

ARBITRATION IN FAMILY PROCEEDINGS

1. The recent development of specialist arbitration facilities targeted to financial remedy litigation demands procedural changes designed to ensure the adoption of arbitral awards in the family court in a way which is as swift and uncomplicated as possible.
2. Arbitration, whether under the IFLA scheme or otherwise is available to resolve all forms of financial disputes justiciable in the Family Court or Family Division. Therefore such schemes are capable of resolving disputes under:
 - a. Part 2 of the MCA 1973 (or the civil partnership equivalent)
 - b. The Married Women's Property Act 1882, s.17 (or the civil partnership equivalent)
 - c. The Inheritance (Provision for Family and Dependents) Act 1975;
 - d. The Matrimonial and Family Proceedings Act 1984, s.12 (or the civil partnership equivalent)
 - e. The Children Act 1989, Sched.1
 - f. The Trusts of Land and Appointment of Trustees Act 1996 (TOLATA)
3. In *S v S* [2014] EWHC 7 (Fam), sub nom *S v S (Financial Remedies: Arbitral Award)* [2014] 1 FLR 1257 the President made a number of observations in relation to an application for a consent order to reflect the provisions of an arbitral award. The decision spells out what should be the approach of the court when considering an arbitral award in the light of the requirements of section 25 of the Matrimonial Causes Act 1973: see in particular para [21] of the report.
4. CPR Part 62 (and its accompanying PD 62) governs procedure in relation to "arbitration claims" made in arbitration proceedings under the Arbitration Act 1996. "Arbitration claims" here are a term of art and are defined by CPR rule 62.2(1) as meaning:
 - a. any application to the court under the 1996 Act;
 - b. a claim to determine –
 - i. whether there is a valid arbitration agreement;
 - ii. whether an arbitration tribunal is properly constituted; or what matters have been submitted to arbitration in accordance with an arbitration agreement;
 - c. a claim to declare that an award by an arbitral tribunal is not binding on a party; and
 - d. any other application affecting –
 - i. arbitration proceedings (whether started or not); or
 - ii. an arbitration agreement.
5. The path presently prescribed by a combination of section 105 of the Arbitration Act 1996, the High Court and County Courts (Allocation of Arbitration Proceedings) Order 1996 (S.I. 1996/3215), as amended ('the 1996 Order'), and CPR rule 62.3 and PD 62 para 2 will result in an Arbitration

Claim Form N8 (Appendix A to PD62) coming before a tribunal wholly unused to family business (but very likely well versed in arbitration law and practice).

6. The operative provisions of para 2 of the PD so far as applicable to the subject-matter of family disputes are that the Form N8 'may be issued at the courts set out in column 1 of the table *below* and will be entered in the list set out against that court in column 2'.

<i>Court</i>	<i>List</i>
Admiralty and Commercial Registry, London	Commercial list
Technology and Construction Court, London	TCC list
District Registry of the High Court (where Mercantile Court established)	Mercantile list
District Registry of the High Court (where arbitration claim form marked 'Technology and Construction Court' in top right hand corner)	TCC list

7. However, a transfer to a more suitable court is envisaged by the 1996 Order, para 6, which reads:
 'Nothing in this Order shall prevent the judge in charge of the commercial list (within the meaning of section 62(3) of the Senior Courts Act 1981) from transferring proceedings under the Act to another list, court or Division of the High Court to which he has power to transfer proceedings and, where such an order is made, the proceedings may be taken in that list, court or Division as the case may be.'
 It is to be noted that transfer can only be made another list, court or Division of the High Court; a transfer to the Family Court is not permitted.
8. Section 105 of the Arbitration Act 1996 permits the Lord Chancellor to specify by order the "court" for the purposes of the Act. However section 105 has not been amended to allow the Family Court to be specified. Only the High Court or the County Court may be specified.
9. Therefore the group recommends that para 2 of PD 62 is amended to add the High Court, Family Division to the list.
10. The group further recommends that a Family Division equivalent of Form N8 be devised and promulgated.
11. The group further recommends that the President promulgates the Guidance set out in Annex 12 to this report.