

PART 62

ARBITRATION CLAIMS

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SCOPE OF THIS PART AND INTERPRETATION

- 62.1 | (1) This Part contains rules about arbitration claims.
- (2) In this Part –

- (a) ‘the 1950 Act’ means the Arbitration Act 1950¹;
 - (b) ‘the 1975 Act’ means the Arbitration Act 1975²;
 - (c) ‘the 1979 Act’ means the Arbitration Act 1979³;
 - (d) ‘the 1996 Act’ means the Arbitration Act 1996⁴;
 - (e) references to –
 - (i) the 1996 Act; or
 - (ii) any particular section of that Act
 include references to that Act or to the particular section of that Act as applied with modifications by the ACAS Arbitration Scheme (England and Wales) Order 2001⁵; and
 - (f) ‘arbitration claim form’ means a claim form in the form set out in the practice direction.
- (3) Part 58 (Commercial Court) applies to arbitration claims in the Commercial Court, Part 59 (Mercantile Court) applies to arbitration claims in the Mercantile Court and Part 60 (Technology and Construction Court claims) applies to arbitration claims in the Technology and Construction Court, except where this Part provides otherwise.

I CLAIMS UNDER THE 1996 ACT

INTERPRETATION

62.2

- (1) In this Section of this Part ‘arbitration claim’ means –
- (a) any application to the court under the 1996 Act;
 - (b) a claim to determine –
 - (i) whether there is a valid arbitration agreement;
 - (ii) whether an arbitration tribunal is properly constituted; or
 what matters have been submitted to arbitration in accordance with an arbitration agreement;
 - (c) a claim to declare that an award by an arbitral tribunal is not binding on a party; and
 - (d) any other application affecting –
 - (i) arbitration proceedings (whether started or not); or
 - (ii) an arbitration agreement.

1 1950 c. 27.

2 1975 c. 3; repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

3 1979 c. 42; repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

4 1996 c. 23.

5 S.I. 2001/1185.

- (2) This Section of this Part does not apply to an arbitration claim to which Sections II or III of this Part apply.

STARTING THE CLAIM

- 62.3
- (1) Except where paragraph (2) applies an arbitration claim must be started by the issue of an arbitration claim form in accordance with the Part 8 procedure.
 - (2) An application under section 9 of the 1996 Act to stay legal proceedings must be made by application notice to the court dealing with those proceedings.
 - (3) The courts in which an arbitration claim may be started are set out in the practice direction.
 - (4) Rule 30.5(3) applies with the modification that a judge of the Technology and Construction Court may transfer the claim to any other court or specialist list.

ARBITRATION CLAIM FORM

- 62.4
- (1) An arbitration claim form must –
 - (a) include a concise statement of –
 - (i) the remedy claimed; and
 - (ii) any questions on which the claimant seeks the decision of the court;
 - (b) give details of any arbitration award challenged by the claimant, identifying which part or parts of the award are challenged and specifying the grounds for the challenge;
 - (c) show that any statutory requirements have been met;
 - (d) specify under which section of the 1996 Act the claim is made;
 - (e) identify against which (if any) defendants a costs order is sought; and
 - (f) specify either –
 - (i) the persons on whom the arbitration claim form is to be served, stating their role in the arbitration and whether they are defendants; or
 - (ii) that the claim is made without notice under section 44(3) of the 1996 Act and the grounds relied on.
 - (2) Unless the court orders otherwise an arbitration claim form must be served on the defendant within 1 month from the date of issue and rules 7.5 and 7.6 are modified accordingly.

- (3) Where the claimant applies for an order under section 12 of the 1996 Act (extension of time for beginning arbitral proceedings or other dispute resolution procedures), he may include in his arbitration claim form an alternative application for a declaration that such an order is not needed.

SERVICE OUT OF THE JURISDICTION

62.5

- (1) The court may give permission to serve an arbitration claim form out of the jurisdiction if –

- (a) the claimant seeks to –
 - (i) challenge; or
 - (ii) appeal on a question of law arising out of, an arbitration award made within the jurisdiction;

(The place where an award is treated as made is determined by section 53 of the 1996 Act.)

