

## PRACTICE NOTE NO. SE EQ 09 – COMMERCIAL ARBITRATION LIST

### Commencement

1. This Practice Note was issued on 13 February 2012 and commences on 20 February 2012.
2. This Practice Note supersedes Practice Note No SC Eq 9 issued on 15 December 2009.
3. Under the provisions of the *International Arbitration Act 1974* (Cth) (“IA Act”) 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 2 of the *Commercial Arbitration Act 2010* (NSW) (“CA Act”) “the Court” in that Act means, subject to s 6(2) of that Act, this Court. That Act confers jurisdiction on this Court in relation to proceedings under it.

### Definitions

5. In this Practice Note

**List** means the Commercial Arbitration List.

**List Judge** means a judge of the Court assigned by the (Chief Justice, Chief Judge in Equity) to administer the List.

**Arbitration Proceedings** mean and include

- (a) Proceedings arising under or relating to the construction or effect or operation of the IA Act, CA Act or the *Commercial Arbitration Act 1984* (NSW) or any equivalent legislation of any State, Territory or foreign country;
- (b) Proceedings arising under or relating to or concerning the construction or effect or operation of the *UNCITRAL Model Law on International Commercial Arbitration* or any international instrument concerning arbitration or alternative dispute resolution;
- (c) Proceedings concerning the construction of an arbitration agreement;
- (d) Application for stay of proceedings arising out of an arbitration agreement or proceedings relating to the dispute in question;
- (e) Proceedings relating to the conduct of an arbitration including applications for any interim measures whether under the IA Act or otherwise;
- (f) Proceedings relating to any challenge to or setting aside of an arbitral award;
- (g) Proceedings relating to the enforcement of an arbitral award or interim measures or an award under the Convention on the Settlement of Investment Disputes between States and Nationals of other States.

### Introduction

6. This Practice Note is designed to facilitate the prompt resolution of disputes arising in the context of arbitral proceedings in which the Court has jurisdiction whether by virtue of the CA Act, the provision of an arbitration agreement or otherwise.
7. The objective of this Practice Note’s provisions are to provide parties with a quick and effective mechanism for resolving disputes in relation to arbitration agreements or which may arise in the context or out of arbitral proceedings.
8. The nature of the issues involved, generally speaking, should make substantive interlocutory steps unnecessary. In particular the List will not be appropriate for matters which, for example, involve significant pre-trial discovery or other interlocutory steps. In particular, such steps will only be ordered if the Court

considers it is necessary for the just and quick disposal of the proceedings, the onus being on the party seeking such steps to justify their necessity. If such steps are found to be necessary then consideration will be given by the Court as to whether it is appropriate the matter remain in the List.

9. The judge administering the List will be Hammerschlag J. It is anticipated that the List will be called over at 9.30 am on the second Tuesday of every month or such earlier time as the nature of the case requires.

### **Entry into the List**

10. A matter in the List shall be commenced in the general form of summons prescribed under the *Uniform Civil Procedure Rules* 2005 but shall be endorsed with a note "The proceedings have been entered into the Commercial Arbitration List established pursuant to Practice Note SC Eq 9. The provisions of the Practice Note shall apply to the proceedings.
11. There is to be filed with the summons
  - (a) A statement of the nature of the dispute;
  - (b) A succinct statement of the issues of fact the plaintiff contends will arise;
  - (c) A succinct statement of the issues of law the plaintiff contends will arise;
  - (d) A statement setting out the interlocutory steps the plaintiff considers necessary to prepare the matter for hearing.
12. Within 14 days of service of the summons a defendant shall file and serve a Commercial Arbitration List Response setting out to the extent if any it does not agree with the plaintiff's formulation:
  - (a) The nature of the dispute.
  - (b) A succinct statement of the additional issues of fact the defendant contends will arise.
  - (c) A succinct statement of any additional issues of law the defendant contends will arise.
  - (d) A statement setting out any additional or different interlocutory steps the defendant considers necessary to prepare the matter for hearing, and
  - (e) A statement whether the defendant contends that it will be more appropriate that the proceedings be dealt with in;
    - (i) The Commercial List;
    - (ii) The Technology and Construction List; or
    - (iii) Any other list.
13. On the return date of the summons the following matters to the extent practicable shall be dealt with
  - (a) Whether having regard to the extent of the factual matters involved in the proceedings it is more appropriate that the proceedings be dealt with in
    - (i) The Commercial List;
    - (ii) The Technology and Construction List;
    - (iii) Any other list.
  - (b) In the event it is determined that the matters remain in the Arbitration List the following matters will be dealt with
    - (i) Directions as to the steps necessary to bring the matter to a hearing;

(ii) Fixing the hearing date.

14. Any urgent interim or interlocutory application is to be brought before the Commercial Arbitration List Judge by contacting his or her Associate or in lieu thereof the Registrar in Equity in the same manner as any urgent matter before the Duty Judge.

**T F Bathurst**

Chief Justice of New South Wales  
13 February 2012

**Related Information**

[International Arbitration Act 1974 \(Cth\)](#)

[Commercial Arbitration Act 2010 \(NSW\)](#)

[Commercial Arbitration Act 1984 \(NSW\)](#)

[Civil Procedure Act 2005](#)

[Uniform Civil Procedure Rules 2005](#)

[UNCITRAL Model Law on International Commercial Arbitration](#)

**Amendment History**

20 February 2012: This Practice Note replaces the previous version of SC Eq 9 that was issued on 15 December 2009.