

IN THE SUPREME COURT OF THE REPUBLIC OF SINGAPORE

REGISTRAR'S CIRCULAR NO. 3 OF 2018

**ISSUANCE OF THE GUIDE FOR THE CONDUCT OF
ARBITRATION ORIGINATING SUMMONS**

The updated Guide for the Conduct of Arbitration Originating Summons (“Arbitration OS”) clarifies further the case management features and specialist practices that have been developed from the docketing and disposal of Arbitration OS at the High Court.

2 The updated Guide for the Conduct of Arbitration OS, which supplements the Rules of Court (Cap 322, R 5, 2014 Rev Ed) and the Supreme Court Practice Directions, applies to all Arbitration OS with immediate effect.

Dated this 1st day of June 2018.



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SUPREME COURT

GUIDE FOR THE CONDUCT OF ARBITRATION ORIGINATING SUMMONS

A. Introduction

1. This guide applies to arbitration matters by way of Originating Summons filed under the International Arbitration Act (“IAA”) and the Arbitration Act (“AA”) (collectively referred to as “arbitration OS”) which are managed by the Companies, Insolvency, Equity & Trust and Arbitration (“CITA”) docket of the Supreme Court.

B. Allocation of hearings

2. Subject to the directions of an arbitration Judge, the following allocation of hearings will generally apply to all arbitration OS matters.

AA Hearings before Registrars

3. In general, the following matters will be fixed for hearing before a registrar at first instance:
 - (i) Applications under Order 69 r 3(1)(a) of the Rules of Court (“ROC”) to reinstate discontinued proceedings pursuant to section 6(4) of the AA;
 - (ii) Applications under Order 69 r 3(1)(b) for leave to enforce interlocutory orders or directions of an arbitral tribunal pursuant to section 28(4) of the AA, such application to be made in accordance with Order 69 r 13;
 - (iii) Applications under Order 69 r 3(1)(c) for an order in support of arbitral proceedings pursuant to section 31 of the AA relating to:
 - (a) Security for costs;
 - (b) Discovery of documents and interrogatories;
 - (c) Giving of evidence by affidavit;
 - (iv) Applications under Order 69 r 3(1)(f) for leave to enforce an arbitral award pursuant to section 37 or 46 the AA, such application to be made by way of an ex parte OS supported by an affidavit in accordance with Order 69 r 14;
 - (v) Application under Order 69 r 3(1)(g) for the arbitration OS to be heard otherwise than in open court pursuant to section 56 of the AA where both parties have no objections to the said application;
 - (vi) Application under Order 69 r 3(1)(h) to give directions on whether and to what extent information relating to an application heard otherwise than in open court may be published pursuant to section 57 of the AA where both parties have no objections to the said application;
 - (vii) Taxation of costs directed by an arbitral award to be paid pursuant to section 39(1) of the AA;
 - (viii) Taxation of fees of the arbitral tribunal pursuant to section 40(2) of the AA; and
 - (ix) Applications for stay of legal proceedings filed pursuant to s 6 of the AA.

