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Choice of Court Agreements Bill

Bill No. 14/2016.

Read the first time on 4th April 2016.

CHOICE OF COURT AGREEMENTS ACT 2016

(No. of 2016)

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A BILL

intituled

An Act to give effect to the Convention on Choice of Court Agreements done at The Hague on 30 June 2005 and for connected purposes, and to make related amendments to certain other Acts.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART 1
PRELIMINARY

Short title and commencement

5 **1.** This Act is the Choice of Court Agreements Act 2016 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

General interpretation

2.—(1) In this Act, unless the context otherwise requires —

10 “chosen court” means a court, of a Contracting State, designated in an exclusive choice of court agreement;

“Contracting State” —

 (a) means a State which is a party to the Convention; and

 (b) includes, in an appropriate case —

15 (i) a Regional Economic Integration Organisation which is a party to the Convention; and

 (ii) a member State, of a Regional Economic Integration Organisation which is a party to, and has made a declaration under Article 30(1) of, the Convention;

20 “Convention” means the Convention on Choice of Court Agreements done at The Hague on 30 June 2005;

“court of origin”, in relation to a foreign judgment for which recognition or enforcement is sought under this Act, means the court which gives the foreign judgment;

25 “foreign judgment” means a judgment given by a court of a Contracting State (other than Singapore), being —

 (a) a chosen court; or

30 (b) a court to which a chosen court has transferred, in accordance with the law or practice relating to the allocation of jurisdiction or transfer of cases among

courts in that Contracting State, the case to which the judgment relates;

“judgment” means —

- (a) a final court decision (by whatever name called) on the merits, a consent order, a consent judgment or a judgment given by default; or
- (b) a determination by a court of any costs or expenses relating to any such court decision, consent order, consent judgment or a judgment given by default;

“judicial settlement” —

- (a) means a contract approved by, or concluded before, a court of a Contracting State (other than Singapore), in the course of proceedings, being a contract —
 - (i) between the parties to proceedings before that court;
 - (ii) by which those parties end those proceedings; and
 - (iii) which is recorded by that court in an official document; but

- (b) does not include a consent order or consent judgment;

“law of Singapore” means any written law or any rule of law that applies in Singapore;

“State of origin” —

- (a) in relation to a foreign judgment for which recognition or enforcement is sought under this Act, means the Contracting State of the court of origin of the foreign judgment; or
- (b) in relation to a judicial settlement for which enforcement is sought under this Act, means the Contracting State of the court which recorded the judicial settlement.

(2) Where the High Court is designated in an exclusive choice of court agreement, the designation is to be construed as including the Singapore International Commercial Court unless a contrary intention appears in the agreement.

5 (3) Unless the context otherwise requires, where different systems of law apply in different territorial units in a Contracting State (other than a Regional Economic Integration Organisation) —

10 (a) any reference to the law or procedure of that Contracting State is to be construed as a reference, where appropriate, to the law or procedure in force in the relevant territorial unit of that Contracting State;

(b) any reference to residence in that Contracting State is to be construed as a reference, where appropriate, to residence in the relevant territorial unit of that Contracting State;

15 (c) any reference to the court or courts of that Contracting State is to be construed as a reference, where appropriate, to the court or courts in the relevant territorial unit of that Contracting State; and

20 (d) any reference to a connection with that Contracting State is to be construed as a reference, where appropriate, to a connection with the relevant territorial unit of that Contracting State.

Meaning of “exclusive choice of court agreement”

25 **3.—(1)** An exclusive choice of court agreement is an agreement between 2 or more parties that —

(a) is concluded or documented —

(i) in writing; or

30 (ii) by any other means of communication which renders the information communicated accessible so as to be usable for subsequent reference; and

(b) designates, for the purpose of deciding any dispute which arises or may arise in connection with a particular legal relationship, the courts, or one or more specific courts, of one

Contracting State to the exclusion of the jurisdiction of any other courts.

(2) A choice of court agreement between 2 or more parties which satisfies the following requirements is deemed to be an exclusive choice of court agreement, unless the parties to the agreement expressly provide otherwise:

(a) the agreement is concluded or documented —

(i) in writing; or

(ii) by any other means of communication which renders the information communicated accessible so as to be usable for subsequent reference;

(b) the agreement designates, for the purpose of deciding any dispute which arises or may arise in connection with a particular legal relationship, the courts, or one or more specific courts, of one Contracting State.

