

CIVIL JUSTICE COMMISSION REPORT

29 December 2017

THE CIVIL JUSTICE COMMISSION

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THE CIVIL JUSTICE COMMISSION

1 The Civil Justice Commission was constituted by the Honourable Chief Justice Sundaresh Menon at the Opening of the Legal Year on 5 January 2015 with the following Terms of Reference:

(A) The overall objective of the Civil Justice Commission is to transform, not merely reform, the litigation process by modernizing it, enhancing efficiency and speed of adjudication and maintaining costs at reasonable levels.

(B) The key areas are to simplify rules, avoid outdated language without discarding established legal concepts, eliminate time-consuming or cost-wasting procedural steps, ensure fairness to all litigants, make good use of advancements in information technology and allow greater judicial control of the entire litigation process.

(C) The work of the Civil Justice Commission includes such other aspects as the Chief Justice may direct from time to time.

2 The Civil Justice Commission drafted, discussed and debated the proposed new rules of civil procedure supported by the diligent and efficient Secretariat. The proposed new Rules of Court are set out in this Report after the explanatory notes.

3 We decided that the new Rules of Court should be in two Parts for better understanding and coherence, with each Part having Chapters dealing with different matters. Part 1 covers all the essential aspects of general civil litigation set out in 22 Chapters. The Chapters are aligned in broadly the same sequence that a case in Court is driven along the litigation highway, from commencement of action to trial, to judgment and appeal and, where necessary, to enforcement of judgment proceedings. It represents the main body of our work.

4 Part 2 brings together the multifarious rules made under Acts of Parliament over the years. The Chapters in Part 2 are set out in alphabetical order at inception according to the title of each set of rules, with the exception

of the first two Chapters because these concern the Constitution, the supreme law of our country. The Chapters in Part 2 are essentially stand-alone rules for various unrelated categories of cases. They have been left in their existing state and are not reproduced in this Report. It is envisaged that when all the matters in Part 1 are finalised, the Chapters in Part 2 will undergo some modifications to harmonise them with the new procedures in Part 1.

5 We hope that our humble efforts will go some way towards fulfilling the Chief Justice's expectations expressed in paragraph 46 of his speech at the Opening of the Legal Year 2015 where he said, "I am confident that the Commission's recommendations will be both bold and innovative".

Tay Yong Kwang
Chairman
Civil Justice Commission

29 December 2017

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INTRODUCTION

1 The key to the new Rules that the Civil Justice Commission (“CJC”) proposes is the liberty to do right for each case. The Court and the parties are guided by the spirit of the rules, not shackled by the letter of the law. The hope is that no one will be denied justice because of accidental procedural flaws committed in the course of litigation or due to the perceived lack of a procedure for dealing with a particular problem that has arisen before the courts.

2 We tried to set out the new Rules in language that is easy to understand without losing sight of words that have established legal significance. We used relatively short sentences and paragraphs and avoided Latin terms and other legal jargon that may impress but not edify the reader. We even made the unusual move of introducing a Preamble to the new Rules so that anyone reading the new Rules for the first time will have an overview of how a Court case will move from commencement to conclusion.

3 We also made a firm commitment from the start not to copy rules from other jurisdictions although that is often the easiest and fastest way to do things. Our approach hopes to achieve the following benefits:

- (a) There is a fresh new approach that is easy to understand and which is tailored for local litigation;
- (b) Singapore lawyers are not bogged down by constantly having to research into a rule’s genealogy in other jurisdictions, thus saving solicitors’ time and costs;
- (c) There will be little need to refer to cases pronouncing on procedural rules from other jurisdictions, saving hearing time and costs; and
- (d) Our Court of Appeal will not need to deal with conflicting pronouncements by the highest courts of different jurisdictions on procedural rules.

4 The new Rules comprise two parts: Part 1 covers general litigation which is the primary focus of the CJC as most of the court cases will come within this Part. Part 2 contains the specialised applications under various legislation. The existing Orders relating to such applications are retained in Part 2 in their existing state and they will be reviewed to harmonise with the new procedures in Part 1 after Part 1 is finalised. It is envisaged that at least some of the matters in Part 2 can be moved out of the Rules of Court eventually so that they become stand-alone rules and do not make the Rules unnecessarily unwieldy.

5 The new Rules seek to let the Court take control right after an action is commenced instead of leaving the parties to determine the pace and intensity of the proceedings. The case conference registrars and the trial judges will have maximum autonomy and flexibility in managing their cases. The Chief Justice may direct that certain rules do not apply or are modified for any class of cases. Similarly, broad discretion is given to the case conference registrars and the trial judges to tailor the rules to suit the case or the class of cases that they are dealing with.

6 The new Rules also seek to simplify and expedite applications and appeals on procedural matters so that disputes are resolved on the factual and legal merits. This ensures that disputes do not become procedural skirmishes which waste time and costs and often do not bring the parties any closer to the main battlefield.

