

Panel 1: Interim remedies and arbitration

RELEVANT PROVISIONS OF THE ARBITRATION ACT 1996

24 Power of court to remove arbitrator.

(1) A party to arbitral proceedings may (upon notice to the other parties, to the arbitrator concerned and to any other arbitrator) apply to the court to remove an arbitrator on any of the following grounds -

- (a) that circumstances exist that give rise to justifiable doubts as to his impartiality;
- (b) that he does not possess the qualifications required by the arbitration agreement;
- (c) that he is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so;
- (d) that he has refused or failed—
 - (i) properly to conduct the proceedings, or
 - (ii) to use all reasonable despatch in conducting the proceedings or making an award, and that substantial injustice has been or will be caused to the applicant.

(2) If there is an arbitral or other institution or person vested by the parties with power to remove an arbitrator, the court shall not exercise its power of removal unless satisfied that the applicant has first exhausted any available recourse to that institution or person.

(3) The arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.

(4) Where the court removes an arbitrator, it may make such order as it thinks fit with respect to his entitlement (if any) to fees or expenses, or the repayment of any fees or expenses already paid.

(5) The arbitrator concerned is entitled to appear and be heard by the court before it makes any order under this section.

(5A) The court may not order the arbitrator to pay costs in proceedings under this section unless any act or omission of the arbitrator in connection with the proceedings is shown to have been in bad faith.

(6) The leave of the court is required for any appeal from a decision of the court under this section.

32 Determination of preliminary point of jurisdiction.

(1) The court may, on the application of a party to arbitral proceedings (upon notice to the other parties), determine any question as to the substantive jurisdiction of the tribunal. A party may lose the right to object (see section 73).

(1A) An application under this section must not be considered to the extent that it is in respect of a question on which the tribunal has already ruled.

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(2) An application under this section shall not be considered unless—

- (a) it is made with the agreement in writing of all the other parties to the proceedings, or
- (b) it is made with the permission of the tribunal.

(3) *[deleted]*

(4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.

(5) Unless the court gives leave, no appeal lies from a decision of the court whether either condition specified in subsection (2) is met.

(6) The decision of the court on the question of jurisdiction shall be treated as a judgment of the court for the purposes of an appeal. But no appeal lies without the leave of the court which shall not be given unless the court considers that the question involves a point of law which is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

39 Power to make provisional awards.

(1) The parties are free to agree that the tribunal shall have power to order on a provisional basis any relief which it would have power to grant in a final award.

(2) This includes, for instance, making—

- (a) a provisional order for the payment of money or the disposition of property as between the parties, or
- (b) an order to make an interim payment on account of the costs of the arbitration.

(3) Any such order shall be subject to the tribunal's final adjudication; and the tribunal's final award, on the merits or as to costs, shall take account of any such order.

(4) Unless the parties agree to confer such power on the tribunal, the tribunal has no such power. This does not affect its powers under section 47 (awards on different issues, &c.).

39A Power to make award on summary basis

(1) Unless the parties otherwise agree, the arbitral tribunal may, on an application made by a party to the proceedings (upon notice to the other parties), make an award on a summary basis in relation to a claim, or a particular issue arising in a claim, if the tribunal considers that—

- (a) a party has no real prospect of succeeding on the claim or issue, or
- (b) a party has no real prospect of succeeding in the defence of the claim or issue.

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(2) For the purposes of subsection (1), an arbitral tribunal makes an award “on a summary basis” in relation to a claim or issue if the tribunal has exercised its power under section 34(1) (to decide all procedural and evidential matters) with a view to expediting the proceedings on the claim or issue.

(3) Before exercising its power under section 34(1) as mentioned in subsection (2), an arbitral tribunal must afford the parties a reasonable opportunity to make representations to the tribunal.

41 Powers of tribunal in case of party’s default.

(1) The parties are free to agree on the powers of the tribunal in case of a party’s failure to do something necessary for the proper and expeditious conduct of the arbitration.

(2) Unless otherwise agreed by the parties, the following provisions apply.

(3) If the tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim and that the delay—

(a) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim, or

(b) has caused, or is likely to cause, serious prejudice to the respondent, the tribunal may make an award dismissing the claim.

(4) If without showing sufficient cause a party—

(a) fails to attend or be represented at an oral hearing of which due notice was given, or

(b) where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions, the tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on his behalf, and may make an award on the basis of the evidence before it.

(5) If without showing sufficient cause a party fails to comply with any order or directions of the tribunal, the tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the tribunal considers appropriate.

(6) If a claimant fails to comply with a peremptory order of the tribunal to provide security for costs, the tribunal may make an award dismissing his claim.

(7) If a party fails to comply with any other kind of peremptory order of the tribunal, then, without prejudice to section 42 (enforcement by court of peremptory orders), the tribunal may do any of the following—

(a) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order;

(b) draw such adverse inferences from the act of non-compliance as the circumstances justify;

(c) proceed to an award on the basis of such materials as have been properly provided to it;

(d) make such order as it thinks fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

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41A Emergency arbitrators

(1) This section applies where—

- (a) the parties have agreed to the application of rules that provide for the appointment of an individual as an emergency arbitrator, and
- (b) an emergency arbitrator has been appointed pursuant to those rules.