Meaning of “international case”

4.—(1) For the purposes of Part 2, a case is an international case unless —

(a) the parties to the case reside in the same Contracting State; and

(b) the relationship of the parties and all other elements relevant to the dispute (other than the location of the chosen court) are connected only with that Contracting State.

(2) For the purposes of Part 3, a case is an international case if the claim is for —

(a) the recognition, or recognition and enforcement, of a foreign judgment; or

(b) the enforcement of a judicial settlement recorded before a court of a Contracting State (other than Singapore).

Exclusive choice of court agreement as independent agreement

5. Where an exclusive choice of court agreement forms part of a contract —

- (a) the agreement is to be treated as independent of the other terms of the contract; and
- (b) the validity of the agreement cannot be challenged solely on the ground that the contract is not valid.

5 **Residence of person other than individual**

6. For the purposes of this Act, a person (other than an individual) is resident in a State if —

- (a) the person has its statutory seat in that State;
- 10 (b) the person was incorporated or formed under the law of that State;
- (c) the person has its central administration in that State; or
- (d) the person has its principal place of business in that State.

Act binds Government

7. This Act binds the Government.

15 **Application of Act**

8. Subject to sections 9, 10 and 22, this Act applies in every international case where there is an exclusive choice of court agreement concluded in a civil or commercial matter.

Certain matters excluded from Act

20 9.—(1) This Act does not apply to an exclusive choice of court agreement if —

- (a) any party to the agreement is an individual who acts primarily in the capacity of a consumer; or
- 25 (b) the agreement relates to a contract of employment or collective agreement.

(2) This Act does not apply to any of the following matters:

- (a) the status and legal capacity of an individual;

- (b) any matter relating to family law, including —
 - (i) the rights or obligations arising out of a marriage or a similar relationship;
 - (ii) divorce, annulment or the dissolution of marriage;
 - (iii) maintenance; 5
 - (iv) matrimonial property; and
 - (v) the custody of children;
- (c) any matter relating to succession, including wills, intestate succession, the provision of maintenance for a spouse or child of a deceased individual out of the deceased individual's estate, the administration of estates and other probate matters; 10
- (d) bankruptcy, insolvency, composition or any analogous matter;
- (e) the carriage of passengers and goods; 15
- (f) any matter relating to any of the following:
 - (i) marine pollution;
 - (ii) limitation of liability for a maritime claim;
 - (iii) general average;
 - (iv) emergency towage and salvage; 20
- (g) any matter relating to competition or anti-trust law;
- (h) liability for nuclear damage;
- (i) any claim for personal injury or death brought by or on behalf of an individual;
- (j) any tort or delict claim, for damage to any movable or immovable tangible property, that does not arise from a contractual relationship; 25
- (k) any right in rem in any immovable property or any tenancy of immovable property;

- (l) the validity, nullity or dissolution of any legal person, or the validity of a decision of the management of the legal person;
- (m) the validity of any intellectual property right (other than copyright and related rights);
- 5 (n) the infringement of any intellectual property right (other than copyright and related rights) except any infringement proceedings that are or could have been brought for breach of a contract between the parties relating to that intellectual property right;
- 10 (o) the validity of an entry in a public register.

(3) This Act does not apply to an arbitration or any proceeding related to an arbitration.

(4) The Minister may by regulations made under section 22 —

(a) exclude from the application of this Act —

- 15 (i) any specific matter; or
- (ii) any specific matter in relation to any Contracting State; or

(b) modify the application of this Act or any provision of this Act to —

- 20 (i) any specific matter; or
- (ii) any specific matter in relation to any Contracting State.

(5) Despite subsections (2) and (4)(a), the raising, in any court proceedings, of a matter mentioned in subsection (2) or (4)(a) as a preliminary question or defence, and not as an object of the proceedings, does not prevent this Act from applying to those proceedings.

(6) A proceeding under a contract of insurance or reinsurance is not excluded from the application of this Act by reason only that the contract relates to a matter to which this Act does not apply.

30 (7) A proceeding is not excluded from the application of this Act by reason only that a State (including a government, a government agency or any person acting for a State) is a party to the proceeding.

(8) This Act does not affect the privileges and immunities of a State or an international organisation, in respect of the State or international organisation and of its property.

