



Queensland

Uniform Civil Procedure (Commercial Arbitration) Amendment Rule 2019

Subordinate Legislation 2019 No. 49

made under the

Supreme Court of Queensland Act 1991

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1 Short title

This rule may be cited as the *Uniform Civil Procedure (Commercial Arbitration) Amendment Rule 2019*.

2 Rules amended

This rule amends the *Uniform Civil Procedure Rules 1999*.

3 Insertion of new ch 9A

After chapter 9—

insert—

Chapter 9A Commercial arbitration

Part 1 Preliminary

365A Words and expressions

- (1) Words and expressions used in the *International Arbitration Act 1974* (Cwlth) or the *Commercial Arbitration Act 2013* have the same meaning in this part as they have in those Acts.
- (2) Words and expressions used in the *International Arbitration Act 1974* (Cwlth) have the same meaning in part 2 as they have in that Act.
- (3) Words and expressions used in the *Commercial Arbitration Act 2013* have the same meaning in part 3 as they have in that Act.

365B Documents not in English

A party to a proceeding to which this chapter applies who seeks to rely on a document that is not in English must provide a certified English translation of the document—

- (a) to the court; and
- (b) to each other party to the proceeding.

Notes—

- 1 The *International Arbitration Act 1974* (Cwlth), section 9 also deals with the translation of awards and arbitration agreements in proceedings to which Part II of that Act applies.
- 2 The *Commercial Arbitration Act 2013*, section 35 also deals with the translation of awards in proceedings to which part 8 of that Act applies.

Part 2 International commercial arbitration

365C Application for stay and referral to arbitration—foreign arbitration agreements

- (1) An application under the *International Arbitration Act 1974* (Cwlth), section 7 to stay the whole or part of a proceeding and refer the parties to arbitration must be in the approved form.
- (2) The application must be accompanied by—
 - (a) a copy of the arbitration agreement; and
 - (b) an affidavit stating the material facts on which the application for relief is based.

365D Application to enforce foreign award

- (1) An application under the *International Arbitration Act 1974* (Cwlth), section 8(2) to enforce a foreign award must be in the approved form.
- (2) The application must be accompanied by—
 - (a) the documents mentioned in the *International Arbitration Act 1974* (Cwlth), section 9; and

- (b) an affidavit stating—
 - (i) the extent to which the foreign award has not been complied with, at the date the application is made; and
 - (ii) the usual or last known place of business or residence of the person against whom it is sought to enforce the foreign award or, if the person is a company, the last known registered office of the company.

365E Application for referral to arbitration—Model Law, art 8

- (1) An application under the Model Law, article 8 to refer parties to arbitration must be in the approved form.
- (2) The application must be accompanied by—
 - (a) a copy of the arbitration agreement; and
 - (b) an affidavit stating the material facts on which the application for relief is based.

365F Subpoenas

- (1) An application for the issue of a subpoena under the *International Arbitration Act 1974* (Cwlth), section 23(3) must be in the approved form.
- (2) The application must be accompanied by—
 - (a) a draft subpoena in the approved form; and
 - (b) an affidavit stating the following—
 - (i) the names of the parties to the arbitration;
 - (ii) the name of the arbitrator or the names of the arbitrators constituting the arbitral tribunal conducting the arbitration;

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- (iii) the place where the arbitration is being conducted;
 - (iv) the nature of the arbitration;
 - (v) the terms of the permission given by the arbitral tribunal for the application;
 - (vi) the conduct money, if appropriate, to be paid to the person to whom the subpoena is directed (the *addressee*);
 - (vii) the witness expenses payable to the addressee.
- (3) The court may—
- (a) fix an amount that represents the reasonable loss and expense the addressee will incur in complying with the subpoena; and
 - (b) direct that the amount be paid by the applicant to the addressee before or after the addressee complies with the subpoena.
- (4) An amount fixed under subrule (3) may be in addition to any conduct money or witness expenses mentioned in subrule (2)(b).
- (5) A subpoena must be in the approved form.
- (6) A person served with a subpoena must comply with the subpoena in accordance with its terms.
- (7) Chapter 11, part 4 applies, as far as practicable, to a subpoena mentioned in this rule.

