

**AN ANALYSIS OF THE RULES OF COURT (AMENDMENT
NO 3) RULES OF 1997 AND THE RULES OF COURT
(AMENDMENT) RULES OF 1998**

**A. THE RULES OF COURT (AMENDMENT NO 3) RULES OF
1997**

The Rules of Court (Amendment No 3) Rules, 1997 ((S 483/97) came into effect on 1st December, 1997.¹ They concern the modification of the procedure in respect of the warrant of arrest in admiralty actions and the introduction of a new Order 89D governing oaths and affirmations pursuant to the Oaths Act.²

ORDER 70: ADMIRALTY PROCEEDINGS³

Background to, and nature of, the amendments

The amendments affect the procedure governing the warrant of arrest. Prior to their replacement, paragraphs (2) and (3) of Order 70, rule 4 provided:

(2) A party applying for the issue out of the Registry of a warrant to arrest any property shall before the issue of such warrant procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property.

(3) A warrant of arrest shall not be issued until the party applying for it has filed a praecipe in Form 157 requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by paragraphs (7) and (8) so, however, the court may, if it thinks fit, allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

Pursuant to the amendments, paragraphs (2) and (3) of Order 70, rule 4 now state:

(2) Before a warrant to arrest any property is issued, a party applying for it must-

- (a) file a praecipe in Form 157 requesting issue of the warrant; and
- (b) procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property.

¹ Rule 1 of the Rules of Court (Amendment No 3) Rules, 1997.

² Cap 211.

(3) A warrant of arrest shall not be issued until the party applying for the warrant has filed an affidavit made by him or his agent containing the particulars required by paragraphs (6) and (7); however, the court may, if it thinks fit, allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

Effect and rationale of amendments

As can be seen, the amendments re-organise the two paragraphs so that the conditions for the issue of the warrant of arrest are more clearly defined. In particular, the procedure concerning the filing of the *praecipe* has been transposed from paragraph (3) to paragraph (2) so that paragraph (3) is only concerned with the affidavit requirements. Note that paragraph (3) now refers to the particulars in paragraphs (6) and (7) (previously, the reference was to paragraphs (7) and (8) even though there was no paragraph (8)).

ORDER 89D: OATHS ACT⁴

Background to, and nature of, the amendments

The new Order 89D was introduced pursuant to section 6 of the Oaths Act, which provides that all oaths and affirmations are to be administered according to such forms and with such formalities as are prescribed by rules made under section 80 of the Supreme Court of Judicature Act.⁵ Prior to advent of Order 89D, oaths and affirmations were administered 'according to the forms and with the formalities now in use'.⁶

Order 89D consists of 5 rules: Application and interpretation;⁷ forms and formalities of oaths;⁸ forms and formalities of affirmations;⁹ provisions for persons who are physically incapable of taking an oath or making an affirmation in the prescribed manner;¹⁰ and the form of *jurat* and marking of an exhibit in an affidavit.¹¹

³ Rule 2 of the Rules of Court (Amendment No 3) Rules, 1997.

⁴ Rule 3 of the Rules of Court (Amendment No 3) Rules, 1997.

⁵ Cap 322.

⁶ Pursuant to section 6 of the Oaths Act.

⁷ Order 89D, rule 1.

⁸ Order 89D, rule 2.

⁹ Order 89D, rule 3.

¹⁰ Order 89D, rule 4.

¹¹ Order 89D, rule 5.

Two new forms, Forms 197 and 198, were introduced in conjunction with the new Order. Form 197 concerns the 'Form of Oath' for the purpose of persons giving evidence in court or in a tribunal or enquiry or in 'such other hearing', or by affidavit, pursuant to section 4(1)(a) of the Oaths Act (Form (a) of Form 197). This Form also applies to interpreters in respect of their duties pursuant to section 4(1)(b) of that Act (Form (b) of Form 197). Form 198 is the 'Form of Affirmation' and is similarly sub-divided for persons giving evidence and interpreters.¹²

Effect and rationale of amendments

Rules 2, 3 and 4 concern the substantive aspects of the oath and affirmation. Rule 2(2) provides:

The person taking the oath may place his left hand on the Bible or hold it in any manner as he may desire not repugnant to justice or decency...and shall raise his right hand and say or repeat after the officer administering the oath the words set out, where applicable, in Form 197 or in any other form as may be described by law.

