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Litigation 2022

Singapore: Law & Practice
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SINGAPORE

Law and Practice

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1. GENERAL

1.1 General Characteristics of the Legal System

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

Judges 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 doctrine of "horizontal stare decisis" – that is, where courts at the same level in the judicial hierarchy are bound by each other's decisions – is not applicable. However, a court would be hesitant to depart from a line of previous decisions.

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

1.2 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, High Court (General Division and Appellate Division) and Singapore International Commercial Court (SICC).

The Court of Appeal hears criminal appeals and prescribed categories of civil appeals from the decisions of the General Division of the High Court and is the court of final appeal. Court of Appeal hearings usually feature three judges.

The High Court exercises original and appellate jurisdiction in civil and criminal cases.

- The General Division of the High Court hears civil cases where the claim exceeds SGD250,000, probate matters if the estate exceeds SGD5 million (or if the case involves the resealing of a foreign grant), admiralty matters, insolvency matters, applications for the admission of advocates and solicitors, and ancillary matters in family proceedings where assets equal SGD5 million or more.
- The General Division of the High Court tries criminal cases where the offences are punishable by death or with imprisonment terms exceeding ten years. The General Division of the High Court also hears points of law in special cases submitted by a District Court or Magistrates' Court. The General Division of the High Court can reverse State Courts' decisions, or direct a State Court to conduct a new trial.
- The Appellate Division of the High Court hears civil appeals that are not allocated to the Court of Appeal under the Sixth Schedule of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (SCJA).

The SICC is an international division of the Supreme Court with specialist local and international judges. It hears transnational commercial disputes.

The State Courts consist of the District Courts, the Magistrates' Courts, the Coroners' Courts, the Small Claims Tribunals, and the Employment Claims Tribunals. Magistrates' Courts may deal with civil claims of up to SGD60,000 and any criminal offence for which the maximum term of imprisonment does not exceed five years or is punishable with a fine only. District Courts may deal with civil claims of up to SGD250,000 and any criminal offence for which the maximum term of imprisonment does not exceed ten years or is punishable with a fine only. The Small Claims Tribunal has a claims limit of SGD20,000,

which can be raised to SGD30,000 with written consent.

The Family Justice Courts – comprising the Family Division of the High Court, the Family Courts and Youth Courts – hear the full suite of family-related cases, and probate and succession matters.

Finally, there are smaller tribunals dealing with specialised matters.

1.3 Court Filings and Proceedings

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

A party can apply to have a private hearing where it would be in the interests 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 with a current and valid practising certificate have the exclusive right to appear in the Singapore courts.

A company or a limited liability partnership which is party to court proceedings must be represented by an advocate and solicitor. However, the court may grant leave for an officer of a local company or partnership to act on its behalf.

Foreign lawyers do not have rights of audience. However, foreign lawyers may be permitted to appear as counsel before the SICC in certain cases – for instance, to make submissions on

foreign law and if they meet the requirements for registration.

On application, Queen’s Counsel, Senior Advocates and the like can be admitted on an ad hoc basis to argue complex matters.

2. LITIGATION FUNDING

2.1 Third-Party Litigation Funding

Previously, third-party funding was prohibited under the common law doctrines of “champerty” and maintenance.

The 2017 amendments to the Civil Law Act abolished the above torts, allowing funding agreements for qualified funders for specified categories of disputes set out in the Act (although these are not necessarily exhaustive).

To qualify, 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 or not less than SGD5 million in managed assets.

Lawyers are obliged 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 funding contracts with their clients.

2.2 Third-Party Funding: Lawsuits

Third-party funding is allowed for arbitration and related court or mediation proceedings, proceedings commenced in the SICC or appeal

proceedings arising from any decision made in proceedings commenced in the SICC for so long as those proceedings remain in the SICC and related mediation proceedings, and potentially certain insolvency matters.

2.3 Third-Party Funding for Plaintiff and Defendant

Third-party funding is available to both plaintiffs and defendants, although in practice funding is unlikely to be available to defendants except where a substantial counterclaim is involved.

2.4 Minimum and Maximum Amounts of Third-Party Funding

There is no minimum or maximum statutory limit on the amount of third-party funding.