365G Application relating to evidence for arbitration

- (1) An application for an order under the *International Arbitration Act 1974* (Cwlth), section 23A(3) must be in the approved form.
- (2) The application must be accompanied by an affidavit stating—

- (a) the name of the person against whom the order is sought; and
- (b) the order sought; and
- (c) the ground under the *International Arbitration Act 1974* (Cwlth), section 23A(1) relied on; and
- (d) the terms of the permission given by the arbitral tribunal for the application; and
- (e) the material facts relied on.

365H Application relating to disclosure of confidential information

- (1) An application under the *International Arbitration Act 1974* (Cwlth), section 23F or 23G for an order prohibiting or allowing the disclosure of confidential information must be in the approved form.
- (2) The application must be accompanied by an affidavit stating—
 - (a) the name of the person against whom, or in whose favour, the order is sought; and
 - (b) the order sought; and
 - (c) the material facts relied on; and
 - (d) if the application is made under the *International Arbitration Act 1974* (Cwlth), section 23F—the terms of the order of the arbitral tribunal allowing disclosure of the confidential information and the date the order was made; and
 - (e) if the application is made under the *International Arbitration Act 1974* (Cwlth), section 23G—
 - (i) the date the arbitral tribunal’s mandate was terminated; or

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- (ii) the date and terms of—
 - (A) the request made to the arbitral tribunal for disclosure of the confidential information; and
 - (B) the arbitral tribunal’s refusal to make the order.

365I Application for relief under miscellaneous provisions of Model Law

- (1) An application for relief under the Model Law, article 11(3), 11(4), 13(3), 14, 16(3), 17H(3), 17I, 17J or 27 must be in the approved form.
- (2) The application must be accompanied by an affidavit stating the material facts on which the application for relief is based.

365J Application to set aside award—Model Law, art 34

- (1) An application under the Model Law, article 34 to set aside an award must be in the approved form.
- (2) The application must identify—
 - (a) if the applicant relies on the Model Law, article 34(2)(a)—which subparagraph of article 34(2)(a) is relied on; and
 - (b) if the applicant relies on the Model Law, article 34(2)(b)—which subparagraph of article 34(2)(b) is relied on; and
 - (c) brief grounds for seeking the order.
- (3) The application must be accompanied by an affidavit—
 - (a) exhibiting—
 - (i) a copy of the arbitration agreement; and

- (ii) a copy of the award, including the reasons of the arbitral tribunal for the award; and
- (b) identifying—
 - (i) the detailed grounds for seeking the order; and
 - (ii) the material facts relied on; and
 - (iii) the date the applicant received the award or, if a request was made under the Model Law, article 33 to the arbitral tribunal to correct the award, the date that request was disposed of by the arbitral tribunal.
- (4) The application and supporting affidavit must be served on any person whose interest might be affected by the setting aside of the award.
- (5) Any application by a party to the arbitration under the Model Law, article 34(4) must be made by application in the proceeding started under subrule (1).

365K Enforcement of award—Model Law, art 35

- (1) An application under the Model Law, article 35 to enforce an award must be in the approved form.
- (2) The application must be accompanied by an affidavit—
 - (a) exhibiting the documents mentioned in the Model Law, article 35(2); and
 - (b) stating—
 - (i) the extent to which the award has not been complied with, at the date the application is made; and
 - (ii) the usual or last known place of business or residence of the person

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against whom it is sought to enforce the award or, if the person is a company, the last known registered office of the company.

365L Enforcement of Investment Convention award

- (1) An application under the *International Arbitration Act 1974* (Cwlth), section 35(2) for leave to enforce an award to which Part IV of that Act applies must be in the approved form.
- (2) The application must be accompanied by an affidavit stating—
 - (a) the extent to which the award has not been complied with, at the date the application is made; and
 - (b) the usual or last known place of business or residence of the person against whom it is sought to enforce the award or, if the person is a company, the last known registered office of the company.

Part 3 Domestic commercial arbitration

365M Application for referral to arbitration

- (1) An application under the *Commercial Arbitration Act 2013*, section 8 to refer the parties to arbitration must be in the approved form.
- (2) The application must be accompanied by an affidavit—
 - (a) exhibiting a copy of the arbitration agreement; and
 - (b) stating the material facts on which the application for relief is based.