(2) Unless otherwise agreed by the parties, if without showing sufficient cause a party fails to comply with any order or directions of the emergency arbitrator, the emergency arbitrator may make a peremptory order to the same effect, prescribing such time for compliance with it as the emergency arbitrator considers appropriate.

42 Enforcement of peremptory orders of tribunal or emergency arbitrator.

(1) Unless otherwise agreed by the parties, the court may make an order requiring a party to comply with a peremptory order made by the tribunal or (as the case may be) the emergency arbitrator.

(2) An application for an order under this section may be made—

- (a) by the tribunal or the emergency arbitrator (upon notice to the parties),
- (b) by a party to the arbitral proceedings with the permission of the tribunal or the emergency arbitrator (and upon notice to the other parties), or
- (c) where the parties have agreed that the powers of the court under this section shall be available.

(3) The court shall not act unless it is satisfied that the applicant has exhausted any available arbitral process in respect of failure to comply with the peremptory order.

(4) No order shall be made under this section unless the court is satisfied that the person to whom the peremptory order was directed has failed to comply with it within the time prescribed in the order or, if no time was prescribed, within a reasonable time.

(5) The leave of the court is required for any appeal from a decision of the court under this section.

44 Court powers exercisable in support of arbitral proceedings.

(1) Unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders (whether in relation to a party or any other person) about the matters listed below as it has for the purposes of and in relation to legal proceedings.

(2) Those matters are—

- (a) the taking of the evidence of witnesses;
- (b) the preservation of evidence;
- (c) making orders relating to property which is the subject of the proceedings or as to which any question arises in the proceedings—
 - (i) for the inspection, photographing, preservation, custody or detention of the property, or
 - (ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property; and for that purpose authorising any person to enter any premises in the possession or control of a party to the arbitration;
- (d) the sale of any goods the subject of the proceedings;
- (e) the granting of an interim injunction or the appointment of a receiver.

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- (3) If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.
- (4) If the case is not one of urgency, the court may act only on the application of a party to the arbitral proceedings made with—
- (a) the permission of the tribunal or (as the case may be) the emergency arbitrator, or
 - (b) the agreement in writing of the other parties.
- (4A) An application under subsection (4) may be made only upon notice to the other parties and to the tribunal or the emergency arbitrator.
- (5) In any case the court shall act only if or to the extent that the arbitral tribunal or the emergency arbitrator, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.
- (6) If the court so orders, an order made by it under this section shall cease to have effect in whole or in part on the order of the tribunal, the emergency arbitrator or of any such arbitral or other institution or person having power to act in relation to the subject-matter of the order.
- (6A) Subject to subsection (7), an appeal lies from a decision of the court under this section.
- (7) The leave of the court is required for any such appeal by a party or proposed party to the arbitral proceedings.

45 Determination of preliminary point of law.

- (1) Unless otherwise agreed by the parties, the court may on the application of a party to arbitral proceedings (upon notice to the other parties) determine any question of law arising in the course of the proceedings which the court is satisfied substantially affects the rights of one or more of the parties. An agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section.
- (2) An application under this section shall not be considered unless—
- (a) it is made with the agreement of all the other parties to the proceedings, or
 - (b) it is made with the permission of the tribunal.
- (3) The application shall identify the question of law to be determined.
- (4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.
- (5) Unless the court gives leave, no appeal lies from a decision of the court whether either condition specified in subsection (2) is met.
- (6) The decision of the court on the question of law shall be treated as a judgment of the court for the purposes of an appeal. But no appeal lies without the leave of the court which shall not be given unless the court considers that the question is one of general importance, or is one which for some other special reason should be considered by the Court of Appeal.

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RELEVANT PROVISIONS OF THE SENIOR COURTS ACT 1981

37 Powers of High Court with respect to injunctions and receivers.

(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.

(2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.

(3) The power of the High Court under subsection (1) to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the High Court, or otherwise dealing with, assets located within that jurisdiction shall be exercisable in cases where that party is, as well as in cases where he is not, domiciled, resident or present within that jurisdiction.

(4) The power of the High Court to appoint a receiver by way of equitable execution shall operate in relation to all legal estates and interests in land; and that power—

(a) may be exercised in relation to an estate or interest in land whether or not a charge has been imposed on that land under section 1 of the M1 Charging Orders Act 1979 for the purpose of enforcing the judgment, order or award in question; and

(b) shall be in addition to, and not in derogation of, any power of any court to appoint a receiver in proceedings for enforcing such a charge.

(5) Where an order under the said section 1 imposing a charge for the purpose of enforcing a judgment, order or award has been, or has effect as if, registered under section 6 of the M2 Land Charges Act 1972, subsection (4) of the said section 6 (effect of non-registration of writs and orders registrable under that section) shall not apply to an order appointing a receiver made either—

(a) in proceedings for enforcing the charge; or

(b) by way of equitable execution of the judgment, order or award or, as the case may be, of so much of it as requires payment of moneys secured by the charge.

(6) This section applies in relation to the family court as it applies in relation to the High Court.