Therefore, the person (whether swearing an affidavit or giving evidence at a hearing) must maintain contact with the Bible, whether by placing his left hand on the Bible or by holding it in an appropriate manner (that is, a manner which is 'not repugnant to justice or decency'). This brings to mind the case of *Chiam See Tong v Ling How Doong & Ors*,¹³ in which there was some controversy over whether it was obligatory for the person taking an oath to place his hand on the Bible.¹⁴ Rule 2(2) clarifies the position. Accordingly, a person who does not wish to place his hand on the Bible or to hold it in any manner (perhaps because of a personal or religious conviction as was the case in *Chiam See Tong v Ling How Doong & Ors*), would not take an oath under rule 2(2). He might decide to affirm (section 5(1)(b) of the Oaths Act allows a person to affirm if has a conscientious objection to taking an oath), in which case rule 3(2) provides:

The person making the affirmation shall raise his right hand and say or repeat after the officer administering the affirmation the words set out, where applicable, in Form 198 or in any other form as may be described by law.

¹² The new forms are set out in Rule 4 of the Rules of Court (Amendment No 3) Rules, 1997.

¹³ [1997] 1 SLR 648.

¹⁴ This aspect of the case was not reported as it was an incidental issue.

Alternatively, he might be able to rely on section 7 of the Oaths Act which states that a person may give evidence on oath or affirmation:

‘in any form common amongst or held binding by persons of the race or persuasion to which he belongs, and not repugnant to justice or decency...’

The person who seeks to take an oath or make an affirmation the form of which does not meet the requirements of rule 2(2) or 3(2) respectively, may, if he can establish that conditions in section 7 of the Oaths Act are satisfied, ask to take the oath or make the affirmation in the proposed mode. The section makes it clear that it is for the court to decide whether to allow the oath or affirmation to be administered in the proposed form, and it is to exercise its discretion as ‘it thinks fit’.¹⁵ The person concerned has no automatic right to take an oath or make an affirmation contrary to rule 2(2) and 3(2). The exercise of the discretion must depend on whether the proposed form is ‘common’, a matter that is to be determined by the court.

Also note in this context that the prescribed wording of the oath and affirmation in Forms 197 and 198 may be varied where an alternative wording is prescribed by law.¹⁶

Special provision is made for the situation in which the person is physically incapable of taking an oath or affirming in the prescribed manner (for example, his movements may be restricted or he may be unable to speak). Rule 4 provides:

‘The officer may, in the case of a person who is physically incapable of taking the oath or making the affirmation in the form and manner prescribed in Rule 2(2) or 3(2), as the case may be, administer the oath or affirmation in such form and manner as is appropriate or expedient in the circumstances.’

This rule appears to be sufficiently flexible to allow any form of oath or affirmation which enables the handicapped witness or deponent to take the oath or make the affirmation in a manner which he regards as binding.

APPENDIX B

Appendix B is amended for the purpose of clarification of the fees for items 118 to 126. The words ‘*Singapore Court*’ in the third column are replaced by the words ‘*Supreme Court*’.¹⁷

¹⁵ Also see section 8 of the Oaths Act concerning the circumstances in which an opposing party may agree to be bound by a proposed oath or affirmation.

¹⁶ Order 89D, rule 2(2) and rule 3(2).

¹⁷ Rule 5 of the Rules of Court (Amendment No 3) Rules, 1997.

B. THE RULES OF COURT (AMENDMENT) RULES OF 1998

The Rules of Court (Amendment) Rules, 1998 (S 425/98) came into effect on 1st September, 1998.¹⁸ They concern service of process (Orders 10 and 11), the procedure governing injunctive relief (Order 29), further arguments and appeals (Order 56 and Order 57), and non-contentious probate proceedings (Order 71). Furthermore, there are limited remedial amendments to Orders 73 and 74. A new form has been incorporated in Appendix A in conjunction with the amendments to Order 71. Additional items have been included in Appendix B and the format has been altered slightly.

The amendments to Orders 10 and 11 apply to proceedings commenced on or after 1st September, 1998.¹⁹ That part of the amendment to Order 29 which extends the procedure under that Order to all originating processes operates immediately. The changes concerning the issue of the originating process and the right of the defendant to apply for a discharge of the injunction operate in relation to applications made on or after 1st September, 1998.²⁰ The amendments to Order 51 apply to appeals to the Court of Appeal in respect of which the notice referred to in Order 57, rule 5(2) (registrar's notice of availability of the record of proceedings) was served on or after 1st September, 1998.²¹ All other amendments operate immediately.

ORDER 10: SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS²²

The amendment concerns Order 10, rule 1(4) and must be read in the context of the previous amendment to this paragraph effected by the Rules of Court (Amendment No 2) Rules of 1997²³. These amending rules (ie, the Rules of Court (Amendment No 2) Rules of 1997) introduced a new procedure by which the plaintiff is required to file a memorandum of service immediately after the service of a writ on a defendant. If this memorandum is not filed within the period of the validity for service (or

¹⁸ Rule 1(1) of the Rules of Court (Amendment) Rules, 1998.

¹⁹ *Ibid.*, r 1(2).

