

Rules of the High Court (Amendment) Rules 2008

The Rules of the High Court (Cap. 4A)

Order 73 – ARBITRATION PROCEEDINGS

Remarks

2. Matters for a judge in court (O. 73, r. 2)

(1) Subject to section 2D of the Arbitration Ordinance (Cap. 341), every application or request to the Court –

- (a) to remit an award under section 24 of that Ordinance, or
- (b) to remove an arbitrator or umpire under section 25(1) of that Ordinance, or
- (c) to set aside an award under section 25(2) of that Ordinance, or
- (HK)(d) for leave to appeal under section 23(2) of that Ordinance, or
- (e) to determine, under section 23A(1) of that Ordinance, any question of law arising in the course of a reference, or

(HK)(f) to make an order under section ~~29A(2)~~ **2GE** of that Ordinance, or

(HK)(g) to decide, under article 13(3) of the Fifth Schedule to that Ordinance, on a challenge to an arbitrator, or (L.N. 363 of 1990)

(HK)(h) to decide, under article 14(1) of the Fifth Schedule to that Ordinance, on the termination of an arbitrator's mandate, or (L.N. 363 of 1990)

(HK)(i) to set aside an arbitral award under article 34 of the Fifth Schedule to that Ordinance, (L.N. 363 of 1990)

~~must be made by originating motion~~ **may be made by originating summons in Form No. 10 in Appendix A** to a single judge in court. (L.N. 363 of 1990)

Rule 47
Consequential
Amendment

Rule 47
Rec 14

(2) Any appeal to the Court of First Instance under section 23(2) of the Arbitration Ordinance (Cap. 341) ~~shall be made by originating motion to a single judge in court and notice thereof may be included in the notice of application~~ **may be made by originating summons in Form No. 10 in Appendix A to a single judge in court which may be included in the originating summons** for leave to appeal, where leave is required. (25 of 1998 s. 2)

Rule 47
Rec 12

(3) An application for a declaration that an award made by an arbitrator or umpire is not binding on a party to the award on the ground that it was made without jurisdiction may be made by ~~originating motion~~ **originating summons in Form No. 10 in Appendix A** to a single judge in court, ~~but the foregoing provision shall not be taken as affecting the judge's power to refuse to make such a declaration in proceedings begun by motion.~~

Rule 47
Rec 14

3. Matters for judge in chambers or master (O. 73, r. 3)

(1) Subject to the foregoing provisions of this Order and the provisions of this rule, the jurisdiction of the Court of First Instance or a judge thereof under the Arbitration Ordinance (Cap. 341), may be exercised by a judge in chambers or a

master. (25 of 1998 s. 2)

- ~~(2) Any application—~~
~~(a) for leave to appeal under section 23(2) of the Arbitration Ordinance (Cap. 341), or~~
~~(b) under section 23(5) of that Ordinance (including any application for leave), or~~
~~(c) under section 23 of that Ordinance, or~~
~~(HK)(d) under section 29A of that Ordinance,~~
~~shall be made to a judge in chambers.~~

Rule 48
Rec 12

~~(3) Any application to which this rule applies shall, where an action is pending, be made by summons in the action, and in any other case by an originating summons which shall be in Form No. 10 in Appendix A.~~

(2) Any application under section 23(5) or (7) of the Arbitration Ordinance (Cap. 341) (including any application for leave) must be made to a judge in chambers.

(3) Any application to which this rule applies may, where an action is pending, be made by summons in the action, and in any other case may be made by an originating summons in Form No. 10 in Appendix A.

(4) Where an application is made under section 23(5) of the Arbitration Ordinance (Cap. 341) (including any application for leave) the summons must be served on the arbitrator or umpire and on any other party to the reference.

4. Application for interim injunction under section 2GC(1) of Arbitration Ordinance (O. 73, r. 4)

Rule 129
Rec 49

(1) An application for an interim injunction or any other interim measure under section 2GC(1) of the Arbitration Ordinance (Cap. 341) in relation to an arbitration proceeding (whether in Hong Kong or in a place outside Hong Kong) must be made by originating summons in Form No. 10 in Appendix A.

(2) Where the application is in relation to an arbitration proceeding outside Hong Kong, rules 1, 2, 3, 4, 7(1), 7A and 8 of Order 29 apply with any necessary modifications to the application as they apply to an application for interlocutory relief in an action or proceeding in the High Court.