7 The Court determines the number of applications that parties can file and when parties can file them. In particular, the hope is to eliminate the prevalent practice of seeking to amend pleadings very close to the commencement of trial or even on the first day of trial, resulting in wastage of trial time and possibly resulting in adjournment of the trial. In general, no application can be taken out within 14 days of commencement of trial or during trial. In appropriate cases, affidavits of evidence-in-chief are ordered before any application is taken out. Production of documents, which takes up a disproportionate amount of time, energy and costs, will be severely curtailed.

8 The new Rules introduce the use of scale costs and re-emphasise the principle that, all things being equal, solicitor-and-client costs should be equal to party-and-party costs. The intended result is that a successful litigant who conducts his case reasonably throughout should recover all his litigation costs.

9 The CJC did not try to provide detailed rules for every conceivable scenario as this will result in a very unwieldy set of rules. Human wisdom is hardly able to contemplate every possibility but human wisdom is sufficient in most cases to resolve new situations in a commonsensical way. We prefer to establish a framework with broad but clear parameters that would take care of the vast majority of cases instead of worrying about how to deal with the occasional aberration. The framework can always be modified if aberrations proliferate into a norm.

10 The explanatory notes to the salient features of the new Rules and the material differences from the existing Rules are set out in this Report. The CJC intends to hold consultations with various interest groups in the first half of 2018 and would be happy to receive comments and suggestions for refinements to the proposed new Rules at the following contact points:

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**EXPLANATORY NOTES TO
PART 1 OF THE NEW RULES**

PART 1

PREAMBLE

1 It would benefit court users, especially litigants-in-person and even new lawyers, to have a general understanding of the civil litigation process at the outset. The Preamble to the new Rules provides an overview of an action from the date of commencement of the action to the date of decision of the Court, including any appeals.

2 The Preamble is accompanied by a flowchart. The flowchart serves as a mind-map to assist court users to identify the stage of the proceedings they are in, the steps they will have to take at that particular stage and what they can expect at the subsequent stages of the proceedings.

3 The Preamble outlines the course of a typical action. Not all actions have to proceed in precisely the same way.

4 The Preamble is meant to guide court users in understanding the civil litigation process and not to be used to interpret the new Rules.

CHAPTER 1: GENERAL MATTERS

Scope

1 This Chapter sets out the general provisions of the Rules. It also simplifies and consolidates the existing Orders 1, 2 and 3.

Applicability of Rules

2 Rule 2(6) gives the Chief Justice the power to determine the extent to which the Rules apply to certain category of cases. For instance, certain rules may be disapplied by the Chief Justice for smaller value claims, such as Magistrates' Court cases, so as to speed up the process and to reduce costs. The Chief Justice's directions are to be published in Annex 1 in accordance with Rule 2(7).

Ideals

3 The Ideals in Rule 3 are akin to constitutional principles by which the parties and the Court are guided in conducting civil proceedings. The Ideals are to be read conjunctively. Although the Ideals may not be achieved in every case, parties are expected to assist the Court and to conduct their cases in a manner which will help to achieve the Ideals.

Powers of Court

4 Rule 5 empowers the Court to do what is right and necessary in a case where the Rules do not cater to a specific problem, provided it is not prohibited by any written law and is consistent with the Ideals.

5 When parties do not comply with the Rules and the Court does not waive the non-compliance, the Court may refuse to hear the parties or even dismiss a matter. Rule 5 also modifies the precept that non-compliance is always curable so long as it can be compensated by costs. That precept tends to favour parties with deep pockets. The price of non-compliance will no longer be

measured in purely monetary terms. Instead, the test is whether the non-compliance is inconsistent with any of the Ideals in a material way.

6 Rule 5 also allows the Court to impose a late filing fee for each day of non-compliance to dis-incentivise persistent non-compliance.

Calculation of time

7 Section 50 of the Interpretation Act (Cap 1, 2002 Rev Ed) excludes Sundays and public holidays when calculating time for a period not exceeding 6 days. It applies “unless the contrary intention appears”.

8 Rule 6 expressly ousts the application of the Interpretation Act to the calculation of time. Rule 6 provides that a non-court day (which is defined as a Saturday, Sunday or public holiday under Chapter 1) will be included in the calculation of time for a period that is 7 days or more. Thus, a 7-day deadline means exactly 7 days and does not exclude Saturdays, Sundays or public holidays.

Extension of time

9 Rule 7 modifies the parties’ ability under the existing Rules to extend time by consent. Under Rule 7, parties may only extend time without an order of Court once by consent in writing and for a *maximum* period of 7 days. This will prevent parties from repeatedly delaying time and give the Court greater control of cases which are not progressing because of multiple mutual extensions of time.

Applications to Court

10 Rule 8 provides generally that applications to the Court should be made by way of summons supported by affidavit. It also gives the Court the flexibility to allow any application to be made orally or by letter.

Forms

11 The Forms referred to in the Rules are set out in Annex 2. The language and format of the existing forms have been simplified to make them more accessible, informative and user-friendly.

CHAPTER 2: PARTIES TO PROCEEDINGS AND CAUSES OF ACTION

Scope

1 This Chapter simplifies and consolidates the existing Orders 1, 5, 15, 64 and 76 related to the procedural rules on standing, certain causes of action, as well as the appointment, change and discharge of solicitors.

