RESPONSE TO FEEDBACK FROM PUBLIC CONSULTATION ON THE CIVIL JUSTICE REFORMS: RECOMMENDATIONS OF THE CIVIL JUSTICE COMMISSION AND THE CIVIL JUSTICE REVIEW COMMITTEE

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I. Introduction

1. The Civil Justice Reform proposals are the culmination of the work of two committees – the Civil Justice Commission ("CJC") set up by the Chief Justice and the Civil Justice Review Committee ("CJRC") established by the Ministry of Law ("MinLaw").

2. The two committees comprised members of the judiciary, representatives from the Attorney-General's Chambers, academics and senior practitioners from the Bar.

3. Both committees were broadly tasked with reforming and modernising our civil justice system although each committee addressed distinct issues in their deliberations. The common intent was to enhance the efficiency of resolving disputes while keeping legal costs at reasonable levels and to ensure that our system would be capable of meeting the demands and challenges of the future.

4. The committees' recommendations were published in separate reports before being jointly released for public consultation in October 2018 as the Civil Justice Reform proposals.

5. While there was broad support for the majority of the reform proposals, a significant number of respondents who provided feedback to the proposals highlighted that Singapore already possesses a leading civil litigation system and questioned the need for change at this juncture.

6. Singapore's civil justice system is highly efficient and effective:

   (a) In 2015, a perception survey conducted by MinLaw found that 92% of Singaporeans had trust and confidence in our legal system, and agreed that our legal system was fair and efficient[1];

(b) In 2016, Chief Justice Menon highlighted that the Supreme Court had, for more than a decade, successfully disposed of at least 85% of all writs filed within 18 months of filing[2];

(c) The World Economic Forum in its 2019 Global Competitiveness Index placed Singapore 1st out of 141 countries in terms of the "[e]fficiency of [its] legal framework in settling disputes"; and

(d) Singapore's civil justice system was ranked 6th out of 128 countries in the 2020 World Justice Project Rule of Law index.

7. However, there is a need to continually review and improve our system to stay ahead of the curve, and address areas that may still pose difficulties for some of its users. For example, significant time and expense are still devoted to procedural matters instead of the merits of the dispute. Civil litigation tools intended to facilitate fact-finding are instead utilised for tactical or strategic gain. This is particularly evident in cases where there is a mismatch in resources between the litigants.

8. Further, the last major revamp of our civil justice system came in the 1990s when the challenges then were different to the challenges we face today or may face tomorrow. The Civil Justice Reform proposals therefore come at an opportune moment as we seek to transform our civil justice system to better serve the needs of our society, and ensure access to justice.

[1] "What Singaporeans think of the Legal System", online: https://www.mlaw.gov.sg/content/dam/minlaw/corp/News/Annex%20-%20Survey%20of%20legal%20system%20infographics.pdf.

[2] CJ Menon's speech on the rule of law and the SICC, 10 January 2018 (https://www.sicc.gov.sg/docs/default-source/modules-document/news-and-article/b_58692c78-fc83-48e0-8da9-258928974ffc.pdf)

II. General Feedback

9. MinLaw and the New Rules of Court Implementation Team[3] would like to thank all respondents to the public consultation on the Civil Justice Reform proposals, which took place from 26 October 2018 to 31 January 2019.[4]

10. The majority of respondents were lawyers who provided their feedback in their personal capacity or through the Law Society of Singapore. We also received feedback from financial institutions, non-profit organisations and members of the public.

11. Respondents gave feedback on the proposals which involved substantive policy considerations and also provided drafting suggestions. The feedback was constructive and helped shed light on different perspectives on the proposals.

12. Most respondents welcomed the proposed amendments to reform the civil justice system and were of the view that these amendments were timely and helpful in modernising it. Some of the proposals however, have raised concerns amongst the lawyers.

13. The feedback has been carefully considered and adjustments have been made to the proposals, where appropriate. We elaborate further below in this response to the feedback on the Civil Justice Reforms.

[3] The New Rules of Court Implementation Team is chaired by Justice Ang Cheng Hock and comprises representatives from the Supreme Court and the State Courts.

[4] For the avoidance of doubt, references to specific sections in this document refer to sections in the version of the Public Consultation Paper on Civil Justice Reforms ("Public Consultation Paper") (Annex A); Report of the Civil Justice Review Committee ("CJRC Report") (Annex B); Civil Justice Commission Report ("CJC Report") (Annex C) and the Supreme Court of Judicature Act (Chapter 322, Section 80) Rules of Court ("Draft Rules") (Annex D) that was released for public consultation between 26 October 2018 and 31 January 2019.

III. General Matters

(a) ***Ideals***[5]

14. A majority of the respondents supported the introduction of the Ideals i.e. guiding principles in the draft Rules of Court ("Draft Rules") to guide the conduct of civil proceedings.

15. However, some concerns were raised:

    (a) The interaction between each of the Ideals is unclear and in some instances can even conflict with each other.

    (b) The Ideals ought to be unified by an overarching objective – the absence of which could lead to inconsistent and incoherent interpretations of the Draft Rules.

    (c) The Ideals appear to be exhaustive which may be unduly limiting on the courts'[6].