IAA Hearings before Registrars

4. In general, the following matters will be fixed for hearing before a registrar at first instance:
 - (i) Application under Order 69A r 3(1)(a) for the arbitration OS to be heard otherwise than in open court pursuant to section 22 of the IAA where both parties have no objections to the said application;
 - (ii) Applications under Order 69A r 3(1)(b) for leave to enforce interlocutory orders or directions of an arbitral tribunal pursuant to section 12(6) of the IAA relating to:
 - (a) Security for costs;
 - (b) Discovery of documents and interrogatories;
 - (c) Giving of evidence by affidavit,Such applications are to be made in accordance with O 69A r5.
 - (iii) Applications under O69A r 3(1)(c) for interlocutory orders or directions pursuant to section 12A of the IAA, such orders may include an order made pursuant to section 12(1)(c) read with section 12A(2) of the IAA;
 - (iv) Applications under Order 69A r 3(1)(ca) to reinstate discontinued proceedings pursuant to section 6(4) of the IAA;
 - (v) Applications under Order 69A r 3(d) for leave to enforce an arbitral award under section 18 or 19 of the IAA and under Order 69A r 3(e) for a foreign award pursuant to section 29 of the IAA, such applications are to be made in accordance with O69A r 6;
 - (vi) Applications under Order 69A r 4 for service out of jurisdiction of originating process; and
 - (vii) Applications for stay of legal proceedings filed pursuant to s 6 of the IAA.
5. Where parties by consent request that an arbitration Judge hear a specific interlocutory application filed under the AA or IAA or indicate that whatever the outcome, the parties are likely to take the matter to the next level, then subject to the availability of hearing dates and barring other exigencies, the interlocutory application may be fixed before an arbitration Judge assigned to hear the arbitration OS; and
6. An arbitration Judge will be assigned to hear all appeals arising from any applications filed under section 6 of the AA and section 6 of IAA and any Registrar's decision in an arbitration OS as well as all applications for review of taxation of costs and/or fees.

AA Hearings before Judges

7. Order 69 r 2 of the ROC sets out the arbitration OS matters to be heard by an arbitration Judge under the AA.

8. The following matters under Order 69 and the AA will also be fixed for hearing before an arbitration Judge:
- (i) Application under Order 69 r 3(1)(c) for an order in support of arbitral proceedings pursuant to section 31 of the AA relating to:
 - (a) Examination of a party or witness on oath or affirmation;
 - (b) Preservation and interim custody of any evidence for the purpose of the arbitral proceeding and/or of any property which is or forms part of the subject-matter of the dispute;
 - (c) Samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject-matter of the dispute;
 - (d) Securing the amount in dispute and/or ensuring that any award which may be made in the arbitral proceeding is not rendered ineffectual by the dissipation of assets by a party; and
 - (e) Interim injunction or any other interim measure.
 - (ii) Application under Order 69 r 3(1)(d) for an extension of time pursuant to section 10 or 36 of the AA;
 - (iii) Application under Order 69 r 3(1)(e) for an order pursuant to section 41(2) of the AA where the arbitral tribunal withholds its award for non-payment of fees and expenses;
 - (iv) Application under Order 69 r 4 to determine a preliminary question of law pursuant to section 45 of the AA;
 - (v) Application under Order 69 r 5 to set aside an award pursuant to section 48 of the AA;
 - (vi) Appeals under Order 69 r 6 on question of law arising out of an award pursuant to section 49(3)(a) of the AA;
 - (vii) Application to set aside an order granting leave to enforce an arbitral award obtained pursuant to Order 69 r 14(4); and
 - (viii) Application under section 42 of the AA to charge property recovered or preserved in the arbitration proceeding with the payment of solicitor's costs pursuant to section 117 of the Legal Profession Act.

IAA Hearings before Judges

9. Order 69A r 2 ROC sets out the arbitration OS matters to be heard by an arbitration Judge under the IAA.

10. The following matters under Order 69A will also be fixed for hearing before an arbitration Judge:
 - (i) Application under Order 69A r 3(1)(b) for leave to enforce interlocutory orders or directions of an arbitral tribunal pursuant to section 12(6) of the IAA relating to:
 - (a) Preservation and interim custody of any evidence for the purpose of the arbitral proceeding and/or of any property which is or forms part of the subject-matter of the dispute;
 - (b) Samples to be taken from, or any observation to be made or of experiment conducted upon, any property which is or forms part of the subject-matter of the dispute;
 - (c) Securing the amount in dispute and/or ensuring that any award which may be made in the arbitral proceeding is not rendered ineffectual by the dissipation of assets by a party; and
 - (d) Interim injunction or any other interim measure.
 - (ii) Application under Order 69A r 3(1)(c) for interlocutory orders or directions pursuant to section 12A of the IAA relating to matters as stated in the above paragraph 10(i); and
 - (iii) Application under O69A r 6(4) to set aside an order enforcing an arbitral award.

