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No. S 754

SUPREME COURT OF JUDICATURE ACT 1969

SINGAPORE INTERNATIONAL COMMERCIAL COURT (AMENDMENT NO. 2) RULES 2022

In exercise of the powers conferred by section 80 of the Supreme Court of Judicature Act 1969 and all other powers enabling us under any written law, we, the Rules Committee, make the following Rules:

Citation and commencement

1. These Rules are the Singapore International Commercial Court (Amendment No. 2) Rules 2022 and come into operation on 1 October 2022.

Amendment of Order 1

2. In Order 1 of the Singapore International Commercial Court Rules 2021 (G.N. No. S 924/2021) (called in these Rules the principal Rules) —

(a) in Rule 2(2), after sub-paragraph (b), insert —

“(ba) any proceedings (either upon application or on the General Division’s own motion) for the transfer of a case relating to corporate insolvency, restructuring or dissolution from the General Division to the Court, where the case is commenced on or after 30 July 2020 but before 1 April 2022;”;

(b) in Rule 2, after paragraph (4), insert —

“(5) For the purposes of paragraph (2)(ba), the parties concerned are every plaintiff or applicant in the case, every defendant or respondent (if any) in the case, and every third party or subsequent party (if any) in the case.”; and

(c) in Rule 4, replace the definition of “place of business” with —

““place of business” has the meaning given by —

(a) Order 23A, Rule 1, in the case of any proceedings relating to corporate insolvency, restructuring or dissolution that are international and commercial in nature; or

(b) Order 2, Rule 1(4), in any other case;”.

Amendment of Order 2

3. In Order 2 of the principal Rules —

(a) in Rule 1(1), replace “The” with “For the purposes of section 18D(1) of the Supreme Court of Judicature Act 1969, the”;

(b) in Rule 1(2), replace sub-paragraph (d) with —

“(d) proceedings relating to international commercial arbitration that the General Division may hear, as provided for under section 18D(2)(a) of the Supreme Court of Judicature Act 1969 and Order 23, Rule 3;

(da) proceedings relating to corporate insolvency, restructuring or dissolution that are international and commercial in nature, as provided for under section 18D(2)(c) of the Supreme Court of Judicature Act 1969 and Order 23A, Rule 2; and”;

(c) in Rule 1(3), after “For the purposes of”, insert “section 18D(1)(a) of the Supreme Court of Judicature Act 1969 and”;

(d) in Rule 1(4)(a) and (b), replace “carries out” (wherever it appears) with “carries on”;

- (e) in Rule 1(4)(c), replace “carry out” with “carry on”; and
- (f) in Rule 4(8)(b)(ii), replace “any matter” with “any evidence”.

Amendment of Order 3

4. In Order 3, Rule 1 of the principal Rules —

- (a) after paragraph (1), insert —

“(1A) Despite paragraph (1)(c), a solicitor or full registration foreign lawyer mentioned in that provision must not, when representing a party in any relevant proceedings prescribed by the Legal Profession (Representation in Singapore International Commercial Court) Rules 2014 (G.N. No. S 851/2014) for the purposes of section 36P(1A) of the Legal Profession Act 1966 —

- (a) plead any matter without the permission of the Court under rule 14(1A)(a) of the Legal Profession (Regulated Individuals) Rules 2015 (G.N. No. S 701/2015) or section 36P(1A)(a) of that Act (as the case may be) read with Order 23A, Rule 5; or
- (b) make a submission on any matter of Singapore law.

Explanation

The “relevant proceedings” are prescribed in rule 3A(2) of the Legal Profession (Representation in Singapore International Commercial Court) Rules 2014. They are as follows:

- (a) any proceedings mentioned in section 18D(2)(c) of the Supreme Court of Judicature Act 1969;
- (b) an application under Order 25 of the Singapore International Commercial Court Rules 2021 to punish for —
- (i) contempt of the Singapore International Commercial Court committed in connection with

any relevant proceedings mentioned in paragraph (a); or

- (ii) contempt of the appellate court committed in connection with any appeal to the appellate court from any judgment given or order made by the Singapore International Commercial Court in any relevant proceedings mentioned in paragraph (a).”; and

(b) in paragraph (2), in the *Explanation*, replace the definition of “Relevant proceedings” with —