16. The CJC, in formulating the Ideals recognised that all of the Ideals may not be achieved in every case.[7] For example, enabling "fair access to justice" in a certain case may sometimes be at odds with ensuring that proceedings are conducted expeditiously. Hence, the Ideals would apply, conjunctively, as dictated by the circumstances of each case. To have an overarching objective or ideal may elevate one ideal above others or may result in the courts being restricted in the way the Ideals are applied. Ultimately, the Ideals are intended to *guide* parties and the court in the conduct of civil proceedings and not to be applied in a formulaic manner. Therefore, no changes are proposed to the Ideals as currently set out in Chapter 1 of the Draft Rules.

[5] Para 21 Public Consultation Paper, Chapter 1 para 3 CJC Report, Chapter 1 Rule 3 of the Draft Rules.
[6] Based on the feedback, some examples of other factors that the courts can and should take into account include the lack of prejudice to a party or the financial position of each party.
[7] Chapter 1 para 3 CJC Report.

(b) ***Non-compliance with the Rules***[8]

17. The Draft Rules provide that the court can, amongst other powers, refuse to hear any matter or dismiss it without a hearing if there is non-compliance with the Draft Rules. The feedback raised a major concern with the proposal that the consequences of non-compliance with the Rules could potentially be disproportionate to the severity of the breach – even a minor breach could technically result in a case being dismissed. Respondents suggested that the principle of proportionality should be expressly included to guide the exercise of the court's powers.

18. The principle of proportionality has been subsumed under the overarching Ideals. In considering whether any breach of the Rules ought to result in a dismissal of the case, the court would have regard to the Ideals such as "*fair access to justice*" and "*fair and practical results suited to the needs of the parties*". These Ideals act to temper any unjust results. Therefore, we propose to maintain the provision as drafted.

(c) ***Calculation of time***

19. The Draft Rules provide that a non-court day (i.e. Saturday, Sunday or public holiday) would be included in the calculation of time for a period that is 7 days or more.[9] Currently, any period of 8 days or more would include non-working days in its reckoning.[10]

[8] Para 23 Public Consultation Paper, Chapter 1 para 5 CJC report, Chapter 1 Rule 5(4) of the Draft Rules.
[9] Para 24 Public Consultation Paper, Chapter 1 para 8 CJC report, Chapter 1 Rule 6(6) of the Draft Rules.
[10] Order 3 rule 2(5) of the Rules of Court.

20. The majority of respondents opposed this recommendation:

(a) The inclusion of a non-court day in computing time periods of 7 days or more would compress timelines for an exact 7-day deadline. As the courts commonly make orders with a 7-day timeline, the proposed change will have a significant impact on the profession.

(b) Most businesses and clients operate on a 5-day week and including non-court days such as weekends may present difficulty in getting instructions on time.

(c) This would open up the possibility of abuse where aggressive opponents serve papers on the eve of non-court days to put pressure on counter-parties.

(d) It would also lead to adverse downstream consequences such as overworked lawyers if the timelines are shortened.

21. Having considered the strong feedback received and after balancing the competing considerations of expediting court timelines and the interests of the parties to litigation, adjustments will be made to the Draft Rules. All 7-day time periods stipulated in the Draft Rules will be increased to 14 days. This simplifies the Rules of Court, and also ensures fairness to all litigants.

(d) Extension of time by consent

22. There was concern over the proposal that the period within which a person is required to serve, file or amend any pleading or document may be extended **only** once by consent in writing for a maximum period of 7 days, for the following reasons:[11]

(a) Party autonomy would be curtailed.

(b) It would hamper attempts to resolve the dispute out of court.

(c) There would be an unnecessary increase in applications for extensions of time.

[11] Para 25 Public Consultation Paper, Chapter 1 para 9 CJC report, Chapter 1 rule 7(3) of the Draft Rules.

23. Some respondents also stated that it was unclear whether the proposal applied to *each* event/deadline or if it was intended to mean that parties may only extend time once by consent throughout the entire course of proceedings, for a maximum period of 7 days. One respondent counter-proposed that each party should be given the opportunity to obtain an extension of time by consent once.

24. To clarify, the proposed rule provides that the time to serve, file or amend any pleadings or other document may be extended by consent of parties only once in each instance. If parties require more than one extension, they may apply to court, who will give the appropriate directions. The purpose is not to curtail party autonomy, but to enhance the court's matter management ability to ensure that proceedings are conducted expeditiously and are not delayed by parties through unbridled consensual extensions of time throughout the proceedings.

25. Having taken into consideration all the feedback received, this rule will be retained. However, as mentioned above, all 7-day time periods stipulated in the Draft Rules will be increased to 14 days.

IV. Amicable Resolution of Cases

(a) Duty to consider amicable resolution of cases[12]

26. This proposal received mixed responses from the Bar.

27. Those that supported the proposal suggested that imposing a duty to consider amicable resolution of cases would assist in the resolution of cases without the need to proceed to court.

28. However, some respondents were concerned that:

    (a) The proposal has the effect of imposing a condition precedent to litigation.

    (b) There is no real need to replace the existing offer-to-settle regime which provides sufficient incentive for parties to consider amicable resolution of cases.