(3) Upon hearing of the originating summons, the Court may direct that all or any part of the hearing be conducted in open court.

5. Time limits and other special provisions as to appeals and applications under the Arbitration Ordinance (O. 73, r. 5)

(1) An application to the Court –

Remarks

- (a) to remit an award under section 24 of the Arbitration Ordinance (Cap. 341), or
- (b) to set aside an award under section 25(2) of that Ordinance or otherwise, or
- (c) to direct an arbitrator or umpire to state the reasons for an award under section 23(5) of that Ordinance,

must be made, and the summons ~~or notice~~ must be served, within ~~21 days~~ 30 days after the award has been made and published to the parties.

Rule 49
Logical
Extension

(2) In the case of an appeal to the Court under section 23(2) of the Arbitration Ordinance (Cap. 341), ~~the notice~~ the summons must be served, and the appeal entered, within ~~21 days~~ 30 days after the award has been made and published to the parties:

Provided that, where reasons material to the appeal are given on a date subsequent to the publication of the award, the period of ~~21 days~~ 30 days shall run from the date on which the reasons are given.

(3) An application, under section 23A(1) of the Arbitration Ordinance (Cap. 341), to determine any question of law arising in the course of a reference, must be made, ~~and notice thereof served, within 14 days~~ within 30 days after the arbitrator or umpire has consented to the application being made, or the other parties have so consented.

(4) For the purpose of paragraph (3) the consent must be given in writing.

(5) In the case of every appeal or application to which this rule applies, ~~the notice of originating motion, or as the case may be, the originating summons~~ the summons, must state the grounds of appeal or application and, where the appeal or application is founded on evidence by affidavit, or is made with the consent of the arbitrator or umpire or of the other parties, a copy of every affidavit intended to be used, or as the case may be, of every consent given in writing, must be served with ~~that notice~~ that summons.

Rule 49
Rec 14

6. Applications and appeals to be heard in a particular list (O. 73, r. 6)

(1) Any matter which is required, by rule 2 or 3, to be heard by a judge, shall be entered in a particular list unless the Judge in charge of such list otherwise directs.

(2) Nothing in the foregoing paragraph shall be construed as preventing the powers of the Judge in charge of a particular list from being exercised by any judge of the Court of First Instance. (25 of 1998 s. 2)

6A. Originating summons to be heard in chambers (O. 73, r. 6A)

Rule 50
Rec 15

An originating summons referred to in rules 2, 3 and 5 may be heard in chambers if the judge, whether of his own motion or at the request of one or

Remarks

more of the parties, so decides.

7. Service out of the jurisdiction of summons, ~~notice, etc.~~ and order
(O. 73, r. 7)

Rule 51
Consequential
Amendment

(HK)(1) Subject to ~~paragraph (1A)~~ **paragraphs (1A) and (1B)**, service out of the jurisdiction of –

Rule 130
Consequential
Amendment

(a) any originating summons ~~or notice of originating motion~~ under the Arbitration Ordinance (Cap. 341), or

(b) any order made on such a summons ~~or motion as aforesaid~~,

is permissible with leave of the Court provided that the arbitration to which the ~~summons, motion or order~~ **summons or order** relates is granted by Hong Kong law or has been, is being, or is to be held within the jurisdiction.

Rule 51
Consequential
Amendment

(1A) Service out of the jurisdiction of an originating summons for leave to enforce an award is permissible with the leave of the Court whether or not the arbitration is governed by Hong Kong law.

(1B) Service out of the jurisdiction of an originating summons by which an application for an interim injunction or any other interim measure under section 2GC(1) of the Arbitration Ordinance (Cap. 341) is made is permissible with the leave of the Court.

Rule 130
Rec 49

(2) An application for the grant of leave under this rule must be supported by an affidavit stating the grounds on which the application is made and showing in what place or country the person to be served is, or probably may be found; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this rule.

(3) Order 11, rules 5, 6 and 8, shall apply in relation to any such ~~summons, notice or order~~ **summons or order** as is referred to in paragraph (1) ~~or (1B)~~ as they apply in relation to a writ.