“ “Relevant proceedings” includes —

- (a) an offshore case;
- (b) an action —
 - (i) which was treated pursuant to Rule 4 as an offshore case, but which the Court has decided under Rule 7 is not, or is no longer an offshore case; and
 - (ii) in which the Court has allowed, under Rule 7(4)(b), a party to continue to be represented by a registered foreign lawyer or by a solicitor registered under section 36E of the Legal Profession Act 1966;
- (c) any proceedings mentioned in section 18D(2)(c) of the Supreme Court of Judicature Act 1969;
- (d) an application under Order 25 to punish for —
 - (i) contempt of the Court committed in connection with any proceedings referred to in paragraph (a), (b) or (c); or
 - (ii) contempt of the appellate court committed in connection with any appeal to the appellate court from any judgment given or order made by the Court in any proceedings referred to in paragraph (a), (b) or (c); and
- (e) an action in respect of which the Court or the Court of Appeal has made —

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- (i) an order that a question of foreign law be determined on the basis of submissions instead of proof; and
 - (ii) an order permitting a named registered foreign lawyer, a named registered law expert, or a named solicitor registered under section 36E of the Legal Profession Act 1966, to make submissions on the question of foreign law on behalf of a party.”.

Amendment of Order 21

5. In Order 21 of the principal Rules, after Rule 33, insert —

“Application for permission under section 36P(1A)(a) of Legal Profession Act 1966 or rule 14(1A)(a) of Legal Profession (Regulated Individuals) Rules 2015 (O. 21, r. 34)

34.—(1) An application for a foreign lawyer registered under section 36P(1) of the Legal Profession Act 1966, or for a solicitor registered under section 36E of that Act, to be given the permission of the Court of Appeal under section 36P(1A)(a) of that Act or rule 14(1A)(a) of the Legal Profession (Regulated Individuals) Rules 2015 (as the case may be) to plead any matter in any appeal to the Court of Appeal from any judgment given or order made by the Court in any proceedings mentioned in section 18D(2)(c) of the Supreme Court of Judicature Act 1969 (called in this Rule the relevant appeal), in an application under Order 25 to punish for contempt of the Court of Appeal committed in relation to the relevant appeal, or in any proceedings that are preliminary to the relevant appeal (called in this Rule the preliminary proceedings) —

- (a) may be made by the foreign lawyer or solicitor, as the case may be;
- (b) may be made before, at the same time as, or after the commencement of the relevant appeal or preliminary proceedings, as the case may be; and

(c) may be made —

- (i) by an Originating Application, in any case where the application for permission is made before the commencement of the relevant appeal or preliminary proceedings (as the case may be) in the Court; or
- (ii) by a summons, in any other case.

(2) An application under paragraph (1) must be supported by a witness statement that —

- (a) is made by the applicant; and
- (b) contains the following information:
 - (i) the names of the parties to the relevant appeal or preliminary proceedings, as the case may be;
 - (ii) brief particulars of the relevant appeal or preliminary proceedings, as the case may be;
 - (iii) the reasons why permission under section 36P(1A)(a) of the Legal Profession Act 1966 or rule 14(1A)(a) of the Legal Profession (Regulated Individuals) Rules 2015 (as the case may be) should be given, taking into account any relevant factor, including the factors prescribed for the purposes of section 36P(1B) of that Act in rule 3B of the Legal Profession (Representation in Singapore International Commercial Court) Rules 2014 or the factors prescribed in rule 14(1B) of the Legal Profession (Regulated Individuals) Rules 2015, as the case may be.”.

Amendment of Order 23

6. In Order 23 of the principal Rules —

- (a) in Rule 3(1) and (2), replace “section 18D(2)” with “section 18D(2)(a)”; and

(b) in Rule 11(3)(b)(ii), replace “any matter” with “any evidence”.

New Order 23A

7. After Order 23 of the principal Rules, insert —

“ORDER 23A

PROCEEDINGS RELATING TO CORPORATE INSOLVENCY, RESTRUCTURING OR DISSOLUTION

Definitions (O. 23A, r. 1)

1. In this Order, unless the context otherwise requires —

“affected person”, in relation to any insolvency proceedings, means 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, such as (but not limited to) —