    (c) The court, when considering whether parties had discharged their duty to consider amicable resolution, would require the parties to reveal privileged legal advice to explain their decision.

    (d) It would also be unfair to judge parties' decisions on hindsight.

29. Respondents also raised some operational concerns in relation to the proposal:

    (a) The duty to consider amicable resolution of cases is inherently incompatible with the nature of some cases for example, cases needing urgent interlocutory relief such as Anton Piller orders and Mareva injunctions.

    (b) The duty to offer amicable resolution would lead to unnecessary waste of costs and time especially if it is certain that parties will not settle and would prefer to proceed to litigation.

[12] Para 30 Public Consultation Paper, Chapter 3 para 2 CJC Report, Chapter 3 rule 1 of the Draft Rules.

(c) There is a lack of clarity in the Draft Rules on how a court would determine the reasonableness of a litigant's decision not to attempt amicable resolution.

30. One respondent also suggested the adoption of a pre-action protocol to encourage parties to consider or evaluate the use of Alternative Dispute Resolution ("ADR") before commencing litigation. This could involve having the client and his counsel acknowledge and confirm at the time when the pleadings are filed, that legal advice on ADR options and cost consequences of commencing a suit has been rendered.

31. The duty to consider ADR is not new. Today, under the Supreme Court Practice Directions, counsel are expected to advise their clients on the different ways their disputes may be resolved using an appropriate form of ADR and ADR is to be considered at the earliest possible stage in order to facilitate the just, expeditious and economical disposal of civil cases.[13]

32. It also ought to be clarified that the proposal only requires parties to (a) consider amicable resolution of cases before the commencement and during the course of any action or appeal; and (b) to make an offer of amicable resolution before commencing action unless he has reasonable grounds to do so. Parties are not obligated to make an offer of amicable resolution in *all* circumstances.

33. The proposal does not ignore the fact that in certain cases, there may be reasonable grounds for a party or the parties not to make an offer of amicable resolution. For example, it would be open to a party to argue that it is unreasonable to offer amicable resolution in

[13] Paragraph 35B Supreme Court Practice Directions

cases where urgent interlocutory relief is required to stop ongoing harm and when such an offer is not possible given the extreme urgency of the matter.

(b) Court has the power to order parties to attempt to resolve the dispute by amicable resolution[14]

34. This section deals with the proposal for the courts to have the power to order parties to attempt to resolve the dispute by amicable resolution. The feedback raised doubts as to the viability of mandatory mediation[15] on the basis of anecdotal evidence that suggested that ADR would have a higher rate of success if voluntarily entered into.

35. We note the feedback that court-ordered ADR might not be effective in some cases. While the Draft Rules will allow the courts to order parties to attempt to resolve the dispute by amicable resolution, they will also be amended to clarify that the courts, in deciding whether to exercise this power, will take into account all relevant circumstances, including whether any of the parties have refused to attempt to resolve the dispute by amicable resolution, as well as the Ideals.

36. The Draft Rules will also be amended to allow the court to order a party who does not wish to attempt to resolve the dispute by amicable resolution to submit a sealed document setting out his reasons for such refusal, for example, if such reasons are privileged. The sealed document will only be opened by the court after the determination of the action or appeal and its contents may be referred to on any issue of costs. This power ensures that the reasons for not attempting amicable resolution are not thought up *ex post facto* at the costs submissions stage, and will impress on the parties the possible cost implications that may

[14] Para 32 Public Consultation Paper, Chapter 3 para 5 CJC Report, Chapter 3 rule 3 of the Draft Rules, para 83 CJRC Report.
[15] Mandatory mediation has been implemented in a number of common law jurisdictions such as Australia, New Zealand, Canada and United States.

arise if these reasons are inadequate. As is the case today, the court will make a determination on any contested issues relevant to the question of costs raised by parties at the cost submissions stage.

V. Commencement of Proceedings

(a) Form of Originating Claim

37. The CJC proposes that parties will affix their signatures to pleadings filed in an Originating Claim action[16] to certify that the contents of the pleadings are true to the best of their knowledge and belief, while solicitors will affix their signatures to certify that they have advised their clients of this obligation.

38. Several respondents questioned the necessity for parties and solicitors to provide such certification as it would only add to costs for parties and potentially lead to more satellite litigation.

39. The proposed requirement is a reasonable imposition on the litigant and/or his solicitor and would be effective in ensuring that:

    (i) Litigants understand the gravity of filing pleadings, and ensure that the pleadings contain only true and verifiable facts.

    (ii) Litigants understand that approval has to be obtained from the court before subsequent amendments to pleadings may be made.

40. These outcomes are to the benefit of the parties and also serve to promote the efficient conduct of proceedings. The proposal will therefore be retained.

[16] Form 4 (Statement of Claim) and Form 7 (Defence) of Annex 2 of the Draft Rules.