²⁰ *Ibid.*, r 1(3).

²¹ *Ibid.*, r 1(4).

²² *Ibid.*, rule 2.

²³ Introduced by GN No S 283/97. The Rules of Court (Amendment No 2) Rules of 1997, which came into force on July 1st 1997, are examined in Pinsler JD, 'The Rules of Court (Amendment No 2) Rules, 1997' (1997) 9 S.Ac.L.J. Part II, pp 275-293.

extended validity)²⁴ of the writ, the action is deemed to have been discontinued. The procedure replaces the process of endorsement of service on the writ. Order 10, rule 1(4), as modified by those amending rules, provides:

Where a writ is duly served on a defendant otherwise than by virtue of paragraph (3), then, subject to Order 11, Rule 3, unless within 3 days after service the plaintiff files a memorandum of service in Form 11 containing the following particulars, that is to say, the day of the week and date on which it was served, where it was served, the person on whom it was served, and, where he is not the defendant, the capacity in which he was served, the plaintiff in the action begun by the writ shall not be entitled to enter final or interlocutory judgment against that defendant in default of appearance or in default of defence, unless the Court otherwise orders.

The Rules of Court (Amendment) Rules, 1998 make a further modification by substituting a period of '8 days' for '3 days' (in the second line). The effect of this amendment is to give the plaintiff a longer period of time in which to file the memorandum of service, and therefore avoid the serious consequences which arise from default. However, the change only takes effect in relation to proceedings commenced on or after 1st September, 1998.²⁵ The shorter period of 3 days applies to proceedings commenced before this date.

ORDER 11: SERVICE OF PROCESS OUT OF SINGAPORE²⁶

A number of amendments have been introduced to Order 11, the effect of which has been to expand the scope of certain paragraphs. The paragraphs affected are (d), (f) and (o) of Order 11, rule 1.

Former Order 11, rule 1(d)

(d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which —

(i) was made in Singapore;

²⁴ Ie, within 12 months after the expiry of the writ. See the new para (5) of O 21, rule 2, which is considered below.

²⁵ Rule 1(2) of the Rules of Court (Amendment) Rules, 1998.

²⁶ *Ibid*, rule 3.

- (ii) was made by or through an agent trading or residing in Singapore on behalf of a principal trading or residing out of Singapore;
- (iii) is by its terms, or by implication, governed by the law of Singapore; or
- (iv) contains a term to the effect that that Court shall have jurisdiction to hear and determine any action in respect of the contract;

New Order 11, rule 1(d):

(d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which —

- (i) was made in Singapore, or was made as a result of an essential step being taken in Singapore;
- (ii) was made by or through an agent trading or residing in Singapore on behalf of a principal trading or residing out of Singapore;
- (iii) is by its terms, or by implication, governed by the law of Singapore; or
- (iv) contains a term to the effect that that Court shall have jurisdiction to hear and determine any action in respect of the contract;

Effect and rationale of amendments to Order 11, rule 1(d):

The effect of the amendment is to extend paragraph (d)(i) beyond claims made in Singapore to include claims ‘...made as a result of an essential step being taken in Singapore’. The previous wording raised difficulties where the contract was made in Singapore but is varied or amended elsewhere. If the variation or amendment was substantial enough so that, in effect, a new contract is substituted for the original one, paragraph (d)(i) would not apply. Where a contract was constituted by acts done in more than one country, the court would apply the appropriate legal principles to determine the place where it was made, a conclusion not always easily reached.²⁷

²⁷ See *Transniko Pte Ltd v Communication Technology Sdn Bhd* [1996] 1 SLR 580, at p 583; *Brinkibon Ltd v Stahag Stahl und Stahlwarenhandels-gesellschaft GmbH* [1983] 2 AC 34; *Entores Ltd v Miles Far East Corp* [1955] 2 QB 327.

Under the new paragraph (d)(i), it is only necessary to show that the contract was made ‘as a result of an essential step being taken in Singapore’. Although the matter of whether the step taken was ‘essential’ may be the subject of argument, the position is clearer than it was under the previous rule. Now, all that is necessary is for the court to conclude that what was done in Singapore was sufficiently important or significant (in the context of the making of the contract) to be regarded as essential. For example, the rule would be satisfied if the offer or acceptance occurs in Singapore.

The amendment to paragraph (d)(i) is more consistent with the process by which contracts are concluded over the internet. The former paragraph (d)(i) was not sufficiently flexible to take into account the type of technology used, the steps involved in processing the communications and the physical location of the information systems of the parties (factors which would be relevant to the determination of the country where the contract was made). The amended paragraph (d)(i) simplifies the process by conferring jurisdiction on the Singapore court if ‘an essential step’ was taken in Singapore. Therefore, a transaction concluded on the internet would be within the amended paragraph (d)(i) if, for example, the offer or acceptance was made in Singapore. Under the former rule, such a step would not, *per se*, have constituted the making of a contract.