2.5 Types of Costs Considered under Third-Party Funding

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 presently not permitted for litigation or arbitration proceedings, although the Ministry of Law is reconsidering this position.

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 required by a contractual dispute resolution mechanism.

Where both parties are represented by lawyers before proceedings start, the plaintiff's lawyers must first enquire if the defendant's lawyers have instructions to accept service on behalf of their client. If the defendant's lawyers do not confirm that they have such instructions within three working days, the plaintiff's lawyers can serve the originating process on the defendant directly.

A prospective plaintiff should send a letter of demand 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, and for some categories of claims brought in the State Court, such as (i) personal injury claims, (ii) non-injury motor accident claims, and (iii) defamation claims. The court will sanction any failure to comply with these protocols unless good reasons are provided.

3.2 Statutes of Limitations

The Limitation Act applies to civil suits. It provides for many different scenarios, but the more common scenarios are the following:

- actions based on a contract or tort have a six-year limitation period – there are certain special provisions for negligence, nuisance or breach of duty, and the limitation period is extended for “latent” injuries or damage;
- actions to recover land have a 12-year limitation period; and
- no limitation period applies to an action by a beneficiary of a trust 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 “latent” injuries and damage, the limitation period commences

only when the plaintiff has both the right and the knowledge to bring an action.

3.3 Jurisdictional Requirements for a Defendant

A defendant must be properly served with an originating process, either personally in Singapore or outside Singapore (with leave of court). Exceptionally, the court may order “substituted service” by other means such as email, Skype, Facebook and WhatsApp, if personal service is impracticable.

After the Singapore Court has been seized of jurisdiction by way of proper service, a defendant may still dispute jurisdiction – for example, where an applicable arbitration or choice of court agreement exists, and/or if the Singapore courts are not the appropriate forum.

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 may amend originating processes after they have been filed, although leave of court may be required.

3.5 Rules of Service

Originating processes must be served personally on each defendant, unless alternative means of service are expressly permitted.

Service may be validly effected upon a defendant’s lawyer who accepts service on behalf of the client. The court will also give effect to modes of service contractually agreed between parties.

Substituted service and service outside Singapore are addressed in **3.3 Jurisdictional Requirements for a Defendant**.

3.6 Failure to Respond

If a defendant intends to contest a writ action, the defendant must file a Memorandum of Appearance in the action within the stipulated time. Failure to enter an appearance allows the plaintiff to enter default judgment.

Default judgment is inapplicable for actions commenced by originating summons. The matter proceeds with no opposing party in attendance.

3.7 Representative or Collective Actions

Representative actions are permitted where the claimants or defendants have the same interest in the proceedings. The court retains the discretion to discontinue the proceedings.

No judgment or order can be enforced against any non-party to the proceedings except with leave of court.

3.8 Requirements for Cost Estimate

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

4. PRE-TRIAL PROCEEDINGS

4.1 Interim Applications/Motions

Interim applications can be made 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 closed, which is 14 days after service of the plaintiff's reply.

The application has to be made by way of a summons supported by affidavit(s). The defendant can file rebuttal affidavits within 14 days after service, 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. If this is met, the defendant must establish a fair or reasonable probability that the defence is real or bona fide.

Separately, a party can apply to strike out an unmeritorious claim or defence if it:

- discloses no reasonable cause of action or defence;
- is scandalous, frivolous or vexatious;
- may prejudice, embarrass or delay the fair trial of the action; and/or
- 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 is by way of a summons supported by affidavit(s), which the other party may reply to via affidavit(s). No affidavits are filed if the applicant's sole basis is that the pleading discloses no reasonable cause of action or defence.

4.3 Dispositive Motions

See **4.2 Early Judgment Applications**. Judgment on admission of facts is available where a party has made admissions of fact which the applicant can capitalise on to obtain a judgment or order in its favour. Further, the court has the power to summarily determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings.

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 a direct interest in the subject matter of the action.

4.5 Applications for Security for Defendant's Costs

A defendant 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 who will be unable to pay the defendant's costs if ordered; and/or
- has changed address during the course of the proceedings with a view to evading the consequences of the litigation, and/or the address is not stated or incorrectly stated in the originating process.

The court may decline to exercise its discretion to order security for costs where it would not be just to do so.

