SINGAPORE'S NEW CIVIL JUSTICE REGIME: SEVEN LIKELY CHANGES OF NOTE AND WHAT THEY MEAN IN PRACTICAL TERMS

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A variety of reforms (draft amendments) have been proposed to Singapore's Rules of Court (Rules), the procedural rules applicable to all litigants in Singapore.

The draft amendments aim to enhance the efficiency of resolving disputes while keeping legal costs at reasonable levels and ensure that Singapore's civil justice system is capable of meeting the demands and challenges of the future.

While it is still unclear when the draft amendments will be enacted, there are a variety of things we can glean about the new lay of the land from the draft amendments currently in circulation, in conjunction with relevant committee reports. This alert will highlight seven noteworthy changes that will likely be implemented and what each will mean in practical terms.

AMENDMENT NO. 1: IDEALS (CHAPTER 1, RULE 3)

The draft amendments contain a set of Ideals that are meant to guide parties and the Court in the conduct of civil proceedings.

These Ideals are (a) fair access to justice, (b) expeditious proceedings, (c) cost-effective work proportionate to the nature, complexity and value of the claim, (d) efficient use of court resources; and (e) fair and practical results.

Likely Impact

Litigation could become more cost-effective and faster. The Court appears to be equipped with a greater discretion to grant directions that will streamline proceedings, with the aim of reducing costs and minimizing unnecessary litigation.

The Ideals are a novel inclusion which have no equivalent express provision under the existing Rules, though the spirit of these Ideals are generally interpreted as being implied under the Rules.

AMENDMENT NO. 2: AMICABLE RESOLUTION (CHAPTER 3, RULE 1)

Parties have a duty to consider amicable resolution before and during the course of litigation.

Parties also have a duty to make an offer of amicable resolution before commencing proceedings unless they have reasonable grounds not to do so.

Likely Impact

Under the existing Rules, parties do not have an express duty to consider amicable resolution although legal practitioners have a duty to advise their clients about the different ways their disputes may be resolved using an appropriate form of alternative dispute resolution, such as mediation.

The imposition of these new, express duties on parties is in line with the Court's move towards encouraging parties to explore alternative dispute resolution. This suggests that the Court may be more prepared to penalise parties who unreasonably refuse to attempt amicable resolution by making unfavourable cost orders.

AMENDMENT NO. 3: VALIDITY AND SERVICE OF ORIGINATING PROCESS (CHAPTER 4, RULE 3; CHAPTER 7, RULE 4)

An Originating Claim and an Originating Application (presently, the Writ of Summons and Originating Summons, respectively) will be valid for service for three months from their date of issue, regardless of whether they are to be served in Singapore or in another jurisdiction. The Court may extend the validity only twice and by not more than three months each time, except in special cases.

A party who commences proceedings is obliged to take reasonable steps to effect service of the relevant court documents expeditiously, failing which the Court has the power to make various orders at Case Management Conferences, including the dismissal of the claimant's action.

Likely Impact

Claimants will need to have a greater degree of certainty that they intend to pursue their claims before commencing proceedings.

The draft amendments are meant to restrict a claimant's ability to commence an action simply to preserve their position and/or leverage on having filed an action in Court (e.g., to advance on-going settlement negotiations). Particularly, where service of originating process is to be effected out-of-jurisdiction, claimants should have on hand the necessary information prior to commencing proceedings, for example by obtaining advice in the relevant foreign jurisdiction on the methods of valid service in that jurisdiction.

AMENDMENT NO. 4: FILING OF AFFIDAVITS OF EVIDENCE-IN-CHIEF (AEICS) (CHAPTER 7, RULE 7)

In the draft amendments, it was proposed that the Court be granted the power to order parties to file and serve their AEICs before document production.

However, following a public consultation, the draft amendments will be updated to expressly state that the Court may order parties to file and serve their AEICs simultaneously or in any sequence (i.e., the Court may still allow for AEICs to be filed after document production), which is in line with the current practice.

Likely Impact

Under the present Rules, AEICs are generally filed and served after the document production.

The draft amendments will give the Court broader discretion to determine when litigants are to file their AEICs, in particular, even before document production.

Given that litigants may be directed to file their AEICs before commencing discovery, litigants should ensure they have the necessary documents to establish their claim at an early stage of proceedings.

Claimants who do not have copies of documents that are vital to their claim may want to consider applying for pre-action discovery in anticipation of the possibility that they will be ordered to file and serve AEICs before discovery.

Litigants may also wish to consider the strength of their case, based on available evidence, at an early stage instead of waiting to see if favourable documents are produced in discovery.

AMENDMENT NO. 5: SINGLE INTERLOCUTORY APPLICATION (CHAPTER 7, RULE 8)

As far as possible, each litigant will only be permitted to make one application before trial to deal with all interlocutory matters, including applications for disclosure of specific documents, applications for further and better particulars, and applications to amend pleadings, among others.

However, certain interlocutory applications such as applications for summary judgment, striking out, and a stay of proceedings will be excluded from this single application pending trial.

Likely Impact

This will likely increase the efficiency of proceedings. Under the current Rules, there is no express limit to the number of interlocutory applications that can be made by a litigant and such applications can be taken out sequentially. As such, a litigant may intentionally protract and increase the cost of proceedings by filing multiple interlocutory applications sequentially, particularly where one party has deeper pockets than the other.

Under the draft amendments, parties will have to properly consider their case at an early stage and thoroughly identify the interlocutory applications that they wish to make in a single application pending trial. Litigants may not get a second bite of the cherry if they fail to do so.

AMENDMENT NO. 6: SCOPE OF DISCOVERY (CHAPTER 8, RULE 2)

Presently, the discovery obligations of parties include not just documents that the party intends to rely on but also documents that may be adverse to that party's case.

Under the draft amendments, parties will instead exchange a list of and a copy of (a) all documents that they will be relying on, and (b) all documents that fall within the broader scope of discovery as agreed between parties or as ordered by the Court.

Following the public consultation, the draft amendments will be modified to provide that parties will also be required to produce all known adverse documents in the party's possession or control.

Likely Impact

The intent behind the changes implemented in the draft amendments to the rules of discovery was to narrow the scope of parties' initial obligation to disclose documents, with the aim of reducing the time and costs expended.

This would also bring court proceedings in Singapore closer to how documents are produced in arbitration, where document disclosure is generally limited to documents that are relevant to the issues in dispute.

Given that the draft amendments will still require the production of all known adverse documents in a party's possession or control, the narrowing of the scope of discovery should not result in unfairness arising from information asymmetry between parties.

AMENDMENT NO. 7: SINGLE JOINT EXPERT (CHAPTER 9, RULES 2, 3, AND 4)

Parties may only call on expert witnesses with the leave of Court, and parties are encouraged to agree on a single joint expert as far as possible.

The list of issues to be referred for expert evidence is to be agreed between parties and approved by the Court.

Likely Impact

Given that the Court will have greater control over when expert evidence may be used, and the way expert evidence is to be obtained, the quality and reliability of the evidence is likely to be higher.

If the success of a party's claim or defence rests on its ability to appoint an expert who has unorthodox or "creative" views, that party may need to reconsider its litigation strategy.

CONCLUSION

While the draft amendments seems to promise cheaper and more efficient litigation, there will inevitably be issues that arise when they are implemented and uncertainties around how they apply in practice.

If you are considering whether to commence legal proceedings before or after the draft amendments come into force, do not hesitate to contact us.

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