# SINGAPORE INTERNATIONAL COMMERCIAL COURT
# USER GUIDES

# Table of Contents

Note 1: Jurisdiction

Note 2: Commencing an Action

Note 3: Foreign Representation

Note 4: Disapplication of Singapore Evidence Law

Note 5: Injunctions Prohibiting Disposal of Assets

Note 6: Remote Hearings

Note 7: Enforcement of SICC Judgments

Note 8: Corporate Insolvency, Restructuring and Dissolution Proceedings

Note 9: Alternative Dispute Resolution

# SICC USER GUIDES NOTE 1
# JURISDICTION

1. The jurisdiction of the Singapore International Commercial Court (the "Court") is governed by section 18D of the Supreme Court of Judicature Act (Cap. 322) ("SCJA") read with Order 2, Rules 1 to 5 of the Singapore International Commercial Court Rules 2021 ("SICC Rules").

## (a) At commencement

2. Under section 18D(1) of the SCJA, the Court has jurisdiction to hear and try an action that is international and commercial in nature, that the General Division of the High Court may hear and try in its original civil jurisdiction, and that satisfies such other conditions as the Rules of Court may prescribe. Those other conditions, which are prescribed by Order 2, Rule 1(1) of the SICC Rules, are as follows:

(a) the action between the parties when the case was first filed is of an international and commercial nature;

(b) each party named in the case when it was first filed has submitted to the Court's jurisdiction under a written jurisdiction agreement; and

(c) the parties do not seek any relief in the form of, or connected with, a prerogative order (including a mandatory order, a prohibiting order, a quashing order or an order for review of detention).

3. Where the parties have submitted to the Court's jurisdiction under a written jurisdiction agreement, it is presumed that the action is of an international and commercial nature: see Order 2, Rule 1(8) of the SICC Rules. However, the presumption is a rebuttable one and does not affect the Court's power under Order 2, Rule 3 of the SICC Rules, to consider its jurisdiction and exercise of jurisdiction in a case, or over a claim in a case.

4. Under section 18D(2)(a) of the SCJA, the Court (being a division of the General Division of the High Court) has jurisdiction to hear any proceedings relating to international commercial arbitration that the General Division of the High Court may hear and that satisfy such conditions as the Rules of Court may prescribe. Where those proceedings are commenced by way of any originating application, the only condition prescribed under Order 23, Rule 3(1) of the SICC Rules is that those proceedings must be proceedings that the General Division of the High Court may hear under the International Arbitration Act (Cap. 143A).

5. The Court may decline to exercise jurisdiction in a case (even if the applicable jurisdictional requirements are met) if exercising jurisdiction would be contrary to the Court's international and commercial character or would be an abuse of the process of the Court.

6. The Court will not decline to assume jurisdiction solely on the ground that the dispute between the parties is connected to a jurisdiction other than Singapore, if there is a written jurisdiction agreement between the parties: see Order 2, Rule 3(3) of the SICC Rules. In other



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

words, the fact that there are few or no connecting factors to Singapore does not constitute a basis to ask the Court to decline to assume jurisdiction. Since the parties have agreed in writing to submit to the jurisdiction of the Court, which is an international court, the Court would not examine the connecting factors to Singapore in deciding whether to decline to assume jurisdiction.

7. Additionally, the Court has the jurisdiction to hear and determine a case transferred to the Court under Order 2, Rule 4 and Order 23, Rule 11 of the SICC Rules. It also has the jurisdiction to hear and determine an originating application under Order 12, Rule 6 and Order 18, r 1(3) of the SICC Rules respectively for the production of documents, an injunction or search order before the commencement of proceedings in the Court, and an originating application under Order 25 of the SICC Rules for permission to commit a person for contempt of court in respect of any judgment or order made by the Court: see Order 2, Rule 1(2) of the SICC Rules.

### (b) Joinder of additional parties

8. Where the Court has exercised jurisdiction over the case, a person may be joined as a party, including as an additional claimant, defendant or as a third or subsequent party, to the case. This is provided that:

(a) the requirements in Order 10 of the SICC Rules are met; and

(b) the claims by or against the person:

(i) do not include a claim for any relief in the form of, or connected with, a prerogative order (including a mandatory order, a prohibiting order, a quashing order or an order for review of detention); and

(ii) are appropriate to be heard in the Court.

9. Unlike the claims between the claimants and the defendants named in the originating application when it was first filed, there is no requirement that the claims by or against a person sought to be joined to the action must be of an international and commercial nature, so long as the action as a whole maintains an international and commercial character: see section 18D(3) of the SCJA. The Court, in exercising its discretion on whether to join that person, would have to decide whether the claims by or against that person are appropriate to be heard in the Court. In exercising that discretion, the Court would have regard to its international and commercial nature: see Order 10, Rule 5(3) of the SICC Rules.

10. There is also no requirement that a person sought to be joined to the action or proceedings must have submitted to the Court's jurisdiction under a written jurisdiction agreement. There is one exception. A State or the sovereign of a State may not be made a party to a case in the Court unless the State or the sovereign has submitted to the jurisdiction of the Court under a written jurisdiction agreement: see Order 10, Rule 5(2) of the SICC Rules.

11. Where the person sought to be joined has not agreed in writing to submit to the jurisdiction of the Court, the Court may examine the connecting factors to Singapore in


** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

deciding whether to exercise its compulsory jurisdiction and join that person to the action or proceedings.

12. However, this does not mean that the Court is bound to consider and give weight to arguments based on connecting factors made by persons sought to be joined. Where the person sought to be joined has submitted to the Court's jurisdiction under a written jurisdiction agreement, for example, the Court may decide to disregard such arguments in deciding whether to join that person. This would be in the discretion of the Court.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

# SICC USER GUIDES NOTE 2
# COMMENCING AN ACTION

1. Proceedings in the Court must be commenced by an originating application: see SICC Rules Order 4, Rule 1(1).

2. Generally, save for proceedings under the International Arbitration Act (Cap. 143A) (see paragraph 7 onwards), an originating application must be in Form 5: see SICC Rules Order 4, Rule 1(2). The originating application must be accompanied by a claimant's statement, a copy of the written jurisdiction agreement to which the claimant and defendant are party, and the claimant may, when filing the originating application, file an offshore case declaration: see SICC Rules Order 4, Rules 1(4).

3. A claimant's statement must be in Form 6 and must contain a concise summary of the material facts giving rise to the claim, any alleged harm suffered by the claimant, the cause of action against the defendant and the relief sought including where, possible, an initial quantification of the claim amount: see SICC Rules Order 4, Rule 4.

4. An originating application is valid for service for 12 months beginning with the date of its issue: see SICC Rules Order 4, Rule 3(1). A plaintiff may apply to extend the validity of an originating application under SICC Rules Order 4, Rule 3(2).

5. After the originating application and claimant's statement are served on a defendant, the defendant must:

(a) file and serve a defendant's statement in Form 7 within 28 days; and

(b) in that defendant's statement:

i. state whether the defendant intends to contest the claim or any part thereof;

ii. state whether the defendant intends to dispute service and/or jurisdiction;

iii. identify the claim or part thereof that is contested; and

iv. provide a concise summary of the material facts underlying the defence and the nature and grounds of the defence: see SICC Rules Order 4, Rule 5.

6. Unless otherwise provided in the SICC Rules, the Court will order that a contested claim or counterclaim be decided by one of three adjudication tracks: the pleadings adjudication track; the statements adjudication track; or the memorials adjudication track: see SICC Rules Order 4, Rule 6(1). The pleadings adjudication track is equivalent to the writ action under the Rules of Court in force before 1 April 2022. It involves the filing of pleadings (i.e. Statement of Claim, Defence, Reply, etc) and generally culminates in a trial of the matter. The statements adjudication track is equivalent to the originating summons under the Rules of Court in force before 1 April 2022, which involves the filing of witness statements, and generally



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

culminates in a hearing on submissions. The memorials track involves the filing of memorials which are generally required to set out in full detail the parties' respective statements of facts, legal arguments, reliefs claimed, and be accompanied by witness statements, expert reports (if any) and supporting documents. In deciding the applicable adjudication track, the Court may have regard to any agreement between the parties on the applicable adjudication track: see SICC Rules Order 4, Rule 6(2).

7. Proceedings under the International Arbitration Act must be commenced by way of an originating application in Form 42 and accompanied by a witness statement which must state the grounds in support of the application, exhibit a copy of the arbitration agreement or any record of the content of the arbitration agreement, the award and any other document relied on by the applicant, set out any evidence relied on by the claimant and must be served with the originating application: see SICC Rules Order 23, Rule 4. In addition, the witness statement must include, at the start of the witness statement, a short summary of the claimant's reasons why grounds in support of the application are established.

8. The defendant in proceedings under the International Arbitration Act must file and serve a defendant's statement in Form 43: see SICC Rules Order 23, Rule 6(1). If the defendant does not intend to dispute service or jurisdiction and only intends to contest some or all of the claims, the defendant is to file and serve, together with the Defendant's Statement, a witness statement stating the grounds on which the defendant opposes the application: see SICC Rules Order 23, Rule 6(9).

9. Proceedings under the International Arbitration Act will be decided by the statements adjudication track, unless the Court otherwise directs.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

## SICC USER GUIDES NOTE 3
## FOREIGN REPRESENTATION

1. Generally, only advocates and solicitors who are qualified to practise law in Singapore have rights of audience before the Singapore courts. However, in view of the international nature of the Court, parties may be represented by foreign lawyers in proceedings in the Court under certain circumstances: see SICC Rules Order 3, Rule 1(1)(c)-(d) and (2).[1]

2. In order to represent parties in proceedings in the Court, the foreign lawyers would have to be registered under section 36P of the Legal Profession Act (Cap. 161). There are 2 types of registered foreign lawyers: a foreign lawyer who is granted full registration under section 36P(1) of the Legal Profession Act ("full registration foreign lawyer") and a foreign lawyer who is granted restricted registration under section 36P(2) of the Legal Profession Act ("restricted registration foreign lawyer"). The latter may only represent parties for the purposes of making submissions on such matters of foreign law as the Court or the Court of Appeal may permit (see SICC Rules Order 3, Rules 1(1)(d) and 2(1)(d) and paragraphs 17 to 20 below).

### (a) Offshore cases

3. The main category of cases in which full registration foreign lawyers may represent parties is offshore cases.

4. An offshore case is an action which has no substantial connection to Singapore, but does not include (a) any proceedings under the International Arbitration Act (Cap. 143A) that are commenced by way of any originating process; and (b) an action in rem (against any ship or any other property) under the High Court (Admiralty Jurisdiction) Act (Cap. 123): SICC Rules Order 3, Rule 3.

5. An action has no substantial connection to Singapore where (a) Singapore law is not the law applicable to the dispute and the subject matter of the dispute is not regulated by or otherwise subject to Singapore law; **or** (b) the only connections between the dispute and Singapore are the parties' choice of Singapore law as the law applicable to the dispute and the parties' submission to the jurisdiction of the Court: see SICC Rules Order 3, Rule 3(2).

6. The following illustrations serve to demonstrate, as a matter of general principle, cases where the subject matter of the dispute is regulated by Singapore law. Such cases will consequently fall outside of the scope of offshore cases.

[1] Apart from advocates and solicitors and registered foreign lawyers, parties to proceedings in the Court may also be represented: (a) in specific proceedings in the Court, by persons who have been admitted under section 15 of the Legal Profession Act (Cap. 161) to practise as an advocate and solicitor on an ad hoc basis for the purposes of those proceedings; (b) in the same type of cases where full registration foreign lawyers may represent parties, by solicitors registered under section 36E of the Legal Profession Act; and (c) in the same type of cases where restricted registration foreign lawyers may represent parties for the purposes of making submissions on such matters of foreign law as the Court or the Court of Appeal may permit, by law experts registered under section 36PA of the Legal Profession Act. However, this note will focus on representation by registered foreign lawyers.



* *The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

(a) where there is a dispute over the sale of shares in a Singapore incorporated company pursuant to a share purchase agreement governed by New York law, the subject-matter of the dispute (i.e. the shares) is regulated by or otherwise subject to Singapore law.

(b) where there is a dispute over the transfer of land in Singapore pursuant to a contract governed by English law, the subject-matter of the dispute (i.e. the land) is regulated by or otherwise subject to Singapore law.

(c) where there is a dispute over the affairs of a company pursuant to a shareholders' agreement governed by Indonesian law and one of the issues relates to the use of a patent registered in Singapore, the subject-matter of the dispute (i.e. the patent) is regulated by or otherwise subject to Singapore law.

7. The Court has jurisdiction over both offshore cases and non-offshore cases, so long as the applicable jurisdictional requirements under section 18D of the Supreme Court of Judicature Act and SICC Rules Order 2, Rules 1 and Order 23 Rule 3 are met.

8. There are two primary implications of an offshore case: first, as mentioned above, full registration foreign lawyers may represent parties in offshore cases; and second, in making a confidentiality order under SICC Rules Order 16, Rule 9, the Court will generally give due weight to the fact that the case is an offshore case and any agreement between the parties on the making of such an order: see SICC Rules Order 16, Rule 9(2).

9. An action is to be treated as an offshore case if:

(a) either (i) the claimant has filed an offshore case declaration together with the originating process, or (ii) any other party has filed such a declaration together with the first document filed by the party in that case, in accordance with SICC Rules Order 3, Rule 5; or

(b) the Court decides, on an application under SICC Rules Order 3, Rule 6, that the case is an offshore case.

10. An offshore case declaration must be in Form 1. It must explain why the case is an offshore case and state all the facts relevant to the explanation, and must be served on all other parties to the case: see SICC Rules Order 3, Rule 5.

11. Where no offshore case declaration has been filed in a case in accordance with SICC Rules Order 3, Rule 5, a party to the case may apply to the Court under SICC Rules Order 3, Rule 6(1) for a decision that the case is an offshore case.

12. The differences between (a) an offshore case declaration; and (b) an application to Court under SICC Rules Order 3, Rule 6 for a decision that a case is an offshore case, are summarised in the table below:

| | **Offshore case declaration** | **SICC Rules Order 3, Rule 6(2) application** |
|---|---|---|



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

| **Application necessary?** | No. | Yes, see procedure set out in SICC Rules Order 3, Rule 6(2). |
|---|---|---|
| **By when?** | Declaration to be filed by either:<br><br>(i) the claimant – together with the originating process; or<br><br>(ii) any other party – together with the first document filed by the party in the case.<br><br>[See SICC Rules Order 3, Rule 5] | Application to be filed:<br><br>(i) By the claimant / defendant– no later than 28 days after the service of a Defendant's Statement;<br><br>(ii) By a third or subsequent party in proceedings – no later than 28 days after the service of a Defendant's Statement by the third or subsequent party;<br><br>[See SICC Rules Order 3, Rule 6(2)] |
| **What effect?** | A case will be treated as an offshore case if a party has filed an offshore case declaration, unless the Court decides under SICC Rules Order 3, Rule 7 that the case is not or is no longer an offshore case. | A case will be treated as an offshore case if the Court decides under SICC Rules Order 3, Rule 6 that the case is an offshore case, unless and until the Court decides subsequently under SICC Rules Order 3, Rule 7 that the case is not or is no longer an offshore case. |

13. Once either of the conditions set out at paragraph 9 above has been satisfied and a case is treated as an offshore case, the parties can be represented by full registration foreign lawyers in the case. In other words, a full registration foreign lawyer may, among other things, file documents in the Court, appear at hearings before the Court and make submissions to the Court on a party's behalf.

14. A case ceases to be treated as an offshore case if the Court subsequently decides, on its own motion or on the application of a person under SICC Rules Order 3, Rule 7, that the case is not or is no longer an offshore case. But the Court may, in the interests of the just, economical and expeditious disposal of the proceedings, allow a party who has been represented by a full registration foreign lawyer to continue to be so represented, subject to any conditions that the Court may impose: see SICC Rules Order 3, Rule 7(4).

15. In exercising its discretion under SICC Rules Order 3, Rule 7(4), the Court may take into account all the circumstances of the case, including but not limited to:

(a) the reason(s) that the case is not or is no longer an offshore case;

(b) the stage at which the proceedings are at;



* *The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

(c) the prejudice, if any, that may be suffered by the parties if they are no longer allowed to be represented by full registration foreign lawyers; and

(d) whether the parties have local advocates and solicitors acting as co-counsel and/or advising them on the aspects of the proceedings which are connected to Singapore.

16. Purely by way of illustration, the Court may consider exercising its discretion under SICC Rules Order 3, Rule 7(4) and allowing a party who has been represented by a full registration foreign lawyer to continue to be so represented in the following scenarios:

(a) where a counterclaim made by the defendant that is separate and distinct from the original claim caused the case to cease to be an offshore case;

(b) where a claim by the defendant against a third party caused the case to cease to be an offshore case, the Court may allow the claimant who is not involved in the third party claim to continue to be represented by a full registration foreign lawyer; and

(c) where local advocates and solicitors are acting as co-counsel and/or advising the parties on the aspects of the proceedings which are connected to Singapore, or where the parties undertake to engage local advocates and solicitors for this purpose.