Where the plaintiff is a corporation, the court may order security for costs if there is credible evidence that it will be unable to pay the defendant's costs if the defence succeeds.

4.6 Costs of Interim Applications/Motions

Costs are entirely at the discretion of the court. Generally, a successful party will get its costs unless there are special reasons for not awarding such costs.

The courts can have regard to, inter alia, the scales of costs in the rules of court (ROC) and judge-issued costs guidelines in Appendix G of the Supreme Court Practice Directions.

The court may decide to determine costs at a later stage of the proceedings.

4.7 Application/Motion Timeframe

Most interlocutory applications are heard within two to three months after being filed. The applicant can request urgent timelines where circumstances warrant. Where the applicant is requesting an urgent hearing, the applicant should complete (as far as possible) and file Form 1A of Appendix A of the Supreme Court Practice Directions. The applicant should also prepare and file skeletal submissions for the urgent hearing.

In cases of extreme urgency, an applicant may request to have the matter heard *ex parte* before the duty registrar/duty judge. There are requirements to give notice (to opposing parties/counsel) and all papers and draft orders of court must be ready. Parties who seek urgent relief on an *ex parte* basis are also under a duty of full and frank disclosure. Material non-disclosure may result in the *ex parte* order being set aside.

5. DISCOVERY

5.1 Discovery and Civil Cases

A party usually gives discovery by serving a list of documents in chronological order with a brief description of each document. The opposing

party is entitled to inspect and obtain copies of the listed documents.

For general discovery, parties must disclose all documents that are relevant to disputed issues, regardless of whether the documents support or are adverse to the disclosing party's case.

Parties can apply for specific discovery of documents or categories of documents. The court will order specific discovery only if it is necessary for disposing fairly of the cause or matter.

Unless the SICC or High Court orders otherwise, discovery in SICC cases is governed by its own set of rules, which is similar to international arbitration practice.

In an SICC case, each party provides all the documents on which it relies within the time and in the manner ordered by the SICC. Unlike High Court proceedings, parties in SICC proceedings need not provide general disclosure of both beneficial and self-damaging documents. A party may be required to disclose particular documents upon application by the other party only if they are relevant and material to the requesting party's case.

5.2 Discovery and Third Parties

A party may apply to court to obtain discovery from a person who is not a party (ie, not a plaintiff or a defendant) to the civil case.

The application should specify the documents sought, and must be served personally on the third party and on every other party to the proceedings.

The supporting affidavit must state the grounds for the application, 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 why it would be just to grant the application.

5.3 Discovery in this Jurisdiction

The discovery process during a civil case comprises two stages: general discovery and specific discovery. These stages are outlined at **5.1 Discovery and Civil Cases**.

5.4 Alternatives to Discovery Mechanisms

A party can also seek 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.

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

5.5 Legal Privilege

A person has the right not to give discovery of documents covered by legal professional privilege, which comprises two categories.

First, legal advice privilege covers any communication made between a client and the client's 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 conveys to the client.

Second, litigation privilege covers information and materials created and collected, at a time when litigation is in reasonable contemplation, for the dominant purpose of the litigation.

5.6 Rules Disallowing Disclosure of a Document

In addition to legal professional privilege, a party may rely on other exclusionary rules to withhold disclosure of certain documents. This includes "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. "Without prejudice" communications may not be disclosed unless both parties consent.

"Marital communications" privilege is a statutory right based on the 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 that person during marriage by that person's spouse. The communications continue to be privileged even if the marriage comes to an end. 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 damages will not be an adequate remedy.

An interim injunction is a protective order to preserve the status quo until the court can fully adjudicate the dispute.

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

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

The second is that an interim injunction does not finally decide the issues in dispute between the parties, but only seeks to protect parties from irreparable harm. The court should take whichever course appears to carry the lower risk of injustice.

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

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

- prohibitory injunctions which restrain a party from performing a wrongful act;
- proprietary injunctions which restrain the defendant from dealing with a particular asset and its traceable proceeds;
- Mareva injunctions, which restrain a defendant from dealing with the defendant's assets so that the defendant cannot dispose of them to defeat pending claims; and
- anti-suit injunctions, which restrain 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.

