

Chartered Institute of Arbitrators – Irish Branch



All-Ireland Arbitration Rules 2020

PUBLISHED FEBRUARY 2021

INTRODUCTIONS BY MEMBERS OF THE JUDICIARY IN BOTH JURISDICTIONS:

Mr. Justice Mark Horner and Mr. Justice David Barniville

The Honourable Mr. Justice Mark Horner:

As the judge in charge of all major Commercial litigation in Northern Ireland I welcome the publication of the new Arbitration Rules (2020) (“the New Rules”) which are intended to apply to the whole of Ireland, North and South. Those responsible for drafting the New Rules deserve the warmest of congratulations.

There are a number of reasons why anyone with an interest in dispute resolution should embrace these New Rules.

Firstly I see Arbitration as a key tool in resolving disputes. For a while Arbitration appeared to have gone out of fashion but has recently made a comeback. It enjoys statutory support from the Arbitration Act 1996 in Northern Ireland and has enjoyed and will continue to enjoy the support of all judges in Northern Ireland engaged in Commercial litigation.

Secondly the New Rules are drafted in plain English and permit a user-friendly approach. They are intended to be read and understood by everyone not just the lawyer and the expert witness but also, most importantly, by the lay client. Any member of the general public reading these New Rules should have no difficulty in understanding the process involved.

Thirdly a multi-disciplinary approach has been taken in drafting these Rules involving all sections of the Arbitration community. This multi-disciplinary approach has undoubtedly made the New Rules more user friendly and thus more effective.

I join with Mr. Justice David Barniville in extending a warm welcome to these New Rules which I hope will have a transformative effect on ADR in general and arbitration in particular on the island of Ireland.

The Honourable Mr. Justice Horner

Royal Courts of Justice
Chichester street,
Belfast BT1 3JF
September 2020

The Honourable Mr. Justice David Barniville:

I am delighted to have been asked, with Mr. Justice Mark Horner of the High Court of Northern Ireland, to write these short introductory remarks for the new Arbitration Rules (2020) (the “New Rules”) which have been prepared by the Chartered Institute of Arbitrators – Irish Branch (the “Branch”) and which it is intended can be applied to arbitrations in Ireland and Northern Ireland.

A great deal of work has gone into the preparation of the New Rules and a broad group of interested parties was consulted by the Branch’s Arbitration Rules Sub-Group (the “Sub-Group”), including members of the judiciary, in putting them together. It is more than 30 years since the last version of the Arbitration Rules were published. Much has happened in both jurisdictions since then both in terms of the practice of arbitration and in terms of the legislation governing domestic and international arbitrations in both jurisdictions. In Ireland, the enactment of the Arbitration Act, 2010 (the “2010 Act”) represented a very significant development in the law in Ireland, giving effect to the UNCITRAL Model Law on International Commercial Arbitration and the New York Convention. The Irish Courts have consistently demonstrated their support for the arbitral process. The many judgments of the Irish Courts (and the various judges who have been designated by the President of the High Court to hear arbitration related cases in that Court) bear testimony to this. Ireland is widely seen as an arbitration-friendly jurisdiction. Arbitration and arbitration practitioners are rightly seen as significantly contributing to the Irish economy and play a crucial role in the ongoing efforts to promote and develop Ireland as a leading global centre for dispute resolution.

The publication of the New Rules will greatly assist in providing the necessary certainty and clarity which parties are entitled to expect from the arbitral process. In cases where they apply, the New Rules will serve as a very useful template for the fair, expeditious and final determination of disputes dealt with by arbitration and should dovetail nicely with the provisions of the 2010 Act and the jurisprudence of the Irish Courts in the arbitration field.

As the judge currently designated by the President of the High Court to deal with arbitration related cases in that Court, I warmly welcome the publication of the New Rules and congratulate and thank the Branch and, in particular, the Sub-Group for the work involved in their preparation.

Mr. Justice David Barniville

High Court of Ireland
Four Courts
Dublin 7

Dated 18th September, 2020

PREAMBLE TO THESE RULES

Where any agreement, submission or reference provides for arbitration under the Arbitration Rules of the Chartered Institute of Arbitrators – Irish Branch ('the Branch'), which includes the Northern Ireland Chapter ('NI Chapter'), the arbitration shall be conducted in accordance with the following Rules. These Rules were adopted by the Branch as of November 2020.

In any other circumstances where a dispute is referred to arbitration these Rules may be used in whole or in part by agreement of the parties as Rule 16 provides.

A core objective of these Rules is that it is the duty of an arbitrator to achieve a just, expeditious and final determination of the disputes referred to arbitration at a minimum of cost to the parties

The Branch recognises that the Institute's Disputes Appointment Service ("DAS) based in London is endeavouring to create a centralised global database of arbitrators, including, *inter alia*, arbitrator's areas of expertise, relevant experience and geographical practice areas. On the completion of this exercise by the DAS, it is intended that these Rules will be amended in liaison with the DAS to enable the DAS to assist in making appointments in accordance with the objectives of the Institute

These Rules were developed by the Arbitration Rules Sub-Group of the Irish Branch in 2019 and 2020, adopted by the Branch Committee and approved by the Institute's Headquarters in December 2020.