Act does not apply to interim measures of protection

10.—(1) This Act does not apply to any interim measure of protection. 5

(2) To avoid doubt —

(a) this Act does not prevent a party from applying to a Singapore court for an interim measure of protection in any case or proceeding involving an exclusive choice of court agreement; and 10

(b) this Act does not prevent a Singapore court from granting, in any such case or proceeding, any interim measure of protection under the law of Singapore.

PART 2

15

JURISDICTION

Jurisdiction of Singapore chosen court

11.—(1) A Singapore court, which an exclusive choice of court agreement designates for the purposes of deciding a dispute, has jurisdiction to decide the dispute, unless the agreement is null and void under the law of Singapore. 20

(2) A Singapore court which has jurisdiction under subsection (1) cannot decline to exercise jurisdiction on the ground that the dispute should be decided in a court of another State.

(3) Despite subsections (1) and (2), a Singapore court may decline to exercise jurisdiction in any other circumstances that the Minister may prescribe by regulations made under section 22. 25

(4) Subsections (1) and (2) do not affect any written law which —

(a) restricts the subject matter or value of a claim which a Singapore court has jurisdiction to decide; or 30

(b) allocates jurisdiction to different courts in Singapore.

(5) Where a chosen court in Singapore has a discretion whether to transfer to another Singapore court a case to which an exclusive choice of court agreement applies, the chosen court must, before exercising that discretion, take into account the parties' choice of court.

Where Singapore court is not chosen court

12.—(1) Despite any other written law or rule of law, if an exclusive choice of court agreement does not designate any Singapore court as a chosen court, a Singapore court must stay or dismiss any case or proceeding to which the agreement applies, unless the Singapore court determines that —

(a) the agreement is null and void under the law of the State of the chosen court;

(b) a party to the agreement lacked the capacity, under the law of Singapore, to enter into or conclude the agreement;

(c) giving effect to the agreement would lead to a manifest injustice or would be manifestly contrary to the public policy of Singapore;

(d) for exceptional reasons beyond the control of the parties to the agreement, the agreement cannot reasonably be performed; or

(e) the chosen court has decided not to hear the case or proceeding.

(2) This section does not affect the ability of a Singapore court to stay or dismiss the case or proceeding on other grounds.

PART 3

RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND ENFORCEMENT OF JUDICIAL SETTLEMENTS

Recognition and enforcement of foreign judgments

13.—(1) An application may be made to the High Court for a foreign judgment to be recognised, or to be recognised and enforced,

in the same manner and to the same extent as a judgment issued by the High Court.

(2) A foreign judgment —

(a) is to be recognised only if the judgment has effect in the State of origin; and

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(b) is to be enforced only if the judgment is enforceable in the State of origin.

(3) In determining whether to recognise or enforce a foreign judgment, the High Court —

(a) must not review the merits of the foreign judgment, except to the extent necessary to apply the provisions of this Part; and

10

(b) is bound by any findings of fact on which the court of origin assumed jurisdiction, unless the judgment was given by default.

(4) Where a foreign judgment satisfies the requirements for recognition, or for recognition and enforcement, under this Part, the High Court must recognise, or recognise and enforce, as the case may be, the foreign judgment, except in the circumstances provided under this Part for the refusal of such recognition or enforcement.

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Grounds on which High Court must refuse to recognise or enforce foreign judgment

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14. The High Court must refuse to recognise or enforce a foreign judgment, or must set aside an order (made pursuant to an application under section 13(1)) that recognises or enforces a foreign judgment, in any of the following circumstances, or in any other circumstances that the Minister may prescribe by regulations made under section 22:

25

(a) the defendant in the proceedings in which the judgment was obtained was not notified of the document by which the proceedings were instituted or an equivalent document, including the essential elements of the claim, in sufficient time to enable the defendant to defend the proceedings, unless —

30

(i) the law of the State of origin allows the notification to be challenged; and

(ii) the defendant had entered an appearance and presented the defendant's case without challenging the notification in the court of origin;

(b) the foreign judgment was obtained by fraud in connection with a matter of procedure;

(c) the recognition or enforcement of the foreign judgment would be manifestly incompatible with the public policy of Singapore, including circumstances where specific proceedings leading to the judgment would be incompatible with fundamental principles of procedural fairness in Singapore.

