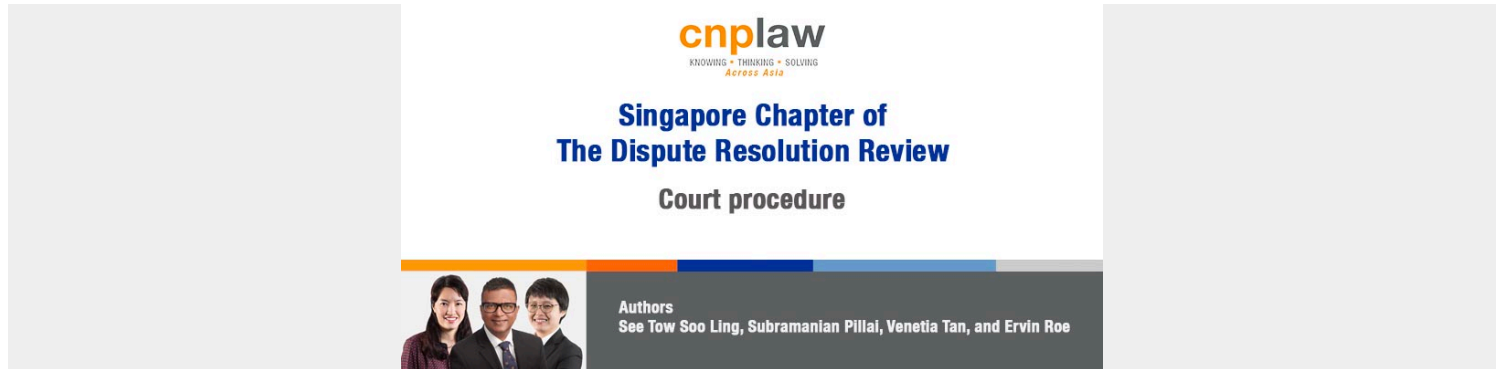


COURT PROCEDURE

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>Civil procedure in Singapore is premised on the Supreme Court of Judicature Act, the State Courts Act, the Rules of Court, the Supreme Court Practice Directions, the State Courts Practice Directions and case law.

i. Procedures and time frames

>Apart from commencing an action in court, in a limited number of cases, claimants may find recourse at the Small Claims Tribunal (SCT). The SCT has jurisdiction to hear and determine claims relating to a dispute arising from any contract for the sale of goods or the provision of services, claims in tort in respect of damage caused to any property other than the tort of interference with enjoyment or use of place of residence, and claims relating to a dispute arising from any contract for the lease of residential premises not exceeding two years. Claims must be filed at the SCT within two years of the date on which the cause of action accrued. Parties are not legally represented before the SCT.

>Most civil claims are commenced by either writ of summons or by originating summons, in the magistrates' court, district court or High Court, depending on the value of the claim. Proceedings are begun by writ of summons when there are likely to be substantial disputes of fact. A writ of summons must be endorsed with either a statement of claim or a concise statement of the nature of the claim made, or the relief or remedy required. The writ of summons must give sufficient information to enable the defendant to identify when the cause of action occurred. Within eight days of the writ being served, the plaintiff must file its memorandum of service.

>The defendant has eight days from the date of service of the writ to make an appearance (21 days if service of the writ is out of jurisdiction), failing which the plaintiff may apply for judgment to be entered in default of appearance. The defendant then has 14 days after the expiration of the time to enter an appearance or 14 days after the date of service of the statement of claim, whichever is later, to file their defence and counterclaim (if any).

>If the plaintiff is of the view that the defendant has no defence to the claim, they may decide at this point to make an application for summary judgment. An application for summary judgment must be accompanied by an affidavit containing all necessary evidence in support of the claim. The defendant has 14 days to file an affidavit opposing the summary judgment application, and the plaintiff has a final right of reply by way of an affidavit. The court may enter judgment for the whole or part of the claim to which the application relates, or grant the defendant conditional or unconditional leave to defend.

>If the matter is to proceed to trial, the plaintiff will file its summons for directions. At the hearing for the summons for directions, the court will consider and make appropriate orders or directions to simplify and expedite proceedings, including setting timelines for the filing and exchanging of witness' affidavits of evidence-in-chief (AEICs), the period to set down the action for trial and an estimate of the length of the trial.

>Not less than five days before the trial, the following must be filed: the originals of the AEICs, the bundle of documents that will be relied on and referred to by the parties, and the parties' opening statements (if the trial is in the High Court).