The Arbitration Rules Sub-Group comprised the following persons:

Paula Mary Murphy FCIArb. Chair of the Sub-Group and Committee Member

Timothy Bouchier-Hayes FCIArb.

Adrian Kearney C. Arb., Northern Ireland Chapter and Committee Member

Conor Kelly C. Arb.

Tom Wren FCIArb., Hon. Sec. to the Sub-Group

Chairman Irish Branch Martin Waldron

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Rule 1: References Under These Rules: All-Ireland Application

Wherever a reference is made to 'Act' or 'the Act' it shall mean a reference to either the Arbitration Act, 2010, if the arbitration is to be conducted under the laws of Ireland or it shall mean a reference to the Arbitration Act, 1996, if the arbitration is to be conducted under the laws of Northern Ireland, whichever is applicable.

Rule 2: Interpretation and Confidentiality

2.1 In these Rules:

- (i) Words importing the singular includes the plural, masculine includes feminine;
- (ii) Arbitrator includes Arbitral Tribunal whether comprising a sole member or three arbitrators;
- (iii) Wherever a period is described in days same shall be a reference to calendar days unless expressly stated otherwise, or if the applicable law of the reference otherwise requires;
- (iv) Award includes any interim Award and the final Award;
- (v) In all other matters of interpretation, the relevant provisions of the parties' contract and the Interpretation Act under the procedural law of the reference shall apply; and,
- (vi) References to Branch Chairman¹ means the Chairman of Irish Branch of the Chartered Institute of Arbitrators or, if the Branch Chairman should not be available for the appointment of an arbitrator, a duly appointed Irish Branch officer deputed for purposes of making an appointment under these Rules.

2.2 Unless otherwise agreed in writing between the parties, the parties and the Arbitrator shall treat the arbitral process and the Award as confidential to the maximum extent available at law. Unless previously in the public domain, all of the proceedings and material prepared for the arbitration shall be kept confidential unless disclosure is required by law.

Rule 3: Request for Appointment of Arbitrator

3.1 These Rules shall apply where their application is agreed by the parties or alternatively if the arbitration agreement provides that the appointment of an arbitrator shall be made by the Branch Chairman.

3.2 Where a request is made for the appointment of an arbitrator pursuant to an arbitration agreement between the parties it shall be made to the Branch Chairman in writing at the current address or email address of Irish Branch as of the date of request.

3.3 Any request made under this Rule 3 shall include the following details:

- (i) the names and addresses of the parties;
- (ii) the terms of the arbitration agreement and the date of execution thereof;

¹ Where a contract to arbitrate refers to the President of Irish Branch same shall be taken to refer to the Irish Branch Chairman.

- (iii) the substantive and procedural law applicable to the reference to arbitration; and,
 - (iv) a brief summary of the nature and circumstances of the dispute between the parties.
- 3.4 Where a request is made for the appointment of an arbitrator pursuant to these Rules the request shall include an appointment fee paid by cheque or through the Irish Branch website portal made payable to The Chartered Institute of Arbitrators – Irish Branch.
- 3.5 Until further notice is issued by Irish Branch the appointment fee shall be €475.00 plus VAT if the request is issued in the Eurozone or £425.00 plus VAT if the request is issued in Northern Ireland or any other location in the United Kingdom. The VAT shall be paid at the applicable rate obtaining in the Irish Republic as of the date of the request.
- 3.6 For requests made outside of the Eurozone or the United Kingdom, the application fee shall be paid in Euro.
- 3.7 Irish Branch may amend the appointment fee at any time principally by means of notice on its website, www.arbitration.ie, or by advice to the requestor prior to an appointment being made.

Rule 4: Selection and Appointment of Arbitrator

- 4.1 If an arbitrator is to be appointed as Rule 5 provides, on accepting a request for the appointment of an arbitrator, the Branch Chairman shall (unless the parties have previously agreed upon an arbitrator in writing) pursuant to this Rule 4 select and appoint an arbitrator to determine the dispute and shall advise the parties in writing within seven (7) business days of the receipt of the request inclusive of the payment of the appointment fee.
- 4.2 The appointment of an arbitrator shall take effect upon the Arbitrator's acceptance of his appointment to the Branch Chairman and to the parties to the reference in writing. Upon the Arbitrator accepting his appointment, the Branch Chairman shall be *functus officio* and the Arbitrator shall be at liberty to act with or without terms and conditions of engagement having been executed between the Arbitrator and the parties to the reference. If the Arbitrator does not accept his appointment in writing within seven (7) days of the date of the Branch Chairman's letter of appointment, he shall be deemed to have declined the appointment.

Rule 5: Number of Arbitrators

- 5.1 The Branch Chairman shall, unless the parties have agreed otherwise, appoint a sole arbitrator. In making an appointment, the Branch Chairman shall take into consideration any agreement reached or representation made by the parties concerning the qualifications or experience of the arbitrator.
- 5.2 If the parties agree that three arbitrators shall be appointed, each party shall appoint one arbitrator, and the Branch Chairman, shall appoint the third arbitrator who shall act as Chairman of the Arbitral Tribunal.

Rule 6: Jurisdiction of Arbitrator

- 6.1 The Arbitrator shall have the power to rule on his own jurisdiction.
- 6.2 Without prejudice to Rule 6.1, in the absence of any agreement between the parties to the contrary, the Arbitrator's jurisdiction and powers shall be as set out in **Schedule A**.
- 6.3 If the Arbitrator requires written terms and conditions of engagement to be executed by the parties, he may at the same time or at any time, with the consent of the parties, by order or direction, add to omit or amend his jurisdiction and powers provided such changes are not contrary to the Act.