- (b) the claim is for an order under section 44 of the 1996 Act; or
- (c) the claimant –
 - (i) seeks some other remedy or requires a question to be decided by the court affecting an arbitration (whether started or not), an arbitration agreement or an arbitration award; and
 - (ii) the seat of the arbitration is or will be within the jurisdiction or the conditions in section 2(4) of the 1996 Act are satisfied.
- (2) An application for permission under paragraph (1) must be supported by written evidence –
 - (a) stating the grounds on which the application is made; and
 - (b) showing in what place or country the person to be served is, or probably may be found.
- (3) Rules 6.24 to 6.29 apply to the service of an arbitration claim form under paragraph (1).
- (4) An order giving permission to serve an arbitration claim form out of the jurisdiction must specify the period within which the defendant may file an acknowledgment of service.

NOTICE

62.6

- (1) Where an arbitration claim is made under section 24, 28 or 56 of the 1996 Act, each arbitrator must be a defendant.
- (2) Where notice must be given to an arbitrator or any other person it may be given by sending him a copy of –
 - (a) the arbitration claim form; and
 - (b) any written evidence in support.

- (3) Where the 1996 Act requires an application to the court to be made on notice to any other party to the arbitration, that notice must be given by making that party a defendant.

CASE MANAGEMENT

- 62.7
- (1) Part 26 and any other rule that requires a party to file an allocation questionnaire does not apply.
 - (2) Arbitration claims are allocated to the multi-track.
 - (3) Part 29 does not apply.
 - (4) The automatic directions set out in the practice direction apply unless the court orders otherwise.

STAY OF LEGAL PROCEEDINGS

- 62.8
- (1) An application notice seeking a stay of legal proceedings under section 9 of the 1996 Act⁶ must be served on all parties to those proceedings who have given an address for service.
 - (2) A copy of an application notice under paragraph (1) must be served on any other party to the legal proceedings (whether or not he is within the jurisdiction) who has not given an address for service, at –
 - (a) his last known address; or
 - (b) a place where it is likely to come to his attention.
 - (3) Where a question arises as to whether –
 - (a) an arbitration agreement has been concluded; or
 - (b) the dispute which is the subject-matter of the proceedings falls within the terms of such an agreement,
 the court may decide that question or give directions to enable it to be decided and may order the proceedings to be stayed pending its decision.

VARIATION OF TIME

- 62.9
- (1) The court may vary the period of 28 days fixed by section 70(3) of the 1996 Act for –
 - (a) challenging the award under section 67 or 68 of the Act; and
 - (b) appealing against an award under section 69 of the Act.
 - (2) An application for an order under paragraph (1) may be made without notice being served on any other party before the period of 28 days expires.
 - (3) After the period of 28 days has expired –

⁶ 1996 c. 23.

- (a) an application for an order extending time under paragraph (1) must –
 - (i) be made in the arbitration claim form; and
 - (ii) state the grounds on which the application is made;
- (b) any defendant may file written evidence opposing the extension of time within 7 days after service of the arbitration claim form; and
- (c) if the court extends the period of 28 days, each defendant's time for acknowledging service and serving evidence shall start to run as if the arbitration claim form had been served on the date when the court's order is served on that defendant.

HEARINGS

62.10

- (1) The court may order that an arbitration claim be heard either in public or in private.
- (2) Rule 39.2 does not apply.
- (3) Subject to any order made under paragraph (1) –
 - (a) the determination of –
 - (i) a preliminary point of law under section 45 of the 1996 Act; or
 - (ii) an appeal under section 69 of the 1996 Act on a question of law arising out of an award,
 will be heard in public; and
 - (b) all other arbitration claims will be heard in private.
- (4) Paragraph (3)(a) does not apply to –
 - (a) the preliminary question of whether the court is satisfied of the matters set out in section 45(2)(b); or
 - (b) an application for permission to appeal under section 69(2)(b).

II OTHER ARBITRATION CLAIMS

SCOPE OF THIS SECTION

62.11

- (1) This Section of this Part contains rules about arbitration claims to which the old law applies.
- (2) In this Section
 - (a) 'the old law' means the enactments specified in Schedules 3 and 4 of the 1996 Act as they were in force before their amendment or repeal by that Act; and

- (b) 'arbitration claim' means any application to the court under the old law and includes an appeal (or application for permission to appeal) to the High Court under section 1(2) of the 1979 Act⁷.
- (3) This Section does not apply to –
 - (a) a claim to which Section III of this Part applies; or
 - (b) a claim on the award.