Rule 51
Rec 14
Rule 130
Consequential
Amendment

8. Registration in High Court of foreign awards (O. 73, r. 8)

Where an award is made in proceedings on an arbitration in any territory to which sections 3 to 9 of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) extend, being a part to which the said Ordinance has been applied, then, if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place, Order 71 shall apply in relation to the award as it applies in relation to a judgment given by that court, subject, however, to the following modifications-

(a) for references to the country of the original court there shall be substituted references to the place where the award was made; and

(b) the affidavit required by rule 3 of the said Order must state (in addition to the other matters required by that rule) that to the best of the

information or belief of the deponent the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

9. Registration of awards under Arbitration (International Investment Disputes) Act 1966 (O. 73, r. 9)

(1) In this rule and in any provision of these rules as applied by this rule-

“the Act of 1966” (1966 年法令) means the Arbitration (International Investment Disputes) Act 1966 (1966 c. 41 U.K.);

“award” (裁決) means an award rendered pursuant to the Convention;

“judgment creditor” (判定債權人) and “judgment debtor” (判定債務人) mean respectively the person seeking recognition or enforcement of an award and the other party to the award.

(2) Subject to the provisions of this rule, the following provisions of Order 71, namely rules 3(1) (except subparagraphs (c)(iv) and (d) thereof), 7 (except paragraph (3)(c) and (d) thereof) and 10(3) shall apply with the necessary modifications in relation to an award as they apply in relation to a judgment to which the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) applies.

(3) An application to have an award registered in the Court of First Instance under section 1 of the Act of 1966 ~~shall be made~~ **may be made** by originating summons which shall be in Form 10 in Appendix A. (25 of 1998 s. 2)

Rule 52
Rec 12

(4) The affidavit required by Order 71, rule 3, in support of an application for registration shall –

- (a) in lieu of exhibiting the judgment or a copy thereof, exhibit a copy of the award certified pursuant to the Convention; and
- (b) in addition to stating the matters mentioned in paragraph (1)(c)(i) and (ii) of the said rule 3, state whether at the date of the application the enforcement of the award has been stayed (provisionally or otherwise) pursuant to the Convention and whether any, and if so what, application has been made pursuant to the Convention, which, if granted, might result in a stay of the award.

(5) There shall be kept in the Registry under the direction of the Registrar a register of the awards ordered to be registered under the Act of 1966 and particulars shall be entered in the register of any execution issued on such an award.

(6) Where it appears to the Court on granting leave to register an award or on an application made by the judgment debtor after an award has been registered –

- (a) that the enforcement of the award has been stayed (whether provisionally or otherwise) pursuant to the Convention; or

(b) that an application has been made pursuant to the Convention, which, if granted, might result in a stay of the enforcement of the award, the Court shall, or, in the case referred to in subparagraph (b) may, stay execution of the award for such time as it considers appropriate in the circumstances.

(7) An application by the judgment debtor under paragraph (6) shall be made by summons and supported by affidavit.

(L.N. 363 of 1990)

10. Enforcement of settlement agreement under section 2C of the Arbitration Ordinance or of award under section 2GG of that Ordinance (O. 73, r. 10)

(1) An application for leave –
(HK)(a) under section 2C of the Arbitration Ordinance (Cap. 341) to enforce a settlement agreement, or (L.N. 363 of 1990)
(b) under section 2GG of that Ordinance to enforce an award on an arbitration agreement, (L.N. 363 of 1990; 2 of 2000 s. 15)
in the same manner as a judgment or order may be made ex parte but the Court hearing the application may direct a summons to be issued.

(2) If the Court directs a summons to be issued, the summons ~~shall be an originating summons~~ **may be an originating summons** which shall be in Form No. 10 in Appendix A.

Rule 53
Rec 12

(3) An application for leave must be supported by affidavit-
(a) exhibiting –
(HK)(i) where the application is under section 2C of the Arbitration Ordinance (Cap. 341), the arbitration agreement and the original settlement agreement or, in either case, a copy thereof; (L.N. 363 of 1990)
(ii) where the application is under section 2GG of the Arbitration Ordinance (Cap. 341), the arbitration agreement and the original award or, in either case, a copy thereof; (L.N. 363 of 1990; 2 of 2000 s. 15)
(iii) where the application is under section 40B(1) or 42(1) of the Arbitration Ordinance (Cap. 341), the documents required to be produced by section 40D or 43, as the case may be, of that Ordinance, (2 of 2000 s. 15)
(c) stating the name and the usual or last known place of abode or business of the applicant (hereinafter referred to as “the creditor”) and the person against whom it is sought to enforce the settlement agreement or award (hereinafter referred to as “the debtor”) respectively,
(d) as the case may require, either that the settlement agreement or award has not been complied with or the extent to which it has not been complied with at the date of the application.