If an application for an interim injunction is so urgent it cannot be heard the next working day, counsel can contact the duty registrar, who will arrange for a hearing to take place.

The hearing may take place in court or at any place as directed by the judge or registrar hearing the matter.

The applicant must ensure that all the application papers and the appropriate draft orders have been prepared. If the documents have yet to be filed in court when the counsel seeks an urgent hearing, the applicant must undertake to the registrar processing the application to have these documents filed no later than the next working day.

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

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

All applications, including applications for injunctive relief, should generally be heard inter partes. In exceptional circumstances, injunctive relief can be sought ex parte.

Under paragraph 41 of the Practice Directions, any party applying ex parte for an injunction must give notice to the other concerned parties at least two hours 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 and the nature of the relief sought.

If possible, a copy of the ex parte summons should be provided.

Notice need not be given if the giving of the notice would or might defeat the purpose of the ex parte application. The reasons for not following the Practice Directions should be clearly set out in the supporting affidavit for the ex parte application.

If any of the other parties are not present or represented at the hearing of the ex parte application, 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 proceed ex parte, or whether it should be heard inter partes if the case is not sufficiently urgent.

6.4 Liability for Damages for the Applicant

To obtain an interim injunction, the applicant must undertake to the court that it will comply with any order to compensate the respondent for any loss the court might later find that the order for injunctive relief wrongfully 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 the undertaking by a payment into court, by providing a bond from an insurance company, or a bank guarantee, or a payment to the applicant'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 to restrain a defendant from dealing with assets

which are 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 if there are grounds for believing that the assets may be disposed of to avoid execution.

6.7 Consequences of a Respondent's Non-compliance

A party who fails to comply with the terms of an injunction may be in contempt of court, which is punishable by a fine of up to SGD100,000, or imprisonment for up to three years, or both, unless the party shows the non-compliance was wholly or substantially attributable to an honest and reasonable failure to understand the obligation imposed on that party.

7. TRIALS AND HEARINGS

7.1 Trial Proceedings

Trials are held in public before a single judge.

The parties will file and exchange the affidavits of the factual and expert witnesses (whose reports will be annexed to their affidavits) well before the trial. Opening statements will be exchanged just before the trial.

The trial judge will normally review these materials before the trial and give appropriate directions for the conduct of the trial.

At the trial, the opening statements are frequently taken to be read, although the court sometimes requests oral opening statements to be

made, after which the parties will usually present the evidence for their cases.

Generally, the first party to proceed is the plaintiff, unless the burden of proof in the case lies with the defendant. Witnesses (and their evidence) are admitted by conducting examination-in-chief, during which the witnesses confirm their identities and that the evidence deposed to in their affidavits is accurate. After the completion of the examination-in-chief, the opposing side's advocate will proceed to cross-examine that witness. A witness who has been cross-examined may be re-examined by the advocate of the party who called the witness, but only on matters that were dealt with in cross-examination. Leading questions may be asked only during cross-examination.

Once the plaintiff's witnesses have been examined, the plaintiff may close the plaintiff's 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 elect to submit no case to answer – ie, that the plaintiff has not established a sufficient case for the defendant to answer.

If no such submission is made, the defendant will be called upon to present the defendant's case. Examination-in-chief, cross-examination and re-examination of the defendant's witnesses will then take place.

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

A judge typically does not interfere with the manner in which a party conducts the party's case; any interference will only arise out of a necessity to ensure that the appropriate trial procedures and rules of evidence are complied with.

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, the trial judge will also usually give directions for the filing of written closing submissions, and written reply submissions. Directions for oral submissions are also sometimes given.

7.2 Case Management Hearings

Pre-trial Conferences

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) heard by a registrar. The first PTC is usually scheduled within the first six weeks after the filing of the writ.

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, the number of days the trial will take and the estimated costs of proceeding to trial. Directions may also be given for parties to exchange lists of issues for expert witnesses.

PTCs may also be conducted by judges (JPTCs). 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, such as an extension of time for filing pleadings or obtaining a summary judgment. To do so, the parties must make an interlocutory application to the court by filing a summons, with the directions

or orders needed, and may also be required to file an affidavit setting out the facts and matters supporting the application. Such a summons will be engrossed by the court upon filing. Usually, the hearing date of the application is fixed at the time of its filing and is stated on the engrossed summons. The applicant will then serve the engrossed summons on the respondent(s).