Grounds on which High Court may refuse to recognise or enforce foreign judgment

15.—(1) The High Court may refuse to recognise or enforce a foreign judgment, or may set aside an order (made pursuant to an application under section 13(1)) that recognises or enforces a foreign judgment, in any of the following circumstances:

(a) the exclusive choice of court agreement applicable to the dispute in relation to which the judgment was obtained is null and void under the law of the State of the chosen court, unless the chosen court has determined that the agreement is valid;

(b) a party to the exclusive choice of court agreement applicable to the dispute in relation to which the judgment was obtained lacked the capacity, under the law of Singapore, to enter into or conclude the agreement;

(c) the defendant in the proceedings in which the judgment was obtained was notified of the document by which the proceedings were instituted or an equivalent document, including the essential elements of the claim, in a manner incompatible with the fundamental principles in Singapore concerning the service of documents;

- (d) the foreign judgment is inconsistent with a judgment given by a Singapore court in a dispute between the same parties;
- (e) the foreign judgment is inconsistent with an earlier judgment given in another State between the same parties on the same cause of action, and the earlier judgment satisfies the conditions necessary for recognition in Singapore under the law of Singapore;
- (f) any other circumstances that the Minister may prescribe by regulations made under section 22.

(2) The High Court may refuse to recognise or enforce a foreign judgment, may set aside an order (made pursuant to an application under section 13(1)) that recognises or enforces a foreign judgment, or may postpone the recognition or enforcement of a foreign judgment, if —

- (a) the foreign judgment is being reviewed or appealed against in the State of origin; or
- (b) the time for applying for a review of or for appealing against the foreign judgment in the State of origin has not expired.

(3) A refusal to recognise or enforce a foreign judgment, the setting aside of an order (made pursuant to an application under section 13(1)) that recognises or enforces a foreign judgment, or a postponement of the recognition or enforcement of a foreign judgment, under subsection (2) does not preclude a subsequent application for the recognition, or recognition and enforcement, of that judgment when —

- (a) the review or appeal mentioned in subsection (2)(a) has been disposed of; or
- (b) the time for applying for a review or for appealing mentioned in subsection (2)(b) has expired.

(4) Where —

- (a) an exclusive choice of court agreement applies to a case;
- (b) a chosen court designated in that agreement has discretion whether to transfer the case to another court in the same

Contracting State, and transfers the case to the other court;
and

(c) the other court issues a foreign judgment against a party to
the case who objected in a timely manner to the transfer,

5 the High Court may refuse to recognise or enforce that judgment
against that party, or may set aside an order (made pursuant to an
application under section 13(1)) that recognises or enforces that
judgment against that party.

**Refusal of recognition or enforcement of foreign judgment
awarding non-compensatory damages**

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16.—(1) The High Court may refuse to recognise or enforce a
foreign judgment, or may set aside an order (made pursuant to an
application under section 13(1)) that recognises or enforces a foreign
judgment, if, and to the extent that, the foreign judgment awards
15 damages (including exemplary or punitive damages) in excess of
compensation for the actual loss or harm suffered by the party
awarded the damages.

15

(2) In making its decision under subsection (1), the High Court must
take into account whether, and the extent to which, the damages
20 awarded by the court of origin serve to cover costs and expenses
relating to the proceedings in which the foreign judgment was
obtained.

20

**Recognition and enforcement of ruling on preliminary
question, etc.**

17.—(1) If any excluded section 9(2) matter or excluded
section 9(4)(a) matter arises as a preliminary question in any
proceedings resulting in a foreign judgment, the High Court must
not recognise or enforce under this Act, or must set aside an order
(made pursuant to an application under section 13(1)) that purports to
30 recognise or enforce, the ruling on that question.

25

30

(2) Subject to subsection (3), if any excluded section 9(2) matter
arises as a preliminary question in any proceedings resulting in a
foreign judgment, the High Court may refuse to recognise or enforce
the foreign judgment, or may set aside an order (made pursuant to an

application under section 13(1)) that recognises or enforces the foreign judgment, to the extent that the judgment was based on a ruling on that question.

(3) However, where the ruling mentioned in subsection (2) is on the validity of an intellectual property right (other than copyright or a related right), the High Court may refuse to recognise or enforce the foreign judgment based on that ruling, may set aside an order (made pursuant to an application under section 13(1)) that recognises or enforces the foreign judgment based on that ruling, or may postpone the recognition or enforcement of the foreign judgment based on that ruling, only if —

(a) that ruling is inconsistent with a judgment or decision of a competent authority on that matter given in the State under the law of which the intellectual property right arose; or

(b) proceedings concerning the validity of the intellectual property right are pending in that State.

