

IN THE SUPREME COURT OF THE REPUBLIC OF SINGAPORE

REGISTRAR'S CIRCULAR NO. 1 OF 2023

ISSUE OF THE GUIDE FOR THE CONDUCT OF ARBITRATION ORIGINATING APPLICATIONS

The Guide for the Conduct of Arbitration Originating Applications (“arbitration OAs”) encapsulates the case management features and specialist practices for the conduct of arbitration OAs in the General Division of the High Court.

2 The Guide for the Conduct of Arbitration Originating Applications, which supplements the Rules of Court 2021 and the Supreme Court Practice Directions 2021, applies to all arbitration OAs filed under the Rules of Court 2021 with immediate effect.

Dated this 3rd day of May 2023.



TAN BOON HENG
REGISTRAR
SUPREME COURT

GUIDE FOR THE CONDUCT OF ARBITRATION ORIGINATING APPLICATIONS

A. *Introduction*

1. The Registrar issues this guide for the conduct of arbitration matters commenced by way of an Originating Application filed under the International Arbitration Act 1994 (“IAA”) or an Originating Application filed under the Arbitration Act 2001 (“AA”) (each referred to as an “arbitration OA”). Arbitration OA matters under the IAA are managed by the Companies, Insolvency, Equity & Trusts and Arbitration (“CITA”) docket of the General Division of the High Court (“GDHC”) and by the Singapore International Commercial Court (“SICC”). Arbitration OA matters under the AA are managed by the CITA docket of the GDHC. This guide deals only with arbitration OA matters in the GDHC.

B. *Allocation of hearings*

2. Subject to the directions of an arbitration Judge, the allocation of hearings as set out in **Annex A** below will generally apply to all arbitration OA matters.

C. *Filing of the arbitration OA and affidavit in support*

3. The arbitration OA and the affidavit in support are to be filed in accordance with the Rules of Court 2021 (“ROC 2021”).
4. The affidavit in support is to be served with the arbitration OA. The affidavit in support must, in addition to complying with Order 34, Rule 5(2) of the ROC 2021 (for AA matters) or Order 48, Rule 2(4) of the ROC 2021 (for IAA matters), include, at the start of the affidavit, a short summary of the applicant’s reasons why grounds in support of the application are established.

D. *Service of the arbitration OA, the affidavit in support and the affidavit by the defendant*

5. The rules governing service of the arbitration OA are set out in Order 6, Rule 11(4) and (5) of the ROC 2021.
6. Unless the Court orders otherwise, reasonable steps to serve the arbitration OA and the affidavit in support on the defendant must be made as soon as possible and, in any event:
 - (i) If the arbitration OA is to be served in Singapore, within 14 days after the arbitration OA is issued.
 - (ii) If the arbitration OA is to be served out of Singapore, within 28 days after the arbitration OA is issued.

7. A defendant who wishes to oppose the arbitration OA must file an affidavit stating the grounds on which the defendant opposes the application within 14 days after being served with the arbitration OA. However, where the defendant is served out of Singapore, the reply affidavit is to be served within 5 weeks after the defendant is served with the arbitration OA and affidavit in support: Order 34, Rule 5(3) (for AA), Order 48, Rule 2(5) (for IAA) and Order 6, Rule 12(2) of the ROC 2021.
8. Except with the permission of the court, which will be granted only in special cases, no further affidavits may be filed after the defendant files the defendant's affidavit on the merits: Order 6, Rule 12(6) of the ROC 2021.

E. Case Conferences

9. A Registrar Case Conference (“RCC”) will also be fixed for a registrar (“RCC Registrar”) to monitor compliance with directions given and ensure readiness for hearing before an arbitration Judge. An RCC may also be convened to consider the possible transfer of an IAA arbitration OA matter from the GDHC to the SICC under Order 23, Rule 11 of the Singapore International Commercial Court Rules 2021. The first RCC will, in general, be conducted within 4 weeks after the filing of the arbitration OA.
10. At the first RCC, the Court will give directions for the management of the matter, which may include the fixing of the hearing date. To assist the Court, the applicant and/or the defendant are to consult with each other and update the Court on the matters stated below:
 - (i) Hearing dates
 - (a) Early fixing of hearing dates. In general, a hearing date will be fixed at the 1st RCC, and parties should be prepared to inform the Court of the estimated length of time required for the hearing of the arbitration OA and attend with the available dates of their respective lead counsel.
 - (b) Instructed Counsel. Parties are to inform the RCC Registrar whether Senior Counsel (“SC”) or King’s Counsel (“KC”) will be instructed to act as lead counsel for the parties in the arbitration OA. The available dates of such instructed Counsel should be provided to the RCC Registrar to assist in the fixing of the hearing date.
 - (c) Appointment of KC. Where a party intends to appoint a KC, directions will be given for the filing of the application under section 15 of the Legal Profession Act 1966 (“LPA”) to proceed expeditiously, so that it does not hold up any arbitration OA hearing.
 - (d) Fixing of hearing date. Parties should work with the Court in the expeditious disposal of any arbitration OA hearing. Generally, the Court will endeavour to fix the hearing for an arbitration OA within 8 to 12 weeks after the date of service of the arbitration OA. While the Court will try its best to accommodate the availability/commitments of counsel, including SC and KC, 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 OA hearing on the earliest date available.