- (a) the applicant or claimant in, or a party to, those proceedings;
- (b) any officer of the corporation that is the subject of those proceedings;
- (c) any shareholder or contributory of, any holder of any equity interest in, the corporation that is the subject of those proceedings;
- (d) any creditor or debtor of the corporation that is the subject of those proceedings;
- (e) any personal representative, or the Official Assignee or trustee in bankruptcy, of any individual who is a shareholder, contributory, holder of equity interest, creditor or debtor mentioned in paragraph (c) or (d);
- (f) the Official Receiver, or any trustee, liquidator or provisional liquidator, of the corporation that is the subject of those proceedings, or of any

entity that is a shareholder, contributory, holder of equity interest, creditor or debtor mentioned in paragraph (c) or (d);

- (g) a judicial manager or interim judicial manager, of the corporation that is the subject of those proceedings, or of any entity that is a shareholder, contributory, holder of equity interest, creditor or debtor mentioned in paragraph (c) or (d);
- (h) a receiver and manager of the whole (or substantially the whole) of the property or undertaking of the corporation that is the subject of those proceedings, or of any entity that is a shareholder, contributory, holder of equity interest, creditor or debtor mentioned in paragraph (c) or (d); and
- (i) an agent appointed under a trust indenture, or under an instrument similar to a trust indenture in a foreign country, to represent any creditor or group of creditors of the corporation that is the subject of those proceedings;

“CIR Rules” means the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 (G.N. No. S 603/2020);

“company” has the meaning given by section 4(1) of the Companies Act 1967;

“foreign company” has the meaning given by section 4(1) of the Companies Act 1967;

“foreign country” means a country or territory outside Singapore;

“insolvency proceedings” means any proceedings relating to corporate insolvency, restructuring or dissolution;

“IRDA” means the Insolvency, Restructuring and Dissolution Act 2018;

“officer”, in relation to a corporation, has the meaning given by section 61(1) of the IRDA, which meaning 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, a 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 IRDA;

“Official Assignee” and “Official Receiver” have the meanings given by section 2(1) of the IRDA;

“place of business”, in relation to an individual or entity, means —

- (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) if paragraphs (a) and (b) do not apply — the habitual residence of that individual or the place of incorporation of that entity.

Jurisdiction (O. 23A, r. 2)

2.—(1) For the purposes of section 18D(2)(c) of the Supreme Court of Judicature Act 1969, the Court may hear insolvency proceedings under Parts 3 to 12 and 22 of the IRDA.

(2) For the purposes of section 18D(2)(c)(i) of the Supreme Court of Judicature Act 1969, insolvency proceedings are international in nature —

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

(b) where sub-paragraph (a) does not apply, if —

(i) the subject of the insolvency proceedings (called in this paragraph the subject) —

(A) is a company; or

(B) is a foreign company 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:

(A) the subject has a place of business 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.

(3) For the purposes of section 18D(2)(c)(i) of the Supreme Court of Judicature Act 1969, insolvency proceedings are commercial in nature if the subject of those proceedings and any affected person have a relationship of a commercial nature, whether contractual or not.

**Application of IRDA, CIR Rules and these Rules
(O. 23A, r. 3)**

3.—(1) The IRDA and the CIR Rules apply, with the necessary modifications, to all insolvency proceedings in the Court.

(2) 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 these 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.

(3) In any insolvency proceedings in the Court, these Rules are to be read subject to the IRDA and the CIR Rules.

(4) Despite Order 4, Rule 6, unless the Court orders otherwise, any insolvency proceedings in the Court must be decided by the statements adjudication track, but with such modifications to the procedures under that track as this Order may require.

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- (5) Despite paragraphs (1) and (3) —
- (a) the definition of “working day” in Order 1, Rule 4 of these Rules applies in place of the definition of “working day” in rule 2(1) of the CIR Rules;
 - (b) Order 1, Rule 11(1) of these Rules continues to apply;
 - (c) the Court must not transfer a case or any insolvency proceedings under rule 143 of the CIR Rules unless that case has previously been transferred to the Court under Order 2, Rule 4 or Order 23, Rule 11 or under Order 110, Rule 12 or 58 of the domestic Rules of Court as in force before 1 April 2022, or those proceedings have previously been transferred to the Court under Rule 4;
 - (d) where the Court has made an order under rule 75 of the CIR Rules as modified by paragraph (1), the pleadings adjudication track or the memorials adjudication track may apply with such modifications as directed by the Court;
 - (e) the reference to the rules for the time being in force in the General Division in rule 27 of the CIR Rules relating to a letter of request is to be read as a reference to the rules for the time being in force in these Rules relating to a letter of request;
 - (f) the reference to the rules for the time being in force in the General Division in rule 22(3) of the CIR Rules relating to payment into and out of court moneys lodged in court by way of security for costs is to be read as a reference to the rules for the time being in force in these Rules relating to payment into and out of court of moneys lodged in court by way of security for costs;
 - (g) Order 21 applies to all appeals and applications to the Court of Appeal from or in relation to the decisions of the Court in insolvency proceedings to which this Order applies, with the modification that the Official

