Limitation Periods in Private International Law
Proposals for Public Consultation

1. The Ministry of Law ("**MinLaw**") is considering introducing legislation to modernise the rules of Private International Law ("**PIL**") governing the application of limitation periods.

2. A summary of these proposed reforms is set out below. The detailed legislative provisions can be found in the draft Foreign Limitation Periods Bill ("**Draft Bill**") attached to this consultation paper.

3. MinLaw seeks the views of consultees in respect of the proposed reforms, the draft provisions, and any other suggestions which consultees may have in this area of law.

(A) PROPOSED REFORMS TO LIMITATION PERIODS IN PIL

(I) Background

4. A common issue encountered in the context of conflict of laws is the question of which country's limitation laws ought to apply when the defence of time bar is raised.

5. At common law, the applicability of a jurisdiction's laws on limitation period traditionally turned on whether these laws should be classified "procedural" (and hence governed by the law of the forum (the "***lex fori***")), or "substantive" (and hence governed by the applicable law of the proceedings (the "***lex causae***")).The outcome of this classification would depend on the language used in the relevant limitation statute. If the relevant law merely barred the remedy as opposed to extinguishing the right, the limitation period would be classified "procedural' in nature (and hence only applicable if it was part of the *lex fori*).

6. In this regard, English common law traditionally considered time bars to be of a procedural nature; English limitation statutes generally used the language of "enforceability", thus suggesting that the remedy was merely barred, and not extinguished. Common law courts would consequently generally apply the limitation periods stipulated by their own domestic laws even if the parties' substantive rights were governed by the laws of another jurisdiction.

7. The position in Singapore in this area is presently unclear. There has been no definitive judgment on point, though the Court of Appeal in the recent decision of *Goh Suan Hee v Teo Cher Teck* [2010] 1 SLR 367[1] indicated a willingness to depart from the traditional common law bifurcation between "substantive" or "procedural" classifications.

[1] This case was, however, not concerned with limitation periods, but with the question of whether the quantification of damages was a question of substance or procedure for conflict of laws.

8. A recent Report of the Law Reform Committee ("**LRC**") entitled "*Limitation Periods in Private International Law*" (January 2011)[2], highlighted that most leading common law jurisdictions, including the United Kingdom, Australia, Canada and the United States, have moved away from this traditional approach and have effected legislative reforms to adopt a modern approach which essentially provides that limitation laws of the law governing the claim should apply as a general rule, subject to public policy reservations of the forum.

9. The LRC highlighted the following main reasons for preferring this modern approach over the traditional approach:[3]

(a) The distinction drawn in the traditional approach between rights and remedy is illusory.

(b) The traditional approach with its forum bias encourages forum shopping.

(c) The traditional approach goes against modern notions of international comity underlying choice of law in the somewhat intrusive and invariable application of forum rules of limitation periods.

(II) Proposed legislative reforms

10. The LRC therefore recommended that similar reforms be enacted through legislation in Singapore (notwithstanding that the Court of Appeal displayed signs that it may be moving in the same direction), given that legislative as opposed to common law reform has the advantages of being able to set out a clear cut-off date for a new direction, as well as the flexibility of applying a broader definition of public policy than is permissible under the common law[4].

11. To this end, the LRC prepared a Bill in its Report which is modeled after the English Foreign Limitation Periods Act 1984 (c 16) (UK). The Draft Bill is largely based on the Bill proposed by the LRC in its Report.

12. Rather than approaching the issue through the lens of the traditional bifurcated (substantive-procedural) classification framework, the Draft Bill adopts a more straightforward approach, and directly states, as a general rule, that the limitation laws of the *lex causae* will apply. This general rule is, however, subject to public policy considerations; the Draft Bill provides that the general rule will not apply to the extent that its application would conflict with public policy.

13. The Draft Bill also makes related amendments to the Arbitration Act and the International Arbitration Act so that the same modern approach to limitation periods in litigation will also apply to arbitration (both domestic and international).

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[2] Available online at: http://www.sal.org.sg/digitallibrary/LRCpublications.aspx.
[3] See the LRC Report at paras 4 and 28.
[4] See the LRC Report at paras 5 and 75.

(B) CONCLUSION

14. MinLaw would like to seek your views and feedback on the proposed reforms for limitation periods in PIL. MinLaw also welcomes other suggestions which consultees may have in this area of law.

15. Replies should reach MinLaw by **21 November 2011**.