APPLICATIONS TO JUDGE

- 62.12 | A claim –
- (a) seeking permission to appeal under section 1(2) of the 1979 Act;
 - (b) under section 1(5) of that Act (including any claim seeking permission); or
 - (c) under section 5 of that Act,
- must be made in the High Court and will be heard by a judge of the Commercial Court unless any such judge directs otherwise.

STARTING THE CLAIM

- 62.13 |
- (1) Except where paragraph (2) applies an arbitration claim must be started by the issue of an arbitration claim form in accordance with the Part 8 procedure.
 - (2) Where an arbitration claim is to be made in existing proceedings –
 - (a) it must be made by way of application notice; and
 - (b) any reference in this Section of this Part to an arbitration claim form includes a reference to an application notice.
 - (3) The arbitration claim form in an arbitration claim under section 1(5) of the 1979 Act (including any claim seeking permission) must be served on –
 - (a) the arbitrator or umpire; and
 - (b) any other party to the reference.

CLAIMS IN DISTRICT REGISTRIES

- 62.14 | If –
- (a) a claim is to be made under section 12(4) of the 1950 Act⁸ for an order for the issue of a witness summons to compel the attendance of the witness before an arbitrator or umpire; and

⁷ 1979 c. 42; repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

⁸ 1950 c. 27; section 12(4) was repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

- (b) the attendance of the witness is required within the district of a District Registry,
- the claim may be started in that Registry.

TIME LIMITS AND OTHER SPECIAL PROVISIONS ABOUT ARBITRATION CLAIMS

62.15

- (1) An arbitration claim to
 - (a) remit an award under section 22 of the 1950 Act⁹;
 - (b) set aside an award under section 23(2) of that Act¹⁰ or otherwise; or
 - (c) direct an arbitrator or umpire to state the reasons for an award under section 1(5) of the 1979 Act,
 must be made, and the arbitration claim form served, within 21 days after the award has been made and published to the parties.
- (2) An arbitration claim to determine any question of law arising in the course of a reference under section 2(1) of the Arbitration Act 1979 must be made, and the arbitration claim form served, within 14 days after –
 - (a) the arbitrator or umpire gave his consent in writing to the claim being made; or
 - (b) the other parties so consented.
- (3) An appeal under section 1(2) of the 1979 Act must be filed, and the arbitration claim form served, within 21 days after the award has been made and published to the parties.
- (4) Where reasons material to an appeal under section 1(2) of the 1979 Act are given on a date subsequent to the publication of the award, the period of 21 days referred to in paragraph (3) will run from the date on which reasons are given.
- (5) In every arbitration claim to which this rule applies –
 - (a) the arbitration claim form must state the grounds of the claim or appeal;
 - (b) where the claim or appeal is based on written evidence, a copy of that evidence must be served with the arbitration claim form; and
 - (c) where the claim or appeal is made with the consent of the arbitrator, the umpire or the other parties, a copy of every written consent must be served with the arbitration claim form.
- (6) In an appeal under section 1(2) of the 1979 Act –
 - (a) a statement of the grounds for the appeal specifying the relevant parts of the award and reasons; and

⁹ 1950 c. 27; section 22 was repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

¹⁰ 1950 c. 27; section 23(2) was repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

(b) where permission is required, any written evidence in support of the contention that the question of law concerns –

(i) a term of a contract; or

(ii) an event,

which is not a ‘one-off’ term or event,

must be filed and served with the arbitration claim form.

(7) Any written evidence in reply to written evidence under paragraph (6)(b) must be filed and served on the claimant not less than 2 days before the hearing.

(8) A party to a claim seeking permission to appeal under section 1(2) of the 1979 Act who wishes to contend that the award should be upheld for reasons not expressed or fully expressed in the award and reasons must file and serve on the claimant, a notice specifying the grounds of his contention not less than 2 days before the hearing.