Rule 7: Failure or Impossibility to Act; Substitute Arbitrator

- 7.1 If after the appointment the Arbitrator dies, refuses, fails or otherwise becomes unable or unfit to act, or because of the revocation of the Arbitrator's mandate by agreement of the parties, the appointment of a substitute Arbitrator shall be made pursuant to these Rules as they stood on the date of the original appointment.

Rule 8: Challenges

- 8.1 Prior to and after appointment, the Arbitrator shall disclose any circumstances as could give rise to justifiable doubts as to his impartiality or independence with reference to established standards and principles such as the Guidelines on Conflicts of Interest in International Arbitration adopted by resolution of the International Bar Association Council on 23rd October 2014 ('IBA Guidelines') or any amendment thereto in force as of the date of the Arbitrator's appointment. Failure to disclose or discovery by any of the parties in respect of any matter other than generally accepted exceptions such as the IBA Guidelines Green List shall give rise to any party to the proceedings having a right to object within a period of fifteen (15) days commencing on the date the party knew or ought to have known of the existence of a matter which would give rise to such an objection.
- 8.2 In all other respects challenges and the challenge procedure shall be as the Act provides.

Rule 9: Independence and Impartiality of Arbitrator; Equal Treatment of Parties

- 9.1 The Arbitrator shall be and shall remain at all times wholly independent and impartial, shall not act as advocate for any party and shall ensure that the provisions of the Act are strictly observed at all times.

Rule 10: Extension of Proceedings to Admit Third Parties

- 10.1 The Arbitrator may, where all the parties agree, conduct two sets of arbitration proceedings out of the one set of facts substantially at the same time or may admit other parties to an existing reference by way of consolidated multi-party proceedings. To facilitate such parallel arbitrations or consolidation, subject to the provisions of the Act and with the parties' agreement, the Arbitrator may make such amendments to these Rules as the Arbitrator may require.

Rule 11: Communications

- 11.1 Where a party sends any communication (including any notice or statement made under these Rules) to the Arbitrator, it shall send copies to the other parties at the same time by the same means and confirm to the Arbitrator on the face of the communication that it has done so.
- 11.2 The Arbitrator shall copy any communication to a party to the other parties at the same time and by the same means.
- 11.3 Where in any of these Rules or otherwise under the Act a communication is required to be made in writing, this shall include by email if agreed by the Arbitrator. The parties may agree with the Arbitrator to the use of and the protocol for the use of additional means of communication including, by way of example, a software or electronic platform.

Rule 12: Addresses of Parties

- 12.1 For purposes of communications, the addresses of the parties shall be set out in the request for the appointment of an arbitrator. If there is no current address a party's last known place of business or last known address may be used.

Rule 13: Delivery of Communications

- 13.1 Any notice or communication in any arbitration under these Rules shall be deemed to have been properly delivered if dispatched by post, email, or by hand to the address notified to the Arbitrator as the address for service, or as provided in Rule 12, or by other electronic means as may be agreed pursuant to Rule 11.3.
- 13.2 If any party to whom a notice or communication has been sent cannot be found, or if for any reason service on such party cannot readily be effected in accordance with these Rules, the Arbitrator may order substituted service in such form as the Arbitrator thinks fit.

Rule 14: Language of the Proceedings

- 14.1 Unless the parties agree otherwise, the language of the arbitration proceedings shall be English. If the parties have agreed to a language other than English, the agreed language shall be brought to the attention of the Branch Chairman when seeking an appointment under Rule 3.
- 14.2 If any document is expressed in a language other than English and no translation of such document is submitted by the party relying upon it, the Arbitrator may order the party to submit a translation of all or any part of that document.

Rule 15: Directions and Interim Measures

- 15.1 All directions and interim measures issued by the Arbitrator to the parties concerning the reference shall be in writing or, if given orally, shall be confirmed in writing by the Arbitrator within two business days.
- 15.2 The Arbitrator shall have all of the powers the Act confers to grant interim measures.

Rule 16: Changes to Rules of Procedure

- 16.1 If the parties seek to agree other rules of procedure or vary these Rules or any other interlocutory or interim matters, they shall first seek the approval of the Arbitrator and the Arbitrator if he so approves may incorporate any such agreement or variation in an order or direction.

Rule 17: Preliminary Meeting and Case Management

- 17.1 Matters concerning the preliminary meeting, if required, and case management meetings shall be as set out in **Schedule B**.

Rule 18: Conduct of Arbitration Proceedings

- 18.1 Matters concerning the conduct of the arbitration proceedings shall be as set out in **Schedule C**.

Rule 19: Statement of Claim, Defence and Reply, Rejoinder

- 19.1 Matters concerning the parties' pleadings or written statements and replies shall be as set out in **Schedule D**.

Rule 20: Disclosure of Documents

- 20.1 Matters concerning disclosure of documents shall be as set out in **Schedule E**.

