

IN THE SUPREME COURT OF THE REPUBLIC OF SINGAPORE

REGISTRAR'S CIRCULAR NO. 3 OF 2014

**ISSUANCE OF GUIDE FOR THE CONDUCT OF COMPANIES, INSOLVENCY,
EQUITY & TRUST AND ARBITRATION SUITS**

With the introduction of the modified docket system in the High Court, Companies, Insolvency, Equity & Trust and Arbitration (“CITA”) suits have been assigned to Judges and Judicial Commissioners with relevant experience and expertise. Specific registrars have also been assigned to prepare and manage the CITA suits for trial. The Guide for the Conduct of CITA Suits encapsulates the case management features and specialist practices that have developed and is issued as part of the Supreme Court’s larger initiative to implement a docket system in the management of its caseload.

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

Dated this 8th day of December 2014.



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Guide for the Conduct of Companies, Insolvency, Equity & Trust and Arbitration Suits

A. Introduction

1. This guide applies to suits assigned to the Companies, Insolvency, Equity & Trust and Arbitration ("CITA") docket of the High Court. This is to be determined after having regard to the nature of the claim(s) involved in the suit and in particular, the nature of the main claim(s) in suits involving multiple claims. Where the Registry is of the opinion that a suit may be more appropriately managed by another specialised docket, the suit will be transferred to that docket.

2. This Guide supplements the Rules of Court (Cap 322, R 5, 2006 Rev Ed) and Supreme Court Practice Directions.

B. Allocation of hearings

3. Subject to the directions of any Judge in the CITA docket ("CITA Judge"), the following allocation of hearings will apply to suits in the CITA docket.

4. Pre-Trial Conferences ("PTCs") will be heard by any registrar managing the CITA docket ("PTC Registrar").

5. Registrars under the CITA docket will be assigned to hear all interlocutory applications arising in each CITA suit, e.g., applications for further and better particulars, amendment of pleadings, summary judgment, joinder of party, striking out, specific or further discovery, interrogatories and security for costs. This is subject to the following exceptions:

- (a) Where parties by consent request that a CITA Judge hears a specific interlocutory application, then subject to the approval of the CITA Judge, availability of hearing dates and barring other exigencies, the interlocutory application may be fixed before a CITA Judge;
- (b) Where parties indicate that they are very likely to appeal any order made by a registrar, the interlocutory application may be fixed before a CITA Judge; and
- (c) Interlocutory applications concerning issues on the conduct of the trial, including an application for the bifurcation of the trial, will be determined by a CITA Judge.

(6. A CITA Judge will be assigned to hear all interlocutory appeals, Milestone PTCs (see further at Part H below) and the trial on liability.

7. Where a trial is bifurcated, the assessment of damages or taking of accounts may be heard by a registrar under the CITA docket if the claim is below \$500,000. The assessment of damages or taking of accounts in all other cases will be heard by a CITA Judge unless he directs that it be heard by a registrar.

C. First PTC

8. The first PTC will usually be conducted within 6 weeks of the filing of the writ of summons. Where the filing of pleadings has yet to be completed by the first PTC owing to delays in service, pending interlocutory applications (e.g., applications for further and better particulars, striking out or security for costs) or any other reason, the PTC Registrar will give directions for the resolution of those issues so that the suit may proceed.

9. Parties are to attempt to resolve their claims via mediation and/or other modes of alternative dispute resolution and in this regard, their attention is drawn to Order 59 rule 5(c) of the Rules of Court and Part IIIA of the Supreme Court Practice Directions. Parties are to complete the requisite Alternative Dispute Resolution (ADR) forms and to state the reason(s) if they are not attempting mediation and/or other modes of alternative dispute resolution. Time may be given for mediation and/or other modes of alternative dispute resolution to take place.

10. Where the filing of pleadings is completed by the first PTC, parties are to inform the PTC Registrar if any interlocutory applications are anticipated (e.g., applications for summary judgment, striking out, further and better particulars or security for costs) and if not, they are expected to be ready to take directions for general discovery / inspection.

11. Where the plaintiff seeks the taking of accounts as a relief, the trial will generally be to determine liability with accounts to be taken on a separate occasion, if ordered. Where the plaintiff seeks the assessment of damages as a relief, bifurcation orders will not generally be granted in the usual course and a formal application must be made immediately after pleadings close; such bifurcation applications will be heard by a CITA judge.