365N Subpoenas

- (1) An application for the issue of a subpoena under the *Commercial Arbitration Act 2013*, section 27A must be in the approved form.
- (2) The application must be accompanied by—
 - (a) a draft subpoena in the approved form; and
 - (b) an affidavit stating—
 - (i) the names of the parties to the arbitration; and
 - (ii) the name of the arbitrator or the names of the arbitrators constituting the arbitral tribunal conducting the arbitration; and
 - (iii) the place where the arbitration is being conducted; and
 - (iv) the nature of the arbitration; and
 - (v) the terms of the permission given by the arbitral tribunal for the application; and
 - (vi) the conduct money, if appropriate, to be paid to the person to whom the subpoena is directed (the *addressee*); and
 - (vii) the witness expenses payable to the addressee.
- (3) The court may—
 - (a) fix an amount that represents the reasonable loss and expense the addressee will incur in complying with the subpoena; and
 - (b) direct that the amount be paid by the applicant to the addressee before or after the addressee complies with the subpoena.
- (4) An amount fixed under subrule (3) may be in addition to any conduct money or witness

expenses mentioned in subrule (2)(b).

- (5) A subpoena must be in the approved form.
- (6) A person served with a subpoena must comply with the subpoena in accordance with its terms.
- (7) Chapter 11, part 4 applies, as far as practicable, to a subpoena mentioned in this rule.

365O Application relating to evidence for arbitration

- (1) An application for an order under the *Commercial Arbitration Act 2013*, section 27B must be in the approved form.
- (2) The application must be accompanied by an affidavit stating—
 - (a) the name of the person against whom the order is sought; and
 - (b) the order sought; and
 - (c) the ground under the *Commercial Arbitration Act 2013*, section 27B relied on; and
 - (d) the terms of the permission given by the arbitral tribunal for the application; and
 - (e) the material facts relied on.

365P Application relating to disclosure of confidential information

- (1) An application under the *Commercial Arbitration Act 2013*, section 27H or 27I for an order prohibiting or allowing the disclosure of confidential information must be in the approved form.
- (2) The application must be accompanied by an affidavit stating—

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- (a) the name of the person against whom, or in whose favour, the order is sought; and
 - (b) the order sought; and
 - (c) the material facts relied on; and
 - (d) if the application is made under the *Commercial Arbitration Act 2013*, section 27H—the terms of the order of the arbitral tribunal allowing disclosure of the confidential information and the date the order was made; and
 - (e) if the application is made under the *Commercial Arbitration Act 2013*, section 27I—
 - (i) the date the arbitral tribunal’s mandate was terminated; or
 - (ii) the date and terms of—
 - (A) the request made to the arbitral tribunal for disclosure of the confidential information; and
 - (B) the arbitral tribunal’s refusal to make the order.

365Q Application for relief under miscellaneous provisions of Commercial Arbitration Act 2013

- (1) An application for relief under the *Commercial Arbitration Act 2013*, section 11(3) or (4), 13(4), 14, 16(9), 17H, 17I, 17J, 19(6) or 27 must be in the approved form.
- (2) The application must be accompanied by an affidavit stating the material facts on which the application for relief is based.

365R Preliminary point of law

- (1) An application under the *Commercial Arbitration*

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Act 2013, section 27J for leave to apply for the determination of a question of law arising in the course of an arbitration and, if leave is granted, for the determination of the question of law must be in the approved form.

- (2) The application must be accompanied by an affidavit—
 - (a) exhibiting—
 - (i) a copy of the arbitration agreement; and
 - (ii) evidence of the consent of the arbitrator or the consent of all the other parties as required by the *Commercial Arbitration Act 2013*, section 27J(2); and
 - (b) identifying—
 - (i) the name and usual or last known place of business or residence of any person whose interest might be affected by the proposed determination of the question of law or, if the person is a company, the last known registered office of the company; and
 - (ii) the nature of the dispute with sufficient particularity to give an understanding of the context in which the question of law arises; and
 - (iii) the facts on the basis of which the question of law is to be determined and the basis on which those facts are stated, including whether they are agreed, assumed, found by the arbitral tribunal or otherwise; and
 - (iv) the detailed grounds on which it is contended that leave should be granted.
- (3) The application and supporting affidavit must be

served on any person whose interest might be affected by the determination of the question of law.

- (4) The court may, if it considers it appropriate, hear and determine the question of law at the same time as the application for leave to apply for the determination of the question.
- (5) If the court first hears and grants the application for leave, it may make the orders it considers appropriate for the hearing and determination of the question of law.