C. Pre-Trial Conferences

11. Pre-Trial Conferences (“PTCs”) in relation to any arbitration OS will be heard by a registrar managing the CITA docket (“PTC Registrar”).
12. The first PTC will usually be conducted within 2 weeks of the filing of the arbitration OS with the supporting affidavit. Subsequent PTCs will be fixed to monitor compliance with directions given and ensure readiness for hearing before an arbitration Judge.
13. The PTC Registrar will generally deal with and/or give directions on the following at a PTC:
 - (i) Filing of affidavits
 - (a) The PTC Registrar will check that the affidavit in support of the arbitration OS has been filed in accordance with the ROC.
 - (b) Application to set aside an arbitration award pursuant to O69 r5 (AA) or O69A r2(1)(d) (IAA) of the ROC
 - I. Affidavit in support – the PTC Registrar will check that the affidavit in support of the application has been filed and served in accordance with O69 r 5(2)(c) (AA) and O69A r 2(4A)(d) (IAA) of the ROC which requires the affidavit in support to be served with the application;
 - II. Filing of reply affidavit by defendant - Bearing in mind that difficulties may be encountered with the filing of affidavit(s)

within the timeline provided by the ROC {See O69 r 5(3) (AA) and O69A r 2(4C) (IAA) of the ROC which provide that the defendant is to file the reply affidavit within 14 days of being served with the application}, particularly in applications involving foreign arbitration awards and foreign parties, an extension of time for the filing of the reply affidavit may be sought. In such situations, the Court may generally allow an extension of time for the reply affidavit to be filed within 4 weeks from the date of service of the application.

III. Subsequent affidavit(s) - Parties to an arbitration OS may seek leave to file a further round of affidavits (ie, 2nd round). Leave with condition(s) will generally be granted to the parties to file a second round of affidavits. No leave will be granted to file further affidavits unless there are exceptional circumstances

(ii) Application for court documents and records in the case file to be sealed and access by non-parties to the said documents to be withheld

- (a) At the 1st PTC, parties should update the PTC Registrar as to whether any party intends to file these applications.
- (b) The PTC Registrar will direct parties to take instructions on whether the application will be contested and give directions for the filing of the application.
- (c) If all parties have no objection to the application, the application will be dealt with by the PTC Registrar.
- (d) If the application is contested, the PTC Registrar will give directions for the filing of affidavits and will fix the application for an early hearing date before an arbitration Judge assigned to hear the arbitration OS.

(iii) Application for the proceeding to be heard otherwise than in open court and for directions as to what information in relation to the proceedings may be published pursuant to sections 56 and 57 of the AA and sections 22 and 23 of the IAA

- (a) At the 1st PTC, parties should update the PTC Registrar as to whether any party intends to file these applications.
- (b) The PTC Registrar will direct parties to take instructions on whether the application will be contested and will give directions on the filing of the application.
- (c) If all parties have no objections to the application, the application will be dealt with by the PTC Registrar.