D. Amendment of pleadings

12. Where amendment of pleadings is contemplated, the party seeking to amend its pleadings should send to the other party(ies) a draft of its proposed amendments and the parties should work on agreeing to the proposed amendments as far as possible. The issue of costs can be reserved to be dealt with by the PTC Registrar at a PTC if it is not agreed.

E. Discovery

13. Parties' attention is drawn to Part V of the Supreme Court Practice Directions: Discovery and Inspection of Electronically Stored Documents. At the first PTC after the close of pleadings, parties should be ready to update the PTC Registrar on the progress and outcome of any good faith discussions that were conducted (see paragraph 45 of the Supreme Court Practice Directions).

14. Where possible, parties should conduct discovery by the supply of soft copies in lieu of inspection within the framework set out in Part V of the Supreme Court

Practice Directions. Soft copies of all discoverable documents are to be exchanged together with an abbreviated list of documents. Inspection of the original soft copy documents is to be deferred and given only on request with Order 24 rule 10 of the Rules of Court to apply to the said list of documents as it applies to pleadings and affidavits.

15. **Confidentiality undertakings.** Where information to be disclosed is confidential, parties should be prepared to address the PTC Registrar as to whether confidentiality undertakings are necessary before confidential information is disclosed. The necessity of confidentiality undertakings is to be considered within the context of the principle in *Riddick v Thames Board Mills Ltd* [1977] QB 881, viz documents disclosed during discovery may not be used for a purpose other than pursuing the action in respect of which discovery was obtained (the “*Riddick* principle”).

16. Confidentiality undertakings over and above the *Riddick* principle may take the following forms:

- (a) *Reinforcement of the Riddick principle as an explicit term of an order of court.* Suitable terms may be extracted as part of an order for discovery or summons for directions, or of the PTC.
- (b) *Disclosure subject to execution of a Non-Disclosure Agreement (“NDA”).* Terms of the NDA are to be worked out between parties. Any disagreement over terms of the NDA may be referred to the PTC Registrar for settlement. The NDA may be executed before exchange of lists of documents for general discovery; terms of the NDA may be included as part of an order for discovery or summons for directions, or of the PTC.
- (c) *Confidentiality clubs.* Disclosure of confidential information to named individuals (usually the solicitors, third party experts and selected representatives of the litigants) who have executed NDAs. Where litigants are commercial competitors, there are usually two competing concerns: first, the need for the party to give instructions based on the information disclosed during discovery; and second, the risk that commercially-sensitive information is disclosed to the competitor. These competing concerns may be balanced by the disclosure of the confidential information to a limited number of selected representatives of the competitor who have executed NDAs.

17. Parties are to update the PTC Registrar on any specific / further discovery request to be made at the first PTC after general discovery and inspection. Parties are to make an exhaustive request based on the list of documents provided at general discovery and to limit the number of such requests as far as possible so as not to waste costs and/or time.

F. Nature and extent of expert evidence

18. Parties should be prepared to discuss issues pertaining to the nature and extent of expert evidence concurrently with discovery.

19. At the first PTC after general discovery and inspection, parties are to update the PTC Registrar on whether it will be necessary to call experts and the nature of the experts to be called (e.g., accountants, auditors, foreign law experts). This will allow instructions to be obtained on any rebuttal expert(s) to be appointed by the opposing party(ies). The PTC Registrar may then direct that the parties exchange a list of the names and curriculum vitae of all experts to be called and the specific areas of their testimony at trial within a prescribed time. Thereafter, the PTC Registrar may direct that experts' reports be prepared and exchanged, and for clarifications to be made, within prescribed timeframes, before the exchange of factual witnesses' affidavits of evidence in chief ("AEICs").

20. Parties are encouraged to agree on the appointment of joint expert(s) as far as possible as to save time and costs.

21. Depending on the number of issues to be dealt with by the experts, the PTC Registrar may require the drawing up of a Scotts' Schedule to list each of the issues down and each expert's opinion on the issues for discussion at the next PTC. An experts' caucus may then be directed for the experts to discuss and narrow down the issues for trial, with or without the presence of counsel. After the caucus, the experts are to draw up a list setting out the issues they agree on and the issues they disagree on, with reasons for their disagreement. Having considered the extent to which the experts agree or disagree on the issues and with a view to saving trial time, the CITA Judge may direct the experts to give their evidence concurrently.