2 Rule 1 sets out who can be parties in proceedings in their own names.

3 Rule 2 sets out the parties that must be represented by litigation representatives and Rule 3 sets out the parties that must be represented by solicitors.

4 Rules 4 to 6 govern estate actions, actions against deceased persons and bankrupts, as well as class actions respectively.

5 Rule 7 permits the Court to make a declaratory judgment or order even when no other relief is sought.

6 Rule 8 sets out the provisions for the appointment, change and discharge of solicitors, simplifying and speeding up the process by allowing letters to be used instead of having to file Court documents.

CHAPTER 3: AMICABLE RESOLUTION OF CASES

Scope

1 This Chapter emphasises that parties have to give sufficient consideration to resolving disputes amicably before commencing or during the course of any action or appeal.

Duty to consider amicable resolution of disputes

2 Rule 1 imposes a duty on a party to any proceedings to consider amicable resolution of his dispute before commencing any action or appeal. This duty subsists during the course of the action or appeal. He has to make an offer of amicable resolution (being an offer to settle the action or appeal or an offer to resolve the dispute other than by litigation, whether in whole or in part) unless he has reasonable grounds not to do so. The offeree shall not reject the offer unless he has reasonable grounds to do so.

Terms of amicable resolution

3 Rule 2 sets out how to make and accept an offer of amicable resolution, the reasonableness of its terms and when the fact of not accepting such an offer can be relied upon and make known to the Court. The rules on offers to settle have been simplified to remove unnecessary technicalities.

4 An offer without any expiry date does not run indefinitely until the conclusion of the case, including any appeal. Instead, such an open offer expires once the Court determines the merits of an action to which it relates unless the offeror has stated otherwise. Without this provision, an offeree whose case is dismissed by the Court could technically accept the open offer immediately even if he has been unreasonable in not accepting it earlier.

Powers of Court

5 If the Court is not satisfied that the duty in Rule 1 has been discharged properly, Rule 3 gives the Court the power to order parties to attempt to resolve the dispute other than by litigation. The Court is also empowered by Chapter 16 (Costs) to make adverse costs orders against a successful party who has not discharged his duty to consider amicable resolution.

CHAPTER 4: COMMENCEMENT OF PROCEEDINGS

Scope

1 This Chapter sets out how a party commences an action under the Rules. It simplifies and consolidates the existing Orders 5, 6, 7, 12, 13, 18, 19 and 28.

2 There will be two modes of commencing an action in Court. They will be known as Originating Claim and Originating Application.

3 A party who commences an action will be known as the claimant and the party who is sued will be known as the defendant. Instead of entering an appearance in respect of an Originating Claim, a defendant must file and serve a notice of intention to contest or not to contest.

Duration and renewal of Originating Claim and Originating Application

4 Rule 3 modifies the current duration of the validity of originating processes for service from 6 months (or 12 months for service out of Singapore) to 3 months.

5 The rule modifies the Court's ability to extend the validity of originating processes for service indefinitely to 2 extensions of 3 months each, except in a special case. The general rule therefore is that an originating process is valid for service for a maximum of 9 months.

6 These modifications seek to push claimants to take reasonable steps to effect service expeditiously and to give the Court greater control over cases which are not progressing because the defendant has not been served..

Form and service of Originating Claim

7 Rule 5 restricts a claimant's ability to file a generally endorsed Originating Claim merely to preserve his position and leverage on having filed an action in court. As such, an Originating Claim has to be endorsed with a

statement of claim unless the limitation period for the cause of action will expire within 14 days after the Originating Claim is issued.

8 A claimant must take reasonable steps to serve on the defendant as soon as possible and, in any event, within:

- (a) 14 days after the Originating Claim is issued if it is to be served in Singapore;
- (b) 28 days after the Originating Claim is issued if it is to be served out of Singapore.

Again, this is to ensure that cases do not hibernate after commencement.

Form and service of notice of intention to contest or not to contest

9 Instead of entering an appearance within 8 days after service of the writ (or 21 days for a writ served out of Singapore) under the existing Rules, a defendant is required under Rule 6 to file a notice of intention to contest or not to contest within 7 days (21 days for an Originating Claim served out of Singapore) after the statement of claim is served on the defendant. Such a notice will allow the claimant to know whether he should prepare for battle or whether the defendant has surrendered.

10 Failure to file a notice of intention to contest or not to contest may result in default judgment against the defendant.

Form and service of defence

11 Under Rule 7, a defendant must file and serve a defence to the Originating Claim:

- (a) within 21 days after the statement of claim is served on the defendant in Singapore;
- (b) within 5 weeks after the statement of claim is served on the defendant out of Singapore.

A defendant is now given 21 days to file his defence instead of the existing 14 days because while a claimant has time to prepare his case before commencing action, the defendant may not know that someone is suing him until he is served with the originating process.

12 If the defendant is challenging the jurisdiction of the Court, instead of having to enter an appearance and applying to the Court for the necessary orders within the time limited for serving a defence under the existing Rules, Rule 7 requires the defendant to file and serve a bare defence, stating the ground of challenge on jurisdiction.