Rule 21: Evidence Generally

- 21.1 The Arbitrator shall apply the rules of evidence under the procedural law applicable to the arbitration referral. The admissibility, relevance, materiality and weight of evidence shall be for the Arbitrator to determine.
- 21.2 Having regard to Rule 21.1, the Arbitrator or a party with the approval of the Arbitrator may, as the Act provides, request assistance from a competent court in the applicable jurisdiction in taking evidence.
- 21.3 The Arbitrator may require to see real evidence or to visit the place where any such evidence is situate on reasonable notice to the parties who shall facilitate any such inspection or visit by arrangement with the Arbitrator to suit any agreed time frame in the reference.
- 21.4 The Arbitrator may direct or order the parties or either of them to conduct inquiries, tests or investigations concerning any real evidence or, pursuant to the Act but subject to Rule 22 at **Schedule F.6**, appoint one or more experts for that purpose.

Rule 22: Witness Statements

- 22.1 Matters concerning witnesses in the reference and their statements shall be as set out in **Schedule F**.

Rule 23: Evidence

- 23.1 The parties and the Arbitrator shall discuss what evidence and in what form it is to be submitted to the Arbitrator and the time-table for so doing. Unless included in the Statements of Claim, Defence and Reply, rejoinders, witness statements, experts' reports, or other previous submissions, all documents to be submitted to the Arbitrator shall be in bundles in an agreed order, duly paginated and suitably indexed so that the Arbitrator may be assured he has received in full all documents to be submitted to him in the reference. Documents submitted in agreed bundles shall be considered as entered in evidence.
- 23.2 A party may object to the admissibility of any document submitted to the Arbitrator under these Rules provided that an objection shall be submitted in writing to the Arbitrator promptly or otherwise within any time period as the Arbitrator may direct or fix, failing which the document shall be considered as entered in evidence. The party objecting shall state the grounds upon which it objects to any document submitted by another party. Any such objection concerning the discovery of a document shall be dealt with under Rule 20. A party may correct an accidental disclosure of a document provided that such correction is notified to the other party within twenty-one (21) days of the initial disclosure.

Rule 24: Hearings and Meetings

- 24.1 The Arbitrator shall hold such hearing or meeting as the Arbitrator considers appropriate. Unless the parties have agreed otherwise, the place of the hearing or meeting shall be determined by the Arbitrator who shall also fix the date and time of the hearing or meeting and the Arbitrator shall give the parties adequate notice of same.
- 24.2 An oral hearing or meeting may proceed *ex parte* provided the parties have been given reasonable notice of such a hearing or meeting.
- 24.3 Provided a party gives the Arbitrator and the other party not less than seven (7) days' prior notice, or such shorter notice as may be accepted by the Arbitrator, any party may be represented at any hearing or meeting by a legal or other professional practitioner.
- 24.4 The Arbitrator shall have authority to determine the order of business at hearings and meetings and the management thereof including:
- (i) the start, rest and end times on any one hearing or meeting day;
 - (ii) the order in which the parties present their cases including whether or not a hearing is to be split as between liability and quantum, or in modules, or otherwise;
 - (iii) the allocation of time at hearings or meetings and which time periods, if exceeded by a party, the Arbitrator may allow further time to that party under conditions;
 - (iv) the acceptance of a written witness statement as evidence-in-chief or any other time-saving measure that the Arbitrator considers expedient subject to the Act;

- (v) to declare an oral hearing closed and, in exceptional circumstances, whether at the request of a party or on the Arbitrator's own motion, to re-open an oral hearing at any time before the Arbitrator issues his Award; and,
 - (vi) any other matter or thing as provided in these Rules or otherwise as is within the jurisdiction of the Arbitrator under the Act.
- 24.5 Upon the prior request of a party in writing not less than five (5) days before a hearing or meeting, or other period as the Arbitrator may determine in advance pursuant to Rules 17 and 18, the Arbitrator may order or direct the other party that a witness on whose evidence that other party seeks to rely shall attend for oral questioning before the Arbitrator.
- 24.6 If a party so ordered or directed fails to produce a witness before the Arbitrator on a stated date or dates for a hearing or meeting the Arbitrator may place such weight on the written evidence of that witness or exclude it altogether as the Arbitrator considers appropriate.
- 24.7 Oral evidence shall be received under oath or affirmation and the Arbitrator may refuse to receive evidence from any person who will neither swear the oath nor provide an acceptable affirmation.

Rule 25: The Award

- 25.1 Unless the parties have agreed that no reasons are to be given, or the Award is on agreed terms, the Arbitrator shall make a reasoned Award in writing as soon as practicable after the conclusion of the final hearing or at any interim period the Arbitrator considers expedient and he shall notify the parties in writing when an Award is ready to be taken up.

Rule 26: Majority Decision

- 26.1 Where there is more than one Arbitrator and they disagree on any matter or question they shall decide by a majority.

Rule 27: Settlements

- 27.1 If before the publication of the Arbitrator's Award the parties arrive at a settlement of their disputes they shall immediately so notify the Arbitrator in writing.
- 27.2 The Arbitrator may issue an Award by consent reflecting the terms of the settlement.
- 27.3 Where an arbitration is terminated before an Award is made the Arbitrator shall notify the parties of the termination.

Rule 28: Costs of the Reference and of the Arbitration

- 28.1 The Arbitrator in his terms and conditions of engagement shall state the basis on which his costs, fees and expenses will be charged, become payable and be paid.