Former Order 11, rule 1(f):

- (f) (i) the claim is founded on a tort committed in Singapore; or
- (ii) the claim is wholly or partly founded on, or is for the recovery of damages in respect of, damage suffered in Singapore caused by a tortious act or omission wherever occurring;

New Order 11, rule 1(f):

- (f) (i) the claim is founded on a tort, wherever committed, which is constituted, at least in part, by an act or omission occurring in Singapore; or
- (ii) the claim is wholly or partly founded on, or is for the recovery of damages in respect of, damage suffered in Singapore caused by a tortious act or omission wherever occurring;

Effect and rationale of the amendments to Order 11, rule 1(f)

The effect of the amendment is to extend para f(i) beyond claims ‘founded on a tort committed in Singapore’ to a tort ‘wherever committed, which is constituted, at least in part, by an act or omission occurring in

Singapore'. Paragraph f(i) is now a very much wider provision. The Singapore courts have jurisdiction even if the tort is committed elsewhere, as long as the 'act or omission' which occurs in Singapore partially constitutes that tort. Accordingly, a defamatory statement transmitted in Singapore and communicated abroad would be subject to the jurisdiction of the Singapore courts. Note that the place where the damage is sustained is not an issue for the purpose of jurisdiction under this sub-paragraph (as it is in sub-para (ii)).

It is also significant that the terms 'act or omission' are not defined qualitatively. The 'act or omission' is not required to be 'essential' or even 'significant' (compare to the new para (d)(i) (above)). For example, the Singapore courts may have jurisdiction in respect of a products liability claim involving several manufacturing defects occurring in different countries including Singapore, and the manufacturing defect which occurred in Singapore is a constituent (but not necessarily the most significant) element of the tort.

Former Order 11, rule 1(o)

(o) the claim is brought for money had and received or for an account or other relief against the defendant as constructive trustee, and the defendant's alleged liability arises out of acts committed, whether by him or otherwise, in Singapore;

New Order 11, rule 1(o):

(o) the claim is a restitutionary one (including a claim for quantum meruit or quantum valebat) or for an account or other relief against the defendant as trustee or fiduciary, and the defendant's alleged liability arises out of any act done, whether by him or otherwise, in Singapore;

Effect and rationale of the amendments to Order 11, rule 1(o):

The provision has been reformulated so that it now extends beyond claims for money had and received, for an account and other relief against the defendant as constructive trustee. The new para (o) empowers the court to hear all restitutionary claims (including claims for *quantum meruit* and *quantum valebat*). Furthermore, the word 'constructive' is removed so that the jurisdiction extends to claims against any trustee, and not merely a constructive trustee. A claim against a fiduciary (such as a company director) is now encompassed by the rule.

The final words of para (o) impose an important condition which applies to all the claims in the rule: 'the defendant's alleged liability arises out of any act done, whether by him or otherwise, in Singapore'. It would seem that the 'act done' in Singapore must itself give rise to the liability (where,

for example, there have been a series of acts occurring in Singapore and abroad). Under the previous rule, the defendant's liability had to arise out of 'acts committed' in Singapore. Under the new rule a single act in Singapore would be sufficient.

Operation of the amendments

The amendments to Order 11 apply to proceedings commenced on or after 1 September, 1998.²⁸

ORDER 29: INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, INTERIM PAYMENTS, ETC.²⁹

Background to, and nature of, the amendments

Order 29, rule 1 has been amended to expressly extend the availability of injunctive relief to proceedings commenced by an originating process other than a writ or originating summons, and to provide for the discharge of the injunction if the originating process is not issued within the prescribed period. Moreover, the phraseology of the rule in relation to the terms the court might impose has been modified. The former Order 29, rule 1 was in the following terms:

(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Such application may be made by summons supported by an affidavit and where the case is one of urgency, may be made *ex parte*.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the court thinks fit.

(4) An order for interim injunction must be in Form 58.

²⁸ Rule 1 of the Rules of Court (Amendment) Rules, 1998.

²⁹ *Ibid*, rule 4.

The amended rule states:

1(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons or other originating process, or counterclaim or third party notice, as the case may be.

(2) Such application may be made by summons supported by an affidavit and where the case is one of urgency, may be made *ex parte*.

(3) The plaintiff may not make such an application before the issue of the writ, originating summons, or other originating process by which the cause or matter is to be begun except where the case is one of urgency, and in that case —

(a) the injunction applied for may be granted on terms, if any, as the court thinks fit; and

(b) if the writ, originating summons, or other originating process is not issued within 2 days of the granting of the injunction, or such other period as the court thinks fit, the court shall on application by a defendant discharge the injunction.

