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Law and Practice

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Contents

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1. General

1.1 General Characteristics of Legal System

The Singapore legal system is based on common law for areas such as contract, equity, trusts and tort law, while statutes have been enacted for other areas such as criminal, company and family law.

Judges are required to apply the ratio decidendi (the operative reasons) of decisions of higher Courts. Court of Appeal judgments are strictly binding on the High Court, District Court and Magistrates' Court, whereas English and other Commonwealth decisions are persuasive but not binding.

The legal system is adversarial and the legal process is conducted through both written and oral submissions.

1.2 Structure of Country's Court System

The Singapore Court system comprises the Supreme Court, State Courts and Family Justice Courts.

The Supreme Court consists of the Court of Appeal, the High Court and the Singapore International Commercial Court (SICC).

The Court of Appeal hears civil and criminal appeals from the High Court and is the Court of final appeal. Court of Appeal hearings usually feature three Judges, but exceptionally, appeals may be heard by two, five or any other uneven number of Judges.

The High Court exercises original and appellate jurisdiction in civil and criminal cases. The High Court hears civil cases where the claim exceeds SGD250,000, probate matters if the estate exceeds SGD5,000,000, and ancillary matters in family proceedings where assets equal SGD1,500,000 or more.

The High Court tries criminal cases where the offences are punishable by death or with imprisonment terms exceeding ten years. The High Court also hears points of law in special cases submitted by a District Court or Magistrates' Court. The High Court can reverse decisions from the State Courts, or direct the State Courts to conduct a new trial on the matter.

The SICC is part of the Supreme Court and is a division of the High Court with specialist local and international Judges. The SICC hears transnational commercial disputes.

The State Courts consist of the District Courts, the Magistrates' Courts, the Coroner's Courts and the Small Claims Tribunal. Magistrates' Courts may deal with civil claims of up to SGD60,000, whereas District Courts may deal with claims of up to SGD250,000.

The Small Claims Tribunal has a claims limit of SGD10,000, which can be raised to SGD20,000 if both parties consent in writing.

The Family Justice Courts, comprising the Family Division of the High Court, Family Court and Youth Courts, hear the full suite of family-related cases including all divorce and related matters, adoption and guardianship cases, youth cases, applications for deputyship under the Mental Capacity Act, and probate and succession matters.

1.3 Court Filings and Proceedings

In general, court proceedings are open to the public. However, interlocutory applications are heard in chambers and are not open to the public.

If a party wishes to have a hearing in private, an application can be made to the Court. Such applications are usually made on the basis that a hearing in private would be in the interest of justice, public security or propriety.

The public may view documents filed for Court proceedings by filing a Request to Inspect. The Registrar of the Supreme Court decides whether such a request should be granted.

1.4 Legal Representation in Court

Only advocates and solicitors admitted to the Singapore Bar have the exclusive right to appear in the Singapore Courts.

Where a company or a limited liability partnership is a party to Court proceedings, it must be represented by a Singapore-qualified advocate and solicitor. However, the Court may grant leave for an officer of the company or partnership to act on its behalf.

Foreign lawyers do not have such rights of audience, with the exception of the SICC. In certain cases, foreign lawyers may be permitted to appear as counsel before the SICC, for instance, where the dispute has no substantial connection with Singapore and if they meet the requirements for registration.

On application, Queen's Counsel can be admitted on an ad hoc basis to argue complex matters.

2. Litigation Funding

2.1 Third-party Litigation Funding

Before the amendments to the Civil Law Act in 2017, third-party funding was prohibited under the common law doctrines of champerty and maintenance.

The 2017 amendments abolished the common law torts of champerty and maintenance, allowing funding agreements for qualified funders for specified categories of disputes

(presently only for international arbitration and related Court or mediation proceedings).

To be a qualified funder, the funder's principal business must be the funding of dispute resolution proceedings, whether in Singapore or elsewhere, and it must have a paid-up share capital of at least SGD5 million.

However, the professional conduct rules for lawyers in Singapore were amended to impose obligations to disclose the existence of any funding arrangement and the identity of the funder to the relevant Court or tribunal, and to every other party to the proceedings.

Lawyers and law practices are prohibited from holding any financial or other interests in, or receiving commissions, fees or shares of proceeds from, the funder they have introduced to their clients or that has third-party funding contracts with their clients.

2.2 Third-party Funding of Lawsuits

Third-party funding is allowed for international arbitration and related Court or mediation proceedings.

Separately, funding may also be allowed in the context of insolvency matters, as the High Court has previously held that an assignment of a cause of action falling within a liquidator's statutory power of sale was not caught by the doctrines of champerty and maintenance.

2.3 Third-party Funding for Plaintiffs and Defendants

Third-party funding is available to both plaintiffs and defendants.

2.4 Minimum and Maximum Amounts of Third-party Funding

There is no minimum or maximum amount that a third-party funder will fund.

2.5 Third-party Funding of Costs

A third-party funder will consider funding solicitor-and-client costs, party-and-party costs and other costs incurred in the conduct of the matter.

2.6 Contingency Fees

Contingency fee arrangements are not permitted for litigation or arbitration proceedings.

2.7 Time Limit for Obtaining Third-party Funding

There are no time limits for obtaining third-party funding.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

Generally, there are no prerequisites to filing a lawsuit, barring any pre-litigation steps which are provided for as part of a contractual dispute resolution mechanism. However, where both parties are represented by lawyers who have been communicating in relation to the proceedings in question, the prospective plaintiff's lawyers must first enquire if the prospective defendant's lawyers have instructions to accept service on behalf of their client.

The plaintiff's lawyers can only serve the originating process on the defendant directly if the defendant's lawyers do not confirm that they have such instructions within three working days of the enquiry. This is an ethical rule imposed on lawyers, a breach of which may lead to disciplinary proceedings against the lawyers in question.

It is also good practice for parties to send what is known as a demand letter before commencing action to give the prospective defendant the opportunity to accede to the claim and potentially avoid litigation.

There are pre-action protocols for medical negligence claims that are brought in the High Court and the State Court, for personal injury claims that are brought in the State Court, and for defamation claims that are brought in the State Court. Unless there are good reasons, the failure to comply with the protocol will result in sanctions by the Court.

3.2 Statutes of Limitations

The Limitation Act applies to civil suits. While the Act provides for many different scenarios, the more common scenarios are the following (not exhaustive):

- actions based on a contract or tort have a limitation period of six years, subject to certain special provisions governing actions for damages for negligence, nuisance or breach of duty, and provisions extending the limitation period in the event of 'latent' injuries and damage;
- actions to recover land have a limitation period of 12 years; and
- no limitation period applies to an action by a beneficiary of a trust, where the action is in respect of the trustee's fraud and/or to recover trust property or proceeds from the trustee.