(4) An order giving leave must be drawn up by or on behalf of the creditor and must be served on the debtor by delivering a copy to him personally or by sending

a copy to him at his usual or last known place of abode or business or in such other manner as the Court may direct.

(5) Service of the order out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8, shall apply in relation to such an order as they apply in relation to a writ.

(6) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the Court may fix, the debtor may apply to set aside the order and the settlement agreement or award shall not be enforced until after the expiration of that period or, if the debtor applies within that period to set aside the order, until after the application is finally disposed of.

(HK)(6A) An application under paragraph (6) to set aside the order must be made by summons supported by affidavit, and such affidavit must be filed at the same time as the summons. (L.N. 127 of 1995)

(7) The copy of the order served on the debtor shall state the effect of paragraph (6).

(8) In relation to a body corporate this rule shall have effect as if for any reference to the place of abode or business of the creditor or the debtor there were substituted a reference to the registered or principal address of the body corporate; so, however, that nothing in this rule shall affect any enactment which provides for the manner in which a document may be served on a body corporate.

(HK) 10A. Other provisions as to applications to set aside an order made under rule 10 (O. 73, r. 10A)

(HK) Where a debtor has applied to set aside an order made under rule 10, the Court may, either of its own motion or on an application made by the creditor, and if, having regard to all the circumstances of the case it thinks it just to do so, impose such terms, as to giving security or otherwise, as a condition of the further conduct of the application, as it thinks fit.

(L.N. 167 of 1994)

11. Payments into court (O. 73, r. 11)

(HK)(1) In any arbitration proceedings any party to the reference may at any time pay into court a sum of money in satisfaction of any claim against him under the reference.

(2) On making payment into court under this rule, and on increasing any such payment already made the party making payment must give notice thereof in Form No. 100 in Appendix A to all other parties to the reference; and within 3 days after receiving the notice the recipient parties must send the party making payment a written acknowledgment of its receipt.

(3) A party who has made payment into court under this rule may, without leave, give notice of an increase in such a payment but, subject to that and without prejudice to paragraph (5), a notice of payment may not be withdrawn or amended without leave of the Court which may be granted on such terms as may be just.

(4) Where there are two or more matters in dispute in the arbitration proceedings and money is paid into court under this rule in respect of all, or some only of, those matters, the notice of payment –

- (a) must state that the money is paid in respect of all those matters in dispute or, as the case may be, must specify the matters in respect of which payment is made, and
- (b) where the party makes separate payments in respect of each, or any two of those matters in dispute, must specify the sum paid in respect of that matter or, as the case may be, those matters.

(5) Where a single sum of money is paid into court under this rule in respect of two or more matters in dispute, then, if it appears to the Court that any party to the arbitration proceedings is embarrassed by the payment, the Court may order the party making payment to amend the notice of payment so as to specify the sum paid in respect of each matter in dispute.

(6) For the purposes of this rule, a claim under a reference to arbitration shall be construed as a claim in respect, also, of such interest as might be included in the award if the award were made at the date of the payment into court.

12. Payment in by party who has counterclaimed (O. 73, r. 12)

(HK) Where a party, who makes by counterclaim in the arbitration proceedings a claim against any other party to the arbitration proceedings, pays a sum or sums of money into court under rule 11, the notice of payment must state if it be the case, that in making the payment he has taken into account and intends to satisfy the matter in dispute, or matters in dispute, as the case may be, under his counterclaim.