**(b) Cases involving foreign law**

17. The Court may, on the application of a party, make an order under SICC Rules Order 16, Rule 8 that a question of foreign law be determined on the basis of submissions instead of proof, specifying one or more persons who may submit on the question of foreign law, and such further orders and directions as appropriate. Such an order may be made in both offshore cases and non-offshore cases.

18. Before making such an order, the Court must be satisfied that each party is or will be represented by an advocate and solicitor, a person admitted under section 15 of the Legal Profession Act (Cap. 161), a registered foreign lawyer (either full registration foreign lawyers or restricted registration foreign lawyers) or a registered law expert who is suitable and competent to submit on the relevant questions of foreign law: see SICC Rules Order 16, Rules 8(2)-(4).

19. If a registered foreign lawyer or registered law expert is specified in an order under SICC Rules Order 16, Rule 8, that foreign lawyer or law expert may make submissions to the Court on behalf of a party, but the submissions must be confined to submissions on the question(s) of foreign law covered under the order.

20. If a party applies for a foreign lawyer or law expert to make submissions on the relevant questions of foreign law and that foreign lawyer or law expert is not registered under section 36P or 36PA of the Legal Profession Act (Cap. 161), as the case may be, that foreign lawyer or law expert would have to exhibit an undertaking to apply to be registered within 7 days after the date on which the order is made: see SICC Rules Order 16, Rule 8(6)(d). Where a foreign



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

lawyer or law expert specified in an order under SICC Rules Order 16, Rule 8 is not a registered foreign lawyer or registered law expert, the order will be conditional on that foreign lawyer or law expert being registered: see Order 16 Rule 8(4).



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

# SICC USER GUIDES NOTE 4
# DISAPPLICATION OF SINGAPORE EVIDENCE LAW

1. Order 13, Rule 15(1) of the SICC Rules states that the Court may, on the application of a party, order that any rule of evidence found in Singapore law shall not apply and such other rules of evidence (if any), whether found in foreign law or otherwise, shall apply instead. Under Order 13, Rule 15(2), such an application can be made if all parties agree on the rules of evidence that shall not apply, and any rules of evidence that shall apply instead. Such an application must, under Order 13, Rule 15(7), be made by summons and supported by a witness statement. The supporting witness statement must: (i) state the rules of evidence found in Singapore law that the parties agree do not apply; (ii) state any other rules of evidence that the parties agree are to apply instead; and (iii) exhibit a copy of the rules of evidence proposed to be applied, where this is practicable: see SICC Rules Order 13, Rule 15(8).

2. This guidance note sets out some of the substantive rules of evidence found under Singapore law. These rules may, among others, be disapplied by the parties in accordance with Order 13, Rule 15. The main sources of evidential rules in Singapore are the Evidence Act (Cap. 97), the Rules of Court (Cap. 322, R 5) and the common law. With respect to the common law, section 2(2) of the Evidence Act states that rules of evidence not contained in any written law, so far as such rules are inconsistent with the provisions in the Evidence Act, are repealed.

## (a) Examples of substantive rules of evidence under Singapore law

### *(i) Hearsay evidence*[2]

3. Hearsay evidence is inadmissible. This is often known as the hearsay rule. Hearsay evidence refers to evidence of an out-of-court statement which is adduced for the purpose of establishing the truth of what is contained in the statement. A witness must generally give evidence of what he has personal knowledge of and not hearsay evidence, i.e. what was perceived by others and recounted to him. It should be noted, however, that evidence of a statement which is given to establish the fact that the statement was made, and not the truth of what is contained in the statement, is not hearsay evidence.

4. There are a number of exceptions to the hearsay rule.[3] One exception pertains to statements made by a person in the ordinary course of a trade, business, profession or other occupation.[4] Such statements may be admissible even though they are hearsay. The Court, however, retains an overarching discretion not to admit hearsay evidence even if the evidence falls within one or more of the exceptions to the hearsay rule.[5] The Court would balance the

[2] See, for example, sections 32 and 33 of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") and paras 120.084 to 120.173 of *Halsbury's Laws of Singapore* (LexisNexis Singapore, 2013 Reissue) ("*Halsbury*"). In *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447, the Court of Appeal held that the EA gave effect to exceptions to the rule against hearsay by rendering the exceptions as *relevant* facts. Save for those exceptions in s 32 of the EA (rendered as *relevant* facts), hearsay evidence is rejected on the basis of a lack of relevance.
[3] Section 32(1) of the EA contains some exceptions to the hearsay rule.
[4] Section 32(1)(*b*) of the EA.
[5] See section 32(3) of the EA and *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 at [105] to [110].



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

significance of the evidence against any factors that militate against its admission, including reliability, costs, delay and prejudice. Where the hearsay evidence sought to be admitted is of limited probative value, such evidence should be excluded.[6]

*Example*

5. In *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal*,[7] a report certified coal to be of satisfactory quality. The report was hearsay because the maker of the report was not called to testify to the truth of the report. The report was nonetheless admitted because it was a document that was compiled in the ordinary course of a trade, business, profession or other occupation.

***(ii) Opinion evidence***[8]

6. Opinion evidence is inadmissible. Generally, a witness should only testify to facts which he has personal knowledge of or which he personally perceived. A witness should not give evidence as to his opinion or beliefs drawn from those facts. The reason for this rule is to reserve the drawing of inferences or conclusions to the judge, as the trier of fact, and to avoid unreliable evidence.

7. As with the hearsay rule, there are also certain exceptions to the rule against opinion evidence.[9] The Evidence Act specifies certain circumstances under which opinion evidence may be admitted. For example, the opinion of an ‘expert’ witness may be necessary because the opinion touches upon a point of scientific, technical or other specialised knowledge which the Court is likely to derive assistance from. Such opinion evidence is admissible. Like the hearsay rule, the Court, however, retains an overarching discretion not to admit opinion evidence even if the evidence falls within one or more of the exceptions to the rule against opinion evidence.[10]

*Examples*

8. In *Raffles Town Club Pte Ltd v Tan Chin Seng and others*,[11] the Court allowed opinion evidence on whether there had been a diminution in value of the membership of a club and, if so, the extent of such diminution. Experts were allowed to testify and give their opinions on the valuation of memberships in a social club, as this required specialised knowledge.

9. In *Sim Cheng Soon v BT Engineering Pte Ltd and another*,[12] an issue arose as to whether a working platform was barricaded. Although photographs of the platform were adduced, the photographs were inconclusive. Based on the layout of the scaffolding poles found in the photographs, a factual witness inferred and gave evidence that the working platform was barricaded. This evidence was ruled inadmissible because it was the opinion of the factual

[6] *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 at [109].
[7] [2015] 2 SLR 686.
[8] See sections 32B(3), 47 to 53 and 62(1)(d) of the EA and para 120.095 of *Halsbury.*
[9] See e.g. sections 32B(3) and 47–53 of the EA.
[10] Section 47(4) of the EA.
[11] [2005] 4 SLR(R) 351.
[12] [2007] 1 SLR(R) 148.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

witness which was arrived at based on the photographs. Further, this was also hearsay evidence as the witness himself did not personally take the photographs or observe the working platform.

***(iii) Privilege***[13]

10. Privileged communications are inadmissible. The two most common types of privileged communications are legal professional privilege[14] and without prejudice privilege.[15] As a general rule, privilege must be claimed. If no claim is made, a Court will presume that evidence is not privileged, or if it is privileged, that privilege has been waived.

11. There are two aspects to legal professional privilege – legal advice privilege and litigation privilege. The former refers to communications between an advocate / legal counsel and his client made in the course of and for the purposes of his employment as advocate or legal counsel respectively. The latter refers to all documents prepared or communications made for the dominant purpose of litigation or contemplated litigation. Without prejudice privilege, on the other hand, is the privilege afforded to communications made on a without prejudice basis in the course of and for the purposes of settling a dispute.

*Example*[16]

12. In *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd*,[17] several banks, the appellants, applied for pre-action discovery against the respondent, a company, to produce certain documents. These documents were created in the wake of a fraud committed by a third party, the respondent's finance manager. The finance manager had obtained loans from the banks purportedly on the respondent's behalf but had used the monies for his personal gain. After being informed of the existence of the loans, the respondent hired PricewaterhouseCoopers to *inter alia* identify the nature of the unauthorised transactions and quantify their impact. For that purpose, reports were prepared. The banks sought the production of such reports to ascertain if there was any negligence on the respondent's part. The Court of Appeal held that these reports were protected by litigation privilege as they were prepared for the dominant purpose of aiding litigation.

***(iv) Parol evidence rule***[18]

13. The parol evidence rule prevents a party to a contract that is written and complete on its face to present extrinsic evidence to contradict, vary, add to or subtract from the terms of the contract. More specifically, no evidence of any oral agreement or statement can be admitted to contradict, vary, add to or subtract from the terms of a complete written contract. Such extrinsic evidence is only admissible to aid in the interpretation of the terms of a contract so long as the evidence is relevant, reasonably available to all contracting parties and relates to a clear or obvious context.

---

[13] See sections 23 and 123 to 131 of the EA and paras 120.386 to 120.426 of *Halsbury*.
[14] Sections 128, 128A and 131 of the EA and *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and other appeals* [2007] 2 SLR(R) 367.
[15] Section 23 of the EA.
[16] See also the illustrations in section 128 of the EA.
[17] [2007] 2 SLR(R) 367.
[18] Sections 93 and 94 of the EA.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

*Example*[19]

14. In *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd*,[20] a contractual clause excluded insurance coverage in respect of liability resulting from the loss of or damage to property. Zurich Insurance sought to rely on extrinsic evidence pertaining to the genesis of the contract (such as supporting documents and preparatory notes) to oust this clause from the contract. The Court held that the evidence was inadmissible, and cannot be used to contradict the express terms of the contract.

***(v) Rules relating to the proving of documents***[21]

15. The Evidence Act provides that documents must be proved by primary evidence (that is, the original document itself),[22] except where certain conditions are met[23] — for instance, where the original has been destroyed or lost.[24] The parties may, however, agree to dispense with the requirements of the rules as to documentary evidence. This is usually done in practice by the filing of an agreed bundle of documents. The effect of an agreed bundle is normally to dispense with proof of a document's existence, due execution and pristine quality but not with proof of the reliability of a document's contents. In other words, parties agree to the authenticity of the documents in the bundle but not as to their contents. The precise terms and scope of such agreement may vary and would have to be determined in each individual case if any question arises as to the nature and extent of the dispensation that has been agreed upon.[25]

*Example*

16. In *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another,*[26] the plaintiff attempted to adduce copies of documents in order to prove damages. The defendant objected. The trial Judge agreed that the documents were not properly admitted into evidence as the originals had not been produced and no exception applied. On that basis, only nominal damages were awarded. On appeal, the Court of Appeal agreed with the trial Judge's decision.[27]

***(vi) Examination of witnesses***[28]

17. There is a fixed order for the examination of witnesses under the Evidence Act. Witnesses would first be examined-in-chief by the party calling the witness. Generally, evidence-in-chief for trials before the SICC is adduced by way of witness statements.[29] A witness statement must contain all material facts which must not be departed from or supplemented by new facts in oral evidence without the permission of the Court.[30] After the examination-in-chief, the witness may be cross-examined by the adverse party. After the cross-

[19] See also the illustrations in section 94 of the EA.
[20] [2008] 3 SLR(R) 1029.
[21] See sections 63 to 68 of the EA and para 120.011 of *Halsbury.*
[22] Section 66 of the EA.
[23] Section 67 of the EA.
[24] Section 67(c) of the EA.
[25] See para 120.293 of *Halsbury*.
[26] [2005] 4 SLR(R) 417.
[27] [2006] 3 SLR(R) 769.
[28] See section 140 of the EA and paras 120.445 to 120.447 of *Halsbury*.
[29] SICC Rules Order 13, Rule 1(2).
[30] SICC Rules Order 13, Rule 1(3).



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

examination, the witness may be re-examined by the party calling the witness. The cross-examination need not be confined to the testimony in the examination-in-chief. However, the re-examination must be confined to explaining only matters referred to in cross-examination. If the Court gives a party permission to introduce a new matter in re-examination, the adverse party may further cross-examine upon that matter.

18. One exception to this procedure is the provision of concurrent expert evidence under Order 14, Rule 6. Under that rule, the Court may order that expert witnesses testify as a panel instead of one after another. This is often referred to as the 'hot-tubbing' of witnesses.

*Example*

19. In *Teo Wei Hsin Lawrence (Zhang Weixin), Tin Yan Ying Geraldine (Cheng Yanying Geraldine) v Management Corporation Strata Title Plan No 1525*,[31] a dispute over what caused dampness and moisture in an apartment unit arose. Each party engaged an expert to testify as to the cause and the experts gave concurrent evidence instead of testifying one after another.

### *(vii) The rule in* **Browne v Dunn**[32]

20. If a cross-examiner has adduced, or intends to adduce any evidence that in any respect contradicts the evidence of the witness being cross-examined, he should put the contradictory facts to the witness so that the witness is given an opportunity to respond. This is known as the rule in *Browne v Dunn*. Depending on the circumstances, failure to do so may be held to imply acceptance of the evidence-in-chief. However, the rule in *Browne v Dunn* is not a rigid, technical rule and does not require every point to be put to the witness but is required where the point is at the very heart of the matter.[33]

*Example*

21. In *Lo Sook Ling Adela v Au Mei Yin Christina and another*,[34] a question arose as to whether a fence was shifted by the appellant. The appellant's evidence was that she did not move the fence. As it was not put to her in cross-examination that she had moved the fence, the Court held that it was no longer open to the respondents to assert that the appellant moved the fence.

22. An illustration of how it may be put to the appellant in cross-examination that the appellant had moved the fence is as follows:

Q: Did you move the fence separating your property from the respondent's property such that it encroached onto the respondent's property?
A: No.
Q: I put it to you that you had in fact shifted the fence such that it encroached onto the respondent's property.

[31] [2014] SGDC 350.
[32] (1893) 6 R 67 (HL). See para 120.476 of *Halsbury*.
[33] See *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [42].
[34] [2002] 1 SLR(R) 326.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

A: I do not agree.
Q: I put it to you that the reason why you did that is to enlarge the size of your own property.
A: No, that is not true.

### (b) Examples of disapplication of Singapore evidence rules

*Example 1*

23. A party may apply under Order 13, Rule 15(1) to the Court for an order that the rule relating to hearsay evidence shall not apply, without stipulating another rule that will apply instead. If this order is granted, parties will be allowed to adduce evidence that may ordinarily be considered to be hearsay, and any doubts as to the reliability of the evidence will only go to weight rather than admissibility.

*Example 2*

24. A party may apply under Order 13, Rule 15(1) to the Court for an order that the rule relating to the proving of documents under section 66 of the Evidence Act shall not apply. If this order is granted, parties will be allowed to prove documents by secondary evidence (*e.g.,* copies of the originals) without proving that one of the exceptions in section 67 of the Evidence Act applies.

*Example 3*

25. A party may apply under Order 13, Rule 15(1) to the Court for an order that all rules of evidence found in Singapore law shall not apply but that the IBA Rules on the Taking of Evidence in International Arbitration ("IBA Rules") should apply instead. If this order is granted, all Singapore rules of evidence will not apply and the IBA Rules as appropriately adapted will apply instead. In this regard, Order 13, Rule 15(3) allows the Court, for the just, expeditious and economical disposal of the proceedings, to stipulate conditions that supplement and are consistent with the parties' agreement as the Court sees fit.

### (c) Conclusion

26. The above rules of evidence in Singapore law are some examples of substantive rules of evidence under Singapore law which may apply to cases before the Court. Under Order 13, Rule 15(1), by the agreement of the parties, these rules may be disapplied and different rules of evidence applied instead.

27. Ultimately, if the parties wish to disapply any rule of evidence under Singapore law, it is incumbent on the parties to identify the specific rule/s to be disapplied and the rule/s, if any, that should apply in its/their place.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

# SICC USER GUIDES NOTE 5
# INJUNCTIONS PROHIBITING DISPOSAL OF ASSETS

1. This Note addresses the Court's practices and procedures in an application for an injunction prohibiting the disposal of assets, i.e. freezing order (also known in some jurisdictions as a Mareva injunction or a pre-judgment attachment order). It supplements Order 18 of the SICC Rules in relation to injunctions. Unless otherwise stated, all terms used in this User Guide have the same meaning given to them in Order 1, Rule 4 of the SICC Rules.

## (a) Effects of a freezing order

2. A freezing order may be limited to assets in Singapore, or expressed as covering assets anywhere in the world. It may be expressed as covering all assets of the respondent without limitation, assets of a particular class, or specific assets (such as the amounts standing to the credit of identified bank accounts or trade receivables).

3. A freezing order would generally provide that the respondent is not precluded from utilising the assets covered by the order for a legitimate purpose, such as: ordinary living expenses, legal advice and representation, or in the ordinary and proper course of business.