A limitation period usually commences when the cause of action accrues – for example, when the judgment becomes enforceable (in an action on a judgment) or when rent or interest becomes due (in an action to recover arrears of rent or interest). For 'latent' injuries and damage, the limitation period commences only when the plaintiff has both the right to bring an action for the relevant damage and the knowledge required to bring such an action.

3.3 Jurisdictional Requirements for a Defendant

Broadly speaking, a defendant must be properly served with an originating process, either personally in Singapore or (with leave of court) outside Singapore, in order for him to be subject to a suit in Singapore. Exceptionally, the Court may order 'substituted service' by other means such as email, Skype, Facebook and WhatsApp, if personal service appears to be impracticable.

Once a Singapore Court has been properly seised of jurisdiction by way of proper service, a defendant may still dispute the jurisdiction of the Court, for example, by reason of an arbitration agreement applicable to the dispute, a choice of court agreement which designates a foreign Court and/or on the basis of theSingapore Courts not being the appropriate forum.

Apart from this, each of the Courts in Singapore has different jurisdictional requirements largely pegged to the subject matter specialties of each Court. For example, the SICC hears international commercial matters and the Syariah Court hears certain types of Muslim law disputes where all parties are either Muslims or are married under Muslim law.

3.4 Initial Complaint

Proceedings are either commenced by a Writ of Summons (often accompanied by a Statement of Claim) or by an Originating Summons (accompanied by a supporting affidavit).

Parties are permitted to amend originating processes after they have been filed, although leave of Court may be required before a party can make amendments.

3.5 Rules of Service

Originating processes must be served personally on each defendant, unless alternative means of service are permitted, such as modes of service provided in the Companies Act.

Notwithstanding this, service may be validly effected upon a defendant's lawyer who accepts service on behalf of his client. The Court will also give effect to modes of service contractually agreed between parties.

As set out above in **3.3 Jurisdictional Requirements for a Defendant**, service outside Singapore is possible with leave of Court and, exceptionally, the Court may permit 'substituted service' if personal service appears to be impracticable.

The plaintiff bears the responsibility of informing the defendant that he is being sued. While the Courts have process servers to effect service, the practice is that such process servers will not be assigned to effect personal service unless there are special reasons for doing so, in light of the fact that solicitors and authorised solicitors' clerks are permitted to do so.

3.6 Failure to Respond to a Lawsuit

In a writ action, if the defendant intends to contest the action, he must enter an appearance by filing a Memorandum of Appearance in the action within the stipulated time. Failure to enter an appearance allows the plaintiff to enter default judgment against the defendant (where the plaintiff directly obtains judgment for his claim without the matter having been heard).

No equivalent procedure exists for an action commenced by originating summons. The matter continues to proceed as usual, except that there is no opposing party in attendance.

3.7 Representative or Collective Actions

Representative actions are permitted, where a person or group represents a larger group of plaintiffs or defendants. The claimants or defendants must have the same interest in the proceedings, but even so, the circumstances of the case may justify the Court exercising its discretion to discontinue the proceedings.

The Court may add a person who was not previously named as a defendant as part of the representative group, but no judgment or order obtained will be enforced against any person not a party to the proceedings except with leave of Court.

3.8 Requirement for a Costs Estimate

Legal practitioners have general duties to inform their clients of the basis on which their fees will be charged, as well as any other reasonably foreseeable payments to be made. To the extent possible, estimates of such fees and payments should be provided if requested by their clients.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

It is possible to make interim applications before trial. These are not limited to case management issues and can be applications for interim relief, such as freezing injunctions, search orders and sale of perishable property.

4.2 Early Judgment Applications

A party can apply for early judgment through the summary judgment procedure.

- A summary judgment application has to be made no later than 28 days after the pleadings in an action are deemed to be closed, which is 14 days after service of the reply, defence to counterclaim or defence (whichever is the latest pleading).
- The application has to be made by way of a summons supported by an affidavit. The defendant can file rebuttal affidavits within 14 days after service of the plaintiff's summons and affidavits on him, with a further right of

reply by the plaintiff within 14 days after service of the defendant's affidavits.
- The plaintiff bears the burden of showing a prima facie case for summary judgment in light of the defences raised. If this is met, the defendant must then establish a fair or reasonable probability that he has a real or bona fide defence to the claim.

Separately, a party can also apply for an unmeritorious claim or defence to be struck out on the basis that it (1) discloses no reasonable cause of action or defence; (2) is scandalous, frivolous or vexatious; (3) may prejudice, embarrass or delay the fair trial of the action; and/or (4) is otherwise an abuse of process.

- A striking out application may be brought at any stage of the proceedings, but ideally should be brought as soon as possible.
- The application has to be made by way of a summons supported by an affidavit (unless the applicant is proceeding solely on the basis that the pleading discloses no reasonable cause of action or defence). The other party will likely be allowed the opportunity to file reply affidavits to contest the applicant's case.

4.3 Dispositive Motions

See **4.2 Early Judgment Applications**. Further, judgment on admission of facts is also available where a party has made admissions of fact which the applicant can capitalise on to obtain a judgment or order in its favour.

4.4 Requirements for Interested Parties to Join a Lawsuit

Interested parties may apply by way of a summons supported by an affidavit to intervene in an action and be joined as a party. The intervener must show that he has a direct interest in the subject matter of the action.

4.5 Applications for Security for Defendant's Costs

An applicant may apply for security for costs by a summons supported by an affidavit. As a minimum, the applicant must demonstrate that the plaintiff:

- is ordinarily resident out of the jurisdiction;
- is a nominal plaintiff and there is reason to believe that he will be unable to pay the defendant's costs if ordered; or
- has changed his address during the course of the proceedings with a view to evading the consequences of the litigation, and/or his address is not stated or incorrectly stated in the originating process.

However, the Court may decline to exercise its discretionary power to order security for costs if it is of the view that it would not be just to do so.

4.6 Costs of Interim Applications/Motions

Costs are entirely at the discretion of the Court. The general rule is that a successful party will ordinarily get its costs unless there are special reasons for not awarding such costs.

In determining costs, the Courts have regard to a wide range of factors, such as the scales of costs in the Rules of Court (ROC) and judge-issued costs guidelines.

In some cases, the Court may decide not to immediately fix the costs of the application, but instead reserve these costs for determination at a later stage of the proceedings.