- (e) 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 OA 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 OA, it will be fixed for hearing before the RCC Registrar. If it is filed within two weeks before the hearing date of the arbitration OA, it will be fixed for hearing before the arbitration Judge assigned to hear the arbitration OA.

- (ii) Written submissions and authorities. Once a hearing date has been fixed, directions will be given for the filing and exchange of written submissions and bundle of authorities. Except with the permission of the court, which will be granted only in special cases, written submissions are not to exceed 35 pages: Order 9, Rule 25(14) of the ROC 2021 and paragraph 105(2) of the Supreme Court Practice Directions 2021 ("SCPD 2021").

- (iii) 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) Parties should update the RCC Registrar as to whether any party intends to file this application.
 - (b) The RCC 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 RCC Registrar.
 - (d) If the application is contested, the RCC 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 OA.

- (iv) Application for directions as to the information in relation to the proceedings which may be published pursuant to section 57 of the AA or section 23 of the IAA
 - (a) Parties should update the RCC Registrar as to whether any party intends to file this application.
 - (b) The RCC 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 RCC Registrar.

(d) If the application is contested, the RCC 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 OA.

(v) Interlocutory applications

Parties should update the Court as to any interlocutory application(s), including any application for security for costs, that parties intend to file in respect of the arbitration OA. The RCC Registrar will give directions for such applications and the supporting affidavit(s) to be filed to ensure the efficient disposal of the applications and arbitration OA.

(vi) Expert(s)

Expert evidence may be required on certain matters relevant to the arbitration OA, such as various aspects of foreign law. Approval will ordinarily be granted under Order 12, Rule 2(1) of the ROC 2021 for the filing of such expert affidavit(s). The expert affidavit(s) may be filed at the same time as the affidavit in support or reply affidavit for the arbitration OA, with permission for the filing of the expert affidavit(s) to be sought at the 1st RCC and to have retrospective effect.

(vii) Other related matters / applications

(a) Parties should inform the RCC 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 permission to enforce an arbitral award or any application for stay under section 6 of the AA or section 6 of the IAA.

(b) This will facilitate the fixing of all matters / applications before a single arbitration Judge and reduce any likelihood of conflicting decisions, etc.

11. A Judge Case Conference (“JCC”) will be fixed after the filing of the defendant’s affidavit on the merits.

F. Issue of order to attend court or an order to produce documents

12. A party to an arbitration agreement may apply to court for the issue of an order to attend court or an order to produce documents before an arbitral tribunal, pursuant to section 30 of the AA and section 13 of the IAA respectively.

13. The applicant’s solicitor should attend at the Legal Registry of the Supreme Court with one (1) hard copy each of the Request and the order to attend court that is to be sealed, duly stamped with the requisite fees, for processing. The applicant’s solicitor may be required to attend before the Duty Registrar before any order to attend court is issued, and should be prepared to address the Duty Registrar on the issue of the order to attend court and/or order to produce documents.

G. Urgent applications

14. Any request for an urgent hearing in respect of any arbitration OA matter may be made by attending before the Duty Registrar at the Supreme Court.
15. The applicant's solicitor is to comply with paragraphs 86(6)(a) and 86(8) of the SCPD 2021 when attending before the Duty Registrar to seek an urgent date, and must do either of the following:
 - (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.
 - (ii) Attend with the hard copy 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.
16. Where the applicant's solicitor wishes to attend before the Duty Registrar by way of video conferencing, the applicant's solicitor is to comply with paragraph 86(9) of the SCPD 2021.
17. Urgent hearings in respect of arbitration OA matters will be, as far as possible, fixed for hearing before an arbitration Judge.