(4) An order for interim injunction must be in Form 58.

Effect and rationale of the amendments

Accordingly, there are four areas of modification:

(1) Paragraph 1(1) now includes the additional words 'or other originating process'.

(2) Paragraph 1(3) is re-constituted as two sub-paragraphs: paragraph 1(3)(a) and 1(3)(b). The main part of paragraph 1(3) repeats the amendment in para 1(1) so that it is extended to all originating processes (not merely the writ and originating summons).

(3) As a consequence of the extension of the process to any originating process (and not just the writ and originating summons), the phraseology in paragraph 1(3)(a) is adapted so as to remove specific references to the writ and originating summons. The court's discretion to impose any appropriate terms applies to all originating processes.

(4) Paragraph 1(3)(b) is entirely new. It provides that the court may discharge the injunction where the originating process is not issued 'within 2 days of the granting of the injunction, or other period as the court thinks fit'. The defendant must apply if he intends to have the injunction discharged.

These changes were introduced to comply with Article 50.6 of The Agreement on Trade Related Aspects of Intellectual Property Rights ('TRIPS'). This Agreement binds Singapore as a member of the World Trade Organisation. Article 50 provides that judicial authorities in the member states must have the power to impose provisional measures to prevent, *inter alia*, the infringement of intellectual property rights and to preserve relevant evidence in relation to the infringement. The Article then goes on to set out various principles and procedures in relation to this relief.³⁰ Article 50.6 provides that

'...provisional measures...shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period to be determined by the judicial authority ordering the measures...or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer'.

Put another way, if the plaintiff obtains an injunction prior to issuing the originating process, and he does not issue the originating process within a reasonable time, the defendant may apply for the discharge of the injunction.

Although this requirement was not specifically expressed in any rule or practice direction, the Singapore court had the power to discharge an injunction if a plaintiff, having undertaken to issue the originating process, failed to do so within the time fixed by the court. This was contemplated by the former Order 29, rule 1(3), which provided that the court could impose 'terms providing for the issue of the writ or summons'. This was and is a recognised principle.³¹

The introduction of the new paragraph 1(3)(b) formalises this process and introduces specific criteria for the purposes of determining a reasonable period of time. That is, if the court does not fix a period of time for the issue of the originating process, it must be issued within two days of the granting of the injunction. The paragraph appears broad enough to enable a court to extend the two-day period (whether on the plaintiff's application or on the defendant's application for the discharge of the injunction), or the period which it initially prescribed (on the hearing of the application for the injunction), for the issue of the originating process.

³⁰ See Art 50.1–50.8 of TRIPS.

³¹ See *Lloyds Bowmaker v Britannia Arrow Holdings* [1988] 3 All ER 178.

Although the two-day period is significantly shorter than the maximum periods required by 'TRIPS', it is consistent with the proper judicial practice in Singapore and elsewhere. There really is generally no excuse for a plaintiff, having obtained a potentially destructive remedy (usually on the basis of a limited and one-sided hearing), to hold it over the defendant's head any longer than the briefest of periods without properly legitimising his suit through the proper commencement of proceedings. Moreover, the court may extend the period for issuing the originating process if the particular circumstances of the case justify this outcome.³²

As Order 29 applies to proceedings in general and not merely intellectual property infringements, the amendments affect all actions in which an injunction is sought.

The other provisions of Order 29, rule 1 remain the same. In particular, the plaintiff who applies for an injunction before the issue of the originating process must satisfy the court that 'the case is one of urgency'.

Operation of the amendments

The amendment to Order 29, rule 1(3) (which concerns the issue of the originating process and the right of the defendant to apply for a discharge of the injunction) has effect in relation to applications made on or after 1st September, 1998. The other amendments to rule 1 of that Order (concerning the extension of the procedure to all originating processes) apply immediately.³³

ORDER 56: APPEALS FROM REGISTRAR AND JUDGE IN PROCEEDINGS IN SUPREME COURT³⁴

Background to, and nature of, amendments

The amendments concern Order 56, rule 2, which govern the process of further arguments on interlocutory orders.

Order 56, rule 2 has been amended to clarify that the period in which an application may be made for further arguments to a judge in chambers in respect of an interlocutory order made by him must be construed in the context of section 34(1)(c) of the Supreme Court of Judicature Act (SCJA). Section 34(1)(c) of the SCJA provides (subject to other provisions in the section) that where a judge makes an interlocutory order in chambers, leave to appeal is required unless the judge has certified, on application within seven days after the making of the order by any party for further argument in court, that he requires no further argument.

³² Note what is stated in the immediately preceding paragraph.

³³ Rule 1(3) of the Rules of Court (Amendment) Rules, 1998.