Further pleadings

13 Rule 10 prescribes that there shall be no pleadings beyond the defence or the defence to counterclaim unless the Court otherwise orders. This is to cut down on pleadings that do not add anything material.

Form and service of defendant's affidavit

14 Rule 12 modifies the time for a defendant who is served out of Singapore to file and serve his affidavit from 21 days to within 5 weeks after being served with the claimant's affidavit if he wishes to introduce evidence in the Originating Application. This is to give the defendant who is served out of Singapore more time to file and serve his affidavit and is also consistent with the time given for a defendant who is served out of Singapore to file and serve a defence to an Originating Claim.

15 If the defendant is challenging the jurisdiction of the Court, instead of having to enter an appearance and applying to the Court for the necessary orders within the time limited for serving a defence under the existing Rules, Rule 12 requires the defendant to file and serve a bare affidavit, stating the ground of challenge on jurisdiction.

CHAPTER 5: SERVICE IN SINGAPORE

Scope

1 This Chapter sets out the provisions governing service of documents in Singapore. It simplifies and consolidates the existing Orders 10 and 62. It explains how personal service, ordinary service and substituted service are effected.

Time for service

2 Under the existing Rules, a document is deemed served on a particular day if it is served on that day before midnight. However, for the purposes of computing any period of time after service of that document, it shall be deemed to have been served on a particular working day only if it is served on that day before 4pm.

3 That confusing formula is removed. Under Rule 7, if service is effected before 5pm on any particular day, service is deemed to have been effected on that day. If service is effected after 5pm on any particular day, service is deemed to have been effected on the following day.

CHAPTER 6: SERVICE OUT OF SINGAPORE

Scope

1 This Chapter sets out the provisions governing service of originating processes and other court documents out of Singapore. It largely retains the existing Order 11 with a simplification and rearrangement of its provisions.

Service out of Singapore with Court's approval

2 Instead of enumerating all the permissible cases for service of an originating process out of Singapore, Rule 1(1) prescribes the criteria for obtaining the Court's approval for service out of Singapore, namely showing that the Court has the jurisdiction or is the appropriate court to hear the case. This makes it unnecessary for a claimant to scrutinise the long list of permissible cases set out in the existing Rules in the hope of fitting into one or more descriptions. It also avoids the possibility that a particular category of cases which could and should be heard in Singapore is actually not in the list.

Solicitor for serving party

3 Instead of imposing an obligation on the Ministry of Foreign Affairs and the Court to send an originating process or other court documents to various agencies to effect service out of Singapore under the existing Rules, Rule 2(2) now requires the serving party to engage a solicitor to do so directly unless that is not allowed. It is a sensible change because the Ministry and the Court are no more than post-boxes in the process in reality and have to do unnecessary documentation for something which is of a purely private or commercial nature.

4 The solicitor becomes the point of contact for the serving authority or person in the foreign country and rightly so as he is best placed to respond to any queries from the foreign country.

CHAPTER 7: CASE CONFERENCE

Scope

1 This Chapter sets out the provisions governing the conduct of Case Conferences. It also simplifies and consolidates the existing Orders 4, 14, 16, 18, 20, 25, 34A and 39.

2 The Case Conference is to be the command centre which sets the timelines and the tone of the proceedings. It will be presided over by the trial Judge or a Registrar in consultation with the trial Judge if one has been assigned to the case.

3 A Case Conference will be held 8 weeks after an originating process is issued if the defendant is to be served in Singapore or 12 weeks if the defendant is to be out of Singapore.

Exchange of affidavits of evidence-in-chief

4 Rule 7(1) allows the Court to direct parties to file and serve their list of witnesses and to file and serve affidavits of evidence-in-chief of all or some of the witnesses after pleadings have been filed and served but before any exchange of documents. Where such a direction has been made, the Court will not deal with any application before the direction is complied with.

Single application pending trial

5 Under Rule 8, other than excepted classes of applications, the Court will control the number of and the period within which applications may be filed by determining what applications are required and order each party to file a single application as far as possible. No further application may be taken out at any time without the Court's approval. Parties will not be able to take out any application within 14 days before trial except in a special case and with the trial Judge's approval. This helps to eliminate strategic ambush near trial and avoids wasting Court hearing time on matters that should have been dealt with much earlier.

Amendment of pleadings

6 In similar vein, the Court will not allow pleadings to be amended within 14 days before trial except in a special case. The Court may draw appropriate inferences if material facts in the pleadings are amended. This is to eliminate the prevalent practice of parties seeking to amend pleadings very close to the trial date or even on the first day of trial, which could result in wastage of Court hearing time and possibly the adjournment of the trial.

Interrogatories

7 Interrogatories under the existing Order 26 and 26A are abolished as they have long faded in effectiveness after affidavits of evidence-in-chief were introduced into the existing Rules.

CHAPTER 8: PRODUCTION OF DOCUMENTS

Scope

1 This Chapter sets out the provisions governing the production of documents. The practice on discovery of documents under the existing Order 24 will be changed significantly.

