SINGAPORE INTERNATIONAL COMMERCIAL COURT
USER GUIDES

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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 110, Rules 7 and 57 of the Rules of Court.

(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 110, Rule 7(1), are as follows:

(a) the claims between the plaintiffs and the defendants named in the originating process when it was first filed are of an international and commercial nature;

(b) each plaintiff and defendant named in the originating process 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. Under section 18D(2) 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 process, the only condition prescribed under Order 110, Rule 57(1) is that those proceedings must be proceedings that the General Division of the High Court may hear under the International Arbitration Act (Cap. 143A).

4. The Court may decline to assume jurisdiction in any action or proceedings (even if the applicable jurisdictional requirements under section 18D of the SCJA and Order 110, Rules 7 and 57 are met) if it is not appropriate for the action or proceedings to be heard in the Court. In exercising its discretion, the Court would have regard to its international and commercial nature.

5. 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 110, Rule 8(2). In other 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.

6. Additionally, the Court has the jurisdiction to hear and determine a case transferred to the Court under Order 110, Rules 12 or 58, and an originating summons under Order 52 for leave to commit a person for contempt in respect of any judgment or order made by the Court: see Order 110, Rule 7(2).

(b) Joinder of additional parties

7. Where the Court has assumed jurisdiction over the action or proceedings, a person may be joined as a party, including as an additional plaintiff, defendant or as a third or subsequent party, to the action or proceedings. This is provided that:

(a) the requirements in the Rules of Court for joining the person are met (the relevant provisions include Orders 15 and 16); 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.

8. Unlike the claims between the plaintiffs and the defendants named in the originating process 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. However, 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 110, Rule 9(3).

9. 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 an action in the Court (whether by joinder or otherwise) unless the State or the sovereign has submitted to the jurisdiction of the Court under a written jurisdiction agreement: see Order 110, Rule 9(2).

10. 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 deciding whether to exercise its compulsory jurisdiction and join that person to the action or proceedings. There is therefore no equivalent of Order 110, Rule 8(2) for joinder cases.

11. 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.

SICC USER GUIDES NOTE 2
COMMENCING AN ACTION

1. Proceedings in the Court may be commenced by writ of summons or originating summons. Subject to Order 110, Rule 4, the provisions of the Rules of Court (in particular, Order 5) are applicable.

2. Proceedings in which a substantial dispute of fact is likely to arise must be begun by writ: see Order 5, Rule 2. Proceedings by which an application is to be made to the Court or a Judge thereof under any written law must be begun by originating summons: see Order 5, Rule 3.

3. Proceedings in which the sole or principal question at issue is or is likely to be one of the construction of any written law or any document, or some other question of law, or in which there is unlikely to be any substantial dispute of fact, are appropriate to be begun by originating summons, unless the plaintiff intends to apply for judgment under Order 14 or for any other reason considers the proceedings more appropriate to be begun by writ: see Order 5, Rule 4.

4. Writs of summons and originating summonses filed in the Court must be in Forms 249 and 250 respectively: see Order 110, Rules 4(2) and (3). Except in the case of proceedings under the International Arbitration Act that are heard by the Court, the writ of summons or originating summons must also be accompanied by a plaintiff's declaration signed by the plaintiff or the plaintiff's counsel: see Order 110, Rules 4(4) and 56(1)(*b*).

5. The plaintiff's declaration (if required) must exhibit a copy of the written jurisdiction agreement to which the plaintiff and defendant are party, and must also explain why the action is of an international and commercial nature.

6. The validity period for writs of summons and originating summonses is 12 months beginning with the date of issue: see Order 110, Rule 5. A plaintiff may apply to extend the validity of a writ of summons or originating summons under Order 6, Rule 4(2) and (2A).

SICC USER GUIDES NOTE 3
FOREIGN REPRESENTATION

1. Generally, only advocates and solicitors who are qualified to practise 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 paragraph 26 of the Singapore International Commercial Court Practice Directions (the "SICC PDs").[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 of the Legal Profession Act ("full registration foreign lawyer") and a foreign lawyer who is granted restricted registration under section 36P 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 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 a ship or any other property) under the High Court (Admiralty Jurisdiction) Act (Cap. 123).

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 Order 110, Rule 1(2)(*f*).

6. For an elaboration and illustrations on what constitutes no substantial connection to Singapore, please see paragraph 29 of the SICC PDs.

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 Order 110, Rules 7 and 57 are met.

[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.