- 28.2 If the Arbitrator is on a panel of one or more of the schemes in **Schedule G** (when implemented by an announcement as shall be made by the Branch Chairman) and the amounts at issue in the reference are within one of the schemes as of the date the Arbitrator is appointed, he shall be taken to have agreed to limit his fees to the relevant upper limit in force as of the date of appointment and to write his substantive Award within the maximum period allowed.
- 28.3 From the commencement of the arbitration all the parties shall be jointly and severally liable to the Arbitrator for his costs, fees and expenses until they are discharged in full.
- 28.4 The Arbitrator may seek deposits on account of costs, fees and expenses from time to time from the parties in amounts as the Arbitrator considers appropriate and may specify the dates by which such deposits shall be paid. One party may pay all or part of the Arbitrator's requested deposit or any interim payment required if another party does not make the required payment by the date specified by the Arbitrator. The Arbitrator may suspend or terminate the arbitration if such payments are not paid in full by the dates specified by the Arbitrator.
- 28.5 Unless the parties have requested that all matters, save as to the costs of the reference, should be dealt with in a penultimate Award, the Arbitrator shall calculate the total amount of his costs, fees and expenses and advise the parties in his Award. In making such calculation the Arbitrator shall account for any and all deposits and interim disbursements previously received in payment from the parties or any one of them and shall arrange for the prompt return of any unused deposit or portion thereof.
- 28.6 Unless the parties have otherwise agreed, the Arbitrator, having due regard to a Calderbank offer if properly made, shall determine in his Award which party or parties shall pay his costs, fees and expenses.
- 28.7 Subject to what the parties may have agreed or as may be required by law, in considering the costs of the reference and of the arbitration the Arbitrator may draw inferences against a party who does not comply with the Arbitrator's orders or directions or who delays the proceedings without reasonable cause or who causes unnecessary expense or whose witnesses or any one of them does not cooperate with the Arbitrator's directions or orders.
- 28.8 Unless the Arbitrator's terms and conditions of engagement provides otherwise, after notification by the Arbitrator under Rule 25, any party may take up an Award upon payment to the Arbitrator of any costs, fees and expenses of the Arbitrator then outstanding whereupon the Arbitrator shall send a copy of the Award to the parties.
- 28.9 If an Award has not been taken up within forty-two (42) days of notification the Arbitrator may by action at law proceed to recover his outstanding costs, fees and expenses from any or all of the parties and upon receipt of such payment the Award shall be published.
- 28.10 If the Arbitrator has determined that all or any part of his costs, fees and expenses shall be paid by any party other than the party which has already paid them in taking up an Award that party shall have the right to recover the appropriate amount from the party liable for the payment.

28.11 If the arbitration is abandoned, suspended, concluded by agreement or otherwise before an Award is made, the Arbitrator's costs, fees and expenses incurred to that time shall be paid in proportions as the parties may agree or failing agreement as the Arbitrator shall determine. Any unexpended deposits or interim payments received shall be returned pursuant to the Arbitrator's terms and conditions of engagement.

Rule 29: Exclusions of Liability

29.1 The Arbitrator, any expert appointed by the Arbitrator and the Branch including the Branch Chairman shall not be liable to any party for any act or omission or negligence in connection with any arbitration conducted under these Rules, save for the consequences of conscious and deliberate wrongdoing.

29.2 Neither the Arbitrator nor the Branch Chairman shall be under any obligation to make any statement to any person about any matter concerning the arbitration and no party shall seek to make the Arbitrator or the Branch Chairman compellable as a witness in any legal proceedings arising out of the arbitration.

SCHEDULE A (RULE 6): JURISDICTION AND POWERS OF THE ARBITRATOR

- A.1 By submitting to arbitration under these Rules the parties shall be taken to have conferred on the Arbitrator the following jurisdiction and powers to be exercised by the Arbitrator so far as the law allows and as the Arbitrator may judge expedient for the purpose of ensuring the just expeditious economical and final determination of the dispute referred to him.
- A.2 The Arbitrator shall have jurisdiction to:
- 1 Determine any question as to the validity, extent or continuation in force of any contract between the parties.
 - 2 Determine any question of law arising in the arbitration (including any question as to which system of law governs the dispute).
 - 3 Determine the dispute.
 - 4 Determine any question of good faith or dishonesty arising in the dispute.
 - 5 Order any party to furnish the Arbitrator with such further details of its case in fact or in law as the Arbitrator may require.
 - 6 Proceed in the arbitration following the failure or refusal of any party to comply with these Rules or with his Orders or Directions.
 - 7 Require witnesses to be examined on oath or affirmation and administer oaths or take affirmations from witnesses in such prescribed manner as is necessary.
 - 8 Direct, on such terms and conditions as the Arbitrator may determine, that evidence be given by affidavit.
 - 9 Direct witness statements, as are necessary.
 - 10 Receive and take into account such written, real or oral evidence as the Arbitrator shall determine to be relevant, having regard to Rule 21.1.
 - 11 Make one or more interim Awards.
 - 12 Hold meetings and hearings in Ireland and elsewhere.
 - 13 Express his Award in any currency.
 - 14 Award interest on any sum from and to any date and at such rates as the Arbitrator determines to be appropriate provided that;
 - (a) Interest has been claimed or counter-claimed as special damages; and/or,
 - (b) the Arbitrator finds the sum to have been due but not paid up to the date of the Award; and/or,
 - (c) the Arbitrator finds the sum to have been paid late but after the commencement of the reference.
 - 15 Correct any accidental slip or omission in an Award.

