

GOVERNMENT OF FIJI GAZETTE SUPPLEMENT

No. 38

FRIDAY, 9th NOVEMBER

2018

[LEGAL NOTICE NO. 85]

HIGH COURT ACT 1875

High Court (Amendment) Rules 2018

IN exercise of the powers conferred on me by section 25 of the High Court Act 1875, I hereby make these Rules—

Short title and commencement

- 1.—(1) These Rules may be cited as the High Court (Amendment) Rules 2018.
- (2) These Rules come into force on the date of publication in the Gazette.

Order 74 allocated

2. The High Court Rules 1988 is amended by allocating the following Order 74—

“ORDER 74 — INTERNATIONAL ARBITRATION PROCEEDINGS

Definitions (O.74, r.1)

1. Words and phrases used in this Order have the same meaning as under the Act and the International Arbitration Act 2017 unless the context or express provision otherwise requires.

Application of Order (O.74, r.2)

2. This Order applies to the powers of the Court under the International Arbitration Act 2017 in relation to proceedings for international arbitration.

Applications to the Court (O.74, r.3)

- 3.—(1) Every application to the Court—
 - (a) to appoint an arbitrator under section 16(3) or (4) of the International Arbitration Act 2017;
 - (b) to decide on the challenge of an arbitrator under section 18 of the International Arbitration Act 2017;
 - (c) to decide on the termination of the mandate of an arbitrator under section 19 of the International Arbitration Act 2017;
 - (d) to appeal against the ruling of the arbitral tribunal under section 22 of the International Arbitration Act 2017; or
 - (e) to set aside an award under section 52 of the International Arbitration Act 2017,

must be made by originating summons and supported by an affidavit.

(2) An application under paragraph (1)(a) must be made in accordance with the time frames, where applicable, as prescribed under section 16(3)(a) of the International Arbitration Act 2017.

(3) An application under paragraph (1)(b), (c) or (d) shall be made within 30 days from the date of receipt by the plaintiff of the arbitral tribunal's decision or ruling.

(4) An application under paragraph (1)(e) may not be made more than 3 months after the later of the following dates—

- (a) the date on which the plaintiff received the award; or
- (b) if a request is made under section 51 of the International Arbitration Act 2017, the date on which that request is disposed of by the arbitral tribunal.

(5) The affidavit in support must—

- (a) state the grounds in support of the application;
- (b) have exhibited to it a copy of the arbitration agreement or any record of the content of the arbitration agreement, the award and any other document relied on by the plaintiff; and
- (c) set out any evidence relied on by the plaintiff.

(6) Within 28 days after being served with the originating summons and supporting affidavit, the defendant, if the defendant wishes to oppose the application, must file an affidavit stating the grounds on which the defendant opposes the application.

(7) In considering an application under paragraph (1)(e) the Court may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

(8) The period of time determined by the Court under paragraph (7) shall not be more than 6 weeks.

(9) For the purpose of this Rule, the date of receipt of any decision, ruling, award or corrected award shall be determined in accordance with section 6 of the International Arbitration Act 2017.

Application for stay of legal proceedings for arbitration (O.74, r.4)

4.—(1) A party seeking an order to stay legal proceedings under section 12 of the International Arbitration Act 2017 must file an interlocutory application by notice of motion in that proceeding.

(2) An application under paragraph (1) must be accompanied by an affidavit—

- (a) stating the material facts on which the claim for relief is based; and
- (b) have exhibited to it a copy of the arbitration agreement or any record of the content of the arbitration agreement and any other document relied on by the plaintiff.

(3) An application under paragraph (1) must be made not later than when submitting the party's first statement on the substance of the dispute.

Enforcement of interim measures (O.74, r.5)

5.—(1) A party seeking to enforce an interim measure given by an arbitral tribunal must make an application to the Court by originating summons supported by an affidavit—

- (a) exhibiting a copy of the arbitration agreement or any record of the content of the arbitration agreement and the original award or other interim measure made by the arbitral tribunal sought to be enforced; and
- (b) stating the provisions in the Act or the applicable rules adopted in the arbitration on which the applicant relies.