Guiding principle

2 The Rules impose a new regime which works on the principle that a claimant is to sue and proceed on the strength of his case and not on the weakness of the defendant's case. It aims to prevent parties from engaging in unnecessary requests and applications with the hope of uncovering a "smoking gun". While some cases may justify the current full discovery, the Rules seek to make them rare exceptions rather than the norm. Discovery is very expensive and time consuming. It is also labour intensive in some cases where documents are still stored in printed copy. It is also highly intrusive into privacy and confidentiality (even if the browsing of a party's documents is done by that party's solicitors and their assistants). In today's context, it is even more so since discovery can encompass all the documents and the messages stored in a person's mobile phone and other electronic devices.

Production of documents relied upon by parties and requested documents

3 Under Rule 2, parties are to first produce the documents upon which they rely for their respective cases. The parties may seek production of specific documents under Rule 3 if they can properly identify these documents and show that such documents will be material to the issues in the case.

Court's power to order production on own accord

4 The Court is also given the power under Rule 4 to order any party or non-party to produce a copy of any document in his possession or control.

Prohibition against production of certain documents

5 Rule 5 prohibits the production of any “train of inquiry” document or a document that is part of a party’s private or internal correspondence except in a special case. “Special case” is deliberately left undefined to allow for flexibility and good sense should a rare case emerge.

Privileged documents

6 Rule 7 codifies and gives effect to our Court of Appeal’s decision in *Wee Shuo Woon v HT SRL* [2017] 2 SLR 94 that the mere fact that confidential information had been made technically available to the public at large does not destroy its confidential character.

Use of documents in other proceedings

7 Rule 8 modifies the High Court’s decision in *Foo Jong Long Dennis v Ang Yee Lim & anor* [2015] 2 SLR 578 that although the *Riddick* principle ceases to apply once a document is used in open Court, the party who discloses or owns the document may apply to the court for the implied undertaking to continue.

Production before action or against non-parties

8 Rule 9 allows the Court to order pre-action production of documents and information or against a non-party for the following purposes:

- (a) to identify possible parties to any proceedings;
- (b) to enable a party to trace his property; or
- (c) for any other lawful purpose.

CHAPTER 9: EXPERT EVIDENCE

Scope

1 This Chapter sets out the provisions governing the use of expert evidence in Court. It also simplifies and consolidates the existing Orders 40 and 40A.

Court to approve use of Court expert

2 Rule 2 mandates that expert evidence can only be used in Court with the Court's approval. The Court will only sanction the use of expert evidence if it will contribute materially to the determination of any issue in the case and the issue cannot be resolved by an agreed statement of facts or by submissions based on mutually agreed materials.

Common expert, Court expert and number of experts

3 Rule 3 prescribes the general rule of using one common expert. In a special case and with the Court's approval, the parties may use their own experts but they cannot rely on expert evidence from more than one expert on all or any of the issues. The Court retains the discretion to appoint a Court expert in addition to or in place of the parties' common expert or all the experts.

Issues and common set of facts

4 The parties are required under Rule 4 to agree on the list of issues to be referred for expert evidence and the common set of facts on which the experts are to rely. The Court will approve the list of issues and the common set of facts and the expert evidence will be confined as such.

Meeting of experts

5 Rule 6 provides for a meeting of the parties, their solicitors and the experts before, during or after the making of the expert reports. However, the

contents of discussions at such meetings shall not be used in Court unless the parties otherwise agree.

Panel of experts

6 Rule 7 governs what is commonly called concurrent expert evidence. It gives the Court flexibility as to how evidence should be given by a panel of experts and clarifies that a defendant retains the right to submit a “No case to answer” when that defendant’s expert testifies on such a panel before the defendant’s non-expert witnesses have testified.

CHAPTER 10: INJUNCTIONS, SEARCH ORDERS AND OTHER RELIEF

Scope

1 This Chapter sets out the provisions governing injunctions, search orders, interim payments, receivers, sale and dealings with immovable property before trial as well as interpleaders.

2 It simplifies and consolidates the existing Orders 17, 29, 30, 31.

3 The forms for injunctions and search orders currently found in the practice directions have been incorporated into the Rules. It is envisaged that they may be simplified at a later date.

CHAPTER 11: COURT HEARINGS AND EVIDENCE

Scope

1 This Chapter sets out the provisions governing court hearings, evidence and affidavits. It also simplifies and consolidates the existing Orders 32, 33, 35, 37, 38, 38A, 41 and 43.

Powers of Court

2 The Rules will give the Court flexibility in the conduct of trials and other hearings. For example, Rule 3 allows the Court to conduct hearings on documents alone for certain categories of cases so that the parties or their solicitors do not need to attend Court. This avoids the problem of having to arrange suitable hearing dates for the parties and the Court and obviates transport expenses and travelling time to go to and from Court. It also saves on hearing hours and, in some cases, Court hearing fees. It means of course that the Court has to spend time outside hearing hours to read the documents and then inform the parties of its decision.

3 The procedure for applying for an order to a witness to attend Court and for bringing to Court a person who is in prison has been simplified to applications by letter to the Registrar.