13. Acceptance of money paid into court (O. 73, r. 13)

(HK)(1) Where money is paid into court under rule 11, then, subject to paragraph (2), within 14 days after the receipt of the notice of payment or, where more than one payment has been made or the notice has been amended, within 14 days after receipt of the notice of the last payment or the amended notice but, in any case, before the hearing of the arbitration proceedings begins, a party to the arbitration proceedings may –

- (a) where the money was paid in respect of the matter in dispute or all the matters in dispute in respect of which he claims, accept the money in satisfaction of that matter in dispute or those matters in dispute, as the case may be, or
- (b) where the money was paid in respect of some only of the matters in

dispute in respect of which he claims, accept in satisfaction of any such matter in dispute the sum specified in respect of that matter in dispute in the notice of payment,

by giving notice in Form No. 101 in Appendix A to all other parties to the arbitration proceedings.

- (2) Where after the hearing of the arbitration proceedings has begun-
- (a) money is paid into court under rule 11, or
 - (b) money in court is increased by a further payment into court under that rule,

any party may accept the money in accordance with paragraph (1) within 2 days after receipt of the notice of payment or notice of the further payment, as the case may be, but, in any case, before the arbitrator publishes his award.

(3) Rule 11(5) shall not apply in relation to money paid into court after the hearing of the arbitration proceedings has begun.

(4) On a party accepting any money paid into court all further proceedings in the arbitration proceedings or in respect of the specified matter in dispute or matters in dispute, as the case may be, to which the acceptance relates shall be stayed.

(5) Where money is paid into court by a party who made a counterclaim in the arbitration proceedings and the notice of payment stated, in relation to any sum so paid, that in making the payment the party had taken into account and satisfied the matter in dispute, or matters in dispute, as the case may be, in respect of which he claimed, then, on the claimant party accepting that sum, all further proceedings on the counterclaim or in respect of the specified matter or matters in dispute, as the case may be, shall be stayed.

(6) A party to arbitration proceedings who has accepted any sum paid into court shall, subject to rule 14, be entitled to receive payment of that sum in satisfaction of the matter or matters in dispute to which the arbitration proceedings relate.

14. Order for payment out of money accepted required (O. 73, r. 14)

(HK)(1) Where a party to arbitration proceedings accepts any sum paid into court and that sum was paid into court by some but not all of the other parties to the arbitration proceedings the money in court shall not be paid out except under paragraph (2) or in pursuance of an order of the Court, and the order shall deal with the whole costs of the arbitration proceedings or the matter in dispute to which the payment relates, as the case may be.

(2) Where an order of the Court is required under paragraph (1), then if, either before or after accepting the money paid into court by some only of the other parties the party discontinues the arbitration proceedings against all the other parties and those parties consent in writing to the payment out of that sum, it may be paid out without an order of the Court.

(3) Where after the hearing of the arbitration proceedings has begun a claimant party accepts any money paid into court and all further proceedings in the arbitration proceedings or in respect of the matter in dispute or matters in dispute, as the case may be, to which the acceptance relates are stayed by virtue of rule 13(4), then, notwithstanding anything in paragraph (2), the money shall not be paid out except in pursuance of an order of the Court, and the order shall deal with the whole costs of the arbitration proceedings or with the costs relating to the matter in dispute or matters in dispute as the case may be, to which the arbitration proceedings relate.

15. Money remaining in court (O. 73, r. 15)

(HK) If any money paid into court in connection with arbitration proceedings is not accepted in accordance with rule 13, the money remaining in court shall not be paid out except in pursuance of an order of the Court which may be made at any time before during or after the hearing of the arbitration proceedings; and where such an order is made before the hearing the money shall not be paid out except in satisfaction of the matter or matters in dispute in respect of which it was paid in.

16. Counterclaim (O. 73, r. 16)

(HK) A party to arbitration proceedings against whom a counterclaim is made may pay money into court in accordance with rule 11, and that rule and rules 13 (except paragraph (5)), 14 and 15 shall apply accordingly with the necessary modifications.

17. Non-disclosure of payment into court; amendment of arbitrator's award (O. 73, r. 17)

(HK) Except in arbitration proceedings in which all further proceedings are stayed after the hearing has begun by virtue of rule 13(4), the fact that money has been paid into court under the foregoing provisions of this Order shall not be communicated to the arbitrator until he has published his award, whereupon the arbitrator may amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

18. Investment of money in court (O. 73, r. 18)

(HK) Cash under the control of or subject to the order of the Court may be invested in any manner specified in the High Court Suitors' Funds Rules (Cap. 4 sub. leg.) and the Trustee Ordinance (Cap. 29).

(25 of 1998 s. 2)
(Enacted 1988)