(b) Generally endorsed Originating Claims

41. The Draft Rules provide that an Originating Claim may contain a general endorsement only if the limitation period for the cause of action will expire within 14 days after the Originating Claim is issued, or if there are special circumstances.[17]

42. The feedback received raised concerns with the proposal on the basis that there may be situations in which a generally endorsed claim may genuinely be required. For example, where the matter is one of urgency for reasons other than an impending time bar, or if the claimant is unable to fully articulate his claim until after disclosure of documents.[18]

43. There is no need to amend this provision. The relevant rule is broadly drafted to enable sufficient flexibility where there are special circumstances which require a generally endorsed claim to be filed.

(c) Reply to Defence / Reply to Defence to Counterclaim

44. The CJC proposes to expressly provide in the Draft Rules that there shall be no necessity for a reply if it is intended to merely deny assertions made in the defence (or defence to counterclaim) without adding any further material facts.[19] No further pleadings shall be filed unless ordered by the court at a case conference.[20]

45. Some of the concerns raised in respect of these proposals were:

    (a) The assumption that further pleadings will not add anything material to the parties'

[17] Chapter 4 rule 5(4) of the Draft Rules.
[18] Suggested by the Law Society in its written feedback to the Civil Justice Reform proposals.
[19] Chapter 4 rule 9 of the Draft Rules.
[20] Chapter 4 rule 10 of the Draft Rules.

respective cases may not hold true.

(b) If replies are not permitted, it would require a statement of claim to pre-empt any defences that are the defendant's burden to plead.

46. The feedback received appears to stem from a misapprehension of the proposal. Today, there is anecdotal evidence that suggests that litigants in a vast majority of cases prepare and file a reply or a reply to defence and counterclaim that contains mere denials. This practice is in direct contradiction of the rule that mere joining of issues in the reply is unnecessary[21].

47. The proposal therefore addresses this mismatch between the practice of litigants and the rules by making it explicit that it is unnecessary for a litigant to file a reply that merely denies assertions made in the defence without adding further material facts.

48. To clarify, the right to file a reply, where necessary, is not circumscribed. Where a reply is required however, for example where a litigant needs to plead material facts such as performance, release, fraud or illegality, a reply will still be available as of right.

49. Therefore, no substantive changes to the proposals are necessary, as they are in line with enhancing efficiency and judicial control over the process, while also maintaining fairness to the parties. Nonetheless, we will be amending the draft Rules to make it clear that the approval of the court may be sought to file any further pleadings, in cases where it is necessary for certain matters to be pleaded.

[21] Order 18 Rule 14(1) Rules of Court.

VI. Service in and out of Singapore

50. A number of respondents expressed the view that the time limits of 14 days for service of the Originating Claim and Originating Application in Singapore, and 28 days for service of the Originating Claim and Originating Application out of Singapore[22], are too short. It might be challenging to comply with the proposed time limit especially in cases where considerable time and effort is required to locate the defendant overseas; or where English is not the official language in the country of service and translation services would have to be engaged.

51. We would clarify that the Draft Rules only require the claimant to *commence taking reasonable steps to serve* on the defendant as soon as possible and, in any event, within 14 days after the Originating Claim or Originating Application is issued (for service in Singapore) or 28 days after the Originating Claim or Originating Application is issued (for service out of Singapore). There is no requirement for the claimant to have *effected service* on the defendant within 14 or 28 days (as the case may be) after the issuance of the Originating Claim or Originating Application. As such, it is not necessary to make changes to the proposal.

[22] Para 41 Public Consultation Paper, Chapter 4 para 8 CJC Report, Chapter 4 rules 5(6) and (7) and 11(4) and (5) of the Draft Rules.

VII. Case Conference

(a) Management of case

52. Both committees recommended that a judge and/or relevant judicial officer manage the case throughout its life cycle once the claim is filed, and for the court to give case management directions for the proceedings during these case conferences.[23] While there was strong support for the recommendations, some concerns were raised:

    (a) Potential for judges to "pre-judge" the matter given their early involvement.

    (b) Whether registrars should decide procedural matters that could affect the shape of the trial when the intention was for judges to have close control of the conduct of the case.

53. Firstly, the concern of a judge pre-judging the matter may be overstated. Today, judges already review all the matters before trial – at least by the time the case reaches the stage of the judge pre-trial conference, where the judge typically discusses the issues with the parties and gives further directions for the conduct of the case. The proposal only seeks to involve the judges earlier in the process so that directions on the conduct of the case may be given by the judges at an earlier stage with a view to achieving the Ideals.

54. With regard to the issue of whether the judges or judicial officers should preside over the case conference, the intent is for the case conference to be presided over by the judge or a Registrar in consultation with the judge.[24] This will ensure that the judges have close control over the manner in which the case progresses. Further, the Ideals will serve as a lodestar for the orders and directions to be made at the case conference regardless of

[23] Para 58 Public Consultation Paper, para 58 CJRC Report. 80 percent of the Respondents to the Law Society online survey expressed support for this recommendation.
[24] Chapter 7 para 2 CJC Report, Chapter 7 rule 1(4) of the Draft Rules.

whether the case conference is conducted by a judge or Registrar.

(b) Attendance of counsel at the case conferences

55. The CJRC proposed that case conferences be attended by the lead counsel, or a counsel who is familiar with the case and has sufficient authority to make decisions.[25] The feedback highlighted the concern that this proposal would reduce advocacy opportunities for younger lawyers, and increase the cost of litigation.

