

PART 43 Arbitration Claims

PART 43

Scope of this Part 43.1

43.1

This Part ~~contains rules about arbitration claims.~~

This text has been amended by virtue of Rule Amendment 1 of 2020 issued on 18 May 2020

43.1A

This part applies to Arbitration Division claims (“DIFC-ARB Claims”).

Interpretation 43.2

43.2

In this Part:

- (1) ‘the Arbitration Law’ means the Arbitration Law, DIFC Law No.1 of 2008; and
- (2) ‘Arbitration Claim Form’ means a claim form in Form P43/01;
- (3) ‘~~Arbitration claim~~’ means:

This text has been amended by virtue of Rule Amendment 1 of 2020 issued on 18 May 2020

43.2(3)A

DIFC-ARB Claims mean:

- (a) any application to the Court under the Arbitration Law, including any application:
 - (i) for an order under Article 12 of the Arbitration Law disapplying that Article;

- (ii) to dismiss or stay an action which is the subject of an arbitration agreement under Article 13 of the Arbitration Law;
 - (iii) for an order under Article 14 of the Arbitration Law for an Order requiring disclosure of information relating to arbitral proceedings;
 - (iv) to appoint or to facilitate the appointment of an Arbitral tribunal, to challenge the appointment of an Arbitrator or to terminate the mandate of an Arbitrator under Articles 17 to 20 of the Arbitration Law;
 - (v) for an Order relieving an Arbitrator of any liability incurred by reason of his resignation under Article 21 of the Arbitration Law;
 - (vi) to determine whether an Arbitral Tribunal has jurisdiction in respect of a dispute under Article 23 of the Arbitration Law;
 - (vii) to enforce an interim measure made by an Arbitral Tribunal under Article 24 of the Arbitration Law;
 - (viii) for an order from the Court issuing an interim measure under Article 24 of the Arbitration Law;
 - (ix) to the Court for assistance in taking evidence for the purposes of an arbitration under Article 34 of the Arbitration Law;
 - (x) to the Court of First Instance to determine the amount of fees and expenses properly payable to the Arbitral Tribunal under Article 39 of the Arbitration Law;
 - (xi) to set aside an arbitral award under Article 41 of the Arbitration Law;
 - (xii) for recognition or enforcement of an arbitral award under Article 42 of the Arbitration Law;
- (b) any other application affecting:
- (i) arbitration proceedings (whether started or not); or
 - (ii) an arbitration agreement.

Starting the claim 43.3 - 43.5

43.3

Except where Rule 43.4 or Rule 43.5 applies an arbitration claim must be started by the issue of an arbitration claim form in accordance with the Part 8 procedure.

43.4

An application under Article 13 of the Arbitration Law to stay legal proceedings must be made by Application Notice in the proceedings.

43.5

An application under Article 34 of the Arbitration Law to secure the attendance of a witness should be made in accordance with RDC Part 30.

Arbitration Claim Form 43.6 - 43.7**43.6**

An Arbitration Claim Form must:

(1) include a concise statement of:

(a) the remedy claimed; and

(b) any questions on which the Arbitral Tribunal seeks the decision of the Court;

(2) give details of any arbitration award challenged by the Arbitral Tribunal, identifying which part or parts of the award are challenged and specifying the grounds for the challenge;

(3) show that any statutory requirements have been met;

(4) specify under which Article of the Arbitration Law the claim is made;

(5) identify against which (if any) defendants a Costs Order is sought; and

(6) specify either:

(a) the persons on whom the Arbitration Claim Form will be served, stating their role in the arbitration and whether they are defendants; or

(b) that the claim is made without notice and the grounds relied on.

43.7

Reference in the Arbitration Claim Form to a witness statement or affidavit filed in support of the claim is not sufficient to comply with the requirements of Rule 43.6.

Service 43.8 - 43.13

43.8

An Arbitration Claim Form must be served by the claimant.

43.9

Unless:

(1) the Court orders otherwise; or

(2) the Arbitration Claim Form seeks enforcement or recognition of an award under Part 4 of the Arbitration Law

an Arbitration Claim Form must be served on the defendant within 30 days from the date of issue and Rule 7.20 is modified accordingly

43.10

The rules governing service of the Claim Form are set out in RDC Part 9.

43.11

The Court may exercise its powers under Rule 9.31 to permit service of an Arbitration Claim Form at the address of a party's legal representative or other representative acting for him in the arbitration.

43.12

v

The claimant must file a Certificate of Service within 7 days of service of serving the Arbitration Claim Form. Rule 9.36 specifies what a Certificate of Service must show.