³⁴ *Ibid.*, r 5.

Prior to the amendment, Order 56, rule 2(1)–(3) provided:

(1) A party dissatisfied with any interlocutory order made by a High Court judge in chambers may, within 7 days of making the order, apply to the Judge for further arguments in Court in accordance with practice directions for the time being issued by the Registrar.

(2) Unless the Registrar informs the party making the application within 14 days of the receipt of the application that the judge requires further arguments, the judge shall be deemed to have certified that he requires no further arguments.

(3) Upon hearing further arguments, the judge may affirm, vary or set aside the interlocutory order previously made or may make such other order as he thinks fit. Any such hearing, if in chambers, shall be deemed to be a hearing in Court for the purposes of section 34(1)(c) of the Supreme Court of Judicature Act (Chapter 322).

The amended rule reads:

(1) An application to a Judge for further argument in Court pursuant to section 34(1)(c) of the Supreme Court of Judicature Act (Chapter 322) shall, subject to the provisions of that section, be made in accordance with practice directions for the time being issued by the Registrar.

(2) Unless the Registrar informs the party making the application within 14 days of the receipt of the application that the judge requires further arguments, the judge shall be deemed to have certified that he requires no further arguments.

(3) Upon hearing further arguments, the judge may affirm, vary or set aside the interlocutory order previously made or may make such other order as he thinks fit. Any such hearing, if in chambers, shall be deemed to be a hearing in Court for the purposes of section 34(1)(c) of the Supreme Court of Judicature Act.

Effect and rationale of amendments

Order 56, rule 2(1) has been completely revamped to make the application of section 34(1)(c) of the SCJA abundantly clear to the parties in a suit. This development endorses the position recently taken by the Court of Appeal in *Thomas & Betts (SE Asia) Pte Ltd v Ou Tin Joon & Anor.*³⁵ The Court of Appeal held that the period in which a party could apply for the hearing of further arguments (pursuant to section 34(1)(c) of the SCJA) had to be determined by the provisions of section 50 of the Interpretation Act.³⁶ Section 34(1)(c) of the SCJA provides that a party

³⁵ [1998] 1 SLR 913.

³⁶ Cap 1.

may apply for the hearing of further arguments in respect of an interlocutory order 'within seven days after the making of the order'. Order 56, rule 2(1) prescribed the same period. The applicant argued that according to Order 3, rule 2(5), Saturdays, Sundays and public holidays had to be excluded from the computation of the 7-day period prescribed by Order 56, rule 2(1). However, section 50(d) of the Interpretation Act only excludes such days if the prescribed period is 6 days or less. The Court of Appeal determined that Order 3, rule 2(5) could not apply in the circumstances as the position was governed by statute.³⁷

O 56, r 2, which also prescribes the period of 7 days for making the application under s 34(1)(c) of the Act for [the] hearing of further arguments in court, and to which O 3, r 2 applies, must be read subject to the Act.

The argument of the appellants would be valid if s 34(1)(c) is silent as to the time within which the application for further arguments is to be made. But the section is specific in terms of the time for the making of the application, and in view of the specific time that has been provided in that section it is not open to the Rules Committee to make any rule prescribing a time which is at variance or inconsistent with such time. In our judgment, whatever may be the time prescribed by the Rules, the time specified in the Act must prevail.

In our judgment, in computing the period of 7 days under section 34(1)(c) of the Act, section 50 of the Interpretation Act applies, and the period of 7 days is to be computed in accordance with that section.

Also see Registrar's Circular No 1 of 1998, which was issued to formalise this approach.

For the sake of completeness, it should also be stated that the amending rules removed the terms '(Chapter 322)' from paragraph 2(3) as they already appear in paragraph 2(1).

Operation of the amendments

The amendments came into effect on 1st September, 1998.³⁸

³⁷ [1998] 1 SLR 913, at 916.

³⁸ Rule 1 of the Rules of Court (Amendment) Rules, 1998.

ORDER 57: APPEALS TO THE COURT OF APPEAL³⁹**Background to, and nature of, the amendments**

Order 57, rule 9 concerns the filing of specific documents for the purpose of an appeal to the Court of Appeal. The amendment affects paragraph (1) of this rule.

Prior to the amendment, Order 57, rule 9(1) (last amended by the Rules of Court (Amendment No 2) Rules, 1997)⁴⁰ provided as follows:

9.—(1) Within 3 months after service of the notice referred to in Rule 5 (2), the appellant must file —

- (a) one copy of the record of appeal;
- (b) subject to Rule 9A, 4 copies of the Appellant's Case referred to in that Rule; and
- (c) 4 copies of a core bundle of documents (referred to in this Order as the core bundle),

and serve a copy each thereof on every respondent to the appeal or his solicitor except that if the appeal is to be heard by a Court of Appeal consisting of 2 Judges of Appeal, only 3 copies of the core bundle and the Appellant's Case shall be filed.