4.7 Application/Motion Timeframe

Generally speaking, most applications are heard within two to three months after being filed. In cases of urgency, the applicant can request for the matter to be dealt with on an expedited basis by attending before the Duty Registrar to fix urgent timelines for the hearing of the application.

In cases of extreme urgency, an applicant may even request to have the matter heard directly before the Duty Registrar/Duty Judge, as the case may be. Before doing so, all requirements to give notice (to opposing parties/counsel) must be complied with, and all papers and draft orders of Court must be prepared for the hearing.

5. Discovery

5.1 Discovery and Civil Cases

A party usually gives discovery of documents by serving a list of documents arranged in a chronological order with a brief description of each document, and producing copies of the listed documents.

The discovery process usually takes place after the pleadings have been filed.

Litigants will be under a duty to give discovery only if, and to the extent that, the Court has ordered discovery.

The Court will order the parties to disclose all the documents that are relevant to the issues arising for the Court's determination, including documents which could adversely affect a party's own case, adversely affect another party's case, or support another party's case.

The Court will order discovery only if it is necessary for either disposing fairly of the cause or matter or for saving costs. If discovery is not necessary or not necessary at the stage of the matter, the Court may refuse to make such an order or adjourn the application for discovery.

Unless the SICC or High Court orders otherwise, discovery in a case before the SICC is governed by its own set of rules

and not the rules that govern the discovery process in cases before the High Court.

In a case before the SICC, each party will provide all the documents available to it and on which it relies within the time and in the manner ordered by the SICC. The discovery process in SICC proceedings differs from High Court proceedings because there is no requirement for parties in SICC proceedings to provide general disclosure of both beneficial and self-damaging documents that may be adverse to their own case, or that may assist their opponents. Moreover, under an SICC order for discovery of particular documents, a party may be required to disclose requested documents only if they are relevant and material to the requesting party's case. It is insufficient for parties to merely state, as a reason for seeking disclosure, that the requested documents may lead to a train of inquiry resulting in the obtaining of information which may adversely affect or support a party's case. The objecting party must state reasons for the objection and the requesting party may consequently apply to the SICC by summons for an order to produce the documents in question.

5.2 Discovery and Third Parties

After a civil case has been commenced, a party may be able to obtain discovery from a third party i.e. a person who is not a party (ie, not a plaintiff or a defendant) to the civil case.

For that purpose, an application must be made to the Court, which must be served personally on the third party and on every other party to the proceedings. The application should specify the documents that are sought.

An affidavit must be filed in support of that application, stating the grounds for the application. The applicant must explain why the third party is likely to have the requested documents, how the requested documents are relevant to an issue arising in the case, and that it would be just for the Court to grant the application in all the circumstances of the case.

The burden is on the party resisting the order for discovery to show that the order is not necessary.

5.3 Discovery in this Jurisdiction

The discovery process during a civil case comprises two stages: general discovery and specific discovery.

During general discovery, the Court will, usually on its own motion, order the parties to give discovery of the documents which are directly relevant to the case i.e. the documents on which the party relies or will rely, and the documents which could adversely affect that party's own case, adversely affect another party's case, or support another party's case.

During specific discovery, the Court may, in addition to the documents referred to above, order the parties to disclose documents that are not directly relevant but which may lead to the disclosure of relevant documents.

The Court will order specific discovery when an application is made to the Court for that purpose. An application for specific discovery is usually made after general discovery, and in response to any perceived omission in the documents disclosed during general discovery.

5.4 Alternatives to Discovery Mechanisms

A party can seek also information by serving interrogatories. Interrogatories are a supplementary form of discovery and assist in the resolution or clarification of issues in dispute by requiring persons to answer questions. The questions must be necessary for disposing fairly of the cause or matter or for saving costs. A party on whom interrogatories are sought should answer them to the best of his or her knowledge and belief.

There is also a pre-action interrogatory procedure. The applicant would have to show that the pre-action interrogatory is necessary to ascertain the viability of his or her cause of action and that it is just in all the circumstances of the case to grant the order.

5.5 Legal Privilege

Under Singapore law, a person has the right not to give discovery of documents that are covered by legal professional privilege, which comprises two categories.

First, there is legal advice privilege, which covers any communication made between a client and his legal adviser, including an in-house counsel, in the course of and for the purpose of employment of the legal adviser. The privilege extends to information which the legal adviser receives in a professional capacity from a third party and which he conveys to his client.

Second, there is litigation privilege, which covers information and materials created and collected for the dominant purpose of litigation. This includes communication between legal advisers and third parties which come into existence after litigation is contemplated or commenced and documents obtained by a legal adviser with a view to enable him to prosecute or defend an action or give advice with reference to existing or contemplated litigation.

5.6 Rules Disallowing Disclosure of a Document

In addition to legal professional privilege, a party may rely on a number of other exclusionary rules to object to the disclosure of documents. These include 'without prejudice'communications and 'marital communications'.

'Without prejudice' communications are statements made by opposing parties (or their solicitors) to each other, in the course of settlement negotiations. The 'without prejudice' privilege is intended to encourage litigants to settle their differences rather than litigate them to a finish. 'Without prejudice' communications may not be disclosed unless both parties consent.

'Marital communications' privilege is a statutory right that is based on policy that relationships between spouses ought not to be disrupted. No person who is or has been married can be compelled, or permitted, to disclose any communication made to him during marriage by his spouse. The communications continue to be privileged even if the marriage comes to an end and only the spouse who made the communication can waive the privilege.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

An injunction is an order of the Court requiring a party to do or refrain from doing something. It may be permanent or interim.

A permanent injunction will be granted where the plaintiff's rights have been infringed and will be further infringed if the injunction is denied and if it is established that damages will not be an adequate remedy.

An interim injunction is an injunction granted other than as a final judgment. It is a protective order that is intended to preserve the status quo until the Court can adjudicate the dispute.

The jurisdiction to grant an interim injunction is based on three fundamental principles.

The first is that it is available for protecting some recognisable right, in respect of which the applicant usually seeks some substantive relief.

The second is that the function of an interim injunction is not to decide finally the issues in dispute between the parties, but only to protect rights from irreparable harm. The Court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been wrong at trial in the sense of granting relief to a party who fails to establish his rights at trial or of failing to grant relief to a party who succeeds at trial.

The third is that if the Court finds in the final judgment that a party restrained by an interim injunction had been prevented from exercising his rights, the Court may seek to restore that party to the position he would have been in, had he not been subjected to a restraint.

Thus, the applicant for an interim injunction will usually have to undertake to pay damages to the respondent for any loss that the respondent may sustain by reason of the injunction if it should be held at the trial that the applicant was not entitled to restrain the defendant.