4. The Court may make ancillary orders, such as an order for disclosure of assets.

5. As a condition of the making of a freezing order, the Court will normally require appropriate undertakings by the applicant, including the usual undertaking as to damages. The undertaking is given to the Court.[35]

6. The Court may also in certain circumstances require the applicant to furnish security in any form that it considers appropriate to support the undertaking. Forms of security which may be required by the Court include payment into court, provision of a bond to be issued by an insurance company with a place of business within Singapore, a written guarantee issued from a bank with a place of business within Singapore, or any other mode which the Court deems fit.

7. The applicant for a freezing order without notice to the respondent is under a duty to disclose all material facts that he knows or reasonably ought to know, including any matter that may affect the merits of his case adversely.[36] This includes defences that are likely to be advanced by the other party. The Court may set aside a freezing order obtained without notice if it is later discovered that the applicant did not make full and frank disclosure. Factors which will be considered by the Court in deciding whether to set aside the freezing order include the seriousness of the non-disclosure, the importance of the undisclosed facts, and the reasons for the non-disclosure.[37]

---

[35] *CHS CPO GmbH (in bankruptcy) and another v Vikas Goel and others* [2005] 3 SLR(R) 202.
[36] Order 18, Rule 1(7) of the SICC Rules.
[37] *Bahtera Offshore (M) Sdn Bhd v Sim Kok Beng* [2009] 4 SLR(R) 365 at [18]–[33].



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

8. A freezing order obtained without notice will remain in force until the trial or further order. However, the respondent to a freezing order obtained without notice may at any time apply to court to vary or discharge the freezing order.

**(b) Requirements for the granting of a freezing order**

9. An applicant must satisfy two main requirements before the Court will grant a freezing order: (a) that he has a "good arguable case"; and (b) there is a real risk of dissipation of assets.[38] The test for this latter requirement is whether the refusal of a freezing order would involve a real risk that a judgment in favour of the applicant would remain unsatisfied; this is an objective test, and there is no need to show an intention to dissipate assets.[39]

**(c) Coram hearing an application for a freezing order**

10. The freezing order application will be heard in Chambers by a Judge unless otherwise directed by the Court.[40] As far as practicable, the freezing order application shall be heard by either the single Judge assigned to the substantive dispute, or, if the coram for the substantive dispute comprises three Judges, at least one of the three Judges in that coram.[41]

11. Where, however, an urgent hearing[42] is requested, whether during or outside office hours, and it is not practicable for any of the Judges mentioned in the preceding paragraph to hear the freezing order application, the application will be heard by another Judge.

---

[38] *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 at [17].
[39] *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 at [17].
[40] SICC Rules Order 20, Rule 1(1)(b).
[41] SICC Rules Order 1, Rule 10(1)-(3).
[42] For guidelines on the procedure for urgent hearings, see Annex D of the SICC Procedural Guide.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

**SICC USER GUIDES NOTE 6**
**REMOTE HEARINGS**

1. This Note addresses Court hearings or part thereof which are conducted by video conferencing.

2. Where the Court has directed that any hearing or part thereof is to be conducted by video conferencing, parties are to comply with the Video Conferencing Notice issued by the Registry in respect of the hearing. The recording (in video, audio and/or any other form), photography, and dissemination of any recording or photograph, of a remote hearing are strictly prohibited: see section 5(1) of the Administration of Justice (Protection) Act 2016 (Act No. 19 of 2016). In appropriate cases, the Court may require an undertaking that no such recording, photography or dissemination will take place.

3. Where there is any witness who is situated outside of Singapore and needs to give evidence remotely at a hearing because the witness is unable to give evidence physically in Court during the hearing, parties should take note of the following matters.

4. Any application for permission for any witness outside Singapore to give evidence by live video or live television link in any proceedings must be made expeditiously and, in any case, unless the Court otherwise directs, not later than 8 weeks before the date of commencement of the hearing at which the witness is to give evidence: see SICC Rules O 13, Rule 14(1). The application must be made by summons and supported by a witness statement setting out the basis for the application and enclosing a copy of each document the applicant intends to file in the Registry: see SICC Rules Order 13, Rule 14(4).

5. A party applying for permission for any witness outside Singapore to give evidence by live video or live television link must take note of the relevant legislation and requirements in force in the jurisdiction where the witness is giving evidence, and must make all necessary enquiries and take all necessary steps to ensure that the jurisdiction where the witness is giving evidence raises no objection to the giving of evidence in that jurisdiction for court proceedings in Singapore: see SICC Rules Order 13 Rule 14(2). Certain countries or territories may impose prohibitions against, restrictions on, or requirements to obtain permission for or relating to, the giving of evidence by a witness in that country or territory for court proceedings in a different country or territory. The party applying for leave must make all necessary enquiries, and take all necessary steps, to ensure that the jurisdiction where the witness is giving evidence raises no objection to the giving of evidence in that jurisdiction for court proceedings in Singapore.

6. This includes but is not limited to:

(a) obtaining advice from a foreign lawyer qualified to advise on the laws of the relevant jurisdiction;

(b) making enquiries with the relevant authorities; or



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

(c) obtaining permission from the relevant jurisdiction, in accordance with any applicable procedure, for evidence to be given by a witness located in that jurisdiction through a live video or live television link, if such permission is required.

7. An application for the issue of a letter of request, to the relevant authorities of a foreign jurisdiction, for permission for evidence to be given by live video or live television link by a person located in that jurisdiction, if not contained in an application mentioned in paragraph 4, must be made expeditiously and, in any case, unless the Court otherwise directs, not later than 8 weeks before the date of commencement of the hearing at which the person is to give evidence: see SICC Rules Order 13 Rule 14(3). Please see Form 28 in Appendix A of the SICC Rules.

8. A party obtaining the order must prepare a Letter of Request and file it in the Registry. In a case where the jurisdiction in which the evidence is to be given is a jurisdiction which the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters on 18 March 1970 (the "Hague Evidence Convention") applies, the letter must be in the current version of the applicable Recommended Model Form; or in any other case, in Form 26 in Appendix A of the SICC Rules, with such variations as may be required by the jurisdiction in which the evidence is to be given or by the order see SICC Rules Order 13 Rule 14(6). The letter of request, or a document attached to the letter, must be accompanied by a translation of the letter or document in a language specified by the jurisdiction in which the evidence is to be given, unless that jurisdiction accepts the letter or document in English: see SICC Rules Order 13 Rule 14(7).

9. The party obtaining the order must, when the party files in the Registry the documents, also file an undertaking in Form 27 signed by the party or the party's counsel to be responsible personally for all expenses incurred by an issuing authority or transmitting authority in respect of the letter of request and, on receiving due notification of the amount of those expenses, to pay that amount to the issuing authority or transmitting authority and to produce a receipt for the payment to the proper officer of the Registry: see SICC Rules Order 13 Rule 14(9).

10. For further information on the Hague Evidence Convention, please refer to the following links:

(a) The full text of the Hague Evidence Convention can be found at https://www.hcch.net/en/instruments/conventions/full-text/?cid=82

(b) The Recommended Model Form for a letter of request to be issued under the Hague Evidence Convention and the Guidelines for completing the Model Form can be found at https://www.hcch.net/en/publications-and-studies/details4/?pid=6557&dtid=65



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

# SICC USER GUIDES NOTE 7
# ENFORCEMENT OF SICC JUDGMENTS

1. The Court is part of the Supreme Court of Singapore and is a division of the General Division of the High Court. It is a superior court of law. Judgments of the Court ("SICC judgments") may therefore be enforced in the same manner as other judgments issued by the General Division of the High Court.[43]

2. SICC judgments can be enforced in almost all major commercial jurisdictions and in many other regional ones. Presently, as elaborated on below, a judgment of the SICC is likely to be capable of registration or otherwise enforceable in:[44]

i. common law jurisdictions, including Australia, India and the United States of America ("the USA");
ii. the European Union;
iii. various Asian jurisdictions, such as the People's Republic of China ("China"), Japan and a number of ASEAN jurisdictions.

3. This note highlights the four usual modes by which SICC judgments may be enforced. They are as follows:

i. enforcement under the 2005 Hague Convention on Choice of Court Agreements ("the Convention");
ii. enforcement by way of registration in the courts of certain countries/territories under the Reciprocal Enforcement of Foreign Judgments Act (Cap. 265) ("REFJA")[45];
iii. enforcement under the common law cause of action on a debt; and
iv. enforcement under a civil law procedure.

## Enforcement under the Convention

4. Singapore is a Contracting State to the Convention. Contracting States for whom the Convention has entered into force are required to recognise and enforce each other's judgments

---

42 For more information relating to applications relating to the enforcement of a judgment or order of the SICC in Singapore and applications for a stay of enforcement, please see Order 24, Rules 1 and 2 of the SICC Rules.

44 For more information on the enforcement of foreign judgments in Asian jurisdictions, please refer to Adeline Chong (Ed), *Recognition and Enforcement of Foreign Judgments in Asia*, (Asian Business Law Institute, 2017) ("**ABLI Publication**") accessible at https://abli.asia/publications/Recognition_and_Enforcement_of_Foreign_Judgments_in_Asia (accessed November 2021).

45 Note the Reciprocal Enforcement of Foreign Judgments (Hong Kong Special Administrative Region of the People's Republic of China) Order or the Reciprocal Enforcement of Foreign Judgments (United Kingdom and the Commonwealth) Order 2023 which has come into operation on 1 March 2023. . As at 1 March 2023, Part II of the Reciprocal Enforcement of Foreign Judgments Act (Cap. 265, 2001 Ed.) ("REFJA") is repealed but section 10 of the REFJA as in force immediately prior to this date continues to apply in relation to an order made under section 3 of the REFJA before that date extending Part I of the REFJA to a part of the Commonwealth to which the repealed RECJA applied, and that was in force immediately before 1 March 2023.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

to which the Convention applies,[46] subject only to limited, specified grounds for refusing enforcement. As at 30 November 2021, the Convention has 32 Contracting Parties (31 Contracting States and 1 Regional Economic Integration Organisation, namely the European Union). The Convention has entered into force for all Contracting Parties. A current list of the Contracting Parties can be found at: https://www.hcch.net/en/instruments/conventions/status-table/?cid=98.

5. Through the Convention, where the Court is a chosen court under an exclusive choice of court agreement concluded in a civil or commercial matter, the SICC judgment in that matter may presently be enforced in:

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- European Union
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Mexico
- Montenegro
- Netherlands
- Poland
- Portugal
- Romania
- Singapore
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom

**Registration of SICC judgment**

6. As the SICC is a division of the General Division of the High Court, SICC judgments are enforceable in the same manner as other decisions of the General Division of the High Court. Upon registration of a SICC judgment under the reciprocal frameworks in the countries covered by the REFJA, the SICC judgment can be given the same effect and directly enforced as if it was a judgment issued by a national court of the country of enforcement, save for certain limited exceptions.

7. The REFJA facilitates the reciprocal enforcement of foreign judgments (including judgments of inferior or lower courts), such as judicial settlements, consent judgments, money and non-money judgments and interlocutory orders.[47]

8. The REFJA does not apply to any judgment which may be recognised or enforced in Singapore under the Choice of Court Agreements Act 2016.[48]

**Enforcement under the common law cause of action on a debt**

---

[46] The Convention only applies in international cases to exclusive choice of court agreements concluded in civil or commercial matters: see Article 1 of the Convention. It does not cover matters of personal law (eg. family, consumer, or insolvency matters): see Article 2 of the Convention for the full list of excluded categories.

[47] See the definition of "judgment" under section 2 of the REFJA.

[48] See section 2A of the REFJA.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

9. Enforcement in common law jurisdiction can generally be done by commencing an action on the SICC judgment against the losing party.[49] This action is based on the common law cause of action on a debt, with the SICC judgment as evidence of that debt. This generally means that there is unlikely to be re-litigation on the merits of the original action. In this regard, it has been observed that "[i]t is hard to see how there could be a defence to such action. Accordingly, it should be possible to obtain summary judgment and enforce the summary judgment against the debtor as a matter of course."[50] For example, under the English common law, a foreign judgment (for a debt or definite sum of money) which is final and conclusive on the merits is impeachable only on very limited grounds (namely, lack of jurisdiction, fraud, being against public policy and being contrary to natural justice) and cannot be impeached for any error of fact or law.[51] Where parties have a written jurisdiction agreement (as is the case for parties named in the originating process in the Court), it would additionally not be possible to resist judgment on the basis that the foreign court did not have jurisdiction.[52]

**Enforcement under a civil law procedure**

10. There are many civil law jurisdictions with codes that provide for the enforcement of foreign judgments upon certain requirements being met.[53] Some common requirements are as follows:[54]

- the court that issued the judgment had jurisdiction over the matter;
- the judgment is final, was obtained in accordance with due process, and is not against the public policy of the enforcing jurisdiction; and
- there is reciprocity in the recognition and enforcement of judgments between the court that issued the judgment and the court that is asked to enforce the judgment.

---

[49] However, this route may not be available where Singapore judgments (which includes SICC judgments) are directly registrable in that jurisdiction. For example, Singapore judgments are in general directly registrable in Australia and Brunei and legislation has required that registrable judgments should be enforced only by way of registration: see, in this regard, the ABLI Publication at p 7 para 3 (for the position in Australia), and at p 22 para 12 (for the position in Brunei).

[50] Anselmo Reyes, "Recognition and Enforcement of Interlocutory and Final Judgments of the Singapore International Commercial Court" (2015) 2 J. Int'l & Comp. L. 337 at p 342. See, for a similar observation, the keynote address delivered by Justice Quentin Loh at the Asia Pacific Insurance Conference 2017 at pp 13–14 ("In [a common law action on a judgment debt], the SICC judgment simply serves as evidence of the debt, which means the merits of the original action will not be re-litigated … In many cases, summary judgment, *ie*, obtaining judgment without a full trial, will be available."), accessible at https://www.sicc.gov.sg/docs/default-source/modules-document/news-and-article/keynote-address-by-justice-quentin-loh-asia-pacific-insurance-conference-2017_6b34f677-8ab0-4487-8c26-be7810ff4f70.pdf (accessed November 2021). For an example of a Singapore money judgment that was sued upon abroad and summary judgment obtained in the foreign court, see the decision of the District Court in the State of New York in *Kim v Co-op Centrale Raiffeisen-Boerenleebank B.A* 364 F.Supp.2d.346 (SDNY, 2005).

[51] Lord Collins of Mapesbury, *Dicey, Morris and Collins on The Conflicts of Law,* (15th Ed, Sweet & Maxwell) at para [14R-118].

[52] Lord Collins of Mapesbury, *Dicey, Morris and Collins on The Conflicts of Law,* (15th Ed, Sweet & Maxwell) at para [14-076].

[53] Samuel P. Baumgartner, "How Well do US Judgments Fare in Europe?" (2008) 40 George Washington University International Law Review 173.

[54] For the position on the enforcement of foreign judgments in Asian jurisdictions generally, see the ABLI Publication. Based on the reports in the ABLI Publication, it appears that the civil law jurisdictions in which Singapore judgments may be enforced include China, Japan, the Philippines and South Korea.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

11. An SICC judgment may be enforceable in civil law jurisdictions when the applicable requirements are satisfied. For example, judgments of the Supreme Court of Singapore, of which the Court is a part, have been enforced in China and Japan in accordance with the principle of reciprocity. In China, the Nanjing Intermediate People's Court held that reciprocal relations with Singapore have been established,[55] and recognised and enforced a decision of the Singapore High Court. In Japan, the Tokyo District Court concluded that a judgment of the Singapore High Court had satisfied all the requirements in Art 118 of the Civil Procedure Code of Japan and enforced the Singapore judgment.[56] In Vietnam, a judgment of the Singapore High Court was enforced by the High People's Court of Ho Chi Minh City on the basis of the principle of reciprocity.[57]

**Procedure for enforcement of money judgments**

12. To facilitate the enforcement of money judgments in different jurisdictions, the Supreme Court of Singapore, of which the Court is a part, has also entered into Memoranda of Guidance as to the Enforcement of Money Judgments ("MOGs") with courts in various jurisdictions. These MOGs set out the mutual understanding of the procedures for the enforcement of money judgments in the other jurisdiction's courts, generally on grounds similar to common law principles. To-date, MOGs have been concluded with the following courts:[58]

- Bermuda – Supreme Court of Bermuda
- The People's Republic of China – Supreme People's Court of the People's Republic of China
- Republic of the Union of Myanmar – Supreme Court of the Union, Republic of the Union of Myanmar
- Republic of Rwanda – Supreme Court of Rwanda
- State of Qatar – Qatar International Court and Dispute Resolution Centre
- United Arab Emirates, Abu Dhabi – Abu Dhabi Global Market Courts
- United Arab Emirates, Dubai – Dubai International Financial Centre Courts

**Recognition by parties of right to enforcement**

13. As the Court's jurisdiction is primarily consensual, parties who have voluntarily chosen to have their disputes adjudicated by the Court are not expected to need to resort to enforcement measures in most instances. This observation is supported by the experience in international

[55] (2016) Su 01 Xie Wai Ren No. 3 ((2016) 苏 01 协外认 3 号). The Nanjing Intermediate People's Court relied on the Singapore High Court decision of *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd* [2014] 2 SLR 545 in which a judgment from China was ordered to be recognised and enforced. See also the ABLI Publication at pp 56–58, para 11.