43.13

Where the Arbitration Claim Form is served outside Dubai, the Arbitration Claim Form should be served in accordance with Section III of Part 9 of the RDC.

Notice 43.14 - 43.17

43.14

Where an arbitration claim is made under Article 19(3) (challenging an Arbitrator), Article 20(1) (terminating an Arbitrator's mandate) or Article 39(4) of the Arbitration Law (determination of fees and expenses payable to the arbitral tribunal), each Arbitrator must be a defendant.

43.15

Where notice must be given to an Arbitrator or any other person it may be given by sending him a copy of —

- (1) the Arbitration Claim Form; and
- (2) any written evidence in support.

43.16

Save where Rule 43.17 applies, where a party makes an Arbitration Claim, each of the other parties to the arbitration must be made a defendant to the Arbitration Claim.

43.17

Where a party makes an Arbitration Claim for recognition or enforcement of an award under Part 4 of the Arbitration Law:

- (1) only the party against whom such an order is sought need be made a defendant to the Arbitration Claim; and
- (2) the Arbitration Claim may be made without notice.

Acknowledgment of service 43.18 - 43.20

43.18

A defendant must file an Acknowledgment of Service of the Arbitration Claim Form in every case in Form P43/02.

43.19

Where an Arbitration Claim Form is served within the DIFC or Dubai, the period for filing an Acknowledgment of Service is 14 days after the service of the Claim Form in accordance with RDC Rule 11.5.

43.20

Where an Arbitration Claim Form is served outside Dubai, the period for filing an Acknowledgment of Service is 28 days after the service of the Claim Form in accordance with RDC Rule 9.56.

Representations by an arbitrator 43.21 - 43.24**43.21**

Where an Arbitrator is sent a copy of an Arbitration Claim Form (including an Arbitration Claim Form sent under Rule 43.15), that arbitrator may:

- (1) apply to be made defendant; or
- (2) apply to make representations to the Court under Rule 43.22.

43.22

An application under Rule 43.21(1) to be made a defendant:

- (1) must be served on the Arbitral Tribunal; but
- (2) need not be served on any other party.

43.23

An Arbitrator may make representations by filing written evidence or in writing to the Court.

43.24

Any Arbitrator filing written evidence or making representations to the Court may not be called to give oral evidence without the permission of the Court.

Supply of documents from Court records 43.25

43.25

An Arbitration Claim Form may only be inspected with the permission of the Court.

Case management 43.26 - 43.38

43.26

RDC Part 26 does not apply.

43.27

The claimant should apply for a hearing date as soon as possible after issuing an Arbitration Claim Form.

43.28

When applying for a hearing date, the Arbitral Tribunal should provide to the Court an estimate for the length of the hearing.

43.29

The directions set out in Rules 43.30 to 43.37 apply unless the Court orders otherwise.

43.30

Where a claimant in an arbitration claim seeks to rely on written evidence, a copy of that evidence must be filed and served with the Arbitration Claim Form.

43.31

A defendant who wishes to rely on evidence before the Court must file and serve his written evidence within 21 days after the date by which he was required to acknowledge service.

43.32

A claimant who wishes to rely on evidence in reply to written evidence filed under Rule 43.31 must file and serve his written evidence within 7 days after service of the defendant's evidence.

43.33

Following exchange of written evidence, the parties should confirm or amend by agreement the estimate for the length of the hearing provided pursuant to RDC 43.28.

43.34

Agreed indexed and paginated bundles of all the evidence and other documents to be used at the hearing must be prepared by the claimant.

43.35

Not later than 5 days before the hearing date the claimant must file a complete set of the documents to be used.

43.36

Not later than 2 days before the hearing date the claimant must file and serve:

- (1) a chronology of the relevant events cross-referenced to the bundle of documents;
- (2) (where necessary) a list of the persons involved; and
- (3) a skeleton argument which lists succinctly:
 - (a) the issues which arise for decision;
 - (b) the grounds of relief (or opposing relief) to be relied upon;
 - (c) the submissions of fact to be made with the references to the evidence; and
 - (d) the submissions of law with references to the relevant authorities.

43.37

Not later than the day before the hearing date the defendant must file and serve a skeleton

argument which lists succinctly:

- (1) the issues which arise for decision;
- (2) the grounds of relief (or opposing relief) to be relied upon;
- (3) the submissions of fact to be made with the references to the evidence; and
- (4) the submissions of law with references to the relevant authorities.

43.38

An application for directions in a pending arbitration claim should be made by application notice under Part 23.

Hearings 43.39 - 43.43

43.39

The Court may order that an arbitration claim be heard either in public or in private.

43.40

Rules 35.2 to 35.4 do not apply, save insofar as provided by Rule 43.41 below.