As amended by the Rules of Court (Amendment) Rules, 1998, Order 57, rule 9(1) now states:

Within 2 months after service of the notice referred to in Rule 5 (2), the appellant must file —

- (a) one copy of the record of appeal; and
- (b) subject to Rule 9A, 4 copies of the Appellant's Case referred to in that Rule; and
- (c) 4 copies of a core bundle of documents (referred to in this Order as the core bundle),

and serve a copy each thereof on every respondent to the appeal or his solicitor except that if the appeal is to be heard by a Court of Appeal consisting of 2 judges of Appeal, only 3 copies of the core bundle and the Appellant's Case shall be filed, and these documents, and the record of appeal, shall be filed and served within one month after service of the notice referred to in Rule 5(2).

³⁹ *Ibid.*, rule 6.

⁴⁰ S. 283 of 1997.

Effect and rationale of the amendments

The Rules of Court (Amendment No 2) Rules, 1997⁴¹ had introduced the main changes to rule 9(1) as well as to other provisions in Order 57.⁴² First, the appellant no longer has to file four copies of the record of appeal. Secondly, he is still required to file four copies of the Case except in interlocutory appeals heard by two Judges of Appeal (in which case, three copies suffice). Thirdly, there is the new requirement of a core bundle. As in the case of the record of appeal, four copies must be filed except in interlocutory appeals heard by two Judges of Appeal (in which case, three copies suffice). The content of the core bundle and the respondent's right to file a supplemental core bundle are governed by other paragraphs.⁴³

The purpose of the Rules of Court (Amendment) Rules, 1998 is to refine paragraph (1) of Order 57, rule 9 by making the following adjustments: First, the documents must be filed within a period of 2 months (the period has been reduced from 3 months) after service of the notice referred to in Order 57, rule 5(2) (Registrar's notice of availability of the record of proceedings). Secondly, the additional words at the end of paragraph (1) of Order 57, rule 9 require the documents (including the record of appeal) to be served within one month after service of the notice referred to in Order 57, rule 5(2) (Registrar's notice of availability of the record of proceedings).

Operation of the amendments.

The amendments introduced by the Rules of Court (Amendment) Rules, 1998 apply to appeals to the Court of Appeal in respect of which the notice referred to in Order 57, rule 5(2) (Registrar's notice of availability of the record of proceedings) is served on or after 1st September, 1998.⁴⁴

ORDER 71: NON-CONTENTIOUS PROBATE PROCEEDINGS⁴⁵

Background to, and nature of, the amendments

Order 71 concerns 'Non-contentious probate proceedings'. The amendments introduce a new paragraph (1A) of Order 71, rule 5 and a new paragraph (6A) of Order 71, rule 37. These provisions have an important administrative function relating to probate caveats. To understand their significance it is necessary to refer to paragraphs (6) and (7) of Order 71, rule 37.

⁴¹ *Ibid.*

⁴² For a closer examination of the significance of those amendment rules, see Pinsler JD, 'The Rules of Court (Amendment No 2) Rules, 1997' (1997) 9 S.Ac.L.J. Part II, pp 275-293.

⁴³ *Ibid.*

⁴⁴ Rule 1 of the Rules of Court (Amendment) Rules, 1998.

⁴⁵ *Ibid.*, rule 7.

Order 71, rule 37(6) states:

The Registrar must maintain an index of caveats entered in the Registry and on receiving an application for a grant, he must cause the index to be searched.

Order 71, rule 37(7) is as follows:

The Registrar must not make any grant if he has knowledge of an effective caveat in respect thereof:

Provided that no caveat shall operate to prevent the making of a grant on the day on which the caveat is filed.

As is evident, both paragraphs (6) and (7) concern the duties of the Registrar. Order 71, rule 37(6) requires the Registrar to maintain an index of probate caveats and to cause the index to be searched upon receiving an application for a grant. Order 71, rule 37(7) prohibits the Registrar from making a grant if he has knowledge of an effective caveat in respect of the estate.

Reference should also be made to paragraph 84 of the Supreme Court Practice Directions, 1997 (entitled 'Caveat searches in non-contentious probate proceedings'), which sets out the following directions:

- (1) The directions in this paragraph shall apply to non-contentious probate proceedings under Order 71 of the Rules of Court, 1996.
- (2) Every applicant for a grant under Order 71 of the Rules of Court, 1996, or his solicitors, shall:
 - (a) Conduct a search on the caveat book kept by the Registrar immediately prior to the filing of the petition; and
 - (b) file a certificate in Form 23 of Appendix B together with the petition stating whether there are any caveats in force against the estate of the deceased in question.
- (3) Prior to filing a praecipe to extract a grant, the applicant or his solicitors must conduct a search on the caveat book to ascertain if there are any caveats in force against the estate of the deceased, and the praecipe requesting extraction of the grant must contain a certificate in the following terms:

'It is certified that the caveat book was searched not more than 1 day before the date of this praecipe and that there are no caveats in force in respect of the estate of the deceased herein.'