The respondent who wishes to meet the applicant's case with evidence must file an affidavit opposing the application. The applicant will typically be allowed to file a final affidavit in reply.

Interlocutory applications are generally heard in private (ie, in chambers before registrars at first instance), although in some cases they are heard before judges.

7.3 Jury Trials in Civil Cases

In Singapore, jury trials are not available under any circumstances.

7.4 Rules that Govern Admission of 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 assertion made out of court, whether orally, 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, provided that the expert evidence is sufficiently relevant and will help advance the court's inquiry into the facts.

Parties may adduce expert evidence from their own expert witnesses.

The court also has the power to appoint an expert. 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 the expert's expertise.

7.6 Extent to Which Hearings Are Open to the Public Hearings

Generally, all trials are held in open court and the public can attend these hearings. PTCs and interlocutory hearings, which are conducted in chambers, are closed to the public.

In certain circumstances, trials may be held in camera (ie, in a court which is closed to the general public). Proceedings where, for example, the maintenance of privacy or secrecy is a primary consideration must generally 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, 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. 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 redacted.

7.7 Level of Intervention by a Judge

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

However, the judge can ask witnesses or counsel questions if, among other things:

- 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;
- it enables the judge to follow the points made by counsel;
- 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); or
- 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.

7.8 General Timeframes for Proceedings

An action is commenced by filing a Writ of Summons. Once the writ has been served on the defendant, the defendant 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, the defendant must enter an appearance and file and serve the defence within 14 days after the time limited for entering an appearance or after the service of the statement of claim, whichever is later. If a defendant alleges that the defendant is entitled to any relief or remedy against the plaintiff, the defendant may file and serve a counterclaim in the same action. In that case, the defendant's pleading is known as the defence and counterclaim.

A plaintiff may file and serve a reply within 14 days after the defence has been served. 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, pre-trial conferences are held for the court to monitor and manage the progress of the case.

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

The duration of the trials also varies, depending on the complexity and nature of the case.

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 will invariably be granted if parties have reached a settlement. It is also common for the court to make a “consent order” reflecting the main terms 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.

For matters settled through mediation, the Mediation Act 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.

8.4 Setting Aside Settlement Agreements

General contractual principles apply to the setting aside of settlement agreements. Depending on the grounds for challenging a settlement agreement, “without prejudice” communications (see **5.6 Rules Disallowing Disclosure of a Document**) may be disclosed.

9. DAMAGES AND JUDGMENT

9.1 Awards Available to the 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 rarely 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 dam-

ages may be awarded if the defendant displays outrageous conduct.

Subject to the Unfair Contract Terms Act, an aggrieved party's right to contractual or tortious damages may be excluded or limited by contract.

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 and is calculated from the date of judgment to the date that the judgment is satisfied. The current default interest rate is 5.33% per annum. The courts may award 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 of 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 judgment creditor may also seek an examination of the judgment debtor first 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 the judgment debtor is likely to leave Singapore, the court may order that the judgment debtor be arrested and brought before the court for examination regarding the judgment debtor's ability to pay the judgment.

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 Foreign Judgments Act (Cap 265, 2001 Rev Ed) (REFJA); or
- by way of a common law action.

The statutory regime for reciprocal recognition and enforcement of foreign judgments has been consolidated under the REFJA with effect from 3 October 2019. The REFJA applies to judgments from Hong Kong and has been expanded to include judgments from Commonwealth jurisdictions which formerly fell under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) (RECJA). The RECJA will cease operation once the Reciprocal Enforcement of Commonwealth Judgments (Repeal) Act 2019 (No 24 of 2019) comes into force. The scope of judgments that may be recognised under the REFJA has also recently been expanded. While the precise scope of enforceable judgments depends on the reciprocal agreement with the individual foreign country, the following judgments may now be recognised under the REFJA:

- money and non-money judgments (including freezing orders, injunctions, and orders for specific performance);
- higher and lower court judgments;

- interlocutory judgments; and
- judicial settlements, consent judgments, and consent orders.

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 32 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.