[56] Judgment of the Tokyo District Court, 19 January 2006 (Heisei 18), *Hanrei Times* No 1229 at p 334.

[57] Judgment of the High People's Court of Ho Chi Minh City, Case No 222/2016/TLST-DS, 10 June 2016 (affirmed on appeal to the Appellate Tribunal of the High People's Court of Ho Chi Minh City in Case No 111/2017/QDPT-KDTM, 21 June 2017).

[58] See https://www.sicc.gov.sg/guide-to-the-sicc/enforcement-of-money-judgments (accessed November 2021).



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

arbitration where disputes are referred to arbitral tribunals by agreement and awards are typically honoured in full.[59]

14. In any event, each of these existing modes of enforcement may be complemented by the deeming provisions in the Supreme Court of Judicature Act (Cap 322), which provides at section 18F(1)(*b*) and (*c*) that parties to an agreement to submit to the jurisdiction of the Court shall, subject to express provision in the agreement to the contrary, be considered to have agreed to (i) carry out any SICC judgment without undue delay and (ii) waive any recourse to any court or tribunal outside Singapore against any SICC judgment and the enforcement of such judgment (insofar as such recourse can be validly waived).

15. In addition, parties may include the model SICC dispute resolution clauses in their jurisdiction agreement, which include the provision that parties who have submitted to or agreed to submit to the Court's jurisdiction are deemed to have waived their right to defend against an action based on an SICC judgment in any jurisdiction. The model SICC dispute resolution clauses may be found at the following link on the Court's official webpage: https://www.sicc.gov.sg/docs/default-source/guide-to-the-sicc/sicc_model_clauses.pdf

---

[59] See Anselmo Reyes, "Recognition and Enforcement of Interlocutory and Final Judgments of the Singapore International Commercial Court" (2015) 2 J. Int'l & Comp. L. 337 at p 341. The article cites a 2008 survey of major corporations which use arbitration services conducted by the School of International Arbitration of Queen Mary College of London. This survey found that "high levels of compliance" were reported, with 84% of respondents indicating that the opposing party had honoured the award in full in more than 76% of cases. The "principal reason" given for compliance with the arbitral award was to preserve a business relationship. See also Gary B Born, *International Commercial Arbitration* vol III (2nd Ed, Wolters Kluwer) at para 26-03, where the learned commentator notes that "the overwhelming majority of international awards are complied with voluntarily".



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

# SICC USER GUIDES NOTE 8
# CORPORATE INSOLVENCY, RESTRUCTURING AND DISSOLUTION PROCEEDINGS

## (a) Introduction

1. The Singapore International Commercial Court (the "**Court**") is a division of the General Division of the High Court (the "**General Division**"). The Court has jurisdiction to hear and try an action that is international and commercial in nature, that the General Division may hear and try in its original civil jurisdiction, and that satisfies such other conditions as the Rules of Court may prescribe: see section 18D(1) of the Supreme Court of Judicature Act 1969 ("**SCJA**"). For more information on the jurisdiction of the Court in general, please see SICC User Guides Note 1.

2. The SCJA was amended in 2021, *via* section 56(2) of the Courts (Civil and Criminal Justice) Reform Act 2021, to clarify the Court's jurisdiction in proceedings relating to corporate insolvency, restructuring and dissolution. This Note elaborates on the Court's jurisdiction in, and procedure for, such proceedings.

## (b) The Court's jurisdiction to hear proceedings relating to corporate insolvency, restructuring and dissolution

3. The Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**") provides that the General Division has jurisdiction in corporate insolvency and winding up, individual insolvency and bankruptcy, and related matters: see section 3 of the IRDA. The IRDA, which came into force on 30 July 2020, amends and consolidates the written laws relating to the making and approval of a compromise or an arrangement with the creditors of a company or an individual, receivership, corporate insolvency and winding up, individual insolvency and bankruptcy, and the public administration of insolvency, and provides for the regulation of insolvency practitioners: see the preamble in the IRDA. Specifically in relation to matters of corporate insolvency, the Companies Act (Cap. 50, 2006 Rev Ed) was the primary legislation before the IRDA came into force.

4. Section 18D(2)(*c*) of the SCJA clarifies that the Court has jurisdiction to hear any proceedings relating to **corporate** insolvency, restructuring or dissolution under the IRDA, or under the Companies Act as in force immediately before 30 July 2020, that are **international** and **commercial** in nature, and that **satisfy such conditions as the Rules of Court may prescribe**.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

5. The Rules of Court for proceedings in the Court are contained in the Singapore International Commercial Court Rules 2021 ("**SICC Rules**")[60] and the Rules of Court (Cap. 322, R5, 2014 Rev Ed) ("**ROC 2014**"), as modified by Order 110 of the ROC 2014.[61]

6. For the purposes of section 18D(2)(*c*) of the SCJA, the SICC Rules provide that the Court may hear "*insolvency proceedings under Parts 3 to 12 and 22 of the IRDA*", and define "*insolvency proceedings*" to mean "*any proceedings relating to corporate insolvency, restructuring or dissolution*": see Order 23A, Rule 2(1), read with Order 23A, Rule 1 of the SICC Rules. In this Note, such proceedings will be referred to as "insolvency proceedings". For more information on the types of insolvency proceedings under Parts 3 to 12 and 22 of the IRDA, please see section (e) of this Note.

***(i) International in nature***

7. Under Order 23A, Rule 2(2) of the SICC Rules, for the purposes of section 18D(2)(*c*)(i) of the SCJA, insolvency proceedings are international in nature:

(a) if commenced pursuant to Part 11 of and the Third Schedule to the IRDA;[62] or

(b) where (a) does not apply, if:

(i) the subject of the insolvency proceedings ("**subject**") is –

(A) a company incorporated under the Companies Act 1967;[63] or

(B) a foreign company[64] that has a substantial connection with Singapore by reason of one or more of the matters mentioned in section 246(3) of the IRDA;

AND

(ii) at least one of the following factors applies to the subject at the commencement of the insolvency proceedings:

[60] The SICC Rules came into operation on 1 April 2022. See Order 1, Rule 2 of the SICC Rules for the matters to which the SICC Rules apply.
[61] The Rules of Court (Cap. 322, R5, 2014 Rev Ed), as modified by Order 110 of those Rules, apply to proceedings in the Court, and appeals or applications to the Court of Appeal from or in relation to a judgment or an order of the Court, where the SICC Rules do not apply.
[62] Part 11 of and the Third Schedule to the IRDA pertain to proceedings under the UNCITRAL Model Law on Cross-Border Insolvency. These proceedings are explained further at paragraphs 114 to 128 of this Note.
[63] The term "company" refers to a company incorporated under the Companies Act 1967 or any corresponding previous written law: see Order 23A, Rule 1 of the SICC Rules read with section 4(1) of the Companies Act 1967.
[64] The term "foreign company" refers to (a) a company, corporation, society, association or other body incorporated outside of Singapore; or (b) an unincorporated society, association or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose and which does not have its head office or principal place of business in Singapore: see Order 23A, Rule 1 of the SICC Rules read with section 4(1) of the Companies Act 1967.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

(A) the subject has a place of business[65] in a foreign country;

(B) the subject has at least an asset or property in a foreign country;

(C) the subject has at least a liability that arose in a foreign country;

(D) the subject has at least a contractual obligation that has been or is to be performed in a foreign country, or that was or is owed to a person in a foreign country;

(E) the subject has obligations and liabilities that are governed by the laws of one or more foreign countries;

(F) the subject has at least one creditor having a place of business in a foreign country;

(G) the control and direction of the subject is administered from a foreign country.

8. Section 246(3) of the IRDA, which is referred to at paragraph 7(b)(i)(B) above, states that the Court may rely on the presence of one or more of the following matters to support a determination that a foreign company has a substantial connection with Singapore:

(a) Singapore is the centre of main interests of the company;

(b) the company is carrying on business in Singapore or has a place of business in Singapore;

(c) the company is a foreign company that is registered under Division 2 of Part 11 of the Companies Act 1967;

(d) the company has substantial assets in Singapore;

(e) the company has chosen Singapore law as the law governing a loan or other transaction, or the law governing the resolution of one or more disputes arising out of or in connection with a loan or other transaction;

(f) the company has submitted to the jurisdiction of the Court for the resolution of one or more disputes relating to a loan or other transaction.

***(ii) Commercial in nature***

---

[65] The term "place of business", in relation to an individual or entity, refers to (a) any place at which that individual or entity carries on business; (b) any place of operations where that individual or entity carries on any non-transitory economic activity with human means and property or services; or (c) where (a) and (b) do not apply, the habitual residence of that individual or the place of incorporation of that entity: see Order 23A, Rule 1 of the SICC Rules.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

9. For the purposes of section 18D(2)(*c*)(i) of the SCJA, insolvency proceedings are commercial in nature if the subject of those proceedings and any "affected person" has a relationship of a commercial nature, whether contractual or not: see Order 23A, Rule 2(3) of the SICC Rules.

10. The term "affected person" is defined under Order 23A, Rule 1, in relation to any insolvency proceedings, as "*any person seeking any order or other relief*, *against whom any order or other relief is sought, or who may be affected by any order or other relief sought*, *in those proceedings*". A non-exhaustive list of "affected persons" is set out under Order 23A, Rule 1 of the SICC Rules. This non-exhaustive list includes, amongst others, the applicant or claimant[66] in, or a party to, the insolvency proceedings, any officer[67] of the corporation that is the subject of the insolvency proceedings, any creditor or debtor of that corporation, a judicial manager or interim judicial manager of that corporation, a receiver and manager of the whole (or substantially the whole) of the property or undertaking of that corporation, any trustee, liquidator or provisional liquidator of that corporation, and an agent appointed under a trust indenture (or under an instrument similar to a trust indenture in a foreign country) to represent any creditor of that corporation.

***(iii) Transfers from the General Division to the Court***

11. Insolvency proceedings that are commenced in the General Division may be transferred to the Court if the jurisdictional requirements under section 18D(2)(*c*) of the SCJA read with Order 23A, Rule 2 of the SICC Rules are satisfied. An order for such a transfer may be made by the General Division either on its own motion, or on the application of a party: see Order 23A, Rule 4(2) of the SICC Rules.

12. Before an order for the transfer of insolvency proceedings from the General Division to the Court may be made, notice must first be given, in accordance with the directions of the General Division. Such notice is to be given by the applicant or claimant in the insolvency proceedings (or the party applying for the transfer, as the case may be) to every other party in the insolvency proceedings, and to every affected person who has participated in, or submitted to the jurisdiction of the General Division in relation to, the insolvency proceedings: see Order 23A, Rule 4(3)-(4).

13. In addition, before a transfer order may be made, the General Division must give the following persons a reasonable opportunity to be heard: (a) the person applying for the transfer order (if any), (b) every other party in the insolvency proceedings, and (c) every affected person who has participated in or submitted to the jurisdiction of the General Division in relation to

[66] Where an application to wind up a company is made by a person other than the company, that person must be referred to in the application and all proceedings as the claimant: see Order 23A, Rule 3(1) of the SICC Rules read with rule 63(2) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020.

[67] The term "officer", in relation to a corporation, includes — (a) a director or secretary of the corporation or a person employed in an executive capacity by the corporation; (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and (c) where the corporation is a company, any liquidator of the corporation appointed in a voluntary winding up,
but does not include — (d) a receiver who is not also a manager; (e) a receiver and manager appointed by the Court; (f) a liquidator appointed by the Court or by the creditors; or (g) a judicial manager appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**"): see Order 23A, Rule 1 of the SICC Rules read with section 61(1) of the IRDA.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

the insolvency proceedings and who submits to the General Division a written request to be heard (within the time directed by the General Division): see Order 23A, Rule 4(3)-(4).

14. Where insolvency proceedings are transferred by the General Division to the Court, the General Division may make any order in those proceedings as a consequence of the transfer, and the Court may likewise do so provided that the Court's order is not inconsistent with any order made by the General Division: see Order 23A, Rule 4(5).

15. As the first hearing of a moratorium application under section 64 or 65 of the IRDA may have to take place within 30 days after the date on which the application is made, there are special arrangements to expedite the transfer of such an application from the General Division to the Court. These arrangements are discussed in paragraphs 64 and 65.

## (c) The rules applicable to insolvency proceedings heard by the Court

16. The procedure for insolvency proceedings in the Court is provided under Order 23A of the SICC Rules. In particular, Order 23A, Rule 3(1) of the SICC Rules provides that the IRDA and the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 ("**CIR Rules**") apply, with the necessary modifications, to all insolvency proceedings in the Court. Order 23A, Rule 3(5) of the SICC Rules sets out certain exceptions or caveats to the general applicability of the IRDA and CIR Rules to insolvency proceedings before the Court.

17. A general overview of the procedures prescribed under the IRDA and CIR Rules that apply to insolvency proceedings in the Court is set out under section (d) of this Note. The Court may, however, depart from the prescribed procedure upon such terms as it thinks fit, pursuant to section 12 of the IRDA. In addition, the Court may, under Order 1, Rule 11(1) of the SICC Rules, make such order as the Court considers just and appropriate if it considers that doing so is necessary or desirable for the just, expeditious and economical disposal of any proceedings in the Court.[68]

18. Where there is no express provision in the IRDA or the CIR Rules on any matter of practice or procedure, the Court may: (a) adopt such practice or procedure under the SICC Rules, with such modifications, as the Court considers appropriate; or (b) make such orders and give such directions as are likely to secure substantial justice between the parties: see Order 23A, Rule 3(2) of the SICC Rules.

19. In any insolvency proceedings in the Court, the SICC Rules are to be read subject to the IRDA and the CIR Rules: see Order 23A, Rule 3(3) of the SICC Rules.

## (d) General overview of the procedure for insolvency proceedings in the Court

### *(i) Manner of making applications*

[68] The applicability of Order 1, Rule 11(1) is expressly preserved under Order 23A, Rule 3(5)(*b*) of the SICC Rules.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

20. Rule 8(1) of the CIR Rules provides that the following applications must be made by originating application:

(a) an application under section 91 of the IRDA for the appointment of a judicial manager;

(b) an application under section 124 of the IRDA for the winding up of a company;

(c) an application for the granting of any relief under the UNCITRAL Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law on 30 May 1997 and as applied by Part 11 of the IRDA;

(d) an application for a declaration under section 440(4) of the IRDA;

(e) unless otherwise provided in Parts 3 to 12 or Part 22 of the IRDA or the CIR Rules, any other application under Parts 3 to 12 or Part 22 of the IRDA, the CIR Rules or the regulations by which proceedings are commenced in Court.[69]

21. Every application other than the ones mentioned in paragraph 20 of this Note must be made by summons unless otherwise provided in Parts 3 to 12 or Part 22 of the IRDA or the CIR Rules: see rule 8(2) of the CIR Rules.

22. Unless otherwise directed by the Court, every application under Parts 3 to 12 or Part 22 of the IRDA, the CIR Rules or the regulations must be supported by affidavit: see rule 8(3) of the CIR Rules.

***(ii) Service of application and notice***

23. Generally, an originating application is valid for service for 12 months starting on the date of its issue where permission to serve the originating application out of jurisdiction is required, and for 6 months starting on the date of its issue in any other case: see rule 11(1) of the CIR Rules.

24. The Court may extend the validity of the originating application from time to time for any period (not exceeding 6 months at any one time) that the Court specifies in the order, starting on the day immediately following the day (called the expiry date) on which the originating application would otherwise expire, if any application for extension is made to the Court before the expiry date: see rule 11(2) of the CIR Rules. However, where the Court is satisfied on an application for extension of the validity of the originating application that, despite the making of reasonable efforts, it may not be possible to serve the originating

[69] The term "regulations" is defined under rule 2(1) of the CIR Rules to mean (a) the Insolvency, Restructuring and Dissolution (Proofs of Debt in Schemes of Arrangement) Regulations 2020 (G.N. No. S 604/2020); (b) the Insolvency, Restructuring and Dissolution (Receivership) Regulations 2020 (G.N. No. S 605/2020); (c) Insolvency, Restructuring and Dissolution (Judicial Management) Regulations 2020 (G.N. No. S 606/2020); (d) Insolvency, Restructuring and Dissolution (Court-Ordered Winding Up) Regulations 2020 (G.N. No. S 607/2020); (e) the Insolvency, Restructuring and Dissolution (Voluntary Winding Up) Regulations 2020 (G.N. No. S 608/2020); and (f) the Insolvency, Restructuring and Dissolution (Assignment of Proceeds of an Action) Regulations 2020 (G.N. No. S 611/2020).



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

application within 6 months, the Court may, if it thinks fit, extend the validity of the originating application for any period (not exceeding 12 months at any one time) that the Court specifies in the order: see rule 11(3) of the CIR Rules.

25. Subject to any order to the contrary, every application (contained in an originating application or a summons) and every affidavit in support of the application (the "**supporting affidavit**") must be served on every person against whom any order or other relief is sought: see rule 12(1) of the CIR Rules. The procedure for personal service can be found in rule 13 of the CIR Rules.