- A.3 Unless the parties agree otherwise the Arbitrator shall have power on the application of any party or of his own motion but in either case only after hearing or receiving any representations from the parties to:
- 1 Allow other parties to be joined in the arbitration with the express consent of all the parties and to make an Award determining all disputes between them.
 - 2 Allow any party such terms (as to costs or otherwise) as he shall determine to amend its Statement of Claim, Defence, Reply, or Rejoinder.
 - 3 Extend or abbreviate any time limits provided in these Rules by order or by direction.
 - 4 Rely on his own expert knowledge and experience in any field provided that the parties have been informed of his being possessed of such knowledge or experience and that the parties are given the opportunity to comment or make submissions on any such reliance.
 - 5 Subject to Rule 22, appoint one or more advisors or experts on any matter (including law) to assist the Arbitrator.
 - 6 Decide and order if expert witnesses are to be appointed or not as the case may be mindful of the parties' applications and of the need for natural justice.
 - 7 Direct the parties to submit to the Arbitrator for subsequent exchange written statements (whether or not verified by oath or affirmation) of the proposed evidence of experts and direct which of the makers of such statements are to attend before the Arbitrator for oral examination.
 - 8 Order the parties to produce to the Arbitrator and to each other and to supply copies of any documents or classes of documents in their possession or power which the Arbitrator determines to be relevant and necessary for the determination of the matters in dispute.
 - 9 Order the preservation or storage of any property or thing under the control of any of the parties and which property or thing is the subject of the reference.
 - 10 Subject to the Act, make interim orders for security for any party's own costs and/or to secure all or part of any amounts in dispute in the arbitration.
 - 11 Cap the parties' costs in accordance with the law or by agreement between the parties.
- A.4 If requested by a party the Arbitrator shall convene a hearing on such conditions as he considers to be appropriate.
- A.5 In addition the Arbitrator shall have such further jurisdiction and powers as may be allowed by law and by the contract between the parties including dealing with any matter not specifically provided for in the Rules.

SCHEDULE B (RULE 17): PRELIMINARY MEETING AND CASE MANAGEMENT

- B.1 Within twenty-one (21) days of appointment, the Arbitrator shall, following consultation with the parties, establish a timetable for the entire arbitral process. The Arbitrator shall revise and amend the timetable as required to ensure the just, expeditious and economical prosecution of the arbitration.
- B.2 The Arbitrator may further, within the aforesaid twenty-one (21) days, convene a preliminary meeting (which may include video- or tele-conference) with the representatives of the parties. At such meeting, the Arbitrator and the parties shall consider how the arbitral process may be the most efficiently managed. Such matters may include:
- 1 if the arbitration should be conducted purely on the basis of written submissions of the parties without hearing oral evidence, or viewing real evidence, or both;
 - 2 the provision of joint statements pursuant to Rule 18 including timeframes for same;
 - 3 what, if any, issues or facts in the reference are non-contentious and may be agreed so as to save time and costs;
 - 4 what witnesses of fact and witnesses of opinion are to appear at hearing, why it is necessary that they be heard and what value-add each witness stands to contribute;
 - 5 what, if any, disclosure of documents or other information is required and the means;
 - 6 to what extent costs should be limited, if by agreement between the parties, or if to be determined by the Arbitrator having due regard to Rule 28.3;
 - 7 if meetings or hearings are to be recorded and by what means; and,
 - 8 any other matter or thing which seems expedient to the Arbitrator or which is requested by the parties or either of them on written notice to the other prior to the preliminary meeting to be addressed at that meeting.
- B.3 The parties at all times shall keep to and observe the Arbitrator's timings and directions or orders unless for a reason which the Arbitrator considers is valid upon advance written notice by either party to the Arbitrator.
- B.4 If the Arbitrator considers it necessary, he may at any time convene case management meetings to deal with procedural matters or unexpected arisings of any kind.
- B.5 The parties shall be at liberty to apply to the Arbitrator at any time in writing to deal with any procedural matter or unexpected arising of any kind but in all such matters Rule 11 shall be observed.