G. Appointment of Assessor(s)

22. Parties should address the PTC Registrar on whether it is necessary to appoint assessor(s) to assist the CITA Judge at trial. In this regard, parties are to agree on the area(s) to be dealt with by such assessor(s) subject to any agreement of / directions by the CITA Judge. Parties are encouraged to agree on a single candidate or alternatively, propose a short list of candidates, enclosing a copy of the curriculum vitae of each candidate together with the candidate's schedule of professional fees for the appointment. The shortlist of candidates (if necessary) is to be finalised and filed before the First Milestone PTC (see further at Part H below).

23. Parties are to agree on the sharing of the professional fees of the assessor(s) initially, while reserving the right for the successful party to claim contributions to the professional fees of the assessor(s) as disbursements.

H. Milestone PTCs

24. Milestone PTCs are conducted by the CITA Judge assigned to the suit. Lead Counsel must personally attend all milestone PTCs. Milestone PTCs are also referred to as "JPTCs".

25. The First Milestone PTC may be scheduled after the completion of discovery and before the exchange of AEICs.

26. The Second Milestone PTC may be scheduled after exchange of AEICs and before set down.

27. **First Milestone PTC.** Lead Counsel are to be ready to address the CITA Judge on the following issues:

- (a) *Preparation of agreed bundle before AEICs.* To facilitate the management of voluminous documentary exhibits during the trial, Lead Counsel are to address the CITA Judge on the preparation of an agreed bundle first, and for AEICs to be prepared subsequently with references made to documents in the agreed bundle. Where feasible, the agreed bundle should be finalised 4 weeks before the exchange of AEICs. Parties may supplement the agreed bundle or prepare their own bundles for exchange together with the AEICs.

Parties are to consider adopting paragraph 89 of the Supreme Court Practice Directions on preparation of appeal records in civil appeals to the Court of Appeal for the preparation of the agreed bundle in soft copy.

- (b) *Timelines for the exchange of AEICs of factual witnesses, experts' reports and replies.* Lead Counsel are to file a draft schedule, preferably by agreement, 2 days before the First Milestone PTC.
- (c) *Confidential documents.* Where confidential documents are to be adduced at trial and parties do not wish to file them as part of any bundle or affidavit, directions may be sought from the CITA Judge for the preparation of a separate confidential bundle of documents accessible only by members of the confidentiality club and the Court. The CITA Judge has the ultimate discretion on whether confidential documents ought to be filed and how they are to be treated.
- (d) *Taking of trial dates.* Lead Counsel are to be ready to take tentative trial dates, having in mind the availability of factual and expert witnesses and time required for cross-examination. Trial dates will usually be given in a single tranche to avoid part-heard trials.
- (e) *Appointment of assessor(s).* Lead Counsel are to be ready to address the CITA Judge on all matters relating to the necessity and the appointment of assessor(s). The CITA Judge will give directions on the

procedure for interviewing the candidates before confirming the appointment of assessor(s).

- (f) *Discussion on costs budgeting.* Lead Counsel should prepare all necessary documentation and be prepared to discuss an estimate of the party-and-party costs for the matter.

28. **Second Milestone PTC.** Lead Counsel are to be ready to address the CITA Judge on the following issues:

- (a) *List of issues for trial.* To facilitate discussions with the CITA Judge on the issues for trial, Lead Counsel's statements are to be filed at least 1 week before the Second Milestone PTC. The list of issues must be succinct.
- (b) *Expert witnesses.* To facilitate discussions with the CITA Judge, the Lead Counsel's statements should list expert issues separately.
- (c) *Courtroom facilities.* Where the expert witnesses will be giving concurrent evidence, a courtroom of a suitable size that can accommodate the number of experts may have to be identified. Depending on the number of experts, concurrent evidence of expert witnesses may have to be taken in chambers or in a meeting room, suitably re-configured to accommodate the number of experts to be concurrently cross-examined.

Parties are to consider whether the use of the Technology Court is necessary, e.g., for projection of soft copy agreed bundle and AEICs during trial, video conferencing with overseas expert witnesses, etc.

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