56. We acknowledge the concerns over reduced advocacy opportunities for junior lawyers and increasing costs of litigation. However, it must be highlighted that the CJRC proposal allows for the absence of the lead counsel so long as the case conference is attended by a counsel who is familiar with the case and has sufficient authority to make decisions.

57. The proposal encourages the proper training and delegation of responsibility to junior lawyers. Conversely, attendance at case conferences by junior lawyers without familiarity of the matter or authority to make decisions is not helpful for the professional advancement of the junior lawyer. It also leads to inefficient case management.

58. As for the perceived impact of the proposal on the costs of litigation, it must be highlighted that the introduction of case conferences is intended to get parties and their counsel to closely assess their respective cases as early as possible and for the case to be conducted in a focused and streamlined manner. We therefore envisage that any increase in costs from requiring lead counsel to attend case conferences (if any at all), would be mitigated by overall reductions in the costs of the proceedings arising from efficiencies introduced

[25] Para 64 Public Consultation Paper, para 60 CJRC Report.

through these reforms.

(c) List of Issues ("LOI")

59. Most respondents were sceptical about the practicality and usefulness of the LOI, which the CJRC had proposed parties should submit prior to the first milestone case conference (i.e. after close of pleadings).[26] Respondents expressed doubt that parties would be able to agree on the LOI at such an early stage in the proceedings and were of the view that the LOI would be more helpful for litigants-in-persons.

60. The proposal does not require parties to agree on the LOI at the outset. The aim is for the LOI to be continually reviewed and refined as the case progresses, and for the judge to work with parties in this process. This process helps lawyers ensure that issues are properly identified at an early stage. It minimises last minute amendments to pleadings or introduction of evidence (both of which will be more carefully scrutinised as part of the proposed reforms) and the vacation of trial dates and wasted costs which invariably result. However, we recognise that it may not be cost effective to require the LOI to be submitted early in every case, for example, where parties have indicated that they intend to amend pleadings or to apply for summary judgment or striking out of the whole claim or defence. Therefore, we will amend the proposal to require the parties to submit the LOI at the direction of the court instead.

(d) Exchange of AEICs

61. Various concerns were raised with the recommendation that the court may order that the AEICs of all or some of the witnesses be filed and exchanged before the production of

[26] Paras 65 to 66 Public Consultation Paper, Paras 61 and 64 CJRC Report.

documents:[27]

(a) The front-loading of costs that would have an adverse impact on the likelihood of parties reaching an amicable settlement.

(b) Tipping the scales in favour of those parties with deeper pockets or those with earlier or more complete access to the relevant documents and evidence in the dispute.

(c) Prejudicing the defendant who would have significantly less preparation time given that the plaintiff controls the timing of the case.

(d) Incompatibility with complex cases where parties do not know what allegations and evidence they have to meet before discovery.

62. The intent behind the proposal is to shift the focus to witness evidence as early as possible so that:

(a) Parties proceed on the basis of the strength of their case as opposed to the weakness of their opponents' case.

(b) The case proceeds in a focused manner – parties and their counsel will engage in more thorough preparation of witness evidence at an early stage of proceedings.

(c) Witness evidence will be more accurate and not crafted to suit the documents disclosed during discovery.

63. In the vast majority of such cases, crafting AEICs is likely to be straightforward and based on clear, established documentation which has crossed between the two parties. Nevertheless, there may be instances where this proposal would need to be relaxed – for example, cases involving complex issues such as conspiracy or medical negligence.

[27] Paras 67 and 69 Public Consultation Paper, CJC Report Chapter 7 para 4, Chapter 7 Rule 7 of the Draft Rules, paras 66 and 71 CJRC Report.

64. As foreshadowed by then-Senior Minister of State for Law Mr Edwin Tong SC in his keynote address at the Litigation Conference 2019, to ameliorate some of the difficulties that may arise from the proposal, the Draft Rules on AEICs will be amended to expressly state that the court may order AEICs to be filed simultaneously or in any sequence.

(e) Single Application Pending Trial ("SAPT")

65. The CJC had proposed that the court will generally order all interlocutory applications to be made in a single application. Subject to the exceptions listed, no application may be taken out by any party at any time other than as directed at the case conference or with the court's approval. Parties will not be able to make any application within 14 days before trial except in a special case and with the trial judge's approval.[28]

66. This proposal attracted concerns. The main thrust of the feedback was that parties cannot be expected to anticipate all the interlocutory relief they require, and to take out a single application for all such relief at a single point in time. The feedback also raised a question whether the proposal would work given that some interlocutory matters are inherently incompatible with each other as they arise at different stages of proceedings.

67. The following details as to how the proposal would operate have to be clarified:

(a) The court would have close control of proceedings through the case conferences and will be best placed to assess when the parties are in a position to file the SAPT.

(b) A single application does not necessarily mean that parties are restricted to a single type of relief or to a single hearing. The proposal merely requires parties to properly

[28] Paras 71 to 72 Public Consultation Paper, Chapter 7 para 5 CJC Report.

consider and seek all interlocutory relief under a single application. The SAPT however may be disposed of over several hearings, if necessary.