SCHEDULE C (RULE 18): CONDUCT OF ARBITRATION PROCEEDINGS

- C.1 In the absence of an agreement between the parties but subject to compliance with the Act, the Arbitrator may conduct the arbitration in a fashion as he considers appropriate and provided that each party shall be given a reasonable opportunity of presenting its case and of knowing of the case it has to answer reasonably in advance of any hearing or determination. In exercising the discretion this Rule affords, the Arbitrator shall at all times have fairness and efficiency in mind.
- C.2 The Arbitrator's powers to decide all procedural and evidential matters in the absence of agreement by the parties as provided in C.1 include the following non-exhaustive list in addition to what is provided for in Rule 17:
- 1 what form pleadings by way of statements of claim, counter-claim and defence, replies and rejoinders thereto, are to take and when they are to be provided;
 - 2 to have the parties prepare a joint statement in Scott Schedule format setting out concisely the matters which are in dispute between them with the amounts and/or reliefs sought for submission to the Arbitrator within a stated period of time or by a stated date;
 - 3 what questions, if any, should be put to and answered by the parties in advance of a hearing, in what format, by what means and by when any such questions shall be answered;
 - 4 if and when any real evidence may be inspected by the Arbitrator;
 - 5 if and to what extent there should be written or oral evidence, or both, or other submissions, and when same are to be provided and what other measures, if any, may be required;
 - 6 if and when and to what extent expert evidence should be adduced including the preparation of experts' reports, when the experts' reports should be exchanged, when the experts are to meet to narrow differences of opinion, quantum, or otherwise, with the aim of submitting an Experts' Statement of Agreement and Disagreement to the Arbitrator within a stated period of time or date and if the experts may be subjected to the giving of concurrent evidence or not and in respect of which the Arbitrator may have regard to established standards;
 - 7 any witness who gives oral evidence at a hearing or meeting may be questioned by the parties and the Arbitrator and such oral evidence shall be given under oath or affirmation;
 - 8 the manner by which oral evidence shall be taken, including whether or not witnesses are to be excluded from the hearing until they have furnished their evidence, whether they are required to be physically present or, if by video or audio link will be accepted;

- 9 to postpone, defer, adjourn, or otherwise halt a meeting or hearing for a stated period if a party appears with a legal or professional representative (but not including a McKenzie Friend) without advance notice of such, prior to the day of the meeting or hearing having been given to the other party or for any other reason as seems fair and reasonable to the Arbitrator having regard to C.1 (without prejudice to the Arbitrator's subsequent treatment of costs under Rule 28 in respect of any such postponement, deferral, adjournment or halt); and,
- 10 the Arbitrator is not bound to accept late pleadings or documentary evidence or witnesses appearing without proper notice.

SCHEDULE D (RULE 19): STATEMENT OF CLAIM, DEFENCE AND REPLY, REJOINDER

- D.1 Unless the parties agree to produce a joint statement, the parties shall do the following:
- D.2 The party who requested the arbitration ('the Claimant') shall send to the Arbitrator within the time agreed by the parties or ordered by the Arbitrator a Statement of Claim setting out in sufficient detail the issues, the facts and the contentions of law on which it relies and the relief it claims.
- D.3 The other party ('the Respondent') shall send to the Arbitrator a Statement of Defence within the time agreed by the parties or ordered by the Arbitrator setting out in sufficient detail the issues, the facts and the contentions of law on which it relies and the relief it claims. If the Respondent has a counter-claim, this shall be set out in the Statement of Defence as a Statement of Counter-Claim.
- D.4 After receipt of a Statement of Defence, the Claimant may send to the Arbitrator within the time agreed by the parties or ordered by the Arbitrator a Statement of Reply as shall deal with every particular on which the Claimant intends to further rely.
- D.5 Where there is a counter-claim, the Claimant shall send to the Arbitrator within the time agreed by the parties or determined by the Arbitrator a Statement of Defence to the counter-claim to which the Respondent may make a Statement of Reply.
- D.6 All Statements of Claim, Defence, Replies, shall be accompanied by legible copies of the essential documents on which the party concerned relies, suitably paginated.
- D.7 Where the Arbitrator considers it necessary, he may request the parties to serve rejoinders.
- D.8 A copy of any contract or other legal document or more than one out of which the dispute arises together with a copy of the arbitration agreement shall be annexed to the Statement of Claim.
- D.9 At any stage of the arbitral proceedings, a party may amend or supplement its claim or defence or replies on such terms and conditions as the arbitrator shall decide.
- D.10 Where there are more than two parties the Arbitrator shall issue directions which he considers appropriate to meet the circumstances of the reference having regard to Rule 16.

SCHEDULE E (RULE 20): DISCLOSURE OF DOCUMENTS

- E.1 The parties shall each take all reasonable steps to preserve documents which are or are likely to be subject to disclosure in relation to the reference having due regard to their respective obligations as may arise in respect of possible interim measures or orders as may be issued pursuant to the Act or otherwise under these Rules. Such preservation measures include safeguarding electronically stored information so that same are not destroyed or lost in the ordinary course of business or by an agent such as a server provider.
- E.2 In interpreting E.1, the reference to 'documents' shall mean paper documents of all kinds, drawings, sketches, photographs, programmes, schedules, diagrams, registers and data stored on paper, magnetic tape, electronically on disc or other drives or in electronic storage or otherwise. As to control, a party shall be said to have or have had control of documents if it is or was in the party's physical or virtual possession or if the party has or had the right to such possession or has or had the right to inspect it or to make copies of it by any means.
- E.3 If a party requires disclosure of any documents, the parties shall actively co-operate with each other as directed by the Arbitrator to do any or all of the following:
- 1 identify the documents or records or data required, the parties and persons believed to have or hold or have control over them or who are likely to know how or where they may be located and obtained for disclosure, and the most efficient means for their production;
 - 2 provide an estimate of the likely volume of documents and of the cost to secure disclosure of such documents inclusive of the cost of checking by whatever means for relevance, privilege or other grounds to withhold production, or redaction or like measure and of the cost of any expertise necessary to ensure the efficient management of any such disclosure process;
 - 3 assess the extent to which E.3.2 above may be reduced having regard to what has or will be made available under Rule 19;
 - 4 jointly consider whether the costs of disclosure are proportionate having regard to the issues in the arbitral proceedings and the amounts at issue, the volume of documents or data involved, the ease or difficulty of retrieving the documents and kindred matters; and,
 - 5 if E.3.4 above reveals a disproportionately expensive exercise, to report to the Arbitrator on how the exercise may be narrowed or refined with a view to reducing disclosure to what is reasonable and proportionate.
- E.4 A course of action on the matters referred to in E.3 as may be agreed between the parties shall be set out in writing, as may include a Redfern Schedule, and sent to the Arbitrator who may issue an order or directions in that connection as he considers appropriate.