26. In addition, the Court may at any time –

(a) direct that service of an application and the supporting affidavit (if any) be effected on, or notice of proceedings be given to, any person who may be affected by the order or other relief sought; and

(b) direct the manner in which such service is to be effected or such notice is to be given.[70]

27. Where any person other than the applicant is affected by an application, no order may be made except with the consent of that person, or upon proof that a copy each of the application and the supporting affidavit (if any) have been duly served upon that person: see rule 12(5) of the CIR Rules.

28. Unless the Court gives permission to the contrary or otherwise provided in Parts 3 to 12 or Part 22 of the IRDA or the CIR Rules, an application must be served on every person affected by the application not less than 7 days before the date of the hearing of the application: see rule 14 of the CIR Rules.

29. If, on the hearing of an application, the Court is of the opinion that any person to whom notice has not been given ought to have notice, the Court may either dismiss the application, or adjourn the hearing upon any terms as the Court thinks fit, in order that notice may be given: see rule 15 of the CIR Rules.

***(iii) Adjudication track***

30. Insolvency proceedings in the Court are, by default, decided by the statements adjudication track, but with such modifications to the procedures under that track as Order 23A may require: see Order 23A, Rule 3(4) of the SICC Rules. The statements adjudication track is generally equivalent to the originating summons procedure under the ROC 2014, which involves the filing of witness statements and generally culminates in a hearing on submissions. For more information on the statements adjudication track, please refer to Order 7 of the SICC Rules.

***(iv) Evidence by affidavit***

[70] Rule 12(2) of the CIR Rules.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

31. In insolvency proceedings in the Court, evidence is generally to be given by affidavit: see rule 18(1) of the CIR Rules read with Order 23A, Rule 3(1) of the SICC Rules. This is in contrast with the usual mode of adducing evidence in other matters before the Court, where evidence may generally be adduced by witness statements: see Order 13, Rule 3 of the SICC Rules.

32. Unless the provisions of Parts 3 to 12 or Part 22 of the IRDA, the CIR Rules or the regulations under which an application is made provide otherwise, or the Court otherwise allows, a party to an application who intends to rely on affidavit evidence at a hearing of an application must do both of the following at least 5 days before the date fixed for the hearing:

(a) file the party's affidavit or affidavits (if more than one) in Court;

(b) serve a copy of the party's affidavit or of each of the party's affidavits (if more than one) on every other party to the application and any person who may appear and be heard.[71]

***(v) Court may give directions as to how proceedings are to be conducted***

33. At the hearing of an originating application to which the CIR Rules relate, the Court may by order give any direction as to how the proceedings are to be conducted, as the Court deems fit. This may include directions for the publication of notices and the making of any inquiry: see rule 17 of the CIR Rules.

***(vi) Alternative dispute resolution***

34. The Court has the power to order any party to any proceedings to attempt to resolve any dispute by amicable resolution: see paragraph 23 of the First Schedule to the SCJA.

35. Where the parties are agreeable to alternative dispute resolution, the Court may make directions to facilitate the parties' attempt at alternative dispute resolution: see Order 9, Rule 5(1) of the SICC Rules.

36. Where parties are not agreeable to alternative dispute resolution, the Court may: (a) direct that alternative dispute resolution be reconsidered at a subsequent time; or (b) make any order necessary to facilitate the amicable resolution of the dispute: see Order 9, Rule 5(2) of the SICC Rules.

37. Where the parties reach a settlement through alternative dispute resolution, the Court may record a consent order on the terms of the settlement: see Order 9, Rule 5(3) of the SICC Rules.

***(vii) Appeals***

[71] Rule 19 of the CIR Rules.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

38. Order 21 of the SICC Rules applies to all appeals and applications to the Court of Appeal from or in relation to the decisions of the Court in insolvency proceedings, with the modification that the Official Receiver[72] is not required to give security for costs if the Official Receiver is the appellant: see Order 23A, Rule 3(5)(*g*) of the SICC Rules.

39. An appeal from the Court to the Court of Appeal must be brought by way of notice of appeal. Every notice of appeal must state whether the whole or part only (and if so, what part) of the order the appeal is in respect of: see Order 21, Rule 14(1) of the SICC Rules.

40. If a party intends to appeal against the order of the Court hearing any application in proceedings, or any appeal in relation to such application, the notice of appeal must be filed and served on all parties in the proceedings within 14 days after the date of the Court's order or, in a case where a request for further arguments has been made under section 29B(2) of the SCJA, within 14 days after the date mentioned in section 29B(4)(*b*) of the SCJA: see Order 21, Rules 4 and 14(2) of the SICC Rules.

41. If a party intends to appeal against the order of the Court made on the trial or the hearing on the merits of a proceeding, the notice of appeal must be filed and served on all parties in the proceedings within 28 days after the date of the Court's order or, in a case where a request for further arguments has been made under section 29B(2) of the SCJA, within 28 days after the date mentioned in section 29B(4)(*b*) of the SCJA: see Order 21, Rule 14(3) of the SICC Rules.

42. The Court of Appeal may, on application by the appellant at any time, extend the time for filing and serving the notice of appeal. The Court may extend the time for filing and serving the notice of appeal if the appellant applies for such extension before the time expires: see Order 21, Rule 14(4) of the SICC Rules.

43. If an appeal is urgent or there is a special reason, either the Court or the Court of Appeal may order an expedited appeal, whether upon any party's application or on its own accord. In such circumstances, the Court or the Court of Appeal may dispense with compliance of any provision of the SICC Rules or modify them for the purposes of the appeal: see Order 21, Rule 7 of the SICC Rules.

44. For more information on the procedure for appeals, please refer to Order 21 of the SICC Rules and paragraphs 15.1 to 15.4 of the SICC Procedural Guide.

***(viii) Costs***

45. The costs regime set out under Order 22 of the SICC Rules is applicable to any insolvency proceedings in the Court, and any appeals or applications to the Court of Appeal arising therefrom: see Order 23A, Rule 3(5)(*h*) of the SICC Rules.

46. Under Order 22, Rule 2 of the SICC Rules, the Court has the power to determine all issues relating to the costs of or incidental to all proceedings, including by whom and to what extent the costs are to be paid, at any stage of the proceedings or after the conclusion of the proceedings.

---

[72] "Official Receiver" refers to the "Official Receiver" appointed under section 17(1) of the IRDA: see Order 23A, Rule 1 of the SICC Rules read with section 2(1) of the IRDA.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

47. The quantum of any costs award will generally reflect the costs incurred by the party entitled to costs, subject to the principles of proportionality and reasonableness: see Order 22, Rule 3(1) of the SICC Rules. In considering proportionality and reasonableness, the Court may have regard to all relevant circumstances, including the complexity of the case and the difficulty or novelty of the questions involved, the urgency and importance of the action to the parties, and the conduct of the parties including whether the parties' conduct in respect of alternative dispute resolution facilitated the smooth and efficient disposal of the case: see Order 22, Rule 3(2) of the SICC Rules.

48. As for the assessment of any costs, charges or expenses payable by a liquidator to any solicitor, manager, accountant, auctioneer, broker or other person employed or engaged by the liquidator in a winding up by the Court (i.e. arising from the administration of a liquidation), the procedure is set out in rules 146 to 156 of the CIR Rules, as modified by Order 23A, Rule 3(5)(*i*) of the SICC Rules. Order 23A, Rule 3(5)(*i*) provides that instead of filing a bill of costs, charges or expenses (as required under rule 147 of the CIR Rules), the Court will assess such costs, charges or expenses upon application.

***(ix) Fees and deposits***

49. Subject to Order 23A, Rule 3(5)(*k*) of the SICC Rules on milestone fees, Order 26 of the SICC Rules applies to court fees and deposits relating to:[73]

(a) any insolvency proceedings commenced in the Court;

(b) any insolvency proceedings transferred to the Court from the General Division if the General Division has ordered that the fees chargeable for proceedings commenced in the Court should be payable;[74]

(c) an appeal to the Court of Appeal from a judgment or an order of the Court in any insolvency proceedings mentioned in sub-paragraph (a) or (b);

(d) an application to the Court of Appeal in relation to any insolvency proceedings mentioned in sub-paragraph (a) or (b) or an appeal mentioned in sub-paragraph (c).

50. Milestone fees are payable by a party upon the occurrence of prescribed milestone events. For insolvency proceedings, the milestone events upon which fees are payable are set out in Table 1 under Order 23A, Rule 3(5)(*k*) of the SICC Rules. In summary, milestone fees are payable:

(a) by the applicant or claimant: upon the filing of the originating application, as well as when it receives its first notification of a hearing for directions on case management, and when filing an interlocutory application.

[73] See Order 23A, Rule 3(5)(*j*) of the SICC Rules.

[74] Where the insolvency proceedings before the Court were transferred from the General Division to the Court and the General Division has not directed that the court fees payable for insolvency proceedings commenced in the Court are to apply, the hearing fees and court fees payable in the General Division would apply, instead of SICC court fees and deposits: see Order 23A, Rule 4(5)(*c*).



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

(b) by an affected person (other than the applicant or claimant in the originating application): when the affected person files its first document in the proceedings, as well as when that person files an interlocutory application.

Further, where the pleadings or memorials adjudication track applies by virtue of an order made by the Court under rule 75 of the CIR Rules, milestone fees are payable upon the occurrence of milestone events in those tracks, as listed in Table 1 under Order 23A, Rule 3(5)(*k*).

51. Hearing fees are payable for hearings before the Court and for appeals / applications to the Court of Appeal in relation to proceedings in the Court. These are set out in Order 26, Rule 4 of the SICC Rules.

52. An initial deposit is payable by a claimant / applicant upon the filing of an originating application: see Order 26, Rule 7(1) of the SICC Rules read with Order 26, Rule 7(2)(*a*). Any other party's deposit must also be paid by the party upon the filing of that party's first document in the case: see Order 26, Rule 7(1) of the SICC Rules read with Order 26, Rule 7(2)(*b*). Milestone fees, hearing fees and any other court fees that are payable will be deducted from the party's deposit. The parties are required to maintain a minimum credit in their deposit: see Order 26, Rule 7(8)-(12) of the SICC Rules. The quantum of initial deposits and minimum credit to be maintained is set out in Table 7 under Order 26, Rule 7 of the SICC Rules.

53. Where insolvency proceedings are transferred from the General Division to the Court and the General Division does not direct that the court fees payable for insolvency proceedings commenced in the Court are to apply, the hearing fees and court fees payable in the General Division would apply: see Order 23A, Rule 4(5)(*c*) of the SICC Rules. This means that SICC court fees and deposits as set out in Order 26, including milestone fees and hearing fees, will be inapplicable to those transfer proceedings.

### (e) Specific insolvency proceedings in the Court

54. The procedures outlined at paragraphs 20 to 53 above are the general procedures that apply to insolvency proceedings. This section provides a brief overview of the specific procedures for the following types of insolvency proceedings in the Court:

(a) Scheme of arrangement (Part 5 of the IRDA);

(b) Judicial management (Part 7 of the IRDA);

(c) Winding up (Part 8 of the IRDA);

(d) Winding up of unregistered companies and liquidation or dissolution of foreign companies (Part 10 of the IRDA); and

(e) Proceedings under the UNCITRAL Model Law on Cross-Border Insolvency (Part 11 of the IRDA).

#### *(i) Scheme of arrangement*



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

55. Part 5 (Scheme of Arrangement) of the IRDA applies where there is a compromise or arrangement between a company and its creditors or any class of those creditors. A scheme of arrangement is an agreement between a company in financial distress and its creditors, to assist the company in fulfilling its debt obligations, through restructuring the company's debts and varying the creditors' rights. A proposed scheme will be binding on all creditors if the Court approves the scheme, even if not all the creditors approve of the scheme. The management of the company is not displaced by the appointment of an insolvency practitioner by the Court or a resolution of the company's creditors.

56. Scheme of arrangement proceedings apply to any corporation liable to be wound up under the IRDA: see section 63(1) and (3) of the IRDA. This includes companies that have been incorporated under the Companies Act 1967 or under any corresponding previous law, as well as foreign companies that have a substantial connection with Singapore: see section 246(1)(*d*) of the IRDA.

*Moratorium*

57. Broadly, in scheme of arrangement proceedings, where a company (the "**Subject Company**") proposes or intends to propose a compromise or an arrangement with its creditors, it may make an application to the Court under section 64(1) of the IRDA for:

(a) an order restraining the passing of a resolution for the winding up of the Subject Company;

(b) an order restraining the appointment of a receiver or manager over any property or undertaking of the Subject Company;

(c) an order restraining the commencement or continuation of any proceedings (other than proceedings under section 210 or 212 of the Companies Act 1967, or section 64, 66, 69 or 70 of the IRDA) against the Subject Company, except with the permission of the Court and subject to such terms as the Court imposes;

(d) an order restraining the commencement, continuation or execution of any enforcement order or other legal process, or the levying of any distress, against any property of the Subject Company, except with the permission of the Court and subject to such terms as the Court imposes;

(e) an order restraining the taking of any step to enforce any security over any property of the Subject Company, or to repossess any goods held by the Subject Company under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, except with the permission of the Court and subject to such terms as the Court imposes;

(f) an order restraining the enforcement of any right of re-entry or forfeiture under any lease in respect of premises occupied by the Subject Company (including any enforcement pursuant to section 18 or 18A of the



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

Conveyancing and Law of Property Act 1886), except with the permission of the Court and subject to such terms as the Court imposes.

Among other requirements, such an application may only be made if no order has been made and no resolution has been passed for the winding up of the Subject Company, and the Subject Company makes, or undertakes to the Court to make, an application for a meeting of creditors to be summoned in relation to the proposed scheme of arrangement as soon as practicable: see section 64(2) of the IRDA.

58. Upon the filing of the application under section 64(1) of the IRDA, an automatic moratorium comes into effect, such that among other things, no order may be made and no resolution may be passed for the winding up of the Subject Company and no proceedings (other than proceedings under section 210 or 212 of the Companies Act 1967, or section 64, 66, 69 or 70 of the IRDA) may be commenced or continued against the Subject Company, except with the permission of the Court and subject to such terms as the Court imposes: see section 64(8) of the IRDA. This automatic moratorium begins on the date on which the application is made and ends on the earlier of the following: (a) a date that is 30 days after the date on which the application is made; or (b) the date on which the application is decided by the Court: see section 64(14) of the IRDA.

59. Section 64(3) of the IRDA provides that, when the Subject Company makes an application under section 64(1) of the IRDA:

(a) the Subject Company must publish a notice of the application in the *Gazette* and in at least one English local daily newspaper, and send a copy of the notice published in the *Gazette* to the Registrar of Companies; and

(b) unless the Court orders otherwise, the Subject Company must send a notice of the application to each creditor meant to be bound by the intended or proposed compromise or arrangement and who is known to the Subject Company.

60. An order of the Court under section 64(1) of the IRDA may be expressed to apply to any act of any person in Singapore or within the jurisdiction of the Court, whether the act takes place in Singapore or elsewhere[75]. When an order is made under section 64(1), the Subject Company will also be ordered to submit to the Court, within such time as the Court may specify, sufficient information relating to the Subject Company's financial affairs to enable the creditors to assess the feasibility of the intended or proposed compromise or arrangement.[76] The Court may make an order extending the period for which an order under section 64(1) is in force, if an application for the extension of the period is made by the Subject Company before the expiry of that period.

61. When the Court has made an order under section 64(1) of the IRDA in relation to the Subject Company, the Court may, on the application of a company that is a subsidiary, a holding company or an ultimate holding company of the Subject Company (the "**Related Company**") make one or more of the following orders under section 65(1) of the IRDA, each

[75] See section 64(5)(*b*) of the IRDA.
[76] See section 64(6) of the IRDA.


** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

of which is in force for such period not exceeding the period for which the order under section 64(1) is in force:

(a) an order restraining the passing of a resolution for the winding up of the Related Company;

(b) an order restraining the appointment of a receiver or manager over any property or undertaking of the Related Company;

(c) an order restraining the commencement or continuation of any proceedings (other than proceedings under section 210 or 212 of the Companies Act 1967 or section 65, 66, 69 or 70 of the IRDA) against the Related Company, except with the permission of the Court and subject to such terms as the Court imposes;

(d) an order restraining the issuance, continuation or execution of any enforcement order or other legal process, or the levying of any distress, against any property of the Related Company, except with the permission of the Court and subject to such terms as the Court imposes;

(e) an order restraining the taking of any step to enforce any security over any property of the Related Company, or to repossess any goods held by the Related Company under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, except with the permission of the Court and subject to such terms as the Court imposes;

(f) an order restraining the enforcement of any right of re-entry or forfeiture under any lease in respect of any premises occupied by the related company (including any enforcement pursuant to section 18 or 18A of the Conveyancing and Law of Property Act 1886), except with the permission of the Court and subject to such terms as the Court imposes.

Among other requirements, such an application may only be made if no order has been made and no resolution has been passed for the winding up of the Related Company, an order under section 64(1) made in relation to the Subject Company is in force and the Related Company plays a necessary and integral role in the compromise or arrangement relied on by the Subject Company to make the application for the order under section 64(1): see section 65(2) of the IRDA.

