**62.57.**—(1) An application for enforcement of a Convention award under section 19(2) of the 2010 Act shall be made by petition or, where there are proceedings depending before the court under the 2010 Act in relation to the same arbitration process, by note in the process of the petition.

(2) There shall be produced with such a petition or note—

- (a) the duly authenticated original award or a certified copy of it;
- (b) the original agreement referred to in article II of the Convention or a certified copy of it;
- (c) a translation of any award or agreement which is in a language other than English, certified by an official or sworn translator or by a diplomatic or consular agent;

- (d) an affidavit stating—
  - (i) the full name, title, trade or business and the usual or last known place of residence or, where appropriate, of the business of the petitioner or noter and the party against whom the Convention award was made;
  - (ii) the amount of the Convention award which is unsatisfied; and
  - (iii) that the Convention award has become binding on the parties and has not been set aside or suspended by a court of the country which, or under the law of which, the award was made.

### **Registration of Convention award**

**62.58.**—(1) The court, on being satisfied that the Convention award may be registered, shall grant warrant for registration.

(2) Where the court pronounces an interlocutor under paragraph (1), the Deputy Principal Clerk shall enter the Convention award in a register of Convention awards.

(3) Where the Keeper of the Registers receives from the petitioner or noter the documents referred to in paragraph (4), he or she shall register them in the register of judgments of the Books of Council and Session.

(4) The documents are—

- (a) a certified copy of the interlocutor of the warrant of registration,
- (b) a certified copy of the Convention award to be registered, and any translation of it, and
- (c) any certificate of currency conversion under rule 62.2(1)(b).

(5) An extract of a registered Convention award with warrant for execution shall not be issued by the Keeper of the Registers until a certificate of service under rule 62.59 (service on party against whom Convention award made) is produced to him or her.

### **Service on party against whom Convention award made**

**62.59.** On registration under rule 62.58, the petitioner or noter shall forthwith serve a notice of registration on the party against whom the Convention award was made in Form 62.59.

### **Application for refusal of recognition or enforcement of a Convention award**

**62.60.**—(1) An application under article V of the Convention (request by party against whom Convention award made for refusal of recognition or enforcement) shall be made by note.

(2) A note referred to in paragraph (1) may crave—

- (a) suspension or interdict of any past or future steps in the execution of the Convention award, including registration or enforcement of the award; and
- (b) recall of the interlocutor pronounced under rule 62.58(1) (registration under the Convention).

(3) The note shall be supported by affidavit and any relevant documentary evidence.

(4) Where any interlocutor pronounced under rule 62.59(1) is recalled, a certificate to that effect issued by the Deputy Principal Clerk shall be sufficient warrant to the Keeper of the Registers to cancel the registration and return the documents registered to the petitioner or noter on whose application the interlocutor under that rule was pronounced.”

(3) At the appropriate place in the Appendix insert the form set out at Schedule 2 to this Act of Sederunt.

(4) After Chapter 99 (Energy Act 2008 - interdicts)(2), insert —

## “CHAPTER 100

### ARBITRATION

#### **Interpretation and application**

**100.1.**—(1) In this Chapter—

“the 2010 Act” means the Arbitration (Scotland) Act 2010;

“Convention award” means an award made in pursuance of a written arbitration agreement in a territory of a state (other than the United Kingdom) which is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards;

“Scottish Arbitration Rules” means the Scottish Arbitration Rules set out in schedule 1 to the 2010 Act;

“tribunal” means a sole arbitrator or panel of arbitrators.

(2) Subject to paragraph (3), this Chapter applies to applications and appeals made under the 2010 Act (including applications and appeals made under the Scottish Arbitration Rules).

(3) Rules 100.5 and 100.7 do not apply to an application under section 19(2) of the 2010 Act for enforcement of a Convention award.

#### **Proceedings before a nominated judge**

**100.2.** All proceedings in the Outer House in a cause to which this Chapter applies shall be brought before a judge of the court nominated by the Lord President as an arbitration judge or, where no such judge is available, any other judge of the court (including the vacation judge).

#### **Procedure in causes under the 2010 Act**

**100.3.** Subject to the provisions of the Scottish Arbitration Rules and this Chapter, the procedure in a cause under the Scottish Arbitration Rules shall be such as the judge dealing with the cause shall determine.

#### **Disapplication of certain rules**

**100.4.** The following rules shall not apply to a cause under this Part—

rule 6.2 (fixing and allocation of diets in Outer House);

rule 14.5 (first order in petitions);

rule 14.6 (period of notice for lodging answers);

rule 14.8 (procedure where answers lodged).

#### **Application or appeal under the 2010 Act**

**100.5.**—(1) Subject to paragraph (2), an application or appeal under the 2010 Act shall be made by petition.

(2) If proceedings are depending before the court under paragraph (1) in relation to the same arbitration process, an application under the 2010 Act shall be made by note in the process of the petition.

(3) Upon lodging a petition or note under paragraph (1) or (2), the petitioner or noter must enrol a motion for intimation and service of the petition or note and the court may make such order as is appropriate in the circumstances of the case.