Additionally, the Maintenance Orders (Reciprocal Enforcement) Act (Cap 169, 1985 Rev Ed) provides for the enforcement of maintenance orders issued by the courts of designated countries.

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. It would not be enforced only if it can be shown that the foreign judgment 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 to a Litigation

The General Division of 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 the Family Courts, District Courts and Magistrates' Courts, and other tribunals as may be prescribed by written law – for example, the Employment Claims Tribunals.

10.2 Rules Concerning Appeals of Judgments

Restrictions on the matters that may be brought against a decision of the General Division of the High Court are set out in Sections 29 and 29A of the SCJA and its Fourth and Fifth Schedules.

The Fourth Schedule sets out orders which are non-appealable, including orders made by consent of the parties and orders refusing security of costs.

The Fifth Schedule sets out orders which are appealable only with leave, including orders giving security for costs and orders refusing a stay of proceedings.

Appeals from a decision of the General Division of the High Court are allocated between the Court of Appeal and the Appellate Division of the High Court. The Court of Appeal hears criminal appeals and civil appeals prescribed under the Sixth Schedule of the SCJA. The Appellate Division of the High Court hears all other civil appeals.

Parties before the District Court or Magistrates' Court may appeal to the General Division of the High Court without leave if the amount in dispute, or the value of the subject matter before the lower courts, exceeds 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 or from the High Court 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 days from the date 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 relevant court within the timelines prescribed in the ROC. An application for leave to appeal against a decision of a District Court must be filed to the District Court within seven days from the date of the District Court's decision and, if leave is refused by the District Court, to the General Division of the High Court within seven days from the date of the refusal.

An application for leave to appeal against a decision of the General Division of the High Court must be filed:

- where any written law specifies that the General Division is the court from which such leave must be obtained, to the General Division within seven days after the date of the decision;
- where the application for leave to appeal is to be heard by the Appellate Division, to the Appellate Division within seven days after the date of the decision of the General Division, or where further arguments may be made pursuant to Section 29B of the SCJA, within the timelines prescribed in Order 56A, Rule 3(2) of the ROC; and

- where the application for leave to appeal is to be heard by the Court of Appeal, to the Court of Appeal within seven days after the date of the decision of the General Division or the Appellate Division, as the case may be, or where further arguments may be made pursuant to Section 29B of the SCJA, within the timelines prescribed in Order 57, Rule 2A(2) of the ROC.

A party who has obtained leave to appeal must file and serve a notice of appeal from the date leave is given within the relevant time as stated above.

All registrar's decisions are appealable to either a District Judge (for proceedings in the State Courts) or a judge of the High Court (for proceedings in the Supreme Court) in chambers without leave. The exception to this rule is that the registrar's directions or orders incidental to appeals or applications pending before the Appellate Division of the High Court or the Court of Appeal (such as extensions of time for filing the necessary papers for appeals) cannot be the subject of an appeal to a Judge of the General Division of the High Court. A Notice of Appeal has to be filed within 14 days of the decision and must be served on the other parties 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 the trial judge's conclusion.

An appellate court 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 (i) internal inconsistencies in their testimony, or (ii) the external inconsistency between their evidence and the extrinsic objective facts.

For appeals from the registrar's 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, and a party wishing to introduce a new point should clearly state so in its appeal. 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.

New Evidence on Appeal

New evidence may only be admitted on appeal (with leave of the Court of Appeal) if the party can show 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. The court may also admit new evidence if the evidence relates to matters which have occurred after the date of the decision from which the appeal is brought and that such evidence materially affects the basis of the earlier decision.

10.5 Court-Imposed Conditions on Granting an Appeal

Aside from matters such as obtaining leave and the requirement to provide security for costs above, there are no general conditions imposed by the court on granting appeals.

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, make any order which ought to have been given or made, make such further orders as the case may require, and even 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. 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. The quantum of costs payable may be determined by parties' agreement 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 reasonably incurred would be granted, and any doubts as to whether the costs were reasonably incurred shall be resolved in favour of the paying party. Solicitor-and-client costs are typically taxed on the indemnity basis, which

also 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. Costs assessed on the indemnity basis are typically about one-third more than costs assessed on the standard basis.