(2) An application under paragraph (1) may be made *ex parte*.

(3) Where the interim measure sought to be enforced is in the nature of an interim injunction under section 23(2)(d) of the International Arbitration Act 2017, leave shall be granted only if the applicant undertakes to abide by any order the Court or the arbitral tribunal may make as to damages.

Enforcement of awards (O.74, r. 6)

6.—(1) In this Rule—

“creditor” means an applicant seeking to enforce an award; and

“debtor” means the person against whom an applicant seeks to enforce an award.

(2) An application to enforce an award under section 53 of the International Arbitration Act 2017 may be made *ex parte* and must be made by originating summons supported by an affidavit—

- (a) exhibiting—
 - (i) the arbitration agreement or any record of the content of the arbitration agreement; and
 - (ii) the duly authenticated original award; or
 - (iii) a duly certified copy of the arbitration agreement, record of its contents and the authenticated original award,

and where the award, agreement or record is in a language other than English, a translation of it in the English language, duly certified in English as a correct translation by a sworn translator or by an official or by a diplomatic or consular agent of the country in which the award was made;

- (b) stating the name and the usual or last known place of abode or business of the creditor and the debtor, respectively; and
- (c) as the case may require, stating either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

(3) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the Court may fix, the debtor may apply to set aside the order and the award shall not be enforced until after the expiration of that period or, if the debtor applies within that period to set aside the order, until after the application is finally disposed of.

(4) The copy of that order served on the debtor must state the effect of paragraph (3).

(5) In relation to a body corporate, this Rule shall have effect as if for any reference to the place of abode or business of the creditor or the debtor there were substituted a reference to the registered or principal address of the body corporate; so, however, that nothing in this Rule shall affect any enactment which provides for the manner in which a document may be served on a body corporate.

Applications for interim measures or other orders in relation to arbitral proceedings outside Fiji (O. 74, r. 7)

7. If an application for an interim measure under section 33 of the International Arbitration Act 2017 or for an order under section 44 of the International Arbitration Act 2017 is in relation to any arbitral proceedings outside Fiji, rules 1, 2, 3, 4, 6, 8, 9-18 of Order 29 apply with any necessary modifications to the application as they apply to an application for interlocutory relief in an action or proceeding in the High Court.

Proceedings to be heard in private (O. 74, r. 8)

8.—(1) Subject to paragraph (2), proceedings under the International Arbitration Act 2017 in Court are to be heard in private.

(2) The Court may order proceedings to be heard in open Court—

- (a) on the application of any party; or
- (b) if, in any particular case, the Court is satisfied that those proceedings ought to be heard in open Court.

(3) An order of the Court under paragraph (2) is not subject to appeal.

Restrictions on reporting of proceedings heard in private (O. 74, r. 9)

9.—(1) This rule applies to Court proceedings heard in private under the International Arbitration Act 2017.

(2) A Court in which proceedings are being heard in private must, on the application of any party, make a direction as to what information, if any, relating to the proceedings may be published.

(3) A Court must not make a direction permitting information to be published unless—

- (a) all parties agree that the information may be published; or
- (b) the Court is satisfied that the information, if published, would not reveal any matter (including the identity of any party) that any party reasonably wishes to remain confidential.

(4) Notwithstanding paragraph (3), if—

- (a) a Court gives a judgment in respect of closed Court proceedings; and
- (b) the Court considers that judgment to be of major legal interest,

the Court must direct that reports of the judgment may be published in law reports and professional publications.

(5) If a Court directs under paragraph (4) that reports of a judgment may be published, but any party reasonably wishes to conceal any matter in those reports (including the fact that the party was such a party), the Court must, on the application of the party—

- (a) make a direction as to the action to be taken to conceal that matter in those reports; and
 - (b) if the Court considers that a report published in accordance with the direction made under paragraph (a) would still be likely to reveal that matter, direct that the report may not be published until after the end of a period, not exceeding 10 years, that the Court may direct.
- (6) A direction of the Court under this rule is not subject to appeal.”.

Made this 5th day of November 2018.

A. H. C. T. GATES
Chief Justice