62. Section 65(3) of the IRDA provides that, when the Related Company makes such an application:

(a) the Related Company must publish a notice of the application in the *Gazette* and in at least one English local daily newspaper, and send a copy of the notice published in the *Gazette* to the Registrar of Companies; and

(b) unless the Court orders otherwise, the Related Company must send a notice of the application to each creditor of the Related Company who will be affected by an order under section 65(1) and who is known to the Related Company.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

63. An order of the Court under section 65(1) of the IRDA may be expressed to apply to any act of any person in Singapore or within the jurisdiction of the Court, whether the act takes place in Singapore or elsewhere.[77] The Court may make an order extending the period for which an order under section 65(1) is in force, if an application for the extension of the period is made by the Related Company before the expiry of that period.[78]

*Transfer of moratorium applications under section 64 or 65 of the IRDA from the General Division to the Court*

64. The General Division may, on its own motion or on the application of a party, transfer a moratorium application under section 64 or 65 of the IRDA from the General Division to the Court. The General Division may consider transferring a moratorium application if the following criteria are met:

(a) the application concerns a foreign company;

(b) the application is international and commercial in nature under section 18D(2)(*c*) of the SCJA read with Order 23A Rule 2(2) and (3) of the SICC Rules; and

(c) the value of the foreign company's assets, or the total value of the foreign company's debts and any claims against the foreign company, exceeds S$10 million.

65. Therefore, counsel for the applicant, every other party, and every affected person, in a moratorium application that meets these criteria must take instructions from their clients on the possible transfer of the application to the Court. As the first hearing of a moratorium application may have to take place within 30 days after the date on which the application is made, any case conference to consider the possible transfer of the application to the Court will usually be conducted within 1 week after the date on which the application is made.

*Super priority for rescue financing*

66. Where a company has made an application under section 210(1) of the Companies Act 1967 or section 64(1) of the IRDA, the Court may, on an application by the company, make an order for super priority for rescue financing in accordance with section 67(1) of the IRDA.

*Leave and sanction of proposed scheme*

67. The Subject Company may file an application to the Court for leave to convene a creditors' meeting. After creditors have voted on the proposed scheme of arrangement, the Subject Company may file an application to approve the proposed scheme if the requisite

[77] See section 65(4)(*b*) of the IRDA.
[78] See section 65(5) of the IRDA.


** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

statutory threshold has been met[79]. Even where the statutory approval threshold has not been met, there are various circumstances in which the Court has the power to nevertheless approve the compromise or arrangement: see section 70 of the IRDA.[80]

68. Alternatively, the Court has the power to approve a "pre-packed" scheme of arrangement, without requiring a meeting of creditors, provided the requirements of section 71(3) IRDA are satisfied.

***(ii) Judicial management***

69. Part 7 (Judicial Management) of the IRDA applies where a company, or any creditor of the company, considers that the company is, or is likely to become, unable to pay its debts, but that there is a reasonable probability of rehabilitating the company or of preserving all or part of its business as a going concern, or that the interests of creditors would be better served otherwise than by resorting to a winding up. In such cases, the management of the company is displaced by the appointment of a judicial manager by the Court[81] or a resolution of the company's creditors[82].

70. Judicial management proceedings apply to any corporation liable to be wound up under the IRDA: see section 88(1) of the IRDA. This includes companies that have been incorporated under the Companies Act 1967 or under any corresponding previous law, as well as foreign companies that have a substantial connection with Singapore: see section 246(1)(*d*) of the IRDA.

71. In relation to an application for a company to be placed under the judicial management of a judicial manager, please refer to section 90 of the IRDA. The Court may make a judicial management order in relation to the company if and only if it is satisfied that the company is or is likely to become unable to pay its debts and that the making of the order would achieve one or more of the purposes of judicial management as mentioned in section 89(1) of the IRDA[83]: see section 91(1) of the IRDA.

---

[79] See section 210(3AB)(*a*) and (*b*) of the Companies Act 1967.

[80] Section 70(3) of the IRDA provides that the Court may not make an order to approve the compromise or arrangement unless (a) a majority in number of the creditors meant to be bound by the compromise or arrangement, and who were present and voting (either in person or by proxy) at the relevant meeting, have agreed to the compromise or arrangement; (b) the majority in number of creditors mentioned in (a) represents three-fourths in value of the creditors meant to be bound by the compromise or arrangement, and who were present and voting (either in person or by proxy) at the relevant meeting; and (c) the Court is satisfied that the compromise or arrangement does not discriminate unfairly between 2 or more classes of creditors, and is fair and equitable to each dissenting class.

[81] This will be pursuant to an application to Court for the company to be placed under judicial management: see section 90 of the IRDA.

[82] Instead of applying to the Court for a judicial management order, the company may obtain a resolution of the company's creditors for the company to be placed under the judicial management of a judicial manager: see section 94 of the IRDA.

[83] Section 89(1) of the IRDA provides that the judicial manager of a company must perform the judicial manager's functions to achieve one or more of the following purposes of judicial management: (a) the survival of the company, or the whole or part of its undertaking, as a going concern; (b) the approval under section 210 of the Companies Act 1967 or section 71 of a compromise or an arrangement between the company and any such persons



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

72. A party seeking a judicial management order must file an originating application in Form CIR-3[84] supported by an affidavit in Form CIR-4: see rule 48(1) of the CIR Rules.

73. Upon the filing of an application for judicial management, an automatic moratorium comes into effect, during which, among other things, no order may be made and no resolution may be passed for the winding up of the company and no other proceedings may be commenced or continued against the company, except with the permission of the Court and subject to such terms as the Court may impose: see section 95(1) of the IRDA. This automatic moratorium starts on the date on which the application is made and ends on the date on which the application for judicial management is decided by the Court: see section 95(4)(*a*) of the IRDA.

74. Notice of the application for a judicial management order must be given in Form CIR-5 and published in accordance with section 91(4)(*a*) of the IRDA at least 7 clear days, or such longer time as the Court may direct, before the hearing: see rule 50(1) of the CIR Rules.

75. The application and supporting affidavit must also be served[85] on the company in respect of which the application is made, at least 7 clear days before the hearing of the application unless the application is filed by the company itself. The party applying for the judicial management order is required to file an affidavit of service in Form CIR-6 at least 5 days before the date fixed for the hearing of the application: see rule 51(2) of the CIR Rules.

76. Every creditor or member of a company is entitled to be provided, by the applicant of an application for a judicial management order in respect of the company, with a copy of each of the application and the supporting affidavit within 48 hours of requiring the same, upon payment of $1 per page of such copy: see rule 52 of the CIR Rules.

77. Every person who intends to appear at the hearing of an application for a judicial management order has to serve on the applicant a notice of such intention ("**a notice of intention to appear**"): see rule 53(1) of the CIR Rules. The notice of intention to appear may be in Form CIR-7 with any variations as the circumstances may require: see rule 53(3) of the CIR Rules. The applicant must then prepare a list in Form CIR-8 setting out the names and addresses of the persons who have given notice of their intention to appear at the hearing, and of their respective solicitors, if any. A copy of the list or, if no notice of intention to appear has been given, a statement to that effect, must be filed by the applicant at least 2 clear working days before the day appointed for the hearing of the application: see rules 54(1) and (2) of the CIR Rules.

78. A person who wishes to oppose the making of a judicial management order or a nomination of a judicial manager must file an affidavit in opposition, and serve the affidavit

as are mentioned in the applicable section; (c) a more advantageous realisation of the company's assets or property than on a winding up.

[84] The forms prescribed in the CIR Rules may be found in the First Schedule to the CIR Rules.

[85] Service is to be effected by leaving a copy each of the application and the supporting affidavit with any member, officer or employee of the company at the registered office of the company; or (b) in a case where no such member, officer or employee can be found at the registered office of the company, by leaving a copy each of the application and the supporting affidavit at the registered office or by serving those documents on such member or members of the company as the Court may direct: see rule 51(1) of the CIR Rules.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

on the applicant at least 5 days before the day appointed for the hearing of the application: see rule 55(1) of the CIR Rules.

79. An applicant's reply affidavit to the affidavit in opposition must be filed and served on the opposing party within 3 days after service of the affidavit in opposition: see rule 55(2) of the CIR Rules.

80. After an application for a judicial management order has been filed, the applicant must attend before the Registrar on duty to satisfy the Registrar that[86]:

(a) the notice of the application has been duly published in accordance with rule 50(1) and section 91(4)(*a*) of the IRDA;

(b) the affidavit supporting the application, and the affidavit of service of the application (if any), have been duly filed;

(c) the consent in writing of the licensed insolvency practitioner nominated by the applicant to act as judicial manager has been obtained and filed;

(d) the provisions of the CIR Rules as to applications for judicial management orders have been duly complied with; and

(e) a sum of $1,000 has been deposited with the Court to cover the fees and expenses to be incurred by the judicial manager.

81. Where an order for a company to be placed under judicial management has been made, the order is to be extracted in Form CIR-9, and should contain at the foot of the order a notice stating that it will be the duty of the persons mentioned in section 106(3) of the IRDA to make out the company's statement of affairs and to attend on the judicial manager at the time and place appointed by the judicial manager: see rule 58 of the CIR Rules.

82. During the period in which a company is in judicial management, there is a moratorium on creditor action against the company. Among other things, no proceedings (other than the judicial management proceedings) may be commenced or continued against the company and no enforcement order or other legal process may be issued, continued or executed, and no distress may be levied, against the company or its property, except with the consent of the judicial manager, or with the permission of Court and subject to such terms as the Court may impose: see section 96(4) of the IRDA.

83. Judicial management will automatically end after 180 days from the date that the order for judicial management is made, unless the order specifies otherwise: see section 111(1) of the IRDA. A judicial manager may however obtain an extension of the judicial manager's term of office by making an application to Court or by obtaining the approval of a majority in number and value of creditors of the company: see section 111(3) of the IRDA.

[86] See rule 56(1) of the CIR Rules.


** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

84. At any time when a company is in judicial management, the Court may, on an application by the judicial manager, make an order for super priority rescue financing in accordance with section 101 of the IRDA.

***(iii) Winding Up***

85. Part 8 (Winding Up) of the IRDA applies where the commercial activity of a debtor company is terminated, its assets are liquidated, and the proceeds of sale distributed proportionately to creditors. This allows for, among other things, an equitable and fair distribution of the assets of the debtor company among its creditors, and an investigation of the company's affairs by an independent and appropriately qualified person, with particular emphasis on the circumstances which precipitated the winding up. A process is instituted in which creditors file their proofs of debt which are adjudicated upon, and the company's assets are thereafter distributed. The company is subsequently dissolved and struck off the register of companies.

86. Winding up proceedings apply to companies, which are defined to mean companies incorporated under the Companies Act 1967 or under any corresponding previous law: see section 2(1) of the IRDA read with section 4(1) of the Companies Act 1967.

87. A winding up application must be (a) in Form CIR-11 if it is made by the company itself or (b) in Form CIR-12 if it is made by a person other than the company: see rule 63(1) of the CIR Rules. Where an application to wind up the company is made by a person other than the company, that person must be referred to in the application and all proceedings as the claimant: see rule 63(2) of the IRDA.

88. An application for winding up may be made against a company (whether or not it is being wound up voluntarily) by, amongst others, (a) the company itself; (b) a director of the company; (c) any creditor, be it a contingent or prospective creditor, of the company; (d) a contributory; (e) the liquidator of the company; and (f) the judicial manager of the company[87].

89. The circumstances in which a company may be wound up by the Court are provided in section 125 of the IRDA. These include, among others, the following situations:

(a) the company has by special resolution resolved that it be wound up by the Court: see section 125(1)(*a*) of the IRDA;

(b) the company does not commence business within a year after its incorporation, or suspends its business for a whole year: see section 125(1)(*c*) of the IRDA;

(c) the company has no member: see section 125(1)(*d*) of the IRDA;

(d) the company is unable to pay its debts: see section 125(1)(*e*) of the IRDA;[88]

[87] See section 124(1) of the IRDA.
[88] A company is deemed to be unable to pay its debts if (a) a creditor to whom the company is indebted in a sum exceeding $15,000 has served on the company a written demand requiring the company to pay the sum due and the company has for 3 weeks after service of the demand neglected to pay the sum, or to secure or compound for


** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

(e) the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner which appears to be unfair or unjust to other members: see section 125(1)(*f*) of the IRDA; or

(f) the Court is of the opinion that it is just and equitable that the company be wound up: see section 125(1)(*i*) of the IRDA.

90. An applicant making the winding up application must publish the notice of the application not less than 7 days, or any longer time as the Court may direct, before the hearing (a) at least once in the *Gazette*; and (b) at least once in an English local daily newspaper or in any other newspaper as directed by the Court: see rule 66(1) of the CIR Rules.

91. Every winding up application and every supporting affidavit must be served upon the company in respect of which the application is made, at least 7 clear days before the hearing of the application by a prescribed mode: see rule 68(1) of the CIR Rules. The applicant for the winding up order must file an affidavit of service in Form CIR-13 at least 5 days before the date fixed for the hearing of the application: see rule 68(4) of the CIR Rules. The requirements outlined in this paragraph do not apply if the application is filed by the company in respect of itself: see rule 68(6) of the CIR Rules.

92. Every creditor or contributory of a company is entitled to be provided, by the applicant of a winding up application in respect of the company, with a copy each of the application and the affidavit supporting the application within 48 hours after requiring the same, upon payment of $1 per page of such copy: see rule 69 of the CIR Rules.

93. Every person who intends to appear at the hearing of a winding up application must serve on the applicant a notice of intention to appear: see rule 70(1) of the CIR Rules. A notice of intention to appear may be in Form CIR-15 with any variations as circumstances may require: see rule 70(3) of the CIR Rules.

94. The applicant of an application for winding up must prepare a list in accordance with Form CIR-16 of the names and addresses of the persons who have given notice of their intention to appear at the hearing of the application for winding up and of their respective solicitors, if any. A copy of the list or, if no notice of intention has been given, a statement to that effect, must be filed by the applicant at least 2 clear working days before the day appointed for the hearing of the application: see rules 71(1) and (2) of the CIR Rules.

95. Every affidavit in opposition to a winding up application must be filed and served on the applicant at least 5 days before the day appointed for the hearing of the application: see rule 72(1) of the CIR Rules.

---

it to the reasonable satisfaction of the creditor; (b) an enforcement order or other process issued to enforce a judgment or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or (c) it is proved that the company is unable to pay its debts, taking into account the prospective and contingent liabilities of the company: see section 125(2) of the IRDA.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

96. Any affidavit in reply to an affidavit filed in opposition must be filed and served on the party opposing the application within 3 days after the service of the affidavit in opposition: see rule 72(2) of the CIR Rules.

97. As stated at paragraph 89 above, one of the circumstances in which a company may be wound up by the Court is when the Court is of the opinion that it is just and equitable that the company be wound up: see section 125(1)(*i*) of the IRDA. When a winding up application is made on such a ground, the Court may order that pleadings be delivered or that the originating application or affidavits are to stand as pleadings: see rule 75 of the CIR Rules. Where such an order is made, the Court may direct the pleadings adjudication track or the memorials adjudication track to apply to the case: see Order 23A, Rule 3(5)(*d*) of the SICC Rules. This is notwithstanding the general position that insolvency proceedings are decided by the statements adjudication track.

98. After an application for winding up has been filed, the applicant must attend before the Registrar on duty and satisfy the Registrar that:

(a) the notice of the application has been duly published in accordance with rule 66(1) of the CIR Rules;

(b) the affidavit supporting the application, and the affidavit of service of the application (if any), have been duly filed;

(c) the consent in writing of the Official Receiver or the licensed insolvency practitioner nominated by the applicant to act as liquidator has been obtained and filed;

(d) the provisions of the CIR Rules as to winding up applications have been duly complied with; and

(e) a sum of $10,400 has been deposited with the Official Receiver.[89]

99. Where an order has been made for the winding up of a company, the Judge has the power either by an application made by parties or on the Court's own motion, to order the transfer to him or her of any action, cause or matter pending, brought or continued by or against the company, provided the action, cause or matter is first transferred to the Court under Order 2, Rule 4, Order 23, Rule 11 or Order 23A, Rule 4 of the SICC Rules, or Order 110, Rule 12 or 58 of the domestic Rules of Court as in force before 1 April 2022: see Order 23A, Rule 3(5)(*c*) read with rule 143 of the CIR Rules.

100. Winding up is deemed to have commenced at the time of the making of the application for the winding up: see section 126(2) of the IRDA. The occurrence of any of the following after the commencement of the winding up by the Court is, unless the Court otherwise orders, void:

[89] See rule 73(1) of the CIR Rules.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

(a) any disposition of the property of the company, including things in action, and any transfer of shares or alteration in the status of the members of the company: see section 130(1) of the IRDA;

(b) any attachment, sequestration, distress or enforcement order put in force against the estate or effects of the company: see section 130(2) of the IRDA.