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 Order 110, Rule 30(1), the Court will generally give due weight to the fact that the case is an offshore case and the parties agree that such an order should be made: see Order 110, Rule 30(2) read with paragraph 97 of the SICC PDs.

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

(a) a party has filed an offshore case declaration in accordance with Order 110, Rule 35; or

(b) the Court decides, on an application under Order 110, Rule 36, that the action is an offshore case.

10. An offshore case declaration may be filed in accordance with Order 110, Rule 35. For the plaintiff, this must be filed together with the originating process. For any other party, this must be filed together with the first document filed by that party in the action. An offshore case declaration must explain why the action is an offshore case and state all the facts relevant to the explanation, and must be served on all other parties to the action.

11. Where no offshore case declaration has been filed in an action in accordance with Order 110, Rule 35, a party to the action may apply to the Court under Order 110, Rule 36 for a decision that the action is an offshore case.

12. The differences between (a) an offshore case declaration; and (b) an application to Court under Order 110, Rule 36 for a decision that an action is an offshore case, are summarised in the table below:

	Offshore case declaration	**Order 110, Rule 36 application**
Application necessary?	No.	Yes, see procedure set out in Order 110, Rule 36.
By when?	Declaration to be filed: (i) By the plaintiff – together with the originating process; (ii) By any other party – together with the first document filed by the party in the action. [See Order 110, Rule 35(3)]	Application to be filed: (i) By the plaintiff / defendant in proceedings commenced by writ – within 28 days after close of pleadings; (ii) By a third or subsequent party in proceedings commenced by writ – within 28 days after close of pleadings in the third party action or subsequent party action; (iii)By the plaintiff / defendant in proceedings commenced by

		originating summons – within 28 days after service of the originating summons on the defendant; (iv) By a third or subsequent party in proceedings commenced by originating summons – within 28 days after service of the originating summons on the third or subsequent party. [See Order 110, Rule 36(2)]
What effect?	An action will be treated as an offshore case if a party has filed an offshore case declaration, unless the Court decides under Order 110, Rule 37 that the action is not or is no longer an offshore case.	An action will be treated as an offshore case if the Court decides under Order 110, Rule 36 that the action is an offshore case, unless and until the Court decides subsequently under Order 110, Rule 37 that the action 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 an action is treated as an offshore case, the parties can be represented by full registration foreign lawyers in the action. 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. An action 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 Order 110, Rule 37, that the action 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 Order 110, Rule 37(5).

15. In exercising its discretion under Order 110, Rule 37(5), the Court may take into account all the circumstances of the case, including but not limited to:

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

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

(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 Order 110, Rule 37(5) 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 action to cease to be an offshore case;

(b) where a claim by the defendant against a third party caused the action to cease to be an offshore case, the Court may allow the plaintiff 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 Order 110, Rule 25(1) allowing any question of foreign law to be determined on the basis of submissions instead of proof. 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 Order 110, Rule 25(2). The order would specify the person(s) who may make submissions on the relevant questions of foreign law on behalf of each party: see Order 110, Rule 25(3).

19. If a registered foreign lawyer or registered law expert is specified in an order under Order 110, Rule 25(1), 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 undertake to apply to be registered within 7 days after the date on which the order is made: see Order 110, Rule 28(2)(*e*). Where a foreign lawyer or law expert specified in an order under Order 110, Rule 25(1) is not a registered foreign lawyer or registered law expert, the order will be conditional on that foreign lawyer or law expert being registered.

(c) Other cases where parties may be represented by full registration foreign lawyers

21. Apart from the above, parties may also be represented by full registration foreign lawyers in any of the following proceedings:

(a) an application under Order 52 to punish for contempt of the Court committed in connection with any proceedings where parties are represented by full registration foreign lawyers;

(b) in an application under Order 52 to punish for contempt of the Court of Appeal committed in connection with any appeal to the Court of Appeal from any judgment given or order made by the Court in any proceedings where parties are represented by full registration foreign lawyers.

SICC USER GUIDES NOTE 4
DISAPPLICATION OF SINGAPORE EVIDENCE LAW

1. Order 110, Rule 23(1) of the Rules of Court states that the Court may, on the application of a party, order that any rule of evidence 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 110, Rule 23(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 110, Rule 24, be made by summons and supported by an affidavit.

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 110, Rule 23. 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[1]

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.[2] One exception pertains to statements made by a person in the ordinary course of a trade, business, profession or other occupation.[3] 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.[4] The court would balance the 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.[5]

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[1] 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.

[2] Section 32(1) of the EA contains some exceptions to the hearsay rule.