4 Rule 7(11) clarifies and formalises the conditions and the procedure for a defendant to make a submission of “No case to answer”. Rule 9 allows the Court to ask a witness any question that it thinks necessary.

Affidavits

5 Affidavits may be affirmed before a solicitor who is a Commissioner for Oaths so long as he is not the solicitor acting for the party, even if a member of his firm is acting for that party. It is proposed that Rule 9 of the Commissioner for Oaths Rules which states the contrary be deleted. This makes it more convenient for the parties and their witnesses because they will no longer have

to leave their solicitor's office to go to the office of another solicitor who is a Commissioner for Oaths in order to affirm their affidavits.

6 Affidavits filed as evidence-in-chief must bear a colour photograph of the maker of the affidavit. This will assist the trial Judge in recalling what any particular witness looks like when the trial Judge is considering a reserved judgment or is writing grounds of decision.

CHAPTER 12: JUDGMENTS AND ORDERS

Scope

1 This Chapter simplifies the provisions relating to judgments and orders in the existing Order 42.

Court's decision on dispute on terms of draft order

2 When there is a dispute on the terms of the draft order, Rule 3 gives the Court the option to either hear parties or give its decision without the parties' attendance.

Redaction of order

3 Rule 4 gives the Court the discretion to redact any order in the interests of justice or where the order was made in hearings which were conducted in private under any written law. Likewise the Court also has the discretion to prohibit any person, other than the parties, from inspecting or taking copies of any order for the same reason.

CHAPTERS 13, 14, 15: APPEALS

Scope

1 The provisions governing appeals are set out in 3 chapters. The appeals chapters simplify and consolidate the existing Orders 55, 55A to 55D, 56 and 57.

2 Chapter 13 concerns appeals from applications in an action. Chapter 14 relates to appeals from judgments and orders after trial while Chapter 15 covers appeals from tribunals and case stated. Chapter 15 is technically not a part of general civil litigation but it flows nicely with the other two chapters in concept. There are separate parts in the first and second chapters pertaining to different tiers of appeals. The existing Order 55A has been simplified and retained in the third chapter.

Aims

3 The broad aims of the 3 chapters are:

- (a) Speed up appeals from applications by:
 - i. requiring the parties to file only written submissions with the appeal proceeding by way of a rehearing based on the documents filed by the parties in the Court below;
 - ii. Hearing all such appeals together as the time for filing an appeal does not start to run until all matters in the single application have been disposed of;
- (b) Allow lower Courts maximum autonomy in procedural matters with appellate intervention only if substantial injustice will be caused;

- (c) Move parties quickly from procedural skirmishes to the main battle on the merits of the case;
- (d) Save costs and reduce prolixity by requiring succinct documents to be filed with the imposition of page limits which can only be exceeded if the Court approves and with the payment of a fee;
- (e) Draw a distinction by requiring less formality for appeals in applications and requiring more formality only for appeals on the merits after trials through the filing of Cases. The contents and format of the Cases are prescribed by the Rules with court fees payable in addition to page limit fees if applicable; and
- (f) Make appellate hearings more effective by allowing parties to make only such oral submissions as the appellate Court orders.

CHAPTER 16: COSTS

Scope

1 This Chapter simplifies and incorporates the relevant provisions in the existing Order 59. The most dramatic changes are the concept of scale costs at first instance and the appellate stages of actions and the re-emphasis on the precept that solicitor-and-client costs should be equal to party-and-party costs.

Scale costs

2 Scale costs will apply for liquidated and quantifiable claims, including appeals:

- (a) between party and party unless the parties otherwise agree or the Court otherwise orders in a special case; and
- (b) between solicitor and client unless the solicitor and client otherwise agree.

Essentially, the costs allowed will be a percentage of the amount of claim or of judgment on a tiered basis with a maximum amount of costs allowed prescribed for each tier. The total costs allowed will be the cumulative costs allowed at each tier. Fixed percentages rather than ranges of amounts were prescribed at each tier because the ranges will have to be broad and flexible and in practice, that would lead again to disparity and uncertainty. Stage costs are also not ideal. While ostensibly providing an incentive for the litigants to settle early to reduce costs, in reality they often provide the perverse incentive to prolong the proceedings until the final stages are reached in order to attract more costs for the solicitors.

Solicitor-and client costs should be equal to party-and-party costs

3 There will be a re-emphasis of the principle that in general, solicitor-and-client costs should be equal to party-and-party costs. This way, a successful litigant who conducts his case reasonably throughout can expect to be

reimbursed every dollar that he pays to his solicitor for having to enforce his rights in Court. Further, to discourage unnecessary satellite litigation, no costs will be ordered for applications before judgment. Judges will be expected to fix or to assess the costs of the matters heard by them instead of sending them for assessment by the Registrar.

Philosophy

4 The philosophy in the new Rules is to signal clearly to parties that there is a fixed price the moment they decide to resolve the dispute in court. This allows them to weigh the consequences and whether it is worthwhile to incur the legal costs and if necessary, to make financial provisions for the litigation (especially for corporate litigants). There is no incentive for solicitors to prolong or complicate the proceedings by taking out multiple applications and appeals because there is only one fixed price. No costs for applications will be ordered unless there is unreasonable conduct on the part of any of the parties. On the other hand, there is every incentive to try to resolve the dispute quickly and obtain the fixed price for less time and effort so that the solicitors can then have the capacity to take on more cases.