101. When a winding up has been made, no action or proceeding may be proceeded with or commenced against the company except (a) by the permission of the Court; and (b) in accordance with such terms as the Court may impose: see section 133(1) of the IRDA.

102. When the liquidator has realised all the property of the company or so much of the property of the company as can in his or her opinion be realised and has distributed a final dividend (if any) to the creditors and adjusted the rights of the contributories among themselves and made a final return (if any) to the contributories, the liquidator may apply to the Court for an order that the liquidator be released and that the company be dissolved: see section 147 of the IRDA. Before making such an application, the liquidator must call a meeting of the company and its creditors for the purpose of providing a final account showing how the winding up has been conducted and the property of the company has been disposed of. Such meeting must be called by an advertisement, published in the *Gazette* and at least one English local newspaper: see section 148 of the IRDA.

103. When the Court makes an order for the company to be dissolved, the company is from the date of the order deemed dissolved: see section 149(1) of the IRDA.

***(iv) Winding up of unregistered companies and liquidation or dissolution of foreign companies***

104. Part 10 (Winding Up of Unregistered Companies and Liquidation or Dissolution of Foreign Companies) of the IRDA deals with two separate processes: (a) the winding up of unregistered companies; and (b) the liquidation or dissolution of foreign companies.

105. An "unregistered company" includes a foreign company and any partnership, association, club or company, but does not include a company incorporated under the Companies Act 1967 or under any corresponding previous written law: see section 245(1) of the IRDA.

106. A "foreign company" in turn refers to (a) a company, corporation, society, association or other body incorporated outside Singapore; or (b) an unincorporated society, association or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose and which does not have its head office or principal place of business in Singapore: see section 2(1) of the IRDA read with section 4(1) of the Companies Act.

*Winding up of unregistered companies*



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

107. An unregistered company may be wound up under Parts 8 and 9 of the IRDA[90]. This means that the winding up procedures as described at paragraphs 85 to 103 above continue to apply in the context of a winding up of an unregistered company, save for the following adaptations:

(a) the principal place of business of the unregistered company in Singapore is for all the purposes of the winding up the registered office of the company[91];

(b) the unregistered company must not be wound up voluntarily[92];

(c) the circumstances in which the unregistered company may be wound up are[93] --

(i) if the company is dissolved or ceased to have a place of business in Singapore or has a place of business in Singapore only for the purpose of winding up its affairs or has ceased to carry on business in Singapore;
(ii) if the company is unable to pay its debts; or
(iii) if the Court is of the opinion that it is just and equitable that the company should be wound up;

(d) where the unregistered company is a foreign company, it may be wound up only if it has a substantial connection with Singapore[94].

108. An unregistered company is deemed to be unable to pay its debts if[95]:

(a) a creditor to whom the company is indebted in a sum exceeding $15,000 has served on the company[96] a demand requiring the company to pay the sum due, and the company has for 3 weeks after service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) any action or other proceeding has been instituted against any member for any debt due or claimed to be due from the company or from the member in his or her character of member, notice in writing of the institution of the action or proceedings has been served on the company, and the company has not within 10 days after service of the notice[97] paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to the reasonable satisfaction of the defendant against the action or proceeding and against all costs, damages and expenses to be incurred by the defendant by reason of the action or proceeding;

---

[90] See section 246(1) of the IRDA.
[91] See section 246(1)(*a*) of the IRDA.
[92] See section 246(1)(*b*) of the IRDA.
[93] See section 246(1)(*c*) of the IRDA.
[94] See section 246(1)(*d*) of the IRDA.
[95] See section 246(2) of the IRDA.
[96] By (i) leaving at its principal place of business in Singapore; (ii) delivering to the secretary or director, manager or principal officer of the company; or (iii) otherwise serving in such manner as the Court approves or directs.
[97] By (i) leaving at its principal place of business in Singapore; (ii) delivering to the secretary or director, manager or principal officer of the company; or (iii) otherwise serving in such manner as the Court approves or directs.


** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

(c) an enforcement order or other process issued to enforce a judgment, decree or order obtained in any court in favour of a creditor against the company or any member of the company as such or any person authorised to be sued as nominal defendant on behalf of the company is returned unsatisfied; or

(d) it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

109. For the purposes of determining if a foreign company has a substantial connection with Singapore so that it may wound up by the Court, the factors laid out in section 246(3) of the IRDA may be considered (see paragraph 8 above).

110. A company incorporated outside Singapore may be wound up as an unregistered company even if it is being wound up or has been dissolved or has otherwise ceased to exist as a company under the laws of the place under which it was incorporated: see section 246(4) of the IRDA.

*Liquidation and dissolution of foreign companies*

111. If a foreign company, which establishes a place of business or carries on business in Singapore, goes into liquidation or is dissolved at its place of incorporation or origin, the Court may, on the application of the person who is the liquidator of the foreign company for the foreign company's place of incorporation ("**Foreign Liquidator**"), appoint a liquidator of the foreign company for Singapore ("**Singapore Liquidator**"): see section 250(2) of the IRDA.

112. A Singapore Liquidator appointed by the Court may distribute the foreign company's assets. However, before doing so, he or she must, by advertisement in a newspaper circulating in each country where the foreign company had been carrying on business prior to the liquidation if no liquidator has been appointed for that place, invite all creditors to make their claims against the foreign company within a reasonable time prior to the distribution: see section 250(3)(*a*) of the IRDA. In addition, the Singapore Liquidator must not pay out any creditor to the exclusion of any other creditor of the foreign company without first obtaining an order of the Court: see section 250(3)(*b*) of the IRDA. Finally, the Singapore Liquidator must, unless otherwise ordered by the Court, only recover and realise the assets of the foreign company in Singapore and, (i) in a case where the foreign company is, or was prior to the liquidation or dissolution carrying on business as, a "relevant company", pay the net amount so recovered and realised to the Foreign Liquidator after paying any debts and satisfying any liabilities incurred in Singapore by the foreign company; or (ii) in any other case, pay the net amount so recovered and realised to the Foreign Liquidator: see section 250(3)(*c*) of the IRDA. A "relevant company" means a foreign company that includes a banking corporation, a merchant bank, a financial institution and a licensed insurer: see section 250(7) of the IRDA.

113. As an overarching principle, a Singapore Liquidator must, before paying any amount so recovered and realised in Singapore to the Foreign Liquidator, be satisfied that the interests of creditors in Singapore are adequately protected: see section 250(5) of the IRDA.

***(v) Proceedings under the UNCITRAL Model Law on Cross-Border Insolvency***



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

114. Part 11 (Cross-Border Insolvency) of the IRDA implements in Singapore the UNCITRAL Model Law on Cross-Border Insolvency, as contained in the Third Schedule to the IRDA ("**Model Law**"). The Model Law provides procedural mechanisms to facilitate the conduct of cross-border insolvencies.

115. The Model Law applies where (a) assistance is sought in Singapore by a foreign court or a foreign representative[98] in connection with a foreign proceeding[99]; (b) assistance is sought in a foreign State in connection with a proceeding under Singapore insolvency law; (c) a foreign proceeding and a proceeding under Singapore insolvency law in respect of the same debtor are taking place concurrently; or (d) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under Singapore insolvency law: see Article 1(1) of the Model Law.

116. Pursuant to Article 4(2) of the Model Law, the Court has jurisdiction in relation to such functions specified in Article 1 of the Model Law if:

(a) the debtor –

(i) is or has been carrying on business within the meaning of section 366 of the Companies Act 1967 in Singapore; or

(ii) has property situated in Singapore; or

(b) the Court considers for any other reason that it is the appropriate forum to consider the question or provide the assistance requested.

117. A foreign representative is entitled to apply directly to the Court in Singapore: see Article 9 of the Model Law.

118. A foreign representative appointed in a foreign main proceeding or foreign non-main proceeding is entitled to apply to commence a proceeding under Singapore insolvency law if the conditions for commencing such a proceeding are otherwise met: see Article 11 of the Model Law.[100]

119. An application for any relief under the Model Law must be made by originating application: see rule 8(1)(*c*) of the CIR Rules. The most common type of application made under the Model Law is an application for recognition of a foreign proceeding, which brings with it certain forms of reliefs and consequences.

[98] A "foreign representative" is defined in Article 2(*i*) of the Model Law as a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's property or affairs or to act as a representative of the foreign proceeding.
[99] A "foreign proceeding" is defined in Article 2(h) of the Model Law as a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation.
[100] Articles 2(*f*) and (*g*) of the Model Law define a "foreign main proceeding" as a foreign proceeding taking place in the State where the debtor has its centre of main interests and a "foreign non-main proceeding" as a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

*Application for recognition of a foreign proceeding*

120. A foreign representative may apply to the Court for recognition of a foreign proceeding in which the foreign representative has been appointed: see Article 15 of the Model Law. Recognition essentially allows, among other things, the foreign representative to function as the insolvency representative in Singapore, with the power to examine witnesses, take evidence and obtain delivery of information concerning a company's property. This is in addition to reliefs that become available upon recognition, such as automatic stay reliefs.

121. An application for recognition of a foreign proceeding must be accompanied by evidence of the existence of the foreign proceeding and of the appointment of the foreign representative in accordance with Article 15(2) of the Model Law. Other requirements are set out in Articles 15(3) and (4) of the Model Law.

122. The Model Law draws a distinction between recognition of a foreign proceeding as either a foreign main proceeding or as a foreign non-main proceeding, with each engendering different reliefs and consequences: see Articles 2(*f*) and (*g*) of the Model Law. The reason for this distinction between a foreign main proceeding and a foreign non-main proceeding is because in principle, a foreign main proceeding is expected to have principal responsibility for managing the insolvency of the debtor. Therefore, the Model Law accords proceedings commenced in that location greater deference and more immediate, automatic relief.

123. Essentially, this distinction turns on whether the foreign proceeding is one taking place where the debtor has its centre of main interests ("**COMI**"), and if so, the foreign proceeding must be recognised as a foreign main proceeding. Conversely, if the debtor has an "establishment" within the meaning of Article 2(*d*) of the Model Law in the foreign State,[101] the foreign proceeding must be recognised as a foreign non-main proceeding: see Article 17(2) of the Model Law. To determine where the debtor has its COMI, in the absence of proof to the contrary, the debtor's registered office is presumed to be the debtor's COMI: see Article 16(3) of the Model Law. However, this is a rebuttable presumption, and such presumption would be displaced if it is shown that the place of the debtor's central administration and other factors point to another location. Such COMI factors should be objectively ascertainable by third parties generally, and creditors and potential creditors in particular.[102] In Singapore, the relevant date for determining the debtor's COMI is the date on which the application for recognition is filed.[103]

124. In the context of a foreign main proceeding, certain automatic reliefs flow from recognition of a foreign main proceeding, which are provided for under Article 20(1) of the Model Law:

(a) commencement or continuation of individual actions or proceedings concerning the debtor's property, rights, obligations or liabilities is stayed;

[101] Article 2(*d*) of the Model Law defines "establishment" as "any place of operation where the debtor carries out non-transitory economic activity with human means and property or services".
[102] See *Re Zetta Jet Pte Ltd and others (Asia Aviation Holdings Pte Ltd, intervener)* [2019] 4 SLR 1343 at [72]–[83].
[103] See *Re Zetta Jet Pte Ltd and others (Asia Aviation Holdings Pte Ltd, intervener)* [2019] 4 SLR 1343 at [53]–[61].



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

(b) execution against the debtor's property is stayed; and

(c) the right to transfer, encumber or otherwise dispose of any property of the debtor is suspended.

These reliefs do not affect the right to request or otherwise initiate the commencement of a proceeding under Singapore insolvency law or the right to file claims in such a proceeding: see Article 20(5) of the Model Law.

125. In addition to the automatic reliefs provided for under Article 20(1) of the Model Law, the types of relief that may be granted upon recognition of a foreign proceeding generally may be found in Article 21(1) of the Model Law. Unlike recognition of a foreign main proceeding, such reliefs are not automatic. Moreover, it must be shown that such reliefs sought are necessary to protect the property of the debtor or the interest of the creditors: see Article 21(2) of the Model Law. These reliefs, as provided under Article 21(1) of the Model Law, include:

(a) staying the commencement or continuation of individual actions or proceedings concerning the debtor's property, rights, obligations or liabilities;

(b) staying execution against the debtor's property;

(c) suspending the right to transfer, encumber or otherwise dispose of any property of the debtor;

(d) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's property, affairs, rights, obligations or liabilities;

(e) entrusting the administration or realisation of all or part of the debtor's property located in Singapore to the foreign representative;

(f) extended interim relief granted under Article 19(1) of the Model Law; and

(g) granting any additional relief that may be available to a Singapore insolvency officeholder.

In the case of a foreign non-main proceeding, such relief will only be granted if the Court is satisfied that the relief relates to property that, under the law of Singapore, should be administered in the foreign proceeding or concerns information required in that proceeding: see Article 21(3) of the Model Law.

126. Pending a decision on the application for recognition of a foreign proceeding, the Court may, by the application of the foreign representative, grant relief of a provisional nature where relief is urgently needed to protect the property of the debtor or the interests of the creditor. Such reliefs are provided for in Article 19(1) of the Model Law and includes (a) staying execution against the debtor's property; (b) entrusting the administration or realisation of all or part of the debtor's property located in Singapore to the foreign representative; (c) suspending



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

the right to transfer, encumber or otherwise dispose of any property of the debtor; and (d) providing for the examination of witnesses, taking of evidence or delivery of information concerning the debtor's property, affairs, rights, obligations or liabilities. Unless extended by the Court, such relief will terminate when the application for recognition is decided upon: see Article 19(2) of the Model Law.

127. In addition, after an application for recognition is filed, the foreign representative must inform the Court promptly of (a) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and (b) any other foreign proceeding or proceeding under Singapore insolvency law regarding the same debtor that becomes known to the foreign representative: see Article 18 of the Model Law.

128. Subject to Article 6 of the Model Law, the Court must recognise a proceeding if (a) it is a foreign proceeding; (b) the person or body applying for recognition is a foreign representative; (c) the Article 15 requirements are met; and (d) the application has been properly submitted to the Court under Article 4: see Article 17(1) of the Model Law. Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under Singapore insolvency law: see Article 12 of the Model Law.

### (f) Urgent hearings

129. There may be occasions when insolvency applications need to be heard on an urgent basis. For the procedure in relation to requests for an application to be heard on an urgent basis, please refer to Annex D of the SICC Procedural Guide.[104]

### (g) Legal representation in insolvency proceedings before the Court

130. In addition to advocates and solicitors who are qualified to practise law in Singapore, parties in insolvency proceedings before the Court, including appeals or applications to the Court of Appeal therefrom, may also be represented by foreign lawyers who have been granted full registration under section 36P of the Legal Profession Act 1966 ("**full registration foreign lawyers**") or solicitors registered under section 36E of the Legal Profession Act 1966 ("**section 36E solicitors**"): see Order 3, Rule 1(1)(*c*) of the SICC Rules.[105]

131. However, pursuant to section 36P(1A) of the Legal Profession Act 1966 read with Rule 3A of the Legal Profession (Representation in Singapore International Commercial Court) Rules 2014, and rule 14(1A)(*a*) of the Legal Profession (Regulated Individuals) Rules 2015,

---

[104] The SICC Procedural Guide is available at <https://www.sicc.gov.sg/legislation-rules-pd/sicc-procedural-guide>

[105] Order 3, Rule 1 of the SICC Rules states that parties to proceedings in the Court may be represented by solicitors registered under section 36E of the Legal Profession Act 1966 and full registration foreign lawyers in "relevant proceedings". The term "relevant proceedings" includes "any proceedings mentioned in section 18D(2)(*c*) of the Supreme Court of Judicature Act 1969": see Order 3, Rule 1(2) of the SICC Rules, read with section 36O(1) of the Legal Profession Act 1966 and Rule 3(2)(*ca*) of the Legal Profession (Representation in Singapore International Commercial Court) Rules 2014). The proceedings mentioned in section 18D(2)(*c*) of the Supreme Court of Judicature Act 1969 are the insolvency, restructuring and dissolution matters that the Court has the jurisdiction to hear: see para 4 of this note.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

permission from the Court or the appellate court (as the case may be) must first be obtained before a full registration foreign lawyer or a section 36E solicitor may act in such proceedings.[106]

132. Full registration foreign lawyers and section 36E solicitors are also precluded from making submissions on any matter of Singapore law in such proceedings: see section 36P(1A)(*b*) of the Legal Profession Act 1966 and Order 3, Rule 1(1A)(*b*) of the SICC Rules.

133. An application for a full registration foreign lawyer, or for a section 36E solicitor, to represent a party may be made under Order 23A, Rule 5 (for first-instance insolvency proceedings and proceedings preliminary to the first-instance proceeding) or Order 21, Rule 34 (for appeals and proceedings preliminary to the appeal) of the SICC Rules. Such an application is to be made by the said foreign lawyer or the said section 36E solicitor.

134. The application may be made before, at the same time as, or after the commencement of the proceeding in respect of which permission for the foreign lawyer to act is being sought: see Order 23A, Rule 5(1)(*b*) and Order 21, Rule 34(1)(*b*). The application is to be made by an originating application in the event the application is made prior to the commencement of the proceeding and in any other case, by way of a summons: see Order 23A, Rule 5(1)(*c*) and Order 21, Rule 34(1)(*c*).