[3] Section 32(1)(*b*) of the EA.

[4] 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].

[5] *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 at [109].

Example

5. In *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal*,[6] 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[7]

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.[8] 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.[9]

Examples

8. In *Raffles Town Club Pte Ltd v Tan Chin Seng and others*,[10] 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*,[11] 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 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[12]

[6] [2015] 2 SLR 686.
[7] See sections 32B(3), 47 to 53 and 62(1)(d) of the EA and para 120.095 of *Halsbury.*
[8] See e.g. sections 32B(3) and 47–53 of the EA.
[9] Section 47(4) of the EA.
[10] [2005] 4 SLR(R) 351.
[11] [2007] 1 SLR(R) 148.
[12] See sections 23 and 123 to 131 of the EA and paras 120.386 to 120.426 of *Halsbury*.

10. Privileged communications are inadmissible. The two most common types of privileged communications are legal professional privilege[13] and without prejudice privilege.[14] 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[15]

12. In *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd*,[16] 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[17]

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.

Example[18]

14. In *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd*,[19] a contractual clause excluded insurance coverage in respect of liability resulting from

[13] 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.
[14] Section 23 of the EA.
[15] See also the illustrations in section 128 of the EA.
[16] [2007] 2 SLR(R) 367.
[17] Sections 93 and 94 of the EA.
[18] See also the illustrations in section 94 of the EA.
[19] [2008] 3 SLR(R) 1029.

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[20]

15. The Evidence Act provides that documents must be proved by primary evidence (that is, the original document itself),[21] except where certain conditions are met[22] — for instance, where the original has been destroyed or lost.[23] 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.[24]

Example

16. In *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another*,[25] 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.[26]

(vi) Examination of witnesses[27]

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 is adduced by way of an affidavit with oral evidence-in-chief confined to witnesses confirming that the affidavit is true and accurate.[28] After the examination-in-chief, the witness may be cross-examined by the adverse party. After the cross-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.

[20] See sections 63 to 68 of the EA and para 120.011 of *Halsbury*.
[21] Section 66 of the EA.
[22] Section 67 of the EA.
[23] Section 67(c) of the EA.
[24] See para 120.293 of *Halsbury*.
[25] [2005] 4 SLR(R) 417.
[26] [2006] 3 SLR(R) 769.
[27] See section 140 of the EA and paras 120.445 to 120.447 of *Halsbury*.
[28] See O. 38 r. 2 of the Rules of Court.

18. One exception to this procedure is the provision of concurrent expert evidence under Order 41A, 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*,[29] 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[30]

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.[31]

Example

21. In *Lo Sook Ling Adela v Au Mei Yin Christina and another*,[32] 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.
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

[29] [2014] SGDC 350.
[30] (1893) 6 R 67 (HL). See para 120.476 of *Halsbury*.
[31] See *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [42].
[32] [2002] 1 SLR(R) 326.

Example 1

23. A party may apply under Order 110, Rule 23(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 110, Rule 23(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 110, Rule 23(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 110, Rule 23 allows the Court 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 110, Rule 23(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.

SICC USER GUIDES NOTE 5
INJUNCTIONS PROHIBITING DISPOSAL OF ASSETS

1. This Note addresses the Court's practices and procedures in an application for a Mareva injunction (also known in some jurisdictions as a freezing order or a pre-judgment attachment order). It supplements paragraphs 14 and 15 in Part II, paragraph 54 in Part VIII, as well as Part XVII of the SICC PDs in relation to Mareva injunctions. Unless otherwise stated, all terms used in this Guidance Note have the same meaning given to them in paragraph 2 of the SICC PDs.

(a) Effects of a Mareva injunction

2. A Mareva injunction 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 Mareva injunction 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 Mareva injunction, the Court will normally require appropriate undertakings by the applicant, including the usual undertaking as to damages. The undertaking is given to the Court.[1]

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.[2]

7. The applicant for an *ex parte* Mareva injunction (*ie*, without notice to the respondent) is under a duty to make full and frank disclosure of all material facts in his possession and knowledge, even if they are prejudicial to his claim.[3] This includes defences that are likely to be advanced by the other party. The Court may set aside a Mareva injunction obtained *ex parte* 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 Mareva injunction include the seriousness of the non-disclosure, the importance of the undisclosed facts, and the reasons for the non-disclosure.[4]

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[1] *CHS CPO GmbH (in bankruptcy) and another v Vikas Goel and others* [2005] 3 SLR(R) 202.
[2] Paragraph 108(5) of the SICC PDs.
[3] Paragraph 104(5) of the SICC PDs.
[4] *Bahtera Offshore (M) Sdn Bhd v Sim Kok Beng* [2009] 4 SLR(R) 365 at [18]–[33].