(c) Notwithstanding the above, the proposal for a SAPT does not preclude parties from seeking further interlocutory relief if there is a good reason for it. The proposal merely requires lawyers, together with their clients, to properly consider and be aware of the work required in these proceedings. This benefits litigants and lawyers as they are encouraged to properly assess the scope of work and the likely costs early.

68. However, we recognise that certain interlocutory applications such as applications for summary judgment, applications for striking out of the whole action or defence and applications for stay of the whole action may have to be dealt with before the SAPT in order to save costs and will thus be amending the Draft Rules to exclude such applications from the SAPT.

VIII. Production of Documents

(a) Initial obligation to produce documents

69. The intent of the CJC to narrow the scope of discovery received significant support from the Bar.[29]

70. However, the feedback was unequivocal in indicating that the initial obligation to disclose documents ought to include the disclosure of adverse documents. Today, adverse documents are discoverable as a matter of right and excluding adverse documents would:
    (a) Incentivise the hiding or destruction of adverse documents.
    (b) Increase the number of requests or applications for further documents.

71. The feedback also highlighted that the proposed regime would operate unfairly in cases where there is information asymmetry between the parties. The availability of specific discovery is of little comfort to the party in a weaker position if he/she does not know what documents are in the possession of the other party.

72. The intent of reducing the scope of parties' initial obligation to disclose documents is to reduce the time and costs expended in the exercise of discovery. Nevertheless, we accept the feedback received on this proposal.

73. Parties' obligation to produce documents under Chapter 8 Rule 2 of the Draft Rules will be amended so that parties will also be required to produce all known adverse documents in

[29] 72% of the Respondents to the Law Society online survey expressed support for this recommendation.

the party's possession or control.

74. It may be noted that the term "control" has a wide meaning and the obligation to produce documents would include, for example, documents in the party's custody or power.

75. The term "known adverse documents" include documents which a party ought reasonably to know are adverse to his case. Whether a document is a known adverse document will be assessed objectively. The obligation to produce documents is not limited to the production of adverse documents that a party is actually aware of, but includes the production of adverse documents that the party could have knowledge about through reasonable checks and searches.

(b) Private or internal correspondence

76. The CJC proposed that a party's private or internal correspondence shall not be discoverable except in a special case and with leave of court.

77. The feedback was unanimous in expressing the view that by carving out private or internal correspondence save for exceptional issues, parties lose access to documents that could reveal the true state of affairs.

78. The intent behind the proposal to exclude private or internal correspondence was to prevent parties from inundating each other with lengthy correspondence that would have little or no bearing on the issues in dispute in the case.

79. Having considered the feedback, we will amend the Draft Rules to provide that the court shall not order production of private or internal correspondence except in a special case or if such correspondence are known adverse documents.

80. The call from the Bar to allow for disclosure of private or internal correspondence has been focused on ensuring that private documents that are adverse to a party's case are disclosed. The introduction of a new exception for known adverse documents addresses the concerns raised and will ensure that all private or internal correspondence relevant to the dispute will be disclosed.

IX. Expert Evidence

(a) Single joint expert

81. The proposal was for the introduction of a general rule requiring parties to agree and appoint a single joint expert in matters where expert evidence is required to assist the court, except in a special case and with the court's approval.[30]

82. The majority of respondents were opposed to this recommendation. Respondents were of the view that the current rules pertaining to the adducing of expert evidence are robust enough to achieve the desired outcomes and do not need to be revised:
    (a) Experts more often than not assist the court by presenting different options and avenues.
    (b) The current system already allows experts to narrow their differences through hot-tubbing and court-directed collaboration.

83. In addition, the respondents raised other concerns with the proposal:
    (a) A possible increase in satellite litigation.
    (b) An increase in costs to parties arising from parties having to appoint the joint expert on top of their own experts to assist them with navigating the issues requiring expert opinion.
    (c) Parties would be limited to cross-examining the single expert on his evidence as opposed to putting forward a positive case.

[30] Para 89 Public Consultation Paper; Chapter 9 rule 3 of the Draft Rules.

84. The intent of this proposal was to improve the quality and materiality of expert evidence put before the court. Almost invariably, party-appointed experts give opinions from different ends of the spectrum. Sometimes, this is not because they disagree with each other but because the manner of engagement and the instructions given to the experts differ.

85. While the concerns raised are valid, it must be reiterated that a single joint expert would suffice in the majority of cases which are straightforward, for example matters of establishing assessment of damages, or on proof of foreign law, or in cases of family law which involve the examination of the mental condition of individuals. This will enhance the efficiency and speed of adjudication.

86. Having said that, the feedback has been carefully considered and the proposal will be refined such that parties will be **encouraged** to agree on a single expert, as far as possible.[31]

[31] These revisions were announced by then-SMS(Law) Mr Edwin Tong SC during his keynote speech at Litigation Conference 2019.

X. Court hearings and evidence

(a) Form and contents of AEICs

87. The CJC has proposed that AEICs be affixed with a recent coloured photograph of the deponent, taken in the last 12 months.[32]

88. Several respondents raised objections with this requirement as it added an unnecessary complication to the preparation and filing of AEICs, particularly for witnesses based overseas or who have very busy schedules. Additionally, as AEICs are a matter of public record and accessible by the press, affixing a photograph of the deponent could have a deterrent effect on persons coming forward to give evidence voluntarily.