135. The application must be supported by a witness statement that is made by the applicant that contains the following information (see Order 23A, Rule 5(2) and Order 21, Rule 34(2)):

(a) the names of the parties to the proceeding in respect of which permission for the foreign lawyer to act is being sought;

(b) brief particulars of those proceedings;

(c) the reasons why permission should be given, taking into account any relevant factor, including the factors prescribed in rule 3B of the Legal Profession (Representation in the Singapore International Commercial Court) Rules 2014 or the factors

[106] In particular, section 36P(1A) of the Legal Profession Act 1966 states that a full registration foreign lawyer may not "in any relevant proceedings or relevant appeal, or any proceedings that are preliminary to any relevant proceedings or relevant appeal, prescribed for the purpose of this subsection — (a) plead any matter without the permission of the Singapore International Commercial Court or the appellate court, as the case may be; or (b) make a submission on any matter of Singapore law, except as otherwise prescribed."

"Relevant proceedings" for the purpose of section 36P(1A), refers to, among others, insolvency proceedings that the Court has the jurisdiction to hear: see Rule 3A(2)(*a*) of the Legal Profession (Representation in Singapore International Commercial Court) Rules 2014 read with section 18D(2)(*c*) of the Supreme Court of Judicature Act 1969.

As for "relevant appeal", this refers to an appeal to the appellate Court from any judgment given or order made by the Court in any relevant proceeding, which includes appeals from insolvency proceedings heard by the Court: see Rule 3A(1) of the Legal Profession (Representation in Singapore International Commercial Court) Rules 2014.

As for preliminary proceedings, these are any proceedings that are preliminary to any relevant appeal or any relevant proceeding: Rule 3A(3) of the Legal Profession (Representation in Singapore International Commercial Court) Rules 2014.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

prescribed in rule 14(1B) of the Legal Profession (Regulated Individuals) Rules 2015 (as the case may be) (see paragraph 136 below).

136. Pursuant to section 36P(1B) of the Legal Profession Act 1966, read with rule 3B of the Legal Profession (Representation in Singapore International Commercial Court) Rules 2014 or rule 14(1B) of the Legal Profession (Regulated Individuals) Rules 2015 (as the case may be), the Court or the appellate court (as the case may be) may take into account the following factors in considering whether to grant permission to a full registration foreign lawyer or a section 36E solicitor to represent a party in an insolvency proceeding:

(a) the nature of the factual and legal issues involved in the insolvency proceeding;

(b) the role of the full registration foreign lawyer or section 36E solicitor (as the case may be) in the insolvency proceeding;

(c) the extent of the international elements involved in the insolvency proceeding, including —

   (i) the amount of assets or properties in one or more foreign countries;

   (ii) the obligations and liabilities that are governed by the laws of one or more foreign countries; and

   (iii) the governing law of the underlying agreement.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

## SICC USER GUIDE NOTE 9
## ALTERNATIVE DISPUTE RESOLUTION

1. This Note sets out some guidance on the various alternative dispute resolution ("ADR") mechanisms which parties and their legal representatives may consider in downsizing or containing a dispute vis-à-vis proceedings in the Singapore International Commercial Court ("SICC"). Such ADR mechanisms may assist in clarifying or narrowing the issues in dispute between the parties.

***Legislative Framework***

2. As a division of the General Division, the SICC may order parties to attempt to resolve any dispute by amicable resolution: see section 18I(1), read with section 18(2) and paragraph 23 of the First Schedule, of Supreme Court of Judicature Act 1969 ("SCJA"). This power is exercised in accordance with the SICC Rules 2021: see section 18I(2) of the SCJA. The SICC Rules 2021 provides for parties to consider the possibility of ADR and be prepared to inform the Court of the case's suitability for ADR before case management conferences: see Order 9 rule 3(c) of the SICC Rules 2021. Parties may do so in their answers to questions on settlement and ADR in the Case Management Plan in Form 16 to be submitted to Court as part of the Case Management Bundle: see Order 9 rule 3(d) read with rule 4(2)(c) of the SICC Rules 2021. At the case management conference, the Court has a wide discretion to give directions and make orders, including on ADR: see Order 9 rule 5 of the SICC Rules 2021.

3. The wide discretion applies to cases on the Technology, Infrastructure and Construction List (the "TIC List") as well: see Order 28 rule 11 of the SICC Rules 2021.

4. As proceedings wind down, the Court may record any settlement, whether reached due to an order made by the Court or otherwise, as a consent order, including in cases on the TIC List: see Order 9 rule 5(3) and Order 28 rule 11(2) of the SICC Rules 2021.

5. The Court may also consider the parties' conduct in ADR to determine the proportionality and reasonableness of any costs award made: see Order 22 rule 3(2)(e)(iv) of the SICC Rules 2021.

6. Accordingly, parties and their legal representatives should consider how ADR may be used to downsize or contain their disputes at various stages of the proceedings. Indeed, there are ethical obligations placed on counsel advising parties to consider ADR: see rule 17(2)(e) of the Legal Profession (Professional Conduct) Rules 2015.

***Types of ADR mechanisms***

**(a) Mediation**

7. Mediation is a flexible process where a neutral mediator facilitates discussions between the parties and guides them in the negotiation of a settlement agreement. The parties are active partners in the process and take part in fashioning the resolution and having the final say on



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

whether to accept the settlement. Ultimately, the focus is on reaching a mutually acceptable agreement which address the parties' respective concerns, not determining fault or liability. For this reason, all disputes are suitable for mediation as long as parties are willing to engage in it. The types of disputes which may be suited for resolution through mediation include:

(a) Commercial disputes in which parties wish to maintain an ongoing relationship;

(b) Disputes in which parties wish to have as much control as possible over the dispute's outcome;

(c) Disputes in which parties are unlikely to be satisfied by strict legal remedies because of the involvement of other underlying interests;

(d) Disputes in which parties seek a speedy resolution of their dispute;

(e) Disputes in which parties place importance on confidentiality and privacy; and/or

(f) Claims where the costs of proceedings are disproportionate to the claim's value.

8. Parties should consider whether all or part of their dispute can be resolved through mediation. It would be beneficial for parties to have a reasonably clear idea of their own and their opponent's case, including in terms of the evidence, before engaging in mediation. This enables the parties (and the mediator) to focus on and not lose track of the issues in dispute between the parties and hence the issues that need to be resolved. To that end, directions may be sought from the Court to facilitate mediation.

**(b) Neutral Evaluation**

9. Another ADR mechanism is neutral evaluation. This is particularly suited to cases involving a specialised legal or technical issue or revolving around a particular issue of whatever nature. Neutral evaluation involves a neutral evaluator, with relevant expertise, providing an opinion on certain issues based on information provided by the parties, with or without their submissions and arguments. The opinion may be binding on the parties or may simply assist them in assessing the outcome of the issues if the dispute ultimately goes to trial. The neutral evaluation may help to clarify or narrow the issues in dispute and form a basis for private negotiations or other forms of ADR like mediation or conciliation. The parties in a neutral evaluation maintain significant control over the process. It is the parties who decide whether the neutral evaluation is binding or not, and they determine how the issue is to be framed and whether submissions and arguments may be made. Lastly, the parties control the appointment and identity of the neutral evaluator and are able to appoint a neutral evaluator with the requisite expertise to opine on the issue in question.

**(c) Expert Determination**

10. In expert determination, the parties appoint an independent third party to provide an opinion or determination on a matter which may be binding or not on the parties. The opinion or determination is intended to clarify or narrow the issues in dispute and may form a basis for



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

any private negotiations or other forms of ADR like mediation or conciliation. The parties in expert determination often appoint specialist experts. This is an ADR mechanism often utilised in cases that turn on an expert's opinion on a disputed issue in which parties' experts have not been able to agree.

**(d) Conciliation**

11. Conciliation is an ADR mechanism by which parties appoint a neutral conciliator to provide parties with suggestions and proposals on how to reach an agreement. Conciliation is particularly suited to disputes involving a breakdown in relationships. Conciliation is private and without prejudice.

***Available Schemes in Singapore***

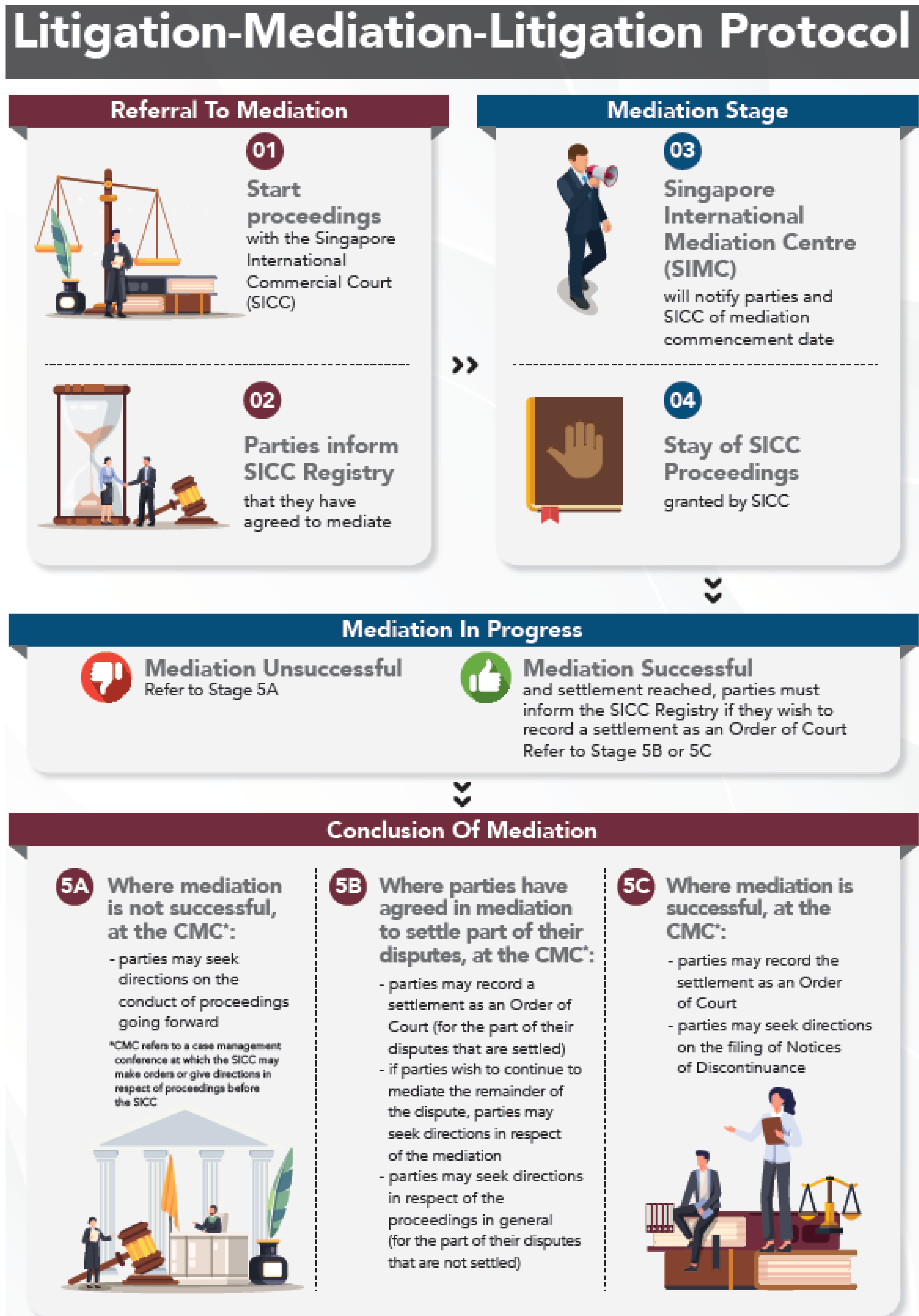
**(a) Mediation**

12. Parties who are interested in combining litigation with mediation may consider the litigation-mediation-litigation ("LML") protocol jointly established by the SICC and Singapore International Mediation Centre ("SIMC"). The LML protocol involves the Court referring cases to the SIMC for mediation as early as the first case management conference.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

**Infographic on the LML Protocol**






** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

13. Parties may choose to adopt the LML protocol in their contracts by incorporating a model LML clause into their agreement. Alternatively, parties may choose to do so at any other time, even after a dispute has arisen and the case has been commenced in the SICC.

14. After the Court has referred the case to the SIMC for mediation, the parties will have a case management stay of up to 8 weeks (subject to extension for good reasons) in which to attempt to resolve their dispute by mediation. The mediation will be administered by the SIMC, and parties will have access to the wide range of international and expert mediators in the SIMC's panel. During the case management stay, the parties may apply to the Court for interim relief to preserve their rights. This includes any application for orders or directions that may facilitate the mediation. Any settlement reached in the course of the mediation may be recorded by the Court as a consent order on agreed terms.

15. For the full procedure under which disputes commenced in the SICC are to be referred to the SIMC for mediation, and the procedure to continue or terminate proceedings in the SICC on conclusion of the mediation, parties may wish to consult the LML protocol, accessible at < www.sicc.gov.sg/docs/default-source/guide-to-the-sicc/lml-protocol-(final).pdf>. For the LML model clause, parties may wish to consult <www.sicc.gov.sg/litigation-mediation-litigation-framework>.

16. For further information on mediation in general and the services provided, parties may wish to consider consulting specialist mediation institutions, such as:[107]

(a) Singapore Mediation Centre <www.mediation.com.sg>

(b) Singapore International Mediation Centre <www.simc.com.sg>

(c) Law Society Mediation Scheme <www.lawsociety.org.sg/for-lawyers/dispute-resolution-schemes/law-society-mediation-scheme/>

(d) Singapore International Mediation Institute <www.simi.org.sg>

(e) International Mediation Institute <imimediation.org>

(f) Financial Industry Disputes Resolution Centre <www.fidrec.com.sg>

(g) World Intellectual Property Office Arbitration and Mediation Centre <www.wipo.int/amc/en/center/index.html>

### (b) Neutral Evaluation

17. For further information on neutral evaluation and the services provided, parties may wish to consider consulting institutions providing neutral evaluation services, such as:[108]

---

[107] This is only a list of various examples and is by no means intended as an exhaustive list of the various service provider institutions.

[108] This is only a list of various examples and is by no means intended as an exhaustive list of the various service provider institutions.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

(a) Singapore Mediation Centre <www.mediation.com.sg>

(b) Law Society Neutral Evaluation and Determination Scheme <www.lawsociety.org.sg/for-lawyers/dispute-resolution-schemes/law-society-neutral-evaluation-and-determination-scheme/>

**(c) Expert Determination**

18. For further information on expert determination and the services provided, parties may wish to consider consulting the institutions involved in the specialist areas of expertise related to their case, such as:[109]

(a) For intellectual property disputes, Intellectual Property Office of Singapore <www.ipos.gov.sg>

(b) For building and construction disputes, Singapore Institute of Architects <sia.org.sg>

**(c) INTEGRAF**

19. The SICC is collaborating with the Singapore Mediation Centre ("SMC") on its new alternative dispute resolution service ("ADR") known as the Integrated Appropriate Dispute Resolution Framework ("INTEGRAF"). INTEGRAF is a framework for the management of complex conflicts arising from large projects or commercial transactions. It will allow parties to apply one or more modes of dispute resolution solutions to different aspects of a dispute. In particular, complex disputes, such as those from the SICC's Technology, Infrastructure and Construction List may benefit from INTEGRAF.

20. Under INTEGRAF, parties may establish a Conflict Avoidance Board ("CAB") appointed by the SMC who will guide the parties through the dispute resolution processes. The CAB will assist parties in reaching a Mediated Settlement Agreement, or it can issue an Opinion or Determination.

21. Parties have an avenue before the SICC as the final step under INTEGRAF. With the SICC-INTEGRAF Model Clause, parties can designate the SICC as the forum of last resort where ADR processes are unsuccessful. Parties may also agree to enforce the CAB's Mediated Settlement Agreement, Opinion or Determination in the SICC.

22. For further information on INTEGRAF, parties may wish to refer to the SMC website: https://mediation.com.sg/service/integrated-appropriate-dispute-resolution-framework/

***Conclusion***

23. With the various ADR mechanisms on offer, it is in the parties' best interest to engage in ADR constructively. Parties and their legal representatives should not ignore or disregard offers to engage in ADR, but rather consider them fully and respond promptly. In assessing

[109] This is only a list of various examples and is by no means intended as an exhaustive list of the various service provider institutions.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*

costs at the end of a trial, the Court has regard to all relevant circumstances, including the proportionality and reasonableness of any costs incurred. In assessing this circumstance and determining if the parties have facilitated the smooth and efficient conduct of the case, Order 22, Rule 3(2)(e)(iv) of the SICC Rules 2021 empowers the Court to have regard to all of the parties' conduct including in respect of ADR.



** The contents of the SICC User Guides are for reference purposes only. They are not in any way binding on the Court. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately.*