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>The Court takes an active role in encouraging parties to consider alternative dispute resolution (ADR) at an early stage. The Court may refer cases commenced in the state courts to an appropriate court dispute resolution or ADR process as it deems appropriate. In exercising its discretion as to costs, the Court may take into account the parties' conduct in relation to unreasonable refusal to engage in ADR, especially where ADR may save costs and achieve a quicker resolution of the disputes.

>For personal injury claims, non-injury motor accident claims, defamation actions and business-to-business debt claims, the State Courts Practice Directions prescribe pre-action protocols with which parties must comply, or risk costs being awarded against them.

ii. Class actions

>Strictly speaking, the Singapore courts do not expressly recognise class actions. However, under Order 15 Rule 12 of the Rules of Court (O 15 R 12), where numerous persons have the same interest in any proceedings, proceedings may be begun by one or more person representing the others. A judgment or order in such a proceeding shall be binding on all persons being represented.

>The Singapore Court of Appeal dealt with O 15 R 12 in the case of *Koh Chong Chiah and others v. Treasure Resort Pte Ltd*. In this case, the Court stated that O 15 R 12 operates in two stages: there must first be satisfaction of the jurisdictional stage, whereby it must be proven that the claimants have the same interest in the proceedings; then the court will turn to the second stage, which is discretionary, to determine whether the proceedings should continue as a representative action.

>Whether an action should be commenced as a representative action under O 15 R 12 or as an ordinary action under O 15 R 4 of the Rules of Court largely depends on how similar the claims are as a matter of fact or law. The Court normally decides whether to proceed an action as a representative action as a matter of case management and whether proceeding as such will prejudice the defendant's defence. In a representative action under O 15 R 12, the represented persons are not obliged to discover documents related to the claim and the defendant will not be able to cross-examine or seek costs against the represented persons in the event that the defence is successful.

iii. Representation in proceedings

>Any natural person may begin and carry on legal proceedings in person. The general rule for a body corporate is that it may not begin or carry on legal proceedings other than by a solicitor. Likewise, a defendant to an action begun by writ that is a body corporate may not enter an appearance in the action or defend it other than by a solicitor.

>The court may, on an application by a company or limited liability partnership, give leave for an officer of the company or limited liability partnership to act on its behalf in any relevant matter or proceeding to which it is a party, if the court is satisfied that the officer has been duly authorised by the company or limited liability partnership to do so, and if it is appropriate to give such leave in the circumstances of the case.

iv. Service out of the jurisdiction

>Documents can be served on persons outside Singapore, with the leave of court. Three major

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requirements must be met before leave will be granted for service out of the jurisdiction:

1. the claim must come within the scope of at least one of the paragraphs of Order 11 Rule 1 of the Rules of Court;
2. the claim must have a sufficient degree of merit; and
3. Singapore must be the *forum conveniens*.

>Service of an originating process out of Singapore should be by way of personal service as long as it does not contravene the law of the country in which service is effected. Where an originating process is to be served in Malaysia or Brunei, service by a private agent is valid.

v. Enforcement of foreign judgments

>A foreign judgment may be enforced at common law or by statutory enforcement.

>Under common law, a foreign judgment will be recognised if it is the final and conclusive judgment of a court that, according to the private international law of Singapore, had jurisdiction to grant the judgment, and if there is no defence to its recognition. A defence to recognition may be where the foreign judgment would conflict with an earlier judgment in the forum, or where the foreign judgment had been obtained by fraud or in breach of principles of natural justice.

>Two statutory regimes under which foreign judgments may be enforced are the Reciprocal Enforcement of Commonwealth Judgments Act (RECJA) and the Reciprocal Enforcement of Foreign Judgments Act (REFJA). A foreign judgment to which the RECJA or REFJA applies can be recognised and enforced in Singapore upon its registration, without the need for the underlying dispute to be re-litigated. The RECJA applies to judgments obtained from the superior courts in the United Kingdom and a number of Commonwealth countries. The REFJA applies to judgments given in foreign countries that afford reciprocal treatment to judgments given in Singapore. Non-monetary judgments cannot be enforced under the RECJA and REFJA. The RECJA is due to be repealed on a date stipulated by the Minister of Law, following the passing of the Reciprocal Enforcement of Commonwealth Judgments (Repeal) Act 2019 on 2 September 2019. The Reciprocal Enforcement of Foreign Judgments (Amendment) Act 2019 came into force on 3 October 2019 to expand the scope of the REFJA and in effect combine the REFJA and RECJA into one statutory regime for reciprocal enforcement of foreign judgments. With the new amendments, more types of judgments may be enforceable:

1. non-monetary judgments, which would include freezing orders, injunctions and orders for specific performance;
2. judgments not issued by superior courts;
3. interlocutory judgments; and
4. judicial settlements, consent judgments and consent orders.