The Court may grant a variety of interim injunctions. These include:

- a prohibitory injunction, which restrains a party from doing a wrongful act;
- a proprietary injunction, which restrains the defendant from dealing with a particular asset and its traceable proceeds;
- a Mareva injunction (also known as a freezing order), which restrains a defendant from dealing with his assets so that he cannot dispose of them to defeat any claim against him; and
- an anti-suit injunction, which restrains a party from commencing, or continuing to prosecute, proceedings in another country.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

Paragraph 11 of the *Supreme Court Practice Directions* deals with applications for interim injunctions outside of the Court's office hours.

According to the Practice Directions, if an application for an interim injunction must be made urgently, counsel can contact the Duty Registrar who will arrange for a hearing to take place only if it is so urgent that it cannot be heard the next working day.

The hearing may take place in the Registrar's Chambers in the Supreme Court or at any place as directed by the Judge or Registrar hearing the matter.

The applicant must ensure that all the papers for the application have been prepared, together with the appropriate draft orders of Court. If the documents have yet to be filed in Court when the counsel seeks an urgent hearing, he must furnish an undertaking to the Registrar processing the application to have these documents filed in Court no later than the next working day.

The Registrar may also direct the counsel to send the application and supporting documents by email if the application is of sufficient urgency.

The counsel must also ensure that all applicable notice requirements are complied with. See **6.3 Availability of Injunctive Relief on an Ex Parte Basis**.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Generally, all applications, including applications for injunctive relief, should be heard inter partes. In exceptional circumstances, an application for injunctive relief can be heard ex parte.

According to paragraph 41 of the Practice Directions, any party applying ex parte for an injunction must give notice of the application to the other concerned parties prior to the hearing. The notice may be given by way of facsimile transmission or telex, or, in cases of extreme urgency, orally by telephone. The notice should inform the other parties of the date, time and place fixed for the hearing of the application and the nature of the relief sought. If possible, a copy of the ex parte summons should be given to each of the other parties.

If any of the other parties are not present or represented at the hearing of the ex parte application, then the applicant's solicitors must inform the Court of the attempts that were made to notify the other parties of the application.

The Judge hearing the application decides whether it should be heard ex parte. He may direct that the application be made inter partes if the case is not urgent.

6.4 Applicant's Liability for Damages

To obtain an interim injunction, the applicant must undertake to the Court that he would comply with any order of the Court to compensate the respondent for any loss the Court might later find that the order for injunctive relief resulted in. If the applicant does not give the undertaking, the Court will usually refuse the injunction.

Where the applicant provides an undertaking, the Court may, in an appropriate case, require the applicant to support his undertaking as to damages by a payment into Court, by providing a bond from an insurance company, or a written guarantee from a bank, or a payment to the plaintiff's solicitor to be held by the solicitor as an officer of the Court pending further order.

6.5 Respondent's Worldwide Assets and Injunctive Relief

A worldwide Mareva injunction can be granted, which would restrain a defendant from dealing with his assets which are wholly located abroad, within several foreign jurisdictions or where some of the assets are within the jurisdiction and some are abroad.

6.6 Third Parties and Injunctive Relief

Injunctive relief in the form of a Mareva injunction can be obtained to restrain a third party from removing or dealing with the defendant's assets, which are known or believed to be in the hands of a third party, and there are grounds for believing that the debtor intends to dispose of assets in order to avoid execution.

6.7 Consequences of a Respondent's Non-compliance

If a party fails to comply with the terms of an injunction, then he may be found to be in contempt of Court, and is liable to be punished by a fine of up to SGD100,000, or imprisonment for up to three years, or both, unless he shows that the non-compliance was wholly or substantially attributable to an honest and reasonable failure to understand the obligation imposed on him.

7. Trials and Hearings

7.1 Trial Proceedings

Trials are held in public, almost always before a Judge sitting alone.

Factual witnesses give their evidence-in-chief in the form of affidavits, and expert witnesses give their evidence in the form of reports that are annexed to their affidavits. Opening statements are usually in writing.

The parties will file, and disclose to each other, the affidavits of the factual and expert witnesses, and their opening statements, well before the trial.

The witness statements, expert reports, bundles of the relevant documents, and written opening statements, will be provided to the trial Judge well before the trial.

The trial Judge would normally review these materials before the opening of the trial and give appropriate directions for the conduct of the trial. Oral presentation of both evidence and argument may be subject to time and other limits.

At the trial, usually, the opening statements will be taken to be read, after which the parties will present their cases unless there are preliminary issues to be considered.

The order in which the parties present their cases at the trial is governed by general rules, though the Court has considerable discretion to depart from those rules and determine how the parties should proceed.

Generally, the first party to proceed is the plaintiff, unless the burden of proof in the case lies with the defendant. The plaintiff's advocate will introduce his first witness. Once the witness confirms that he deposed to the evidence in his affidavit, the defendant's advocate will cross-examine that witness. A witness who has been cross-examined may be re-examined by the advocate of the party who called him on matters that were dealt with in cross-examination.

Once the plaintiff's witnesses have been examined, the plaintiff may close his case.

If there is more than one plaintiff, they will present their cases in the order in which they appear on the record.

Upon conclusion of the plaintiff's case, the defendant may make a submission of no case to answer, i.e. that the plaintiff has not established a sufficient case to demand an answer and that therefore the Judge should decide against the plaintiff there and then.

If no such submission is made, or if it has been rejected, the defendant will be called upon to present his case. The defendant's advocate will then call his witnesses to give evidence. They will be cross-examined by the plaintiff's advocate, and re-examined by the defendant's advocate.

If there is more than one defendant, they will present their cases in the order in which they appear on the record.

Once all the evidence has been adduced, the defendant will close his case.

The trial Judge exercises control throughout the trial. A Judge typically does not interfere with the manner in which a party conducts his case; any interference will only arise out of a necessity to ensure that the appropriate trial procedures and rules of evidence are complied with.

The Judge will at all times ensure that the trial is conducted in an even-handed way.

At the end of the trial, the trial Judge will deliver judgment either immediately or, as is usually the case, reserve judgment to be delivered at a future date. If the judgment is reserved, it is because the Court requires more time for consideration. In that case, the trial Judge will also usually give directions for the filing of written closing submissions, and written reply submissions. The parties would be notified of the date for the delivery of the judgment at a later date.

7.2 Case Management Hearings

There are two types of hearings that will take place before the trial, i.e. pre-trial conferences and the hearing of interlocutory applications. Both tend to be relatively short.