- (d) If the application is contested, the PTC Registrar will give directions for the filing of affidavits and will fix the application for an early hearing date before an arbitration Judge assigned to hear the arbitration OS.
- (iv) Interlocutory applications.
Parties should update the court as to any interlocutory application(s) that parties intend to file. The PTC Registrar will give directions in respect of the filing of such applications and filing of affidavits to ensure the efficient disposal of the applications and arbitration OS.
- (v) Expert(s)
(a) Expert evidence may be required on various aspect of foreign law.
(b) At the 1st PTC, parties should be ready to update the PTC Registrar on any necessity to call expert(s) and the nature of such expert(s), if any. Parties should endeavour to appoint expert(s) expeditiously so as to prevent any delay in the filing of the expert's affidavit.
- (vi) Other related matters / applications
(a) Parties should inform the PTC Registrar if there are related matters / applications filed in respect of the same arbitral award or arbitral proceeding. Such related applications may include any application to set aside the Order for leave to enforce an arbitral award.
(b) This will facilitate the fixing of all matters / applications before a single arbitration Judge and reduce any likelihood of conflicting decisions, etc.
- (vii) Hearing dates
(a) Hearing duration & parties' availability. At the 1st PTC, parties should be prepared to inform the Court of the estimated length of time required for the hearing of the arbitration OS and attend with the available dates of their respective lead counsel as hearing dates will generally be fixed at the 1st PTC.
(b) Instructed Counsel. Parties are to inform the PTC Registrar whether Senior Counsel ("SC") or Queen's Counsel ("QC") will be instructed to act for the parties in the arbitration OS. The available dates of such instructed Counsel should be informed to the PTC Registrar to enable fixing.
(c) Appointment of QC. Where a party intends to appoint a QC, directions will be given for filing of the leave application under section 15 of the Legal Profession Act to proceed expeditiously so that it does not hold up any arbitration OS hearing. Parties' attention are drawn to *Re: Toby Thomas Landau* [2016] SGHC 258 in that regard.
(d) Fixing of hearing date. Parties should work with the Court in the expeditious disposal of any arbitration OS hearing. Generally, the Court will endeavour to fix the hearing for an arbitration OS within 8 to 12

weeks from the date of service of the OS. Whilst the Court will try its best to accommodate the availability/ commitments of counsel, including SC and QC, when fixing any hearing date, the optimal use of judicial resources is of utmost importance and parties' assistance is sought to adjust their schedules so that the Court can fix the arbitration hearing on the earliest date available.

- (e) Exchange of submissions and authorities. Once a hearing date has been fixed, directions will be given for the filing and exchange of submissions and bundle of authorities.
- (f) Vacation of hearing dates. Once a hearing date has been fixed, particularly when this is pursuant to a request for an urgent hearing, it is unlikely that the Court will consider any re-fixing of the hearing date. A party who wishes to vacate or change the hearing date of any arbitration OS will be required to file an application for vacation of the hearing date. If this application is filed more than two weeks before the hearing date of the arbitration OS, it will be fixed for hearing before the PTC Registrar. If it is filed within two weeks of the hearing date of the arbitration OS, it will be fixed for hearing before the arbitration Judge assigned to hear the arbitration OS.

C. Issue of Subpoena

- 14. A party to an arbitration agreement may apply to court for the issue of a subpoena to testify or a subpoena to produce documents before an arbitral tribunal pursuant to section 30 of the AA and section 13 of the IAA respectively.
- 15. The applicant's solicitor should attend at the Legal Registry of the Supreme Court with two (2) hard copies of the subpoena, duly stamped with the requisite fees, for processing. The applicant's solicitor may be required to attend before the Duty Registrar before any subpoena is issued and should be prepared to address the Duty Registrar on the issue of the subpoena.

D. Urgent applications

- 16. Any request for an urgent hearing in respect of any arbitration matter may be made by attending before the Duty Registrar at the Supreme Court.
- 17. The applicant's solicitor is to comply with paragraph 12(6)(a) and 12(8) of the Supreme Court Practice Directions when attending before the Duty Registrar to seek an urgent date and must either:
 - (i) File the documents at least one hour before attending before the Duty Registrar so that the documents would already be in the electronic case file for the Duty Registrar's reference. Solicitors should as far as possible attend before the Duty

Registrar only after they have received notification from the Court that the documents have been accepted; or

- (ii) Attend with the paper documents and give an undertaking to the Duty Registrar to file all the documents by the next working day before the Duty Registrar will deal with the matter.

18. Urgent hearings in respect of arbitration matters will be, as far as possible, fixed for hearing before an arbitration Judge.

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