

MISCELLANEOUS RULES ABOUT DISCLOSURE AND INSPECTION OF DOCUMENTS

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21.1 Interpretation

- (1) A party discloses a document by stating that the document exists or has existed.
- (2) Inspection of a document occurs when a party is permitted to inspect a document disclosed by another person.
- (3) For the purposes of disclosure and inspection –
 - (a) ‘document’ means anything in which information of any description is recorded; and
 - (b) ‘copy’ in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

21.2 Orders for disclosure against a person not a party

- (1) This rule applies where an application is made to the court under any Act for disclosure by a person who is not a party to the proceedings.
- (2) The application –
 - (a) may be made without notice; and
 - (b) must be supported by evidence.
- (3) The court may make an order under this rule only where disclosure is necessary in order to dispose fairly of the proceedings or to save costs.
- (4) An order under this rule must –
 - (a) specify the documents or the classes of documents which the respondent must disclose; and
 - (b) require the respondent, when making disclosure, to specify any of those documents –
 - (i) which are no longer in the respondent’s control; or
 - (ii) in respect of which the respondent claims a right or duty to withhold inspection.
- (5) Such an order may –
 - (a) require the respondent to indicate what has happened to any documents which are no longer in the respondent’s control; and
 - (b) specify the time and place for disclosure and inspection.
- (6) An order under this rule must not compel a person to produce any document which that person could not be compelled to produce at the final hearing.
- (7) This rule does not limit any other power which the court may have to order disclosure against a person who is not a party to proceedings.

(Rule 35.3 contains provisions in relation to the disclosure and inspection of evidence arising out of mediation of cross-border disputes.)

21.3 Claim to withhold inspection or disclosure of a document

- (1)** A person may apply, without notice, for an order permitting that person to withhold disclosure of a document on the ground that disclosure would damage the public interest.
- (2)** Unless the court otherwise orders, an order of the court under paragraph (1) –
 - (a)** must not be served on any other person; and
 - (b)** must not be open to inspection by any other person.
- (3)** A person who wishes to claim a right or a duty to withhold inspection of a document, or part of a document, must state in writing –
 - (a)** the right or duty claimed; and
 - (b)** the grounds on which that right or duty is claimed.
- (4)** The statement referred to in paragraph (3) must be made to the person wishing to inspect the document.
- (5)** A party may apply to the court to decide whether a claim made under paragraph (3) should be upheld.
- (6)** Where the court is deciding an application under paragraph (1) or (5) it may –
 - (a)** require the person seeking to withhold disclosure or inspection of a document to produce that document to the court; and
 - (b)** invite any person, whether or not a party, to make representations.
- (7)** An application under paragraph (1) or (5) must be supported by evidence.
- (8)** This Part does not affect any rule of law which permits or requires a document to be withheld from disclosure or inspection on the ground that its disclosure or inspection would damage the public interest.