(4) If any excluded section 9(4)(a) matter arises as a preliminary question in any proceedings resulting in a foreign judgment, the High Court may refuse to recognise or enforce the foreign judgment, or may set aside an order (made pursuant to an application under section 13(1)) that recognises or enforces the foreign judgment, to the extent that the judgment was based on a ruling on that question.

(5) To avoid doubt, subsection (3) does not affect the powers of the High Court under subsection (4) and sections 14, 15 and 16 to refuse to recognise or enforce, or to set aside an order (made pursuant to an application under section 13(1)) that recognises or enforces, a foreign judgment mentioned in subsection (3).

(6) In this section —

“excluded section 9(2) matter” means any matter mentioned in section 9(2) to which this Act does not apply;

“excluded section 9(4)(a) matter” means any matter mentioned in section 9(4)(a) to which this Act does not apply.

Judgment based on contract of insurance or reinsurance

5 **18.** The High Court may not limit or refuse the recognition or enforcement of a foreign judgment in respect of liability under the terms of a contract of insurance or reinsurance on the ground that the liability under the contract includes liability to indemnify the insured or reinsured in respect of —

- (a) a matter to which this Act does not apply; or
- (b) an award of damages to which section 16 may apply.

Recognition and enforcement of severable part of judgment

10 **19.** Subject to sections 13 to 17, the High Court must recognise, or recognise and enforce, a severable part of a foreign judgment if —

- (a) an application is made for the recognition, or recognition and enforcement, as the case may be, of that part; or
 - (b) only that part is capable of being recognised, or recognised and enforced, as the case may be, under this Act.
- 15

Judicial settlements

20.—(1) An application may be made to the High Court for a judicial settlement to be enforced in the same manner and to the same extent as a judgment issued by that Court.

20 (2) The High Court must enforce a judicial settlement only if —

- (a) the judicial settlement —
 - (i) was approved by a chosen court designated in an exclusive choice of court agreement between the parties to the settlement; or
 - (ii) was concluded before the chosen court mentioned in sub-paragraph (i) in the course of proceedings before that court; and
 - (b) the judicial settlement is enforceable in the same manner and to the same extent as a judgment in the State of origin.
- 25

30 (3) The High Court must refuse to enforce a judicial settlement, or must set aside an order (made pursuant to an application under

subsection (1)) that enforces a judicial settlement, in any circumstance in which a foreign judgment must be refused recognition or enforcement under this Part.

(4) The High Court may refuse to enforce a judicial settlement, or may set aside an order (made pursuant to an application under subsection (1)) that enforces a judicial settlement, in any circumstance in which a foreign judgment may be refused recognition or enforcement under this Part.

PART 4

MISCELLANEOUS

Act not exclusive

21. To avoid doubt, this Act does not affect any of the following matters:

- (a) the enforcement, under any other written law or rule of law, of a choice of court agreement to which this Act does not apply;
- (b) the recognition and enforcement, under any other written law or rule of law, of a judgment to which this Act does not apply;
- (c) the enforcement, under any other written law or rule of law, of a judicial settlement to which this Act does not apply.

Regulations

22.—(1) The Minister may make regulations for carrying out the purposes and provisions of this Act and for any matter which is required under this Act to be prescribed.

(2) Without limiting subsection (1), the regulations may provide for the recognition and enforcement by the High Court of a judgment given by, and for the enforcement by the High Court of a judicial settlement approved by or concluded before, a court of a Contracting State (other than Singapore) designated in a choice of court agreement (not being an exclusive choice of court agreement), including —

(a) the requirements for the recognition and enforcement of such a judgment, or for the enforcement of such a judicial settlement;

5 (b) the circumstances in which the High Court must recognise and enforce such a judgment, or enforce such a judicial settlement; and

10 (c) the application of any provision of this Act, with such modifications as may be prescribed, to or in relation to the recognition and enforcement of such a judgment, or the enforcement of such a judicial settlement.

(3) The powers conferred by this section do not extend to any matter for which the Rules of Court or Family Justice Rules mentioned in section 23 may be made.