89. The intent behind the proposal is to assist the trial Judge in recalling what a particular witness looks like when the trial Judge is considering a reserved judgment or is writing Grounds of Decision.[33] This will serve to ensure just results. The imposition on the deponent is minimal as the affidavit would have to be deposed to before a Commissioner of Oaths in any event and the photograph can be affixed at that juncture.

90. No changes are proposed to the CJC's recommendation.

(b) No departure from facts in AEICs

91. The Draft Rules provide that an AEIC must contain all material facts which shall not be departed from or supplemented by new facts in oral evidence, unless the new facts

[32] Chapter 11 rule 18 of the Draft Rules.
[33] Para 6 CJC Report.

occurred after the date of the making of the AEIC.[34]

92. The feedback highlighted that the absolute prohibition is impractical as cross-examination often results in witnesses supplementing the evidence found in AEICs.

93. First, it must be reiterated that this provision is subject to the Ideals in Chapter 1 of the Draft Rules (for example, fair access to justice or fair and practical results suited to the needs of parties) which would allow departure from or supplementation of evidence in the AEIC if necessary.

94. Second, this restriction applies only to material facts which should already have been in the AEIC at the time it is filed and exchanged, since they would have occurred before the date of the making of the AEIC. If the deponent wishes to add to the evidence in the AEIC or depart from the evidence, there should be good reason for the deponent to do so.

95. Third, the proposed rule does not prohibit, and cannot be read as prohibiting, a witness from answering truthfully during cross-examination.

96. No changes are therefore proposed to this proposal.

(c) <u>Swearing/Affirmation of AEICs</u>

97. The Draft Rules provide that an AEIC may be affirmed by a solicitor who is a Commissioner for Oaths so long as he is not the solicitor or one of the solicitors acting for the party who is or whose witness is making the affidavit even if the Commissioner for Oaths is a solicitor from the same firm.[35]

[34] Chapter 11 rule 15(4) of the Draft Rules.
[35] Chapter 11 rule 21 of the Draft Rules.

98. The feedback highlighted that the current rule was intended to minimise bias in affidavit evidence as an objective and independent Commissioner for Oaths would ensure that the deponent understood the contents of his affidavit and only deposes to what he understands.

99. The rule is an archaic one rooted in old English cases, and there is no reason to assume that a solicitor who is a Commissioner for Oaths would not be able to perform his duties independently when faced with a deponent for whom another solicitor of the same firm is acting. As this rule is under the purview of the Senate of the Singapore Academy of Law[36], the Senate's consideration has been sought to amend this rule.

(d) <u>Powers of the court during trial</u>

100. The CJRC proposed that the trial judge may, among other things, exercise the power to directly question witnesses, including on issues outside the scope of pleadings, if necessary. In making this recommendation, the CJRC has noted that as judicial impartiality remains an important feature of civil procedure, broad guidelines should be introduced for judges who engage in the examination of witnesses.[37]

101. Respondents raised concerns about the perceived impartiality of the judge if the judge enters the fray, and whether the fair conduct of the trial could be impeded if the judicial questioning changes the case parties were prepared to meet.

[36] Supreme Court of Judicature Act (Cap. 322, 2007 Rev Ed) s 68(3).
[37] Para 103 Public Consultation Paper, Paras 102 to 103 CJRC Report.

102. However, the court today already has broad powers under s 167(1) of the Evidence Act to question witnesses. Under the Draft Rules, the court may ask a witness any questions that the court considers necessary at any time and the parties will be allowed to ask the witness further questions arising out of the court's questions.[38] This is consistent with s 167(1) of the Evidence Act. Moreover, the court's power has to be exercised in accordance with the Ideals. We will thus be adopting the position in the Draft Rules.

[38] Chapter 11 rule 9(1) of the Draft Rules.

XI. Appeals

(a) Automatic stay of enforcement

103. The Draft Rules provide that the filing and serving of a notice of appeal will stay the enforcement of the lower court's decision unless the lower court or the appellate court otherwise orders.[39]

104. The feedback highlighted that there would be a strong incentive for the appeal process to be abused if only to take advantage of the benefit of an automatic stay of enforcement.

105. Having considered the feedback, it is accepted that a successful party should not be unduly denied the fruits of the litigation. There would be no prejudice to the losing parties as it is open to them to apply for a stay of enforcement. The relevant provisions will be deleted from the Draft Rules.

(b) Page limits for appeal documents

106. The CJC proposed that documents filed in respect of appeals should be subject to page limits and parties may exceed that limit only with the leave of court and in limited circumstances.[40]

107. Several respondents indicated that the proposed page limits were unrealistic. One response in particular highlighted that for complex cases where there are numerous issues to be canvassed, page limits would unduly curtail the ability of the parties to argue their

[39] Chapter 13 rule 6, Chapter 14 rule 5 and Chapter 15 rule 6 of the Draft Rules.
[40] Chapters 13, 14 and 15 of the Draft Rules.

cases fully.