365S Application to set aside award

- (1) An application under the *Commercial Arbitration Act 2013*, section 34 to set aside an award must be in the approved form.
- (2) The application must identify—
 - (a) if the applicant relies on the *Commercial Arbitration Act 2013*, section 34(2)(a)—which subparagraph of section 34(2)(a) is relied on; and
 - (b) if the applicant relies on the *Commercial Arbitration Act 2013*, section 34(2)(b)—which subparagraph of section 34(2)(b) is relied on; and
 - (c) brief grounds for seeking the order.
- (3) The application must be accompanied by an affidavit—
 - (a) exhibiting—
 - (i) a copy of the arbitration agreement; and
 - (ii) a copy of the award, including the reasons of the arbitral tribunal for the award; and

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- (b) identifying—
 - (i) the detailed grounds for seeking the order; and
 - (ii) the material facts relied on; and
 - (iii) the date the applicant received the award or, if a request was made under the *Commercial Arbitration Act 2013*, section 33 to the arbitral tribunal to correct the award, the date that request was disposed of by the arbitral tribunal.
- (4) The application and supporting affidavit must be served on any person whose interest might be affected by the setting aside of the award.
- (5) An application by a party to the arbitration under the *Commercial Arbitration Act 2013*, section 34(4) must be made by application in the proceeding started under subrule (1).

365T Appeal

- (1) An application under the *Commercial Arbitration Act 2013*, section 34A for leave to appeal on a question of law arising out of an award must be in the approved form.
- (2) The application must state—
 - (a) the question of law to be determined; and
 - (b) the grounds on which it is alleged that leave to appeal should be granted.
- (3) The application must be accompanied by an affidavit showing that, before the end of the appeal period referred to in the *Commercial Arbitration Act 2013*, section 34A(1) and (6), the parties agreed that an appeal may be made under section 34A of that Act.
- (4) The affidavit must exhibit—

- (a) a copy of the arbitration agreement; and
 - (b) a copy of the award, including the reasons of the arbitral tribunal for the award.
- (5) The application must be accompanied by a submission setting out—
- (a) the name and usual or last known place of business or residence of any person whose interest might be affected by the proposed appeal or, if the person is a company, the last known registered office of the company; and
 - (b) the nature of the dispute with sufficient particularity to give an understanding of the context in which the question of law arises; and
 - (c) when and how the arbitral tribunal was asked to determine the question of law and where in the award or the reasons, and in what way, the arbitral tribunal determined it; and
 - (d) the relevant facts found by the arbitral tribunal on the basis of which the question of law is to be determined by the court; and
 - (e) the basis on which it is contended that the determination of the question of law will substantially affect the rights of 1 or more parties; and
 - (f) the basis on which it is contended that—
 - (i) the decision of the arbitral tribunal on the question of law is obviously wrong; or
 - (ii) the question of law is of general public importance and the decision of the arbitral tribunal is open to serious doubt; and
 - (g) the basis on which it is contended that, despite the agreement of the parties to

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resolve the matter by arbitration, it is just and proper in the circumstances for the court to determine the question; and

- (h) a succinct statement of the argument in support of the application for leave and the appeal if leave is granted.
- (6) The application and the supporting material must be served on any person whose interest might be affected by the proposed appeal.
- (7) Within 14 days after service on a party or within the further period the court may allow, the party must file and serve any answering material, including a succinct statement of any argument in opposition to the application for leave and the appeal if leave is granted.
- (8) If it appears to the court that an oral hearing of the application for leave to appeal is required, the court may, if it considers it appropriate, hear and determine the appeal on the question of law at the same time as it hears the application for leave to appeal.
- (9) If the court grants the application for leave before hearing the appeal, it may make the orders it considers appropriate for the hearing and determination of the appeal.
- (10) If an application for leave to appeal is brought or leave to appeal is granted, the court may suspend or discharge any enforcement order made in respect of the award the subject of the proposed appeal.

365U Application to enforce award

- (1) An application under the *Commercial Arbitration Act 2013*, section 35 to enforce an award must be in the approved form.
- (2) The application must be accompanied by—

- (a) the documents mentioned in the *Commercial Arbitration Act 2013*, section 35; and
- (b) an affidavit stating—
 - (i) the extent to which the award has not been complied with, at the date the application is made; and
 - (ii) the usual or last known place of business or residence of the person against whom it is sought to enforce the award or, if the person is a company, the last known registered office of the company.

ENDNOTES

- 1 Made by the Governor in Council on 18 April 2019.
- 2 Notified on the Queensland legislation website on 19 April 2019.
- 3 The administering agency is the Department of Justice and Attorney-General.

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