



DREW & NAPIER

Bill Introduces New Procedure For Post- appeal Applications in Capital Cases

8 November 2022

**LEGAL
UPDATE**

In this Update

The Post-appeal Applications in Capital Cases Bill was introduced in Parliament on 7 November 2022 and introduces a new procedure for post-appeal applications in capital cases where avenues for appeals and bids for clemency have been exhausted (“**PACC Applications**”).

Our update discusses the key features of the new procedure for PACC Applications.

03
INTRODUCTION

03
KEY FEATURES FOR PACC APPLICATIONS

03
COMMENTARY

INTRODUCTION

The Post-appeal Applications in Capital Cases Bill was introduced in Parliament on 7 November 2022 and introduces a new procedure for post-appeal applications in capital cases where avenues for appeals and bids for clemency have been exhausted (“**PACC Applications**”).

KEYPOINT

This Bill seeks to ensure that safeguards are in place to prevent abuse of process by a prisoner awaiting capital punishment when making such applications.

This Bill follows several recent cases where the Court of Appeal chastised the abuse of court processes and the unnecessary prolongation of post-appeal capital cases.

Our update discusses the key features of the new procedure for PACC Applications.

KEY FEATURES FOR PACC APPLICATIONS

A prisoner awaiting capital punishment (“**PACP**”) will be required to apply for permission to make a PACC Application. The PACP will need to provide reasons for not filing the application earlier and also state the grounds of the PACC Application.

In deciding whether to grant such permission, the Court of Appeal will need to consider if the PACC Application is based on material that could not have been adduced in court earlier, even with reasonable diligence. The Court of Appeal will also need to consider if there was a delay in filing the application after the material was obtained by the PACP or his counsel, and the reasons for such delay (if any).

Where the PACP has previously been found by the Court of Appeal to have abused the court’s process, the Court of Appeal must not grant such permission unless the PACP adduces material that was not *and* could not have been (even with reasonable diligence) adduced earlier.

If permission is granted by the Court of Appeal, the PACC Application must be filed within a specified period of time and a hearing will be fixed.

COMMENTARY

The stakes in capital cases cannot be any higher. The Bill underscores the fact that it is crucial for an accused person facing possible capital

punishment to work with defence counsel to ensure that all viable grounds of defence are canvassed at the earliest possible opportunity and proper steps are taken to obtain material which is exculpatory. The statutory framework that the Bill seeks to put in place is in line with the approach already taken by the Courts where challenges and arguments raised at the eleventh hour are unlikely to be given weight if they could and should have been raised earlier.

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If you have any questions or
comments on this article, please
contact:



Adam Maniam

Director, Dispute Resolution &
Competition Law Practice (Disputes)

T: +65 6531 2741

E: adam.maniam@drewnapier.com

Drew & Napier LLC

10 Collyer Quay
#10-01 Ocean Financial Centre
Singapore 049315

www.drewnapier.com

T : +65 6535 0733

T : +65 9726 0573 (After Hours)

F : +65 6535 4906

 **DREW & NAPIER**