Pre-trial Conferences

At any time after the commencement of proceedings and before the trial, the Court will usually direct the parties to attend a case management conference known as a 'pre-trial conference' (PTC). A PTC is usually heard before a Registrar.

The Court will usually fix the first PTC for hearing within the first six weeks after the filing of the writ. An action may go through several PTCs.

At a PTC, each party's lawyers will usually update the Registrar on the status of the proceedings, including whether any interlocutory orders are required. At a stage closer to the trial, each party's lawyers will provide information such as the number of witnesses (including experts), the number of days the trial will take and the estimated costs of proceeding to trial.

The Court will consider all matters, including the possibility of settlement of any or all issues in the action, and give all necessary directions for the parties to progress the action in an expeditious and fair manner. If the parties agree to a settlement of some or all of the matters in dispute, the Court may enter judgment or make such order to give effect to the settlement.

PTCs may also be conducted by Judges (JPTCs) to facilitate a more active role in case management. JPTCs are usually scheduled after the completion of discovery and again after the exchange of the affidavits of evidence-in-chief of the witnesses.

Interlocutory Applications

Once litigation has commenced, the parties may require a Court decision on a variety of matters relating to the conduct of the case. For example, a plaintiff may require an extension of time for serving the statement of claim, a plaintiff may seek summary judgment, a defendant may wish to strike out the plaintiff's statement of claim, or the parties may seek permission to amend their pleadings.

To obtain the Court's orders on these matters, the parties must make an interlocutory application to the Court. A party must file a summons with a supporting affidavit. The summons will set out the directions or orders which a party wishes to obtain from the Court. The affidavit will set out the supporting facts and matters.

The Court would usually then fix an oral hearing to decide the application and notify the applicant of the time and date for the oral hearing of that application. The applicant will then serve that application on each respondent, i.e. the person against whom the order is sought.

The respondent who wishes to meet the applicant's case with evidence of his own must file an affidavit opposing the application.

Interlocutory applications are generally heard in private, i.e. in chambers before Registrars at first instance, though in some cases they are heard before Judges.

7.3 Jury Trials in Civil Cases

Jury trials are not available under any circumstances. Every proceeding before the Court will be heard and disposed of before a trial Judge, who usually sits alone.

7.4 Rules That Govern Admission of Evidence

At trial, contested facts may be proved by only admissible evidence. The admissibility of evidence is governed by the Evidence Act (Cap 97, 1997 Rev Ed).

Evidence is admissible only if it is relevant, subject to any exclusionary rules. There are a number of exclusionary rules. They include legal professional privilege and without prejudice communications, both of which have been covered above, and hearsay evidence.

Hearsay evidence refers to a person's assertions made out of Court, whether orally or in documentary form or in the form of conduct, which is then tendered to prove the truth of the matters it refers to.

Hearsay evidence is generally inadmissible unless it falls within the scope of the exceptions specified in the Evidence Act. These exceptions include statements relating to the existence of any relationship by blood, marriage or adoption, or a statement that is made by a person who is dead or who cannot be produced as a witness.

7.5 Expert Testimony

Expert evidence is admissible on matters that require specialised knowledge or training which the Court does not possess, provided that the expert evidence is sufficiently relevant and will help advance the Court's inquiry into the facts. For example, a Court cannot be expected to form a well-founded view concerning the nature of personal injuries and their likely effect without the assistance of medical practitioners.

A party may adduce expert evidence from his own expert witness.

The Court also has the power to appoint an expert. The purpose of this power is to prevent the Court being left without expert assistance in cases where the parties' experts may be giving entirely contradictory evidence.

Regardless of whether an expert is appointed by a party or the Court, an expert witness's primary duty is to the Court. The expert must provide independent assistance to the Court by way of an objective, unbiased opinion in relation to the matters within his expertise.

7.6 Extent to Which Hearings are Open to the Public

Hearings

Generally, all trials are held in open and public Court. Any member of the public can attend these hearings conducted in open Court. In certain circumstances, trials may be held in camera, ie, in a Court which is closed to the general public. PTCs and interlocutory hearings, which are conducted in chambers, are closed to the public.

Proceedings where, for example, the maintenance of privacy or secrecy is a primary consideration must be tried in camera. These include matrimonial suits and suits under the Adoption of Children Act.

The Court also has a broad discretion and may order a matter to be heard in camera if it is satisfied that it is expedient in the interests of justice, public safety, public security or propriety, or for any other sufficient reason to do so.

Transcripts and Judgments

A copy of every judgment delivered in any cause or matter heard in open Court is available for public inspection upon payment of the prescribed fee, and a copy shall be handed to any member of the public upon payment of the appropriate charges.

Where proceedings are heard in camera pursuant to any written law, any judgment pronounced or delivered in such proceedings shall not be available for public inspection, though the Court has the power to allow inspection or copies to be made of the judgment.

However, in practice, written judgments delivered in respect of proceedings heard in camera are sometimes published, but with important details such as the identity of the parties invariably redacted.

7.7 Level of Intervention by a Judge

The courts adopt an adversarial system (as opposed to an inquisitorial one). So the examination and cross-examination of witnesses are primarily the responsibility of counsel.

However, the judge is not obliged to remain silent. The judge can ask witnesses or counsel questions if, among other things, (i) it is necessary to clarify a point or issue that has been overlooked or has been left obscure, or to raise an important issue that has been overlooked by counsel; (ii) it enables him or her to follow the points made by counsel; (iii) it is necessary to exclude irrelevancies and/or discourage repetition and/or prevent undue evasion and/or obduracy by the witness concerned (or even by counsel); (iv) it serves to assist counsel and their clients to be cognisant of what is troubling the judge, provided it is clear that the judge is keeping an open mind and has not prejudged the outcome of the particular issue or issues or the result of the case itself.

The judge must be careful not to descend (and/or be perceived as having descended) into the arena, thereby clouding his or her vision and compromising his or her impartiality as well as impeding the fair conduct of the trial by counsel and unsettling the witness concerned.

7.8 General Timeframes for Proceedings

An action is commenced by filing a Writ of Summons ('Writ'). Once the Writ has been served on the defendant,

he will have to enter an appearance in the action within eight days of the service of the Writ. If the Writ is served out of jurisdiction, the defendant will have 21 days to enter an appearance in the action.

The statement of claim, which sets out the relevant facts establishing the plaintiff's claim, may be endorsed on the Writ and served together with the Writ. Where the Writ does not have an endorsed statement of claim, the statement of claim must be filed and served on the defendant within 14 days of the defendant entering an appearance in the action.