Receiver is not required to give security for costs if the Official Receiver is the appellant;

- (h) Order 22 applies to any order for costs and any assessment of costs in —
- (i) any insolvency proceedings in the Court;
 - (ii) an appeal to the Court of Appeal from a judgment or an order of the Court in any insolvency proceedings mentioned in sub-paragraph (i); and
 - (iii) an application to the Court of Appeal in relation to any insolvency proceedings mentioned in sub-paragraph (i) or an appeal mentioned in sub-paragraph (ii);
- (i) in relation to 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, rules 146 to 156 of the CIR Rules apply with the modification that the assessment of such costs, charges or expenses are to be by the Court upon application, in place of a bill of costs, charges or expenses;
- (j) unless sub-paragraph (k) provides otherwise, Order 26 applies to court fees and deposits relating to —
- (i) any insolvency proceedings commenced in the Court;
 - (ii) 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 are payable;
 - (iii) an appeal to the Court of Appeal from a judgment or an order of the Court in any

insolvency proceedings mentioned in sub-paragraph (i) or (ii); and

(iv) an application to the Court of Appeal in relation to any insolvency proceedings mentioned in sub-paragraph (i) or (ii) or an appeal mentioned in sub-paragraph (iii); and

(k) the milestone fees set out in Table 1 are payable, in place of the milestone fees set out in Table 2 of Order 26, Rule 3(1), for insolvency proceedings commenced in the Court:

Table 1: Milestone fees				
No.	Milestone event	Amount Payable		Payable by whom
		Main action heard by single Judge	Main action heard by 3 Judges	
All tracks (pleadings, statements and memorials adjudication tracks)				
1	On filing the Originating Application	\$3,740	\$5,390	The applicant or claimant in the Originating Application
2	When any affected person (other than the applicant or claimant in the Originating Application) files its first document	\$3,740	\$5,390	The affected person
3	When the applicant or claimant in the Originating Application receives its first notification of a hearing for directions on case management	\$4,565	\$7,865	The applicant or claimant in the Originating Application

4	When an affected person (including an applicant or claimant in the Originating Application) files an interlocutory application			
	(a) Simple or consent application	\$3,000	\$4,800	The affected person making the interlocutory application, unless the Court orders otherwise
	(b) Any other interlocutory application	\$4,000	\$8,000	The affected person making the interlocutory application, unless the Court orders otherwise
Additionally, where the pleadings adjudication track applies pursuant to an order made under rule 75 of the CIR Rules read with paragraph (1)				
5	On the date on which witness statements are ordered to be exchanged (excluding any extensions of time)	\$19,140	\$22,440	Each party
6	Upon the setting down of the cause or matter for trial	\$6,655	\$8,305	Each party
Additionally, where the memorials adjudication track applies pursuant to an order made under rule 75 of the CIR Rules read with paragraph (1)				
7	On filing the Memorial	\$19,140	\$22,440	The applicant or claimant in the Originating Application
8	On filing the Counter-Memorial	\$19,140	\$22,440	The defendant or affected person filing the Counter-Memorial
9	Upon the setting down of the cause or matter for trial, if any	\$6,655	\$8,305	Each party

Transfer of insolvency proceedings from General Division to Court (O. 23A, r. 4)

4.—(1) Insolvency proceedings commenced in the General Division may be transferred to the Court only if the General Division considers that the Court has jurisdiction to hear those proceedings under section 18D(2)(c) of the Supreme Court of Judicature Act 1969 and Rule 2.

(2) An order for transfer under paragraph (1) may be made by the General Division —

- (a) on its own motion; or
- (b) on the application of a party.

(3) Before an order for transfer under paragraph (1) is made by the General Division on its own motion under paragraph (2)(a) —

- (a) the applicant or claimant in the insolvency proceedings must give notice, in accordance with the directions of the General Division, 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 (except a person or class of persons specified by the General Division), that the General Division may make such an order on its own motion; and
- (b) the General Division must give the applicant or claimant, every other party in the insolvency proceedings, and every affected person mentioned in sub-paragraph (a) who submits to the General Division a written request to be heard within the time directed by the General Division, a reasonable opportunity to be heard.