5 If the defendant deliberately prolongs the proceedings because he knows there is only one fixed price, the Court can award costs above scale costs for such unreasonable conduct. However, the defendant's lawyer is unlikely to want to prolong the dispute because he will also have a fixed price unless he has agreed with the defendant that solicitor-and-client costs will not be on scale costs. However, there are also provisions in the new Rules that enable the Court to keep solicitors' conduct in check.

Departure from scale costs

6 Parties will be able to make an informed decision whether to depart from scale costs. If a client agrees with his solicitor to depart from scale costs, he should be aware of the consequences and should not blame anyone if he is not compensated fully for his solicitor-and-client costs. The same applies to the

parties if they agree not to go by the scale costs. All costs agreements must be in writing and the solicitors are expected to explain to their clients the costs consequences if they opt out of scale costs.

Application of scale costs for settled or default cases

7 The term “special case” is deliberately undefined to allow the Court maximum flexibility in determining whether scale costs ought to apply in any particular case. Therefore, if a case is settled or determined by default very early, the Court might want to order a discount on scale costs, while bearing in mind that the scale costs are intended to apply in the full amounts set out in the Rules whether the action is determined early or late in the proceedings. In exercising its discretion, the Rules provide that the Court should take into consideration a host of factors, including the Ideals, the efforts made at amicable resolution (even before the commencement of the action and during the course of it), the complexity, the conduct of the parties and the principle of proportionality. In the course of negotiating a settlement, the parties are also free to depart from scale costs as a compromise.

CHAPTER 17: ENFORCEMENT OF JUDGMENTS AND ORDERS

Scope

1 This Chapter sets out the provisions for enforcement of judgments and orders. It simplifies and consolidates the existing Order 45 to Order 50.

Enforcement against club and societies membership

2 Rule 1 makes it clear that membership in clubs and societies may be seized as part of enforcement proceedings.

Single enforcement application

3 Rule 2 provides for a single enforcement application to be taken out so that the enforcement applicant does not need to take out multiple applications for each method of enforcement.

Sale by auction

4 Rule 4 prescribes sale by public auction where the estimated value of the seized property is more than \$20,000 as opposed to the current \$2,000 limit, which is way too low in today's money value for a public auction to be cost-effective. The Sheriff may engage appropriate persons to assist him in all matters relating to the enforcement order.

Sheriff's commission

5 Rule 6 prescribes that the Sheriff is entitled to a commission of 2% of:

- (a) the gross proceeds of sale of the seized properties; or
- (b) the estimated value of the seized properties if property is seized but not sold,

subject to a minimum amount of \$100 and a maximum amount of \$50,000.

CHAPTER 18: CONTEMPT OF COURT

Scope

1 This Chapter sets out the provisions relating to Contempt of Court. It largely retains the existing Order 52 with a simplification of its language since Order 52 has only been recently amended to give effect to the Administration of Justice (Protection) Act 2016 (Act 19 of 2016)

Power to arrest absent committal respondent

2 This Chapter has 2 additional rules. First, Rule 17 confirms the High Court's power to order the arrest of a committal respondent who fails to attend a hearing without good reason and to bring him before the Court as soon as it is practicable.

Engaging assistance of auxiliary police officer or other security agency

3 Second, Rule 18 allows the Sheriff to engage any auxiliary police officer or other security agency to assist him in the discharge of his duties.

CHAPTER 19: PREROGATIVE ORDERS

Scope

1 This Chapter sets out the provisions governing judicial review. It simplifies and consolidates the existing Orders 53 and 54.

Service on the Attorney-General's Chambers

2 Applications for prerogative orders may name the Attorney-General as the defendant if the identity of the proper defendant is unknown or uncertain. This is a fall-back position so that the applicant does not feel aggrieved when that he does not know who in the Government he should name as the defendant. For instance, an applicant for a Prohibiting Order may not know which ministry or department in the Government to name as the defendant. This is important because the 3-month deadline to make the application now applies to Mandatory Orders, Prohibiting Orders and Quashing Orders. However, the Attorney-General can apply to the Court to ask the applicant to amend the name of the defendant if the Attorney-General is not the right party.

Procedure

3 The existing application for leave as a distinct first step in applications for prerogative orders is abolished in the new Rules. In practice, solicitors for the applicant and the Attorney-General's Chambers often agree to conflate the leave stage with the merits stage because they usually have to go through the same facts and arguments anyway.

4 However, in the new Rules, the Attorney-General has the liberty to file an affidavit on only preliminary objections or other legal issues against the application without stating the factual disputes yet. The Court may hear these objections first and decide to dismiss the application for prerogative orders on the basis of the preliminary legal issues.

Test

5 The new Rules incorporate the requirements in case law pronouncements on judicial review. The applicant must show that he has the legal standing to make the application. In addition, he must show that the evidence discloses an arguable case of reasonable suspicion in favour of the Court making the orders sought and that the defendant and the matters in issue are susceptible to the orders sought.

