

Practice Note SC Eq 09 - Commercial Arbitration List

Commencement

1. This Practice Note was issued on 15 December 2009 and commences on 1 February 2010.

Application

2. This Practice Note applies to new and existing proceedings in, or to be entered in, the Commercial Arbitration List in the Equity Division which are proceedings concerning any international or domestic commercial arbitration.
3. Under the provisions of the *International Arbitration Act 1974* (Cth) this Court is taken to have been specified in article 6 of the *UNCITRAL Model law on International Commercial Arbitration* to perform the functions referred to in that article if the place of arbitration is or is to be in New South Wales.
4. Under s 4(1) of the *Commercial Arbitration Act 1984* (NSW) “the Court” in that Act means, subject to s 4(2) of that Act, this Court. That Act confers jurisdiction on this Court in relation to proceedings under it.

Introduction

5. The purpose of this Practice Note is to set out the case management procedures for the Commercial Arbitration List for the just, quick and cheap disposal of proceedings.
6. A party who considers that compliance with this Practice Note will not be possible, or will not be conducive to the just, quick and cheap disposal of the proceedings, may apply to be relieved from compliance on the basis that an alternative proposed regime will be more conducive to such disposal.

Definitions

7. In this Practice Note:
List means the Commercial Arbitration List
List Judge means a judge of the Equity Division assigned to administer the List

Terms defined in Practice Note SC Eq 3 shall, unless the context otherwise indicates, have the same meaning in this Practice Note.

Pleadings and Entry in the List

8. A matter in the List shall be commenced in the general form of Summons prescribed under the Uniform Civil Procedure Rules 2005. There is to be filed with the Summons:
 - 1.1 a “Commercial Arbitration List Statement”, setting out, in summary form, in the form of Annexure 1 to Practice Note SC Eq 3:
 - 1.1.1 the nature of the dispute
 - 1.1.2 the issues which the plaintiff believes are likely to arise
 - 1.1.3 the plaintiff’s contentions
 - 1.2 if the proceedings concern an arbitral award, a copy of the arbitral award
 - 1.3 a copy of any agreement under which the arbitration has taken or is to take place
 - 1.4 an affidavit setting out in summary form the facts which give rise to the dispute and to which is to be attached any documents in support of the relief claimed.
9. A defendant shall file and serve a “Commercial Arbitration List Response”, setting out, in summary form in the form of Annexure 1 to Practice Note SC Eq 3:

- 9.1 the nature of the dispute
- 9.2 the issues which the defendant believes are likely to arise
- 9.3 the defendant's response to the plaintiff's contentions including the legal grounds for opposition to the relief claimed in the Summons
10. A defendant shall file and serve with the Commercial Arbitration List Response:
- 10.1 any additional arbitral award or agreement which is asserted to be relevant to any issues raised by the Commercial Arbitration List Response
- 10.2 an affidavit setting out which of the facts in the plaintiff's affidavit are disputed and any additional facts which are asserted to be material to the dispute and to which affidavit shall be attached any documents (in addition to those provided by the plaintiff) relied upon to resist the relief sought.
11. Paragraphs 12 to 17 of Practice Note SC Eq 3 apply to the pleadings and entry into the List except that the pleadings shall be entitled Commercial Arbitration List. A cross claimant or cross respondent is together with its cross claim and cross claim response to serve any documents upon which they rely in support of or resisting the relief claimed respectively.
12. If any document referred to paragraph 8, 10 or 11 required to be provided is not in English, a certified English translation of it is to be provided.
13. If a party intends to rely on other evidence then paragraphs 33 - 36 inclusive of Practice Note SC Eq 1 apply to such evidence.

Case Management

14. It is expected that any applications in respect of any arbitrations or arbitral awards will be given a hearing date on the first return date of the Summons. Practitioners are expected to agree to a timetable, and adopt the Usual Order for Hearing or an agreed Modified Order for Hearing on that date.
15. All proceedings in the List will be case managed by the Commercial List Judge with the aim of ensuring a speedy resolution of the real issues between the parties. Motions in the Commercial Arbitration List are listed at 9.15am on Fridays and are called through for the purpose of ascertaining the length of the hearing and allocating a time for hearing on that or some other day. The Commercial Arbitration List will otherwise be administered at 12 noon on Fridays.
16. The Court expects that Practitioners will have advised their clients of the effect of the provisions of the sections 56 to 61 inclusive of the *Civil Procedure Act 2005* in addition to the expectation set out in paragraph 22 of Practice Note SC Eq 3.
17. The parties will be expected to discuss mediation or other alternative dispute resolution mechanisms.

Discovery

18. No orders will be made for discovery in any application in the Commercial Arbitration List, unless special reasons are established.

J J Spigelman AC
Chief Justice of New South Wales
15 December 2009

Related Information

Practice Note SC Eq 9 was issued on 15 December 2009 and commenced on 1 February 2010.

See also:

[Practice Note SC Eq 1 – Case Management](#)
[Practice Note SC Eq 3 – Commercial List and Technology and Construction List](#)

[International Arbitration Act 1974 \(Cth\)](#)
[Commercial Arbitration Act 1984 \(NSW\)](#)
[Civil Procedure Act 2005](#)
[Uniform Civil Procedure Rules 2005](#)
[UNCITRAL Model Law on Commercial Litigation](#)