(4) The court may make an order for intimation and service of the petition or note at the address of a party's agent or other person acting for that party in the arbitration process and the service will be effective if carried out in accordance with that order.

(5) Upon expiry of any period of notice following intimation and service of the petition or note, the petitioner or noter shall enrol a motion for further procedure and the court may make such order as is appropriate in the circumstances of the case, including, where appropriate, an order disposing of the petition or note.

### **Application for attendance of witnesses or disclosure of evidence**

**100.6.** In relation to a petition or note lodged under rule 45 of the Scottish Arbitration Rules (court's power to order attendance of witnesses and disclosure of evidence), intimation and service of the petition or note is not required.

### **Averments in petitions and notes under the 2010 Act**

**100.7.—**(1) The petitioner or noter must set out in the petition or note the facts and circumstances on which the petition or note is founded and the relief claimed.

(2) In particular, any—

- (a) application under rule 22 (referral of point of jurisdiction) or rule 41 (referral of point of law) of the Scottish Arbitration Rules, or
- (b) appeal under rule 67(1) (jurisdictional appeal), rule 68(1) (serious irregularity appeal) or rule 69(1) (legal error appeal) of the Scottish Arbitration Rules,

should, so far as is necessary, identify the matters referred to in paragraph (3).

(3) The following matters should be identified—

- (a) the parties to the cause and the arbitration from which the cause arises;
- (b) the relevant rule of the Scottish Arbitration Rules or other provision of the 2010 Act under which the petition or note has been lodged;
- (c) any special capacity in which the petitioner or noter is acting or any special capacity in which any other party to the proceedings is acting;
- (d) a summary of the circumstances out of which the application or appeal arises;
- (e) the grounds on which the application or appeal proceeds;
- (f) in the case of an appeal under rule 67(1), whether the appellant seeks the variation or the setting aside of an award (or part of it);
- (g) in the case of an appeal under rule 69(1), whether the appeal is made with the agreement of the parties to the arbitration;
- (h) any relevant requirements of the Scottish Arbitration Rules which have been met.

### **Appeals against arbitral award on ground of legal error**

**100.8.**—(1) In addition to complying with rule 100.5(3) and (5), upon lodging a petition or note under rule 69 of the Scottish Arbitration Rules (legal error appeal), the petitioner or noter shall at the same time—

- (a) except in a case where an appeal is made with the agreement of the parties, enrol a motion for leave to appeal; and
  - (b) lodge any documents that the petitioner or noter intends to rely on in the application for leave (if applicable) and in the appeal.
- (2) A motion for leave to appeal under paragraph (1) shall—
- (a) identify the point of law concerned; and
  - (b) set out the grounds that are relied on for the giving of leave.

(3) Within 14 days of service of the petition or note, or such other time as the court may allow, a respondent may lodge and intimate to all other parties grounds of opposition, including any evidence to be relied upon in opposition to the application for leave.

(4) The application for leave to appeal shall be dealt with without a hearing unless the court considers that a hearing is required.

(5) Where the court considers that a hearing is required, it may give such further directions as it considers necessary.

(6) Rule 41.2 (applications for leave to appeal), rule 41.3 (determination of applications for leave to appeal) and rule 41.3A (competency of appeals) do not apply to an application for leave to appeal under this rule.

### **Anonymity in legal proceedings**

**100.9.**—(1) Where a petition or note is lodged under the 2010 Act, any application to the court under section 15 of the 2010 Act (anonymity in legal proceedings) shall be made not later than the hearing of a motion for further procedure under rule 100.5(5).

(2) Until an application under section 15 of the 2010 Act has been determined or, where no such application has been made, the time at which a motion for further procedure is made under rule 100.5(5) and, thereafter, if the court grants an order under section 15 of the 2010 Act—

- (a) the petition or note shall not be available for inspection, except by court staff and the parties;
- (b) the petition or note shall be referred to publicly, including in the rolls of court, as “Arbitration Application” or “Arbitration Appeal” (as the case may be) and by reference to a number and the year in which it was lodged;
- (c) the court proceedings shall be heard in private.

(3) Unless the court grants an order under section 15 of the 2010 Act, all applications and appeals made under the 2010 Act shall be heard in public.

### **Applications for enforcement of a tribunal’s award under the 2010 Act**

**100.10.**—(1) A petition or note under section 12 of the 2010 Act for enforcement of a tribunal’s award shall—

- (a) identify the parties to the cause and the arbitration process from which the cause arises;
- (b) specify that the award is not currently the subject of—
  - (i) an appeal under Part 8 of the Scottish Arbitration Rules (challenging awards);

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- (ii) any arbitral process of appeal or review; or
  - (iii) a process of correction under rule 58 of the Scottish Arbitration Rules; and
  - (c) specify the basis on which the tribunal had jurisdiction to make the award.
- (2) There shall be produced with such a petition or note—
- (a) the original tribunal’s award or a certified copy of it; and
  - (b) the documents founded upon or adopted as incorporated in the petition or note.”.