(4) Before an order for transfer under paragraph (1) is made by the General Division on the application of a party under paragraph (2)(b) —

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- (a) the party must give notice, in accordance with the directions of the General Division, 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 (except a person or class of persons specified by the General Division), of the application; and
 - (b) the General Division must give the party making the application, every other party in the insolvency proceedings, and every affected person mentioned in sub-paragraph (a) who submits to the General Division a written request to be heard within the time directed by the General Division, a reasonable opportunity to be heard.

(5) Where any insolvency proceedings are transferred by the General Division to the Court —

- (a) the General Division may make any order in those proceedings as a consequence of the transfer;
- (b) the Court —
 - (i) must not reconsider whether it has jurisdiction under section 18D(2)(c) of the Supreme Court of Judicature Act 1969 and Rule 2;
 - (ii) may order that any evidence already adduced in the case is to remain in evidence, even though different rules of evidence may apply in the Court; and
 - (iii) may make any order in those proceedings as a consequence of the transfer, provided that any such order is not inconsistent with any order made by the General Division; and
- (c) the parties must continue to pay the hearing fees and court fees payable in the General Division, unless the General Division, upon ordering a transfer, directs

that the court fees payable for insolvency proceedings commenced in the Court are to apply.

Application for permission under section 36P(1A)(a) of Legal Profession Act 1966 or rule 14(1A)(a) of Legal Profession (Regulated Individuals) Rules 2015 (O. 23A, r. 5)

5.—(1) An application for a foreign lawyer registered under section 36P(1) of the Legal Profession Act 1966, or for a solicitor registered under section 36E of that Act, to be given the permission of the Court under section 36P(1A)(a) of that Act or rule 14(1A)(a) of the Legal Profession (Regulated Individuals) Rules 2015 (as the case may be) to plead any matter in any proceedings mentioned in section 18D(2)(c) of the Supreme Court of Judicature Act 1969 (called in this Rule the relevant proceedings), in an application under Order 25 to punish for contempt of the Court committed in relation to the relevant proceedings, or in any proceedings that are preliminary to the relevant proceedings (called in this Rule the preliminary proceedings) —

- (a) may be made by the foreign lawyer or solicitor, as the case may be;
- (b) may be made before, at the same time as, or after the commencement of the relevant proceedings or preliminary proceedings, as the case may be; and
- (c) may be made —
 - (i) by an Originating Application, in any case where the application for permission is made before the commencement of the relevant proceedings or preliminary proceedings (as the case may be) in the Court or before the transfer of the relevant proceedings to the Court; or
 - (ii) by a summons, in any other case.

(2) An application under paragraph (1) must be supported by a witness statement that —

- (a) is made by the applicant; and
- (b) contains the following information:
 - (i) the names of the parties to the relevant proceedings or preliminary proceedings, as the case may be;
 - (ii) brief particulars of the relevant proceedings or preliminary proceedings, as the case may be;
 - (iii) the reasons why permission under section 36P(1A)(a) of the Legal Profession Act 1966 or rule 14(1A)(a) of the Legal Profession (Regulated Individuals) Rules 2015 (as the case may be) should be given, taking into account any relevant factor, including the factors prescribed for the purposes of section 36P(1B) of that Act in rule 3B of the Legal Profession (Representation in Singapore International Commercial Court) Rules 2014 or the factors prescribed in rule 14(1B) of the Legal Profession (Regulated Individuals) Rules 2015, as the case may be.”.

[G.N. No. S 294/2022]

Made on 16 September 2022.

SUNDARESH MENON
Chief Justice.

LUCIEN WONG
Attorney-General.

TAY YONG KWANG
Justice of the Court of Appeal.

STEVEN CHONG
Justice of the Court of Appeal.

BELINDA ANG SAW EAN
Judge of the Appellate Division.

QUENTIN LOH
Judge of the Appellate Division.

VINODH COOMARASWAMY
Judge.

VINCENT HOONG SENG LEI
Presiding Judge of the State Courts.

CHRISTOPHER TAN PHENG WEE
*District Judge and Registrar of the
State Courts.*

SIRAJ OMAR, SC
Advocate and Solicitor.

CHAN TAI-HUI JASON, SC
Advocate and Solicitor.

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(To be presented to Parliament under section 80(6) of the Supreme Court of Judicature Act 1969).