8. A Mareva injunction obtained *ex parte* will remain in force until the trial or further order. However, the respondent to a Mareva injunction obtained *ex parte* may at any time apply to court to vary or discharge the Mareva injunction.

(b) Requirements for the granting of a Mareva injunction

9. An applicant must satisfy two main requirements before the Court will grant a Mareva injunction: (a) that he has a "good arguable case"; and (b) there is a real risk of dissipation of assets.[5] The test for this latter requirement is whether the refusal of a Mareva injunction 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.[6]

(c) Coram hearing a Mareva injunction application

10. The Mareva injunction application will be heard in Chambers by a Judge unless otherwise directed by the Court.[7] As far as practicable, the Mareva injunction 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.[8]

11. Where, however, an urgent hearing 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 Mareva injunction application, the application shall be heard by another Judge.

(d) Procedure for urgent hearing of a Mareva injunction application

(i) Generally

12. The following paragraphs provide a brief overview of the procedure relating to the urgent hearing of a Mareva injunction application.

(ii) Fixing of hearing

13. A Mareva injunction application may, on the request of the applicant and in appropriate circumstances, be heard on an urgent basis.[9] If a hearing is required to be fixed on an urgent basis, the applicant is to follow the procedures set out in paragraphs 14, 15 and 54 of the SICC PDs.

14. The hearing of a Mareva injunction application may be conducted through teleconference or video conference as the Judge hearing the application may direct.[10]

(iii) Notification to respondent in ex parte applications

[5] *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 at [17].
[6] *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 at [17].
[7] Paragraph 105(1) of the SICC PDs.
[8] Paragraph 105(2) of the SICC PDs. Paragraph 105 of the SICC PDs states that interlocutory applications will be heard by "a Judge". The SICC PDs draw no distinction between cases with a coram of three Judges or a single Judge.
[9] Order 29 Rule 1 of the Rules of Court.
[10] Paragraphs 14(1) and 15(4) of the SICC PDs.

15. The respondent to an *ex parte* application, especially where the application seeks injunctive relief, should be invited to attend at the hearing of the application.[11]

16. Any party applying *ex parte* for a Mareva injunction must give notice of the application to the other concerned parties prior to the hearing.[12] The notice may be given by way of email, facsimile transmission or telex, or, in cases of extreme urgency, orally by telephone.[13] Except in cases of extreme urgency or with the leave of the Court, the party shall give a minimum of two hours' notice to the other parties before the hearing.[14] The notice should inform the other parties of the date, time and place fixed for the hearing of the application and the nature of the relief sought.[15] If possible, a copy of the originating process, the *ex parte* summons and supporting affidavit(s) should be given to each of the other parties in draft form as soon as they are ready to be filed in Court.[16]

17. The directions set out in the paragraph 16 above need not be followed if the giving of the notice to the other parties, or some of them, would or might defeat the purpose of the *ex parte* application.[17]

18. In all cases where a party approaches the Court on an *ex parte* basis, that party must consider its duty to make full and frank disclosure to the Court and the potential consequences of material non-disclosure.[18] Parties should also bear in mind their continuing duty to make full and frank disclosure of all disclosable matters that arise or occur to the party after the grant of *ex parte* relief.[19]

(iv) Forms

19. Applicants for a Mareva injunction are required to prepare their draft orders in accordance with Form 14 (for injunctions prohibiting disposal of assets worldwide) or Form 15 (for injunctions prohibiting disposal of assets in Singapore) in Appendix B of the SICC PDs, as the case may be.[20] Any departure from the terms of the prescribed forms should be justified by the applicant in his supporting affidavit(s).[21]

[11] Paragraph 107(1) of the SICC PDs.
[12] Paragraph 107(2) of the SICC PDs.
[13] Paragraph 107(2) of the SICC PDs.
[14] Paragraph 107(2) of the SICC PDs.
[15] Paragraph 107(2) of the SICC PDs.
[16] Paragraph 107(2) of the SICC PDs.
[17] Paragraph 107(4) of the SICC PDs.
[18] Paragraphs 66(3) and 104(5) of the SICC PDs.
[19] Paragraphs 66(3) and 104(5) of the SICC PDs.
[20] Paragraph 108(1) of the SICC PDs.
[21] Paragraph 108(2) of the SICC PDs.