Where the defendant has entered an appearance, and intends to defend an action, he must file and serve his defence 14 days after the time limited for entering an appearance or after the service on him of the statement of claim, whichever is later. If a defendant alleges that he has a claim or is entitled to any relief or remedy against the plaintiff, he may file and serve a counterclaim in the same action brought by the plaintiff. In that case, the defendant's pleading is known as the defence and counterclaim.

A plaintiff may file and serve his reply within 14 days after the defence has been served on him. Where there is a counterclaim by the defendant, the plaintiff may file and serve a reply and defence to counterclaim or just a defence to counterclaim if there is no reply.

After the pleadings have been filed, the Court will normally hold a PTC, to decide the future conduct of the case, including matters such as discovery, the exchange of witness statements and expert reports. The Court will also fix the trial date.

In simple commercial cases, the trial date may be held within nine to 12 months of the start of the proceedings. Complex commercial cases can take longer. It could be anywhere from 15 months to three years to go to trial.

The duration of the trials also varies, depending on the complexity and nature of the case. A trial in simple commercial cases may take less than five days and up to four weeks in complex commercial cases.

8. Settlement

8.1 Court Approval

Parties are not required to obtain Court approval to settle a lawsuit before trial so long as all parties consent in writing. However, leave of the Court is required to discontinue an action if trial has begun or if the action was commenced by originating summons. Leave of Court would invariably be granted if parties have reached a settlement, and it is common also for the Court to make a 'consent order' reflecting the main terms or bases of settlement if the parties so wish.

8.2 Settlement of Lawsuits and Confidentiality

Parties may include confidentiality clauses in settlement agreements, which are enforceable as contractual terms. Permission may also be sought from a Judge to seal any Court papers to protect the confidentiality of settlements.

In matters settled through mediation, the Mediation Act (Act No. 1 of 2017) provides for the confidentiality and inadmissibility of settlement communications, including the mediated settlement agreement.

8.3 Enforcement of Settlement Agreements

General contractual principles apply to the enforcement and setting-aside of settlement agreements. Settlement agreements which are recorded as consent orders are also enforceable as court judgments or orders. The court may record the consent judgment or order without requiring the parties to appear before the court.

8.4 Setting Aside Settlement Agreements

General contractual principles apply to the setting-aside of settlement agreements.

9. Damages and Judgment

9.1 Awards Available to a Successful Litigant

Other than damages, the Courts may grant other forms of relief such as injunctions and specific performance. The Courts also have the discretion to grant orders for costs, which are usually awarded to the successful litigant.

9.2 Rules Regarding Damages

Contractual damages aim to place the plaintiff in the same position as if the contract had been performed. While the Courts have not foreclosed the possibility of awarding punitive damages for breaches of contract, such a remedy is unlikely to be granted.

Tortious damages seek to restore the plaintiff to the position that it would have been in had the tort not been committed. Aggravated damages may be warranted where a plaintiff had suffered enhanced hurt due to the manner in which the defendant had committed the tort or the defendant's motive in doing so. Further, punitive damages may be awarded if the defendant displays outrageous conduct.

An aggrieved party's right to contractual or tortious damages may be excluded or limited by contract. This is, however, subject to the Unfair Contract Terms Act (Cap 396, 1994 Rev Ed).

9.3 Pre- and Post-judgment Interest

The Courts may award pre-judgment interest for the period between the date when the cause of action arose and the date of the judgment. While the Courts may award interest at a

different rate, the current default pre-judgment interest rate is 5.33% per annum.

Post-judgment interest is generally payable after the date of judgment at the rate of 5.33% per annum, and is calculated to the date that the judgment is satisfied. The Courts may grant post-judgment interest at a different rate, subject to a maximum rate of 6% per annum (Order 42, Rule 12 of the ROC), or enforce an interest rate agreed between the parties.

9.4 Enforcement Mechanisms for a Domestic Judgment

A judgment creditor may choose among a range of options for enforcing a judgment, including writs of execution (which include writs of seizure and sale, writs of possession and writs of delivery), garnishee orders, and appointments of receivers by way of equitable execution. Further, a judgment creditor may obtain a post-judgment Mareva injunction as an aid to execution if there is a real risk of the judgment debtor dissipating its assets. A disclosure order may also be attached as an ancillary order to a post-judgment Mareva injunction.

Before selecting a mode of enforcement, a judgment creditor may seek an examination of the judgment debtor to determine what property the judgment debtor has and where it is situated.

If the judgment debtor's conduct or affairs provide probable reason for believing that he is likely to leave Singapore, the Court may order that the judgment debtor be arrested and brought before the Court for examination regarding his ability to pay the judgment. The judgment creditor may apply for such an order on an ex parte basis, without giving prior notice to the judgment debtor.

9.5 Enforcement of a Judgment From a Foreign Country

Foreign judgments may be enforced in Singapore by the following means:

- under the Choice of Court Agreements Act (Cap 39A, 2017 Rev Ed) (CCAA);
- by registration under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) (RECJA), or the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) (REFJA); or
- by way of a common law action.

The RECJA currently applies to monetary judgments or orders of superior Courts of several Commonwealth jurisdictions, including Australia and India, and the REFJA applies to monetary judgments of the superior Courts of Hong Kong. A RECJA application must be made within 12 months after the date of the judgment unless the Court orders otherwise, and a REFJA application must be made within six years after the date of the judgment. The judgment creditor may issue execution on a registered judgment after registration has been duly made, the judgment debtor has been notified, and the period within which an application may be made to set aside the registration has expired.

The CCAA currently applies to judgments from 31 jurisdictions, including European Union countries. Where the requirements set out in the CCAA are met, the Singapore Court must recognise and enforce a foreign judgment, subject only to limited exceptions within the CCAA.

Where legislation is inapplicable, a judgment creditor may bring a common law action for recognition and enforcement of a foreign judgment by seeking summary judgment on the basis of the foreign judgment within six years of the date of the judgment. A foreign judgment is enforceable if it is a final and conclusive judgment for a definite sum of money granted by a Court of competent jurisdiction. This is unless it was procured by fraud, its enforcement would be contrary to public policy, or the proceedings in which the judgment was obtained were contrary to natural justice.

10. Appeal

10.1 Levels of Appeal or Review Available to a Litigant Party

The High Court has the jurisdiction to hear criminal appeals from the District Courts, Magistrates' Courts, Family Courts and Youth Courts. It may also hear civil appeals from Family Courts, District Courts and Magistrates' Courts, and other tribunals as may be prescribed by written law, for example the Employment Claims Tribunal.