- E.5 A party who agrees or is ordered or directed by the Arbitrator to disclose documents shall do the following within a time frame agreed between the parties or directed or ordered by the Arbitrator:
- 1 search for and obtain the documents in whatever form by means of the methods (or another method as achieves the same but not a less efficient result in terms of time and cost) and within the time frame agreed or as the Arbitrator may direct or order;
 - 2 upon disclosure, send to the other party and the Arbitrator a signed statement of compliance to include a narrative of what the party did to demonstrate full compliance and if not in full the reasons why full compliance could not be achieved or, if a refusal was obtained, the name of the person and that person's organisation or employer together with the stated reason why the person had the right or a duty to refuse; and,
 - 3 with the disclosure include a readily identifiable and understandable means of identifying the documents disclosed by means of unique reference numbers, document identification by date, document type, its author and the original recipient of the document together with any covering letters or email always ensuring that all such disclosed documents are complete and legible to the naked eye without magnification for ease of use in the reference.
- E.6 To secure compliance pursuant to Rule 20 the Arbitrator may direct or order a party to facilitate an inspection and searching exercise using that party's filing systems or computers. The duty of disclosure shall continue throughout the arbitral proceedings and if a document not discovered under E.3 to E.5, inclusive, but which subsequently comes to a party's notice, that party shall immediately notify the parties and the Arbitrator and produce the document.
- E.7 It shall not be a valid reason not to disclose a document on the grounds that it detracts from a party's case, or it would advance another party's case, whether or not a document was agreed to be disclosed or directed or ordered by the Arbitrator to be disclosed, or if it was subsequently found after discovery or came to a party's notice that it existed at any stage in the proceedings.
- E.8 In the event of a controversy concerning any aspect of disclosure, the matter shall be brought to the attention of the Arbitrator so a direction or an order may be issued without delay. If any such controversy includes whether a party has a right to withhold disclosure and the resisting party believes that its production to the Arbitrator to decide whether or not it should be disclosed would be detrimental to that party's case, after the document is identified, the Arbitrator shall have discretion to appoint an independent expert to examine the document and to report on the issue to the Arbitrator. After considering the expert's report, if the Arbitrator determines that the document should or should not be disclosed, he shall issue an order or direction to that effect.
- E.9 Notwithstanding the above, the Arbitrator shall be entitled to refuse to grant an order for the making of discovery of documents or to limit any such order if the Arbitrator considers that:

1. the making of such an order is not reasonably required for him to consider the issue in dispute and to make an Award; or,
2. would place an unreasonable burden on a party in complying with any such order (if made); or,
3. the costs and expenses likely to be incurred in complying with any such order (if made) would be disproportionate to the amount in dispute between the parties.

SCHEDULE F (RULE 22): WITNESS STATEMENTS

- F.1 Each witness statement shall contain:
- 1 the full name and address of the witness;
 - 2 the witness's past and present relationship with the parties and, if relevant to the giving of the evidence, the qualifications, training and experience of the witness;
 - 3 a detailed description of the facts in the witness's knowledge and the source of those facts having regard to Rule 19 at D.6 (to avoid duplication);
 - 4 if as an expert witness, a declaration that it is the duty of the witness to assist the Arbitrator and comply with the *Ikarian Reefer* principles and not be reliant upon any contingent fee;
 - 5 if as an expert witness, a detailed description of the opinion of the witness and shall be clearly distinguishable from the facts in the witness's knowledge; and,
 - 6 the signature of the witness and the date and place where it was signed.
- F.2 With the permission of the Arbitrator and by a date or within any time frame he may order or direct, a party may submit supplementary witness statements to those referred to in the Statement of Claim or Defence to respond to matters raised in the other party's Statement of Defence or Reply or amendments thereto, or witness statement, or expert's report, or other submission made since the original Statement of Claim or Defence, or if evidence is to be introduced of which the party to provide it later became aware and could not reasonably have been aware at the time of the original submission but not otherwise.
- F.3 Expert evidence may only be put forward by the parties with the Arbitrator's consent. The Arbitrator may query the parties as to why expert evidence is merited and if the persons proposed possess the necessary level of expertise. Any such consent of the Arbitrator may be given on conditions including when written expert testimony is to be given and exchanged.
- F.4 Where the Arbitrator consents to grant permission to a party to call expert evidence the other party shall be given opportunity to retain an expert in the same discipline.
- F.5 Where the Arbitrator consents to the parties to call expert evidence the Arbitrator may fix a time frame for the exchange of experts' reports, or meetings of the experts, or joint experts' reports which identify areas of agreement on facts and opinion and areas of disagreement and the reasons therefor.
- F.6 Before appointing an expert, the Arbitrator shall first consult with the parties.



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