43.41

(1) Subject to sub-rule (2) below, arbitral proceedings under the DIFC Arbitration Law 2008 in the DIFC Courts are to be heard otherwise than in open court.

(2) The court may order those 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 subsection (2) is not subject to appeal.

43.42

(1) This Rule applies to arbitral proceedings under the DIFC Arbitration Law 2008 in the DIFC Courts heard otherwise than in open court (“closed court proceedings”).

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

(3) The 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) Despite sub-rule (3), if—

(a) the 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 may direct that reports of the judgment may be published in law reports and professional publications.

(5) If the court directs under sub-rule (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 (5)(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 section is not subject to appeal.

43.43

Having regard to the overriding objective the Court may decide particular issues without a hearing.

Stay or dismissal of legal proceedings 43.44 - 43.45

43.44

An application notice seeking a stay or dismissal of legal proceedings under Article 13 of the Arbitration Law must be served on all parties to those proceedings in accordance with RDC Part 9.

43.45

Where a question arises as to whether:

(1) an arbitration agreement has been concluded; or

(2) the dispute which is the subject-matter of the proceedings falls within the terms of such an agreement;

the Court may decide that question or give directions to enable it to be decided and may order the proceedings to be stayed pending its decision.

Challenging an Arbitrator 43.46**43.46**

An application to challenge an Arbitrator under Article 19(3) of the Arbitration Law must be made within 30 days after receipt of notice of the ruling by the Arbitral Tribunal rejecting the party's challenge.

Applications to determine the jurisdiction of the Arbitral Tribunal 43.47**43.47**

An arbitration claim for the determination of a preliminary question as to the substantive jurisdiction of the Arbitral Tribunal under Article 23(3) of the Arbitration Law must be made within 30 days after receipt of notice of the ruling by the Arbitral Tribunal as a preliminary question that it has jurisdiction.

Interim measures 43.48 - 43.50**43.48**

An application to the Court to enforce an interim measure made by an Arbitral Tribunal or for an order from the Court issuing an interim measure under Article 24 of the Arbitration Law must be

made in an Arbitration Claim Form.

43.49

An application to enforce an interim measure made by an Arbitral Tribunal will not be granted unless the applicant files written evidence showing that the application is made with the written permission of the Arbitral Tribunal.

43.50

An application for an order from the Court issuing an interim measure will be determined in accordance with the Rules set out in Part 25 of the RDC.

Court assistance in taking evidence 43.51 - 43.53

43.51

An Arbitral Tribunal or a party to arbitral proceedings being conducted in the DIFC who wishes to rely on Article 34 of the Arbitration Law to secure the attendance of a witness must apply for a witness summons in accordance with RDC Part 30.

43.52

A witness summons will not be issued on the application of a party to arbitral proceedings unless the applicant files written evidence showing that the application is made with the approval of the tribunal.

43.53

Any other application made under Article 34 of the Arbitration Law for the assistance of the Court in taking evidence must be made in an Arbitration Claim Form.

Applications to set aside an award 43.54 - 43.59

43.54

An application under Article 41 of the Arbitration Law to set aside an arbitral award must be made:

- (1) within 3 months from the date on which the party making the application received the award; or
- (2) if a request had been made under Article 40 of the Arbitration Law, within 3 months from the date on which that request was disposed of by the Arbitral Tribunal; or
- (3) within such longer period as the parties to the arbitration agree in writing.

43.55

Where a party applies to set aside an arbitral award, the arbitration claim form must state:

- (1) the grounds under Article 41(2) of the Arbitration Law on which the party alleges that the award should be set aside; and
- (2) whether the Arbitral Tribunal requests that the setting aside proceedings be suspended under Article 41(4) of the Arbitration Law in order to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as may eliminate the grounds for setting aside.

43.56

The written evidence in support of the application must set out any evidence relied on by the party for the purpose of satisfying the Court:

- (1) of the matters referred to in Article 41(2) of the Arbitration Law; and
- (2) that the award should be set aside.

43.57

The written evidence filed by the respondent to the application must:

- (1) state the grounds on which the Respondent opposes the award being set aside;
- (2) state whether the Respondent requests that the setting aside proceedings be suspended under Article 41(4) of the Arbitration Law in order to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as may eliminate the grounds for setting aside; and
- (3) set out any evidence relied on by him relating to the matters mentioned in Article 41(2) of the Arbitration Law.

43.58

On receipt of an application to set aside an arbitration award under Article 41(2) of the Arbitration Law the Court may give such directions as it considers necessary.

43.59

If the Court considers it appropriate to suspend the setting aside proceedings in accordance with a request made under Rule 43.55(2) or 43.57(2) it may suspend the setting aside proceedings for a period of time determined by it.