The Court of Appeal has the jurisdiction to hear civil appeals from any judgment or order of the High Court, including appeals against a judgment or order of the SICC, and the jurisdiction to hear criminal appeals against any decision made by the High Court in the exercise of its original criminal jurisdiction.

10.2 Rules Concerning Appeals of Judgments

Restrictions on the matters that may be brought before the Court of Appeal are set out in section 34 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (SCJA) and its Fourth and Fifth Schedules. The Fourth Schedule sets out orders which are non-appealable, which include orders giving unconditional leave to defend, orders setting aside unconditionally a default judgment, orders refusing to strike out an action or pleading, and orders refusing security for costs.

The Fifth Schedule sets out orders which are appealable only with leave. These include orders such as orders for security for costs, orders giving or refusing discovery and orders

refusing a stay of proceedings. Leave is generally required to bring appeals before the Court of Appeal unless the amount in dispute or the value of the subject matter before the High Court exceeds SGD250,000.

Parties before the District Court or Magistrates' Court may appeal to the High Court without leave if the amount in dispute, or the value of the subject matter before the lower Court, exceeds SGD50,000. The Supreme Court of Judicature (Amendment No.2) Bill, introduced in Parliament on 10 September 2018, increases this threshold amount from SGD50,000 to SGD60,000. This is subject to the exceptions set out in the Third Schedule of the SCJA.

10.3 Procedure for Taking an Appeal

Parties seeking to bring an appeal from the State Courts to the High Court or from the High Court to the Court of Appeal must file and serve a notice of appeal. At the time of filing the notice of appeal, the appellant must provide security for the respondent's costs of the appeal. The notice of appeal must be filed and served within 14 calendar days from the pronouncement of the judgment or order to be appealed in appeals from the State Courts, and within a month for appeals from the High Court.

If leave is required to appeal, the appealing party must file its application to the lower Court within seven days from the date of the judgment or order. If leave is refused by the lower Court, the appealing party must file the application to the higher Court within seven days of the date of the refusal. Thereafter, a party who has obtained leave to appeal must file and serve a notice of appeal within one month.

Where there is doubt as to whether leave is required, parties may seek a declaration from the Judge below that leave is not required.

All Registrar's decisions are appealable to a Judge of the High Court in chambers without leave. A Notice of Appeal has to be filed within 14 days of the decision and must be served on every other party involved in the proceedings within seven days of its being issued.

Appeals before the Singapore Courts do not operate as a stay of proceedings.

10.4 Issues Considered by the Appeal Court at an Appeal

Standards of Review

An appellate Court generally rehears the case on the documents. It will correct any misapplication of the law but will not ordinarily disagree with the trial Judge's findings of fact. It is entitled to reverse the trial Judge's findings of fact only when they are manifestly wrong, and any advantage which the trial Judge enjoyed by having seen and heard the witnesses is not sufficient to explain his conclusion. However, an appellate Judge may intervene where the inferences drawn by a trial Judge are not supported by the facts on record and may assess the credibility of witnesses based on inconsistencies in their testimony or between their evidence and the extrinsic objective facts.

For appeals from Registrars' decisions to a Judge in chambers, the Judge is to decide such appeals as though the matter is before the Court for the first time.

New Points on Appeal

An appellate Court would only allow a new point to be argued in exceptional circumstances. Further, an appellate Court would not decide in favour of an appellant on a ground put forward for the first time on appeal unless it is satisfied beyond doubt that it has before it all the facts bearing upon the new contention, and that no satisfactory explanation could have been offered by the persons whose conduct is impugned. However, the appellate Court may allow new points to be raised on appeal if they relate to jurisdiction, could result in the rectification of an erroneous order, relate to illegality, or where it is in the overriding interest of justice to do so.

New Evidence on Appeal

New evidence may only be admitted on appeal on special grounds, with the leave of the Court of Appeal. This is unless the evidence relates to matters which have occurred after the date of the decision from which the appeal is brought.

To establish that 'special grounds' apply, it is necessary to demonstrate that the evidence could not have been obtained with reasonable diligence for use at the trial, that the evidence would probably have an important influence on the result of the case, and that the evidence is presumably to be believed.

10.5 Court-imposed Conditions on Granting an Appeal

There are no general conditions imposed by the Court on granting appeals. However, a party does not have the unqualified right to bring an appeal as its right of appeal may be subject to it obtaining leave from the Court to do so, or to conditions such as the requirement for the provision of security for costs.

10.6 Powers of the Appellate Court After an Appeal Hearing

An appellate Court has extensive powers when granting orders after hearing an appeal. It may give any judgment and make any order which ought to have been given or made, and make such further orders as the case may require. Additionally, the Court has the power to order a new trial. These orders may be granted in favour of a party notwithstanding that no notice of appeal has been given in respect of any particular part of a decision, or by that particular party to the

proceedings in the Court. In this regard, the Court's powers are not restricted by any interlocutory orders which have not been appealed against.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

Two sets of costs are relevant: party-and-party costs (payable between parties to litigation); and solicitor-and-client costs (payable by parties to their solicitors). Costs are typically paid by the losing party to the prevailing party (Order 59, Rule 3(2) of the ROC), and are generally intended partially to reimburse the prevailing party for its Court fees and solicitor-and-client costs. The quantum of costs payable may be determined by parties' agreement, as set out in legislation, fixed by the Court or determined by the Court in taxation proceedings.

In taxation proceedings, party-and-party costs are typically taxed on the standard basis, which means that a reasonable amount in respect of all costs incurred would be granted, and any doubts as to whether the costs were reasonably incurred shall be resolved in favour of the paying party (Order 59 Rule 27(2) of the ROC). Solicitor-and-client costs are typically taxed on the indemnity basis, which means that a reasonable amount in respect of all costs incurred would be granted, but that any doubts are to be resolved in favour of the receiving party (Order 59, Rule 27(3) of the ROC). Costs assessed on the indemnity basis are typically about one third more than costs assessed on the standard basis.

Alternatively, where the receiving party is a litigant in person, the Court may allow such costs as would reasonably compensate the litigant for the time expended by him, together with all expenses reasonably incurred (Order 59, Rule 18A of the ROC).

For cases before SICC, the SICC has the discretion to determine by whom and to what extent costs are to be paid. For this purpose, the SICC has the option of applying the costs guidelines referred to above but is not obliged to do so.

11.2 Factors Considered When Awarding Costs

Costs are generally awarded to the prevailing party. In determining whether the prevailing party should be deprived of its costs, the Court may take into account all the circumstances of the case, including the party's conduct in inducing the losing party to commence the action by leading the losing party to suppose that he had a cause of action. The Court may also take into account a party's conduct in the course of the proceedings. Further, where the prevailing plaintiff was awarded only nominal damages, the defendant may be awarded the costs of the action.