SERVICE OUT OF THE JURISDICTION

62.16

(1) Subject to paragraph (2) –

(a) any arbitration claim form in an arbitration claim under the 1950 Act or the 1979 Act; or

(b) any order made in such a claim,

may be served out of the jurisdiction with the permission of the court if the arbitration to which the claim relates –

(i) is governed by the law of England and Wales; or

(ii) has been, is being, or will be, held within the jurisdiction.

(2) An arbitration claim form seeking permission to enforce an award may be served out of the jurisdiction with the permission of the court whether or not the arbitration is governed by the law of England and Wales.

(3) An application for permission to serve an arbitration claim form out of the jurisdiction must be supported by written evidence –

(a) stating the grounds on which the application is made; and

(b) showing in what place or country the person to be served is, or probably may be found.

Rules 6.24 to 6.29 apply to the service of an arbitration claim form under paragraph (1).

(5) An order giving permission to serve an arbitration claim form out of the jurisdiction must specify the period within which the defendant may file an acknowledgment of service.

III ENFORCEMENT

SCOPE OF THIS SECTION

- 62.17 | This Section of this Part applies to all arbitration enforcement proceedings other than by a claim on the award.

ENFORCEMENT OF AWARDS

- 62.18 | (1) An application for permission under –
- (a) section 66 of the 1996 Act¹¹;
 - (b) section 101 of the 1996 Act;
 - (c) section 26 of the 1950 Act¹²; or
 - (d) section 3(1)(a) of the 1975 Act¹³,
- to enforce an award in the same manner as a judgment or order may be made without notice in an arbitration claim form.
- (2) The court may specify parties to the arbitration on whom the arbitration claim form must be served.
- (3) The parties on whom the arbitration claim form is served must acknowledge service and the enforcement proceedings will continue as if they were an arbitration claim under Section I of this Part.
- (4) With the permission of the court the arbitration claim form may be served out of the jurisdiction irrespective of where the award is, or is treated as, made.
- (5) Where the applicant applies to enforce an agreed award within the meaning of section 51(2) of the 1996 Act –
- (a) the arbitration claim form must state that the award is an agreed award; and
 - (b) any order made by the court must also contain such a statement.
- (6) An application for permission must be supported by written evidence –
- (a) exhibiting –
 - (i) where the application is made under section 66 of the 1996 Act or under section 26 of the 1950 Act, the arbitration agreement and the original award (or copies);
 - (ii) where the application is under section 101 of the 1996 Act, the documents required to be produced by section 102 of that Act; or

11 1996 c. 23.

12 1950 c. 27; section 26 was repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

13 1975 c. 3; repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

- (iii) where the application is under section 3(1)(a) of the 1975 Act, the documents required to be produced by section 4 of that Act;
- (b) stating the name and the usual or last known place of residence or business of the claimant and of the person against whom it is sought to enforce the award; and
- (c) stating either –
 - (i) that the award has not been complied with; or
 - (ii) the extent to which it has not been complied with at the date of the application.
- (7) An order giving permission must –
 - (a) be drawn up by the claimant; and
 - (b) be served on the defendant by –
 - (i) delivering a copy to him personally; or
 - (ii) sending a copy to him at his usual or last known place of residence or business.
- (8) An order giving permission may be served out of the jurisdiction –
 - (a) without permission; and
 - (b) in accordance with rules 6.24 to 6.29 as if the order were an arbitration claim form.
- (9) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the court may set –
 - (a) the defendant may apply to set aside the order; and
 - (b) the award must not be enforced until after –
 - (i) the end of that period; or
 - (ii) any application made by the defendant within that period has been finally disposed of.
- (10) The order must contain a statement of –
 - (a) the right to make an application to set the order aside; and
 - (b) the restrictions on enforcement under rule 62.18(9)(b).
- (11) Where a body corporate is a party any reference in this rule to place of residence or business shall have effect as if the reference were to the registered or principal address of the body corporate.

INTEREST ON AWARDS

62.19

- (1) Where an applicant seeks to enforce an award of interest the whole or any part of which relates to a period after the date of the award, he must file a statement giving the following particulars –
 - (a) whether simple or compound interest was awarded;

- (b) the date from which interest was awarded;
 - (c) where rests were provided for, specifying them;
 - (d) the rate of interest awarded; and
 - (e) a calculation showing –
 - (i) the total amount claimed up to the date of the statement; and
 - (ii) any sum which will become due on a daily basis.
- (2) A statement under paragraph (1) must be filed whenever the amount of interest has to be quantified for the purpose of –
- (a) obtaining a judgment or order under section 66 of the 1996 Act (enforcement of the award); or
 - (b) enforcing such a judgment or order.