Appeals 43.60**43.60**

No appeal lies from a decision of the Court under Articles 17(3), 17(4), 19(3), 20(1), 21(2) or 23(3) of the Arbitration Law.

II RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS 43.61 - 43.75**43.61**

Rules 43.62 to 43.74 apply to awards made in arbitration proceedings wherever the seat.

43.62

An application under Article 42(1) of the Arbitration Law to enforce an award or under Article 43 of the Arbitration Law for recognition of an award may be made without notice in an Arbitration Claim Form.

43.63

The Court may specify parties to the arbitration on whom the Arbitration Claim Form must be served, for example where the relevant time period for setting aside the award from the date of service of the award on the losing party has not yet expired, or there is some doubt about the validity of the award or its service upon the respondent.

43.64

The parties on whom the Arbitration Claim Form is served must acknowledge service and the recognition or enforcement proceedings will continue as an arbitration claim.

43.65

The Arbitration Claim Form may be served out of the jurisdiction irrespective of where the award was, or is treated to have been, made.

43.66

The application must be supported by written evidence:

(1) exhibiting:

(a) the original award; and

(b) the original arbitration agreement;

or copies of those documents certified in accordance with Article 42(3) of the Arbitration Law;

(2) (if the award or agreement is not made in English), producing a translation of the award or agreement certified in accordance with Article 42(3) of the Arbitration Law;

(3) stating the name and the usual or last known place of residence or business of the parties or, if a party is a body corporate, its registered or principal address;

(4) (in the case of an application to enforce an award) stating either:

(a) that the award has not been complied with; or

(b) the extent to which it has not been complied with at the date of the application.

43.67

A draft order in both English and Arabic must accompany the application unless the Court orders otherwise.

43.68

The Order enforcing or recognising the award must be served on the defendant in accordance with RDC Part 9.

43.69

The Order may be served outside Dubai:

(1) without permission; and

(2) in accordance with Section III of Part 9 of the RDC as if the Order were an Arbitration Claim Form.

43.70

Within 14 days after service of an Order made without notice or, if the Order is to be served outside Dubai, within such other period as the Court may set:

(1) the defendant may apply to set aside the Order; and

(2) the award must not be enforced until after:

(a) the end of that period; or

(b) any application made by the defendant within that period has been finally disposed of.

43.71

An Order made without notice must contain a statement of

(1) the right to make an application to set the Order aside; and

(2) the restrictions on enforcement under Rule 43.70(2).

43.72

An application under Rule 43.70(1) must:

(1) be made in accordance with RDC Part 23;

(2) set out the grounds under Article 44(1) of the Arbitration Law on which the applicant alleges that the Order should be set aside;

(3) set out any grounds under Article 44(2) of the Arbitration Law on which the applicant alleges that the decision to set aside the Order should be adjourned;

(4) be accompanied by written evidence setting out any evidence relied on by the party for the purpose of satisfying the Court:

(a) of the matters referred to in Article 44 of the Arbitration Law; and

(b) that the Order should be set aside.

43.73

If the Respondent to the application wishes to rely on evidence in reply to written evidence filed under Rule 43.72(4) he must file and serve his written evidence within 7 days after service of the Applicant's evidence.

43.74

The written evidence filed by the Respondent to the application must:

(1) state the grounds on which the Respondent opposes the recognition or enforcement of the award being set aside; and

(2) set out any evidence relied on by him relating to:

(a) the matters referred to in Article 44(1) of the Arbitration Law; and

(b) the provision by the applicant of appropriate security in accordance with Article 44(2).

43.75

After conclusion of the period referred to Rule 43.70(2), in relation to any award in respect of which the Court has made an Order enforcing the award:

(1) the award may be enforced within the DIFC in the same manner as a Judgment or Order of the Court to the same effect; and

(2) the Court may enter Judgment in the terms of the award.

Interest on Awards 43.76 - 43.77

43.76

Where an applicant seeks to enforce an award of interest the whole or any part of which relates to a period after the date of the award, he must file a statement giving the following particulars:

- (1) whether simple or compound interest was awarded;
- (2) the date from which interest was awarded;
- (3) where rests were provided for, specifying them;
- (4) the rate of interest awarded; and
- (5) a calculation showing:
 - (a) the total amount claimed up to the date of the statement; and
 - (b) any sum which will become due on a daily basis.

43.77

A statement under Rule 43.76 must be filed whenever the amount of interest has to be quantified for the purpose of:

- (1) obtaining a Judgment or Order under Rule 43.75; or
- (2) enforcing such a Judgment or Order.