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 the litigant, together with all expenses reasonably incurred.

11.2 Factors Considered when Awarding Costs

The court takes into account all the circumstances of the case, including a party's conduct in the course of the proceedings, the complexity of the matter and the difficulty of the questions involved.

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 (ADR)

12.1 Views of ADR within the Country

Singapore offers a suite of alternative dispute resolution (ADR) options. The Singapore International Arbitration Centre (SIAC) is the most preferred arbitration institution in Asia, and the third-most preferred arbitration institution worldwide, behind only the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA).

Mediation has similarly grown in 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).

Hybrid arbitration and mediation options are also available in Singapore, whereby 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 (ie, Arb-Med-Arb procedure).

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.

The Supreme Court Practice Directions provide that parties may make formal offers for engaging in ADR, and 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 (such as non-injury motor accident cases, personal injury cases and medical negligence cases) before the State Courts will be automatically fixed for ADR at the SCCDR.

Singapore lawyers are compelled (by rules on legal professional conduct) to advise their clients on the use of ADR, where appropriate, and to evaluate the use of ADR processes with a client.

Singapore has also sought to make ADR a more attractive option for dispute resolution by enhancing the enforceability of mediated settlements, through making mediated settlement agreements enforceable in the same manner as a court judgment or order under the Mediation Act. The United Nations Convention on International Settlement Agreements Resulting from Mediation also provides for the direct enforcement (and execution) of mediated settlement agreements across signatory countries.

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 ICC has also set up a case-management office in Singapore.

Private mediation service providers include the SMC and the SIMC. There are also bodies providing mediation services for specific disputes, such as the Community Mediation Unit, the Consumers Association of Singapore and the Tripartite Alliance for Dispute Management.

13. ARBITRATION

13.1 Laws Regarding the Conduct of Arbitration

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). The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Conven-

tion) has been enacted into Singapore law (the Second Schedule of the IAA).

13.2 Subject Matters 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, criminal offences are non-arbitrable.

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 to the narrow bases for challenging arbitral awards expressly set out in the AA and the IAA.

A party seeking to set aside an award must make an application to do so within three months of receipt of 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, and may hear an appeal on a question of law.

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.

14. OUTLOOK AND COVID-19

14.1 Proposals for Dispute Resolution Reform

The Singapore Ministry of Law and the Supreme Court launched a public consultation on 26 October 2018 on proposed reforms to the civil justice system. The proposed reforms are wide-ranging and are intended to transform the litigation process in Singapore.

The Ministry of Law announced on 11 June 2021 that new ROC are expected to be operationalised by the end of 2021. Amongst other things, the new ROC will provide for all interlocutory applications to be made in a single application (except for certain interlocutory applications), for the court to have the discretion to order affidavits of evidence-in-chief to be filed simultaneously with the production of documents or in any sequence, and for the scope of discovery to be narrowed.

14.2 Impact of COVID-19

The Singapore courts continue to operate and hear matters in spite of COVID-19, except for a period between 5 April 2020 to 1 June 2020 when Singapore had a nationwide “circuit-breaker” and the courts heard only essential and urgent matters.

Non-essential and non-urgent court hearings resumed on 8 June 2020 and are largely conducted via videoconferencing. Physical hearings are conducted where videoconferencing is not practicable or otherwise necessary.

The ROC has been amended to specifically provide for the attestation and signing of affidavits in Singapore by electronic means, with the deponent appearing before the commissioner for oaths through a live video link or live television link.

Drew & Napier LLC has been providing exceptional legal service since 1889 and is one of the largest full-service law firms in Singapore. The firm has three senior counsel. It is pre-eminent in dispute resolution, international arbitration, competition and antitrust, corporate insolvency and restructuring, IP (patents and trade marks), tax, and telecommunications, media and technology, and has market-leading practices in M&A, banking and finance, and capital markets. Drew & Napier has represented Singapore's

leaders, top government agencies and foreign governments in landmark, high-profile cases. It is also appointed by Fortune 500 companies, multinational corporations, and local organisations. The firm is experienced in international disputes before the Singapore International Commercial Court and covers the full range of commercial litigation matters, including building and construction, constitutional law, debt recovery, defamation, fraud, and white-collar crime.

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