Rules of Court and Family Justice Rules

15 **23.**—(1) The Rules Committee constituted under section 80(3) of the Supreme Court of Judicature Act (Cap. 322) may make Rules of Court regulating the practice and procedure in the High Court, the Court of Appeal and the State Courts in relation to any matter under this Act.

20 (2) The Family Justice Rules Committee constituted under section 46(1) of the Family Justice Act 2014 (Act 27 of 2014) may make Family Justice Rules regulating the practice and procedure in the Family Justice Courts in relation to any matter under this Act.

25 (3) All Rules of Court mentioned in subsection (1), and all Family Justice Rules mentioned in subsection (2), are to be presented to Parliament as soon as possible after publication in the *Gazette*.

Saving and transitional provisions

30 **24.**—(1) This Act does not apply to an exclusive choice of court agreement that designates a Singapore court as a chosen court, if the agreement is concluded before the date of commencement of this Act.

(2) This Act does not apply to an exclusive choice of court agreement that designates a court of another Contracting State as a

chosen court, if the agreement is concluded before the Convention enters into force in that Contracting State.

(3) This Act does not apply to any case instituted in a Singapore court before the date of commencement of this Act, or any application made (whether before, on or after the date of commencement of this Act) in any such case.

5

(4) For a period of 2 years after the date of commencement of this Act, the Minister may, by regulations, prescribe additional provisions of a saving or transitional nature consequent on the enactment of this Act.

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PART 5

RELATED AMENDMENTS TO OTHER ACTS

Related amendment to Reciprocal Enforcement of Commonwealth Judgments Act

25. The Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 264, 1985 Ed.) is amended by inserting, immediately after section 2, the following section:

15

“Application

2A. This Act does not apply to any judgment which may be recognised or enforced in Singapore under the Choice of Court Agreements Act 2016.”.

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Related amendment to Reciprocal Enforcement of Foreign Judgments Act

26. The Reciprocal Enforcement of Foreign Judgments Act (Cap. 265, 2001 Ed.) is amended by inserting, immediately after section 2, the following section:

25

“Application

2A. This Act does not apply to any judgment which may be recognised or enforced in Singapore under the Choice of Court Agreements Act 2016.”.

30

EXPLANATORY STATEMENT

This Bill enables Singapore to give effect to the Convention on Choice of Court Agreements done at The Hague on 30 June 2005 (the Convention). The Convention establishes an international legal regime for enforcing an exclusive choice of court agreement concluded in a civil or commercial matter in an international case, and provides for the recognition and enforcement of any foreign judgment given by, and the enforcement of any judicial settlement approved by or concluded before, a court of a Contracting State designated in an exclusive choice of court agreement.

The Bill also makes related amendments to the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 264) and the Reciprocal Enforcement of Foreign Judgments Act (Cap. 265).

PART 1

PRELIMINARY

Part 1 relates to preliminary matters such as the definition of certain terms used in the Bill, the application of the Bill and matters to which the Bill does not apply.

Clause 1 relates to the short title and commencement.

Clauses 2, 3 and 4 define certain terms used in the Bill.

In particular, clause 3 defines an exclusive choice of court agreement (ECC agreement) as an agreement between 2 or more parties that —

- (a) is concluded or documented in writing, or by any other means of communication which renders the information communicated accessible so as to be usable for subsequent reference; and
- (b) designates, for the purpose of deciding any dispute, the courts or one or more specific courts of one Contracting State to the exclusion of the jurisdiction of any other courts.

The clause also provides for when a choice of court agreement is deemed to be an ECC agreement.

Clause 2 defines a Contracting State as a State which is a party to the Convention; and includes, where appropriate, a Regional Economic Integration Organisation (REIO) which is a party to the Convention, and also a member State (of an REIO which is a party to, and has made a declaration under Article 30(1) of, the Convention). Article 29 of the Convention states that an REIO which is constituted solely by sovereign States, and has competence over some or all of the matters governed by the Convention, may become a party to the Convention. Reading Article 29 of the Convention together with paragraphs 17 and 295 of the

Explanatory Report to the Convention (the Explanatory Report), the European Community (now known as the European Union) is an REIO.

The clause also provides that where the High Court is designated in an ECC agreement, the designation is to be construed as including the Singapore International Commercial Court (SICC), unless a contrary intention appears in the agreement. Such designation makes the High Court (including the SICC) the “chosen court” under the agreement.