REGISTRATION IN HIGH COURT OF FOREIGN AWARDS

62.20

- (1) Where –
- (a) an award is made in proceedings on an arbitration in any part of a United Kingdom Overseas Territory (within the meaning of rule 6.18(f)) or other territory to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933¹⁴ ('the 1933 Act') extends;
 - (b) Part II of the Administration of Justice Act 1920¹⁵ extended to that part immediately before Part I of the 1933 Act was extended to that part; and
 - (c) an award has, under the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place,
- RSC Order 71, Part I applies in relation to the award as it applies in relation to a judgment given by the court subject to the modifications in paragraph (2).
- (2) The modifications referred to in paragraph (1) are as follows –
- (a) for references to the country of the original court are substituted references to the place where the award was made; and
 - (b) the written evidence required by RSC Order 71, rule 3 must state (in addition to the matters required by that rule) that to the best of the information or belief of the maker of the statement the award has, under the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

¹⁴ 1933 c. 13 (23–24 Geo. 5).

¹⁵ 1920 c. 81 (10–11 Geo. 5); section 10 of Part II was substituted by the Civil Jurisdiction and Judgments Act 1982 (c. 27), section 35(2) and section 14 of Part II was amended by the Civil Jurisdiction and Judgments Act 1982 (c. 27), section 35(3).

REGISTRATION OF AWARDS UNDER THE ARBITRATION (INTERNATIONAL INVESTMENT DISPUTES) ACT 1966

62.21

(1) In this rule –

- (a) ‘the 1966 Act’ means the Arbitration (International Investment Disputes) Act 1966¹⁶;
 - (b) ‘award’ means an award under the Convention;
 - (c) ‘the Convention’ means the Convention on the settlement of investment disputes between States and nationals of other States which was opened for signature in Washington on 18th March 1965¹⁷;
 - (d) ‘judgment creditor’ means the person seeking recognition or enforcement of an award; and
 - (e) ‘judgment debtor’ means the other party to the award.
- (2) Subject to the provisions of this rule, the following provisions of RSC Order 71 apply with such modifications as may be necessary in relation to an award as they apply in relation to a judgment to which Part II of the Foreign Judgments (Reciprocal Enforcement) Act 1933 applies –
- (a) rule 1;
 - (b) rule 3(1) (except sub-paragraphs (c)(iv) and (d));
 - (c) rule 7 (except paragraph (3)(c) and (d)); and
 - (d) rule 10(3).
- (3) An application to have an award registered in the High Court under section 1 of the 1966 Act¹⁸ must be made in accordance with the Part 8 procedure.
- (4) The written evidence required by RSC Order 71, rule 3 in support of an application for registration must –
- (a) exhibit the award certified under the Convention instead of the judgment (or a copy of it); and
 - (b) in addition to stating the matters referred to in rule 3(1)(c)(i) and (ii), state whether –
 - (i) at the date of the application the enforcement of the award has been stayed (provisionally or otherwise) under the Convention; and
 - (ii) any, and if so what, application has been made under the Convention, which, if granted, might result in a stay of the enforcement of the award.

¹⁶ 1966 c. 41.

¹⁷ The text of the Convention is set out in the Schedule to the Arbitration (International Investment Disputes) Act 1966 (c. 41).

¹⁸ 1966 c. 41; section 1 was amended by the Administration of Justice Act 1977 (c. 38), sections 4 and 32(4) and Schedule 5, Part I and by the Supreme Court Act 1981 (c. 54), section 152(1) and Schedule 5.

- (5) Where, on granting permission to register an award or an application made by the judgment debtor after an award has been registered, the court considers –
 - (a) that the enforcement of the award has been stayed (whether provisionally or otherwise) under the Convention; or
 - (b) that an application has been made under the Convention which, if granted, might result in a stay of the enforcement of the award, the court may stay the enforcement of the award for such time as it considers appropriate.