Date issued: 3 May 2023

ANNEX A

AA Hearings before Registrars

1. In general, the following matters will be fixed for hearing before a registrar at first instance:
 - (i) Applications under Order 34, Rule 3(1)(a) of the ROC 2021 to reinstate discontinued proceedings pursuant to section 6(4) of the AA;
 - (ii) Applications under Order 34, Rule 3(1)(b) of the ROC 2021 for permission 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 34, Rule 13 of the ROC 2021;
 - (iii) Applications under Order 34, Rule 3(1)(c) of the ROC 2021 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 discovery of facts;
 - (c) Giving of evidence by affidavit;
 - (iv) Applications under Order 34, Rule 3(1)(f) of the ROC 2021 for permission to enforce an arbitral award pursuant to section 37 or 46 the AA, such application to be made by way of a without notice OA supported by an affidavit in accordance with Order 34, Rule 14 of the ROC 2021;
 - (v) Application under Order 34, Rule 3(1)(h) of the ROC 2021 to give directions on whether and to what extent information relating to an application heard in private may be published pursuant to section 57 of the AA where both parties have no objections to the said application;
 - (vi) Assessment of costs directed by an arbitral award to be paid pursuant to section 39(1) of the AA;
 - (vii) Assessment of fees of the arbitral tribunal pursuant to section 40(2) of the AA; and
 - (viii) Applications for stay of legal proceedings filed pursuant to section 6 of the AA.

IAA Hearings before Registrars

2. In general, the following matters will be fixed for hearing before a registrar at first instance:
 - (i) Applications under Order 48, Rule 3(1)(b) of the ROC 2021 for permission 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 discovery of facts;
 - (c) Giving of evidence by affidavit,

Such applications are to be made in accordance with Order 48, Rule 5 of the ROC 2021.

- (ii) Applications under Order 48, Rule 3(1)(c) of the ROC 2021 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;
 - (iii) Applications under Order 48, Rule 3(1)(d) of the ROC 2021 to reinstate discontinued proceedings pursuant to section 6(4) of the IAA;
 - (iv) Applications under Order 48, Rule 3(1)(e) of the ROC 2021 for permission to enforce an arbitral award under section 18 or 19 of the IAA and under Order 48, Rule 3(1)(f) of the ROC 2021 for a foreign award pursuant to section 29 of the IAA, such applications are to be made in accordance with Order 48, Rule 6 of the ROC 2021;
 - (v) Applications under Order 48, Rule 4 of the ROC 2021 for service out of Singapore of originating process; and
 - (vi) Applications for stay of legal proceedings filed pursuant to section 6 of the IAA.
3. 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 OA.
 4. 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 OA as well as all applications for review of assessment of costs and/or fees.

AA Hearings before Judges

5. Order 34, Rule 2 of the ROC 2021 sets out the arbitration OA matters to be heard by an arbitration Judge under the AA.
6. The following matters under Order 34 of the ROC 2021 and the AA will also be fixed for hearing before an arbitration Judge:
 - (i) Application under Order 34, Rule 3(1)(c) of the ROC 2021 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 34, Rule 3(1)(d) of the ROC 2021 for an extension of time pursuant to section 10 or 36 of the AA;
- (iii) Application under Order 34, Rule 3(1)(e) of the ROC 2021 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 34, Rule 3(1)(g) of the ROC 2021 for the arbitration OA to be heard in open court under section 56 of the AA;
- (v) Application under Order 34, Rule 4 of the ROC 2021 to determine a preliminary question of law pursuant to section 45 of the AA;
- (vi) Application under Order 34, Rule 5 of the ROC 2021 to set aside an award pursuant to section 48 of the AA;
- (vii) Appeals under Order 34, Rule 6 of the ROC 2021 on a question of law arising out of an award pursuant to section 49(3)(a) of the AA;
- (viii) Application to set aside an order granting permission to enforce an arbitral award obtained pursuant to Order 34, Rule 14(4) of the ROC 2021; and
- (ix) 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 LPA.

IAA Hearings before Judges

7. Order 48, Rule 2 of the ROC 2021 sets out the arbitration OA matters to be heard by an arbitration Judge under the IAA.
8. The following matters under Order 48 of the ROC 2021 and the IAA will also be fixed for hearing before an arbitration Judge:
 - (i) Application under Order 48, Rule 3(1)(a) of the ROC 2021 for the arbitration OA to be heard in open court pursuant to section 22 of the IAA;
 - (ii) Application under Order 48, Rule 3(1)(b) of the ROC 2021 for permission 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.

- (iii) Application under Order 48, Rule 3(1)(c) of the ROC 2021 for interim orders or directions pursuant to section 12A of the IAA; and
- (iv) Application under Order 48, Rule 6(5) of the ROC 2021 to set aside an order enforcing an arbitral award.