Relevant factors in determining the quantum of costs to be allowed include the complexity of the matter, the difficulty of the questions involved, the skill and responsibility required of the solicitor, the number of and importance of the documents prepared or perused, the circumstances in which the business involved was transacted, and the urgency and importance of the matter to the client.

11.3 Interest Awarded on Costs

Costs carry interest at the rate of 5.33% per annum from the date of taxation, the date of the order fixing the costs, the date of agreement (if costs are agreed between the parties), or the date of judgment.

12. Alternative Dispute Resolution

12.1 Views on ADR in this Jurisdiction

Singapore offers a suite of alternative dispute resolution (ADR) options in an organised and comprehensive manner. The 2018 International Arbitration Survey conducted by the Queen Mary University of London found that Singapore is the leading arbitration hub in Asia, and the third most preferred seat of arbitration worldwide. Additionally, the Singapore International Arbitration Centre (the SIAC) is the most preferred arbitration institution in Asia, and the third most preferred arbitration institution worldwide, behind only the International Chamber of Commerce and the London Court of International Arbitration. This is reflected in the increase in the SIAC's caseload and the value of those cases, both of which have risen considerably over the years since the SIAC's inception in 1991. Notably, the majority of the SIAC's caseload comprises international cases, representing 83% of new cases filed in the SIAC in 2017.

Mediation has similarly grown to prominence in the Singapore legal landscape, with the establishment of mediation institutions such as the Singapore Mediation Centre (SMC), the Singapore International Mediation Centre (SIMC), the Singapore International Mediation Institute (SIMI), and the State Courts Centre for Dispute Resolution (SCCDR). In particular, the SMC, which is the primary mediation institution in Singapore, offers a variety of ADR services including mediation, conciliation, neutral evaluation, collaborative family practice and domain name dispute resolution. The Community Mediation Centre under the Ministry of Law also provides mediation services for non-commercial disputes.

Hybrid arbitration and mediation options are also available in Singapore. The SIMC provides an 'Arb-Med-Arb' procedure in collaboration with the SIAC. This permits parties to an arbitration reference to first engage in mediation, and record any settlement reached as a consent award in the arbitration. Parties may then continue with arbitration if they fail to reach a settlement.

12.2 ADR Within the Legal System

ADR is an integral part of the Singapore Courts' procedural framework. Courts may take into account a party's unreasonable refusal to participate in ADR in apportioning costs between the parties (Order 59, Rule 5 of the ROC).

In this regard, the Supreme Court Practice Directions provide that parties may make formal offers for engaging in ADR, and that the Court may give directions for the adjournment of pending proceedings if the parties are willing to attempt ADR.

The State Courts integrate ADR services into their dispute resolution framework through the SCCDR. Appropriate matters before the State Courts are referred to ADR as a matter of course. Non-injury motor accident cases, personal injury cases and medical negligence cases in the State Courts will be automatically fixed for ADR at the SCCDR.

Singapore lawyers are compelled to advise their clients on the use of ADR, as the rules on legal professional conduct provide that a legal practitioner must, in an appropriate case, evaluate the use of ADR processes with a client. This is further emphasised in the Supreme Court Practice Directions.

Singapore has also sought to make ADR a more attractive option for dispute resolution by enhancing the enforceability of mediated settlements. Under the Mediation Act, parties may agree to record their mediated settlement agreements as an order of Court even where Court proceedings have not been commenced. These mediated settlement agreements would consequently be enforceable in the same manner as a Court judgment or order.

12.3 ADR Institutions

Various institutions in Singapore provide a range of ADR services. The main arbitration institution in Singapore is the SIAC, which administers both international and domestic cases. The International Chamber of Commerce (ICC) has also set up a case-management office in Singapore.

Private mediation service providers include the SMC and the SIMC, while parties involved in disputes before the State Courts may engage in mediation in the SCCDR. Other bodies such as the Community Mediation Unit, the Consumers Association of Singapore and the Tripartite Alliance for Dispute Management provide mediation services for specific categories of disputes.

To support Singapore's ADR infrastructure, Singapore's ADR institutions also provide various training and accreditation programmes. These include courses conducted by the Singapore Institute of Arbitrators (SIArb) and the Chartered Institute of Arbitrators (CIArb) Singapore Branch, as well as training and accreditation services provided by the SMC and the SIMI.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitrations

While parties may choose to implement either framework, the default position is that domestic arbitrations are generally governed by the Arbitration Act (Cap 10, 2002 Rev Ed) (AA), and international arbitrations are governed by the International Arbitration Act (Cap 143A, 2002 Rev Ed) (IAA). Both sets of legislation are based on the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration ('Model Law'). Singapore is also a signatory to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards ('New York Convention'), which has been enacted into Singapore law and is part of the IAA (in the Second Schedule).

13.2 Subject Matter not Referred to Arbitration

A Court may refuse to refer a matter to arbitration where the subject matter of a dispute is non-arbitrable. A dispute is non-arbitrable where its subject matter is of such a nature as to make it contrary to public policy for that dispute to be resolved by arbitration. For instance, claims relating to the liquidation of an insolvent company may be non-arbitrable due to their impact on non-parties to the arbitration agreement.

13.3 Circumstances to Challenge an Arbitral Award

The Courts have the power to set aside awards in respect of arbitrations seated in Singapore only in the limited circumstances set out in the AA and the IAA. The Courts will not set aside arbitral awards from non-Singapore-seated arbitrations. In determining challenges to arbitral awards, the Singapore Courts adopt a policy of minimal curial intervention and will adhere strictly to the narrow bases for challenging arbitral awards which are expressly set out in the AA and the IAA. Awards would not be set aside merely because they contain errors of fact or law.

A party seeking to set aside an award must make an application to do so within three months from the date on which it had received the award, or the date on which a tribunal disposes of a request to correct or interpret an award or make an additional award.

The Courts have more extensive powers in respect of AA-governed arbitrations than IAA-governed arbitrations. In particular, a party to AA-governed arbitral proceedings may appeal to Court on a question of law arising out of an award made in the proceedings, unless the parties agree otherwise.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

A party seeking to enforce an arbitral award may do so by applying to the High Court of Singapore for leave to enforce the award in the same manner as a judgment or order of the

Court. This application must be made within six years from the time that the applicant becomes entitled to enforce the award. The grounds for resisting enforcement of the award are similar to those for the grounds for setting it aside.

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