108. It is understandable that page limits on documents to be filed in an appeal may be of some concern to litigants and practitioners particularly in cases where there are numerous issues to be canvassed.

109. However, the need for succinctness in the preparation of documents for an appeal – principles that are encapsulated in the Supreme Court Practice Directions today[41] – cannot be overstated.

110. Presently, the Supreme Court Practice Directions already impose page limits on certain documents filed in respect of appeals, such as written Cases and skeletal arguments in appeals before the Court of Appeal and the Appellate Division of the High Court, as well as written submissions in applications filed to these appellate courts.[42] Further, where parties exceed certain number of pages for core bundles, fees are imposed for every page filed in excess of the specified number of pages.[43] The proposal to impose page limits and require leave of court to exceed the page limit therefore would not be a significant change from the current practice today.

111. The CJC's recommendation on page limits will therefore be substantively retained. However, to take into account the cover and contents pages which are to be included in the computation of the number of pages, the page limits imposed on documents filed in respect of appeals will generally be increased by five pages. [44]

[41] Paragraph 87(4) Supreme Court Practice Directions draws parties' attention to the importance of brevity and restraint in the compilation of core bundles.
[42] Paragraphs 87(4A), 90(5), 90(8A), 90A(4)(a) and 90B(3)(a) Supreme Court Practice Directions.
[43] Rows 34, 35 and 35A of Appendix B, Rules of Court.
[44] However, there will be no change to the page limits for further skeletal arguments currently filed under paragraphs 90(8A) and 90(11) of the Supreme Court Practice Directions. Further, the page limits for written submissions for leave

(c) <u>Deadline for filing of appeal</u>

112. Chapter 13 of the Draft Rules reduces the time for filing of an appeal from an application in an action from 1 month to 14 days where the appeal is to the Court of Appeal[45] and 14 days to 7 days for all other appeals.[46]

113. Respondents were generally against any reduction of timelines for the filing of appeals. The feedback highlighted that the reduction of time for filing of appeals could lead to issues for litigants and practitioners as obtaining firm instructions within 7 days is at times difficult. The feedback also suggested that there could be a surge in the filing of notices of appeal by parties to preserve their positions without adequately considering the merits of an appeal.

114. As mentioned earlier at para 21 above, all 7-day time periods stipulated in the Draft Rules will be increased to 14 days. Therefore, parties will have 14 days from the date of the lower court's decision to file and serve an appeal from an application in an action.

to appeal applications currently filed under paragraph 90B of the Supreme Court Practice Directions will be increased by 3 pages.

[45] Chapter 13 rule 22 of the Draft Rules.

[46] Chapter 13 rules 13, 15 and 19 of the Draft Rules.

XII. Costs

115. As part of the Civil Justice Reforms, the CJC proposed that a quantum-based scale fixing recoverable party-and-party ("P&P") costs be introduced for liquidated and quantifiable claims. The proposal also recommended that solicitor-and-client ("S&C") costs be pegged to the amount of P&P costs ordered[47] to ensure that a successful litigant would not be out-of-pocket for his legal costs.

116. The intent of the costs proposal was to keep costs low in order to enhance access to justice. The proposals also sought to introduce certainty and transparency in legal costs so that potential litigants could better assess the consequences of litigation at any early stage.

117. Following strong feedback from the Bar on the impact fixing S&C costs to P&P costs would have on the long term viability of litigation practice, the recommendation to peg S&C costs to recoverable P&P costs was withdrawn and is to be re-visited at a more appropriate juncture.

118. As for the proposal to introduce scale costs applicable to P&P costs, the Law Society of Singapore provided detailed feedback expressing serious concerns with the proposed scale costs. Some of the points raised include:

    (a) A quantum-based scale could result in a highly disproportionate recovery of costs in cases where the cost of work done exceeds the claim value.

    (b) A successful litigant ought to be reasonably compensated for his success and not inordinately out-of-pocket for legal expenses – including defendants who have no say as to whether a suit is commenced.

    (c) The basis or methodology behind the proposed scale is unclear and there is no empirical evidence justifying the shift in the costs regime.

    (d) Scale costs would affect the viability of small law firms.

(e) It might not be an appropriate juncture to introduce scale costs as the new civil justice regime has not been implemented and the scale may not be reflective of actual costs under the revamped system.

119. The feedback received on the costs proposals has been constructive and carefully considered. Hence, the introduction of scale costs for P&P costs will be held in abeyance until some time after the implementation of the reforms. This will allow any scale costs to be introduced to take into account the state of P&P and S&C costs under the new process. We will continue to engage and consult the Bar on this issue.

XIII. Conclusion

120. These reforms are the product of wide-ranging and comprehensive deliberations. They are transformational and will alter the manner in which the civil litigation system operates and interacts with litigants and lawyers. Change is not always easy, but it is necessary for Singapore to maintain efficiency and accessibility in the civil justice system.

121. MinLaw and the New Rules of Court Implementation Team would like to thank all respondents to the public consultation for their insightful feedback, which has been very useful in shaping the revisions to the initial version of the Draft Rules. We seek the continued support of and feedback from the Bar in the implementation of the reforms.

MINISTRY OF LAW AND THE NEW RULES OF COURT IMPLEMENTATION TEAM

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