Time to make application

6 The 3-month deadline, which presently applies only to Mandatory Orders, will apply to Prohibiting Orders and Quashing Orders as well in the new Rules. There is no justification for not imposing the same deadline on the latter 2 Orders as late applications for those 2 Orders can also hinder good public administration and prejudice actions already taken.

CHAPTER 20: COURT FEES

Scope

1 This Chapter provides for court fees to be paid in the circumstances and the manner to be set out in Practice Directions. The existing Order 91 Rule 5 is retained in this Chapter.

2 Until the proposed procedural rules in Part 1 of the Rules of Court are finalised, it will be premature and a waste of time and resources to decide on the type and quantum of court fees that are chargeable.

CHAPTER 21: THE REGISTRY, ADMINISTRATION AND FINANCE

Scope

1 This Chapter simplifies and consolidates the existing Orders 60, 61, 63A, and 90. For instance, Rule 4 does away with the existing Order 90, whereas Rule 5 does away with the existing Order 63A.

2 This Chapter is drafted to make administration and finance as well as rules relating to the electronic litigation system very flexible and responsive to constant changes. Further, there are Instruction Manuals issued by the Government on all aspects of financial management in the public sector and there is no need for the Registry to have another set of instructions in the Rules of Court.

CHAPTER 22: REFERRALS ON ISSUES OF LAW

Scope

This Chapter reproduces Order 101 of the existing Rules. We added in Bermuda as a specified foreign country because a memorandum of understanding was signed recently between Singapore and Bermuda.

**EXPLANATORY NOTES TO
PART 2 OF THE NEW RULES**

PART 2

Scope

1 Part 2 of the new Rules contains the specialised applications under various legislation. The existing Orders and their accompanying forms which are to be retained will appear in Part 2 under the following Chapters:

- Chapter 1 (Order 58) References under Article 100 of Constitution for advisory of opinion
- Chapter 2 (Order 58A) Constitutional Case
- Chapter 3 (Order 80) Administration and similar actions
- Chapter 4 (Order 69) Arbitral Proceedings
- Chapter 5 (Order 85) Bills of Sale Act
- Chapter 6 (Order 95) Building and Construction Industry Security of Payment Act
- Chapter 7 (Order 111) Choice of Court Agreements Act 2016
- Chapter 8 (Order 88) Companies Act
- Chapter 9 (Order 97) Competition Act – Applications under section 85 of Competition Act
- Chapter 10 (Order 89A) Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act
- Chapter 11 (Order 82) Debenture holders action: Receiver’s register
- Chapter 12 (Order 74) Debtors Act
- Chapter 13 (Order 78) Defamation actions
- Chapter 14 (Order 76) Disability
- Chapter 15 (Order 75) Distress Act

- Chapter 16 (Order 89C) Employment Act
- Chapter 17 (Order 98) Income Tax Act
- Chapter 18 (Order 69A) International Arbitration Act
- Chapter 19 (Order 100) Collective sale applications
Title will be changed to:
Land Titles (Strata) Act – Collective sale applications
- Chapter 20 (Order 96) Limited Liability Partnerships Act
- Chapter 21 (Order 79) Moneylenders' actions
- Chapter 22 (Order 83) Mortgage actions
- Chapter 23 (Order 89B) Mutual Assistance in Criminal Matters Act
- Chapter 24 (Order 89D) Oaths and Declarations Act
- Chapter 25 (Order 66) Obtaining evidence for foreign courts, etc.
- Chapter 26 (Order 77) Partners
- Chapter 27 (Order 74) Patents Act
- Chapter 28 (Order 105) Personal Data Protection Act 2012
- Chapter 29 (Order 85A) Proceedings arising out of hire-purchase agreements
- Chapter 30 (Order 73) Proceedings by and against Government
- Chapter 31 (Order 109) Protection from Harassment Act 2014
- Chapter 32 (Order 67) Reciprocal enforcement of judgments
- Chapter 33 (Order 93) Security and Futures Act – Civil liability actions
- Chapter 34 (Order 94) Security and Futures Act – Civil penalty actions
- Chapter 35 (Order 103) Securities and Futures Act – Order for disgorgement against third party
- Chapter 36 (Order 65) Service of foreign process
- Chapter 37 (Order 70) Admiralty proceedings
Title will be changed to:
Shipping and Marine Insurance Claims (existing O 18 r 23 and O 24 r 18 will be moved to this Chapter)

Chapter 38 (Order 110) Singapore International Commercial Court

Chapter 39 (Order 81) Summary proceedings for possession of land

Chapter 40 (Order 89E) Terrorism (Suppression of Financing) Act

Chapter 41 (Order 87) Trade Marks Act

2 The Chapters in Part 2 are set out in alphabetical order at inception according to the title of each set of rules, with the exception of the first two Chapters because these concern the Constitution, the supreme law of our country.

3 It is envisaged that the Chapters in Part 2 will be modified subsequently to harmonise with the new procedure in Part 1, after Part 1 has been finalised.

ANNEX: THE NEW RULES OF COURT