>In addition, the Choice of Court Agreements Act 2016 (CCAA) was enacted in April 2016 to implement the Hague Convention on Choice of Court Agreements (Hague Convention). The RECJA and REFJA will not apply to a foreign judgment that 'may be recognised or enforced' under the CCAA.

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>The CCAA applies where parties have entered into an exclusive choice of court agreement that designates a contracting state (i.e., a state that is a party to the Hague Convention) to hear their dispute, to the exclusion of the jurisdiction of any other courts. A party seeking to have a foreign judgment recognised and enforced in Singapore may apply for an order under Section 13(1) of the CCAA. Generally, a foreign judgment will be recognised and enforced if it has effect and is enforceable in the state in which the judgment originated, subject to mandatory and discretionary grounds for refusal.

vi. Assistance to foreign courts

>Singapore is a contracting state to the Hague Convention. Where parties have agreed upon a court of a contracting state as the exclusive choice of court for their dispute, the chosen court must hear the case when proceedings are brought before it. Any other court, including the Singapore courts, before which proceedings are brought must refuse to hear them. After the judgment is given, the successful party may apply to a court of a contracting state for its recognition and enforcement. The merits of the judgment may not be reviewed by another court of a contracting state and such other court will be bound by the findings of fact of the chosen court. In fact, the court may not refuse to recognise or enforce the judgment except in limited circumstances as set out in Article 9 of the Hague Convention.

>Until recently, there were diverging views as to whether the Singapore court had the power to grant *Mareva* injunctions in support of foreign proceedings. That was until the Court of Appeal, in the case of *Bi Xiaorong (in her personal capacity and as trustee of the Xiao Qiong Bi Trust and the Alisa Wu Irrevocable Trust) v. China Medical Technologies, Inc (in liquidation) and another*, confirmed that the Singapore court has the power to grant a *Mareva* injunction in support of foreign proceedings subject to two prerequisites: that the Court has in personam jurisdiction over the defendant in question; and that the plaintiff must have a reasonable accrued cause of action against the defendant in Singapore. The Court of Appeal further clarified that the cause of action on which the injunction is premised need not terminate in a judgment in Singapore in order for the Singapore courts to grant a *Mareva* injunction.

vii. Access to court files

>Members of the public can search for information maintained by the Supreme Court Registry without leave of court upon payment. To search, inspect or copy any document filed in the Registry, a request to inspect documents can be made by way of an application to court stating the reasons for the request. Upon approval from the court and payment of the prescribed fee, members of the public can inspect the documents and may retain a soft copy if they so wish.

viii. Litigation funding

>Singapore currently does not provide for third-party funding in litigation. However, the Civil Law (Amendment) Act 2017 has been passed, providing for third-party funding in arbitration-related proceedings. The Civil Law (Amendment) Act 2017 declares that no person is, under the law of Singapore, liable for any conduct of it being maintenance or champerty, except when it is contrary to public policy or otherwise illegal.

>Despite the apparent flexibility now afforded to litigation parties for third-party funding, they are to be

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done within the ambit of the provisions provided under Singapore law. Section 5B of the Civil Law Act, read with the Civil Law (Third-Party Funding) Regulations 2017, provides that only prescribed dispute resolution proceedings, being those related to international arbitration proceedings, may be funded by a qualifying third-party funder. The Civil Law (Third-Party Funding) Regulations 2017 even provide for the qualifications for being a qualifying third-party funder. In addition to the above, those who are interested in third-party funding should also bear in mind the guidelines issued by the Singapore Institute of Arbitrators, the Singapore International Arbitration Centre (SIAC) and the Law Society of Singapore.

>Since the amendments that allow third-party funding in arbitration-related proceedings, the Singapore Ministry of Law is now considering steps to extend the framework of third-party funding for both international and domestic arbitration proceedings, and for certain prescribed proceedings in the Singapore International Commercial Court, including mediation proceedings arising out of or in any way connected with such proceedings.

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