

FEDERAL COURT OF AUSTRALIA

Practice Note ARB 1

PROCEEDINGS UNDER THE INTERNATIONAL ARBITRATION ACT 1974

1. This Practice Note sets out the arrangements for proceedings before the Court in which orders are sought under the *International Arbitration Act 1974* (Cth) ('the Act').
2. The Act confers jurisdiction on the Court in relation to:
 - (a) applications for an order to stay a proceeding or part of a proceeding that is before the Court and which involves the determination of a matter that is capable of settlement by arbitration pursuant to an arbitration agreement between the parties.
 - (b) the enforcement of a foreign award under the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*.
 - (c) applications under article 6 of the *UNCITRAL Model Law on International Commercial Arbitration* ('Model Law') for orders concerning:
 - (i) the appointment and termination of an arbitrator (articles 11 and 14 of the Model Law)
 - (ii) challenges against an arbitrator on the basis that the arbitrator lacks impartiality or independence or the necessary qualifications (article 13)
 - (iii) whether an arbitral tribunal has jurisdiction to deal with the issues before the tribunal (article 16)
 - (iv) the setting aside of an arbitral award (article 34)
 - (d) the enforcement of an award under the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*.
3. Each registry has an Arbitration Coordinating Judge who has general responsibility for the management of matters under the Act. A current list of

Arbitration Coordinating Judges is available from the Court's registries and its website at www.fedcourt.gov.au.

4. A proceeding under the Act will, when commenced, be listed before the Arbitration Coordinating Judge.
5. The requirement under:
 - s 8(3) of the Act for the leave of the Court to enforce a foreign award under the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*; and
 - s 35(4) of the Act for the leave of the Court to enforce an award under the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*mirrors the requirement for leave to enforce such awards in State and Territory courts under State or Territory commercial arbitration legislation.
(Subsections 8(2) and 35(2) of the Act provide that an award may be enforced in the Supreme Court of a State or Territory as if the award had been made in that State or Territory in accordance with the law of the State or Territory.)
6. A party to a proceeding under the Act who wants to rely on a document that is not in English must provide the Court and the other parties with a certified English translation of the document.
7. Early mediation by a Registrar or a third party will be encouraged and sometimes ordered by the Court. The parties are expected to discuss the utility of mediation or other assisted dispute resolution mechanisms. Mediation can be used to help identify and reduce issues in dispute, or to eliminate procedural arguments, as well as for the purposes of resolving the whole matter.

M E J BLACK
Chief Justice

8 December 2009