- (4) For the purposes of this direction, 'grant' includes a grant of any letters of representation in Singapore and a grant by any Court outside Singapore which is produced for resealing.

Effect and rationale of the amendments

The new paragraph (1A) of Order 71, rule 5 and the new paragraph (6A) of Order 71, rule 37 re-express the substance of sub-paragraphs 84(2) and (3) of the above Practice Direction. Clearly, the intention here is to ensure that lawyers are fully aware of the requirements.

Accordingly, Order 71, rule 5(1A) provides:

Every applicant for a grant or his solicitors shall:

- (a) Conduct a search on the caveat book kept by the Registrar immediately prior to the filing of the petition; and
- (b) file a certificate in Form 168A together with the petition stating whether there are any caveats in respect of the estate of the deceased person.

And Order 71, rule 37(6A) states as follows:

Prior to filing a praecipe to extract a grant, the applicant or his solicitors must conduct a search on the caveat book to ascertain if there are any caveats in respect of the estate of the deceased, and the praecipe requesting extraction of the grant must contain a certificate in the following terms:

‘It is certified that the caveat book was searched not more than one day before the date of this praecipe and that at the time of the search there were no caveats in respect of the estate of the deceased herein.’

The new Form 168A is included in Appendix A. It is entitled ‘Certificate of Result of Caveat Search’.

Operation of the amendments

The amendments came into effect on 1st September, 1998.⁴⁶

ORDER 73: PROCEEDINGS BY AND AGAINST THE GOVERNMENT⁴⁷

Order 73, rule 5 concerns proceedings for summary judgment. Paragraph 1(b) is amended by the substitution of the words ‘Order 14, rule 5 or 12’ for the words ‘Order 14, rule 1 or 12’. The amendment is necessary because paragraph 1(b) concerns counterclaims against the Government. Order 14, rule 5 (not rule 1) is the provision governing applications for summary judgment on a counterclaim.

⁴⁶ *Ibid*, rule 1.

⁴⁷ *Ibid*, rule 8.

The amendment came into effect on 1st September, 1998.⁴⁸

ORDER 74: DEBTORS ACT⁴⁹

Order 74, rule 11A (which concerns the request for a judgment debtor summons) is amended by changing the reference to 'Form 179' to 'Form 179A', which is the pertinent form.

The amendment came into effect on 1st September, 1998.⁵⁰

APPENDIX A⁵¹

Form 21A

Order 15, rule 13A concerns a notice of action to a non-party. Order 15, rule 13A(4) provides that the person served with such a notice may enter an appearance within 8 days of the service of the notice.

Form 21A is amended to resolve a pre-existing discrepancy. In paragraph (3) of that form, it was provided that the person served with the notice had '14 days' after service to enter an appearance. That paragraph is modified so that the period is now expressed to be '8 days' in accordance with Order 15, rule 13A(4).

Form 168A

A new Form 168A is included in Appendix A. It is entitled 'Certificate of Result of Caveat Search', and should be considered in the context of the amendments to Order 71 (see above).

These amendments came into effect on 1st September, 1998.⁵²

APPENDIX B⁵³

A number of amendments have been made to Appendix B. They are as follows:

- (i) The sub-heading '*Filing*' is inserted immediately above item 70A (under the heading '*Items*').
- (ii) The sub-heading '*Filing*' immediately above item 71 (under the heading '*Items*') is deleted.
- (iii) Three new items are inserted after item 71. They are items 71A, 71B and 71C.

⁴⁸ *Ibid*, rule 1.

⁴⁹ *Ibid*, rule 9.

⁵⁰ *Ibid*, rule 1.

⁵¹ *Ibid*, rule 10.

⁵² *Ibid*, rule 1.

⁵³ *Ibid*, rule 11.

Item 71A concerns the fee in respect of an ‘application for search of information maintained in paper form in respect of caveats lodged in admiralty matters...’.

Item 71B concerns the fee in respect of an ‘application for search of information maintained in electronic form in respect of caveats lodged in admiralty matters...’.

Item 71C concerns the fee in respect of an ‘application for search of information maintained in electronic form in respect of caveats lodged in probate matters...’.

These amendments came into effect on 1st September, 1998.⁵⁴

JEFFREY PINSLER*

⁵⁴ *Ibid*, rule 1.

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