

Send to: PUREVDORJ, MUNKHSELENGE
WAKE FOREST UNIVERSITY SCHOOL OF LAW
1834 WAKE FOREST DR
WINSTON SALEM, NC 27109-8758

Time of Request: Monday, November 22, 2010 23:35:47 EST

Client ID/Project Name:

Number of Lines: 90

Job Number: 2842:254828483

Research Information

Service: Terms and Connectors Search

Print Request: Current Document: 1

Source: Doing Business in the United Kingdom

Search Terms: § 6.05 Arbitration and the Courts



1 of 1 DOCUMENT

Doing Business in the United Kingdom

Copyright 2008, Matthew Bender & Company, Inc., a member of the LexisNexis Group.

PART II Dispute Settlement
CHAPTER 6 Arbitration

1-6 Doing Business in the United Kingdom § 6.05

AUTHOR: Revised by David W. Potts

§ 6.05 Arbitration and the Courts

The passing of the Arbitration Act 1996 has led to a further redefinition of the relationship between arbitration and the Courts. The Courts still provide an important supporting role, continue to have supervisory jurisdiction of arbitrations and generally complement and lend effect to the arbitral process. However, the thrust of the 1996 Act is to ensure that so far as the resolution of substantive issues of the parties is concerned, arbitration has a greater independence of finality than hitherto.

In addition to matters such as the stay of core proceedings in favour of arbitration and removal of arbitrators, the Court has the following powers.

[1] Enforcement of Peremptory Orders

The Court has a power to enforce peremptory orders of the arbitrator.¹

For this purpose, a peremptory order is made by the arbitrator where there has been default in compliance with earlier orders or directions of his. The peremptory order is an order to the same effect as the original order and prescribes an appropriate period of time for compliance with that order. The Court has a power in the event of default in connection with a peremptory order of making a further order which will have attached to it penal consequences e.g. dismissal of the case of the party in default. An order of the Court is also significant in that failure to comply may amount to a contempt of Court punishable as such.

[2] Powers Exercisable in Support of Arbitral Proceedings

To assist the arbitrator, the Court has powers to make supplemental orders² covering:

- (a) the taking of evidence of witnesses
- (b) the preservation of evidence

- (c) inspection photographing, preservation, custody or detention of property
- (d) the taking of samples
- (e) the sale of goods the subject of proceedings
- (f) the granting of an interim injunction or the appointment of a receiver.

[3] Determination of Preliminary Points of Law

Unless otherwise agreed by the parties, the Court may on the application of a party and upon notice to the other side determine any question of law arising in the course of the arbitration proceedings which the Court is satisfied substantially affects the rights of one or more of the parties.ⁿ³

It is necessary to have the agreement of the parties to making this application or the leave of the arbitrator.

[4] Enforcement of the Award

An arbitrator's award may by leaving the Court be enforced in the same manner as a judgment or order of the Court to the same effect.ⁿ⁴

This will include levying execution against goods, charging orders against land and garnishee bank accounts. This is without prejudice to enforcement of an award under the Geneva Convention or the New York Convention and also leaves open to a successful party the option of enforcing the award by bringing a separate Court action on the award.

[5] Challenging the Award

The party may upon notice to the other side and to the arbitrator apply to the Court to challenge any award as to the substantive jurisdiction of the arbitrator or for an order declaring an award on the merits to be of no effect in whole or part because the arbitrator did not have jurisdiction.ⁿ⁵

The party may lose a right to object if he continues to take part in proceedings without making clear that he objects to the arbitrator's substantive jurisdictionⁿ⁶ and he must first exhaust all available arbitral processes and make his application within 28 days of any relevant award or of notification of determination of any relevant arbitral appeal process.ⁿ⁷ A party may also apply to the Court to challenge an award on the grounds of serious irregularity.ⁿ⁸ This is subject to the same limitations and circumstances as apply in the case of a challenge as to substantive jurisdiction. Serious irregularity is defined as follows:

- (a) failure by the arbitrator to comply with his general duty,
- (b) save for matters relating to substantive jurisdiction, the arbitrator exceeding his powers,
- (c) failure to conduct the arbitration in accordance with the agreed procedure,
- (d) failure to deal with all issues put before the arbitrator,
- (e) any arbitral or other institutional person vested by the parties with powers in relation to the proceedings or the award exceeding its powers,
- (f) uncertainty or ambiguity as to the effect of the award,

- (g) procuring the award by fraud or in circumstances contrary to public policy,
- (h) failing to comply with requirements as to the form of the award, or
- (i) any irregularity in the conduct of the proceedings or in the award which is admitted by the arbitrator or any relevant institution or person with powers in relation to the proceedings or the award.

The Court may remit the award to the arbitrator, set it aside in whole or part or declare it to be of no effect as to whole or part. It will only exercise its powers of setting aside or declaring an award to be of no effect if it is satisfied that it would be inappropriate to remit matters back to the arbitrator for reconsideration.

[6] Appeal on Point of Law

There is a power of appeal to the Court on a question of law arising out of an award made in the proceedings.ⁿ⁹ It does not apply to questions of fact. An appeal cannot be made unless all the other parties to the proceedings agree or the Court gives leave. No appeal will be permitted until all available arbitral appeal processes are exhausted and there is a similar 28 day time limit as applies to challenges. A party seeking to appeal may have to provide security for costs.

[7] Extending Time Limit

Unless the parties otherwise agree the Court may by order extend any time limit agreed by them in relation to any matter relating to the arbitral proceeding or in general terms specified by the Arbitration Act 1996.ⁿ¹⁰ Any available arbitral power must first have been exhausted and the Court must be satisfied that this is the case and that a substantial injustice would otherwise be done if time were not extended.

FOOTNOTES:

(n1)Footnote 1. Arbitration Act 1996 s.42.

(n2)Footnote 2. *Ib.s.44.*

(n3)Footnote 3. *Ib.s.45.*

(n4)Footnote 4. *Ib.s.66.*

(n5)Footnote 5. *Ib.s.67.*

(n6)Footnote 6. *Ib.s.73.*

(n7)Footnote 7. *Ib.s.70.*

(n8)Footnote 8. *Ib.s.68.*

(n9)Footnote 9. *Ib.s.69.*

(n10)Footnote 10. *Ib.s.79.* The Court also has power to extend time for commencing arbitration (s.12) and making an award (s.50).