Clause 5 provides that —

- (a) an ECC agreement contained in a contract is to be treated as independent of the other terms of the contract; and
- (b) the validity of the ECC agreement cannot be challenged solely on the ground that the contract is not valid.

Clause 6 specifies, for the purposes of the Bill, when a person (other than an individual) is to be considered resident in a State. In particular, a person is resident in a State if the person has its “statutory seat” in that State. Paragraph 123 of the Explanatory Report explains that a “statutory seat” or “*siège statutaire*” is a corporation’s seat as laid down by the “*statut*” or document containing the constitution of the corporation (such as the articles of association).

Clause 7 provides that the Bill will bind the Government.

Clause 8 provides that, subject to clauses 9, 10 and 22, the Bill applies to every international case (as defined in clause 4) where there is an ECC agreement concluded in a civil or commercial matter.

Clause 9 excludes certain matters from the ambit of the Bill. In particular, the Bill does not apply to the following matters:

- (a) an ECC agreement if —
 - (i) any party to the agreement is an individual who acts primarily as a consumer; or
 - (ii) the agreement relates to an employment contract or a collective agreement;
- (b) the matters set out in clause 9(2);
- (c) an arbitration or any proceeding related to an arbitration.

Clause 9(4) allows the Minister, by regulations made under clause 22, to exclude from the application of the Bill, or to modify the application of the Bill or any provision of the Bill in relation to, any specific matter, or any specific matter in relation to any Contracting State. Clause 9(4) allows the Minister to give effect to any declaration that Singapore may make under Article 21 or 26(5) of the Convention.

Clause 9(5) provides that the raising, in any court proceedings, of a matter mentioned in clause 9(2) or (4)(a) as a preliminary question or defence, and not as an object of the proceedings, does not prevent the Bill from applying to those proceedings.

Under clause 9(7), a proceeding is not excluded from the application of the Bill merely because a State (including a government, a government agency or any person acting for a State) is a party to the proceeding. However, under clause 9(8), the Bill does not affect the privileges and immunities of a State or an international organisation, in respect of itself or of its property.

Clause 10 provides that the Bill does not apply to any interim measure of protection. However, the Bill does not prevent a party from applying to a court for an interim measure of protection in any case or proceeding involving an ECC agreement; nor does the Bill prevent a court from granting, in any such case or proceeding, any interim measure of protection under the law of Singapore.

PART 2

JURISDICTION

Part 2 deals with the jurisdiction of a Singapore court and what it can or cannot do, depending on whether it is a chosen court.

Clause 11 confers on a Singapore court jurisdiction to decide a dispute if an ECC agreement designates the Singapore court for the purposes of deciding the dispute, unless the agreement is null and void under the law of Singapore. A Singapore court which is conferred such jurisdiction cannot decline to exercise jurisdiction on the basis that the dispute should be decided in a court of another State, for instance on the ground of *forum non conveniens* (as elaborated in paragraph 134 of the Explanatory Report). However, under clause 11(3), a Singapore court which is a chosen court may decline to exercise jurisdiction in such other circumstances as the Minister may prescribe by regulations made under clause 22. Clause 11(3) allows the Minister to give effect to any declaration that Singapore may make under Article 19 of the Convention.

Clause 12 provides that if an ECC agreement does not designate any Singapore court as a chosen court, a Singapore court must stay or dismiss the case or proceeding to which the agreement applies, unless the Singapore court determines that any of certain circumstances mentioned in that clause applies. However, that clause does not affect the ability of a Singapore court to stay or dismiss the case or proceeding on other grounds.

PART 3

RECOGNITION AND ENFORCEMENT OF
FOREIGN JUDGMENTS AND ENFORCEMENT OF
JUDICIAL SETTLEMENTS

Part 3 provides for the recognition and enforcement of a foreign judgment, or the enforcement of a judicial settlement, by the High Court and when such recognition or enforcement must or may be refused. A foreign judgment is defined in clause 2(1) as a judgment given by a court of a Contracting State (other than Singapore) which is —

- (a) a chosen court; or
- (b) a court to which a chosen court has transferred, in accordance with the law or practice in that State governing the allocation of jurisdiction or transfer of cases among its courts, the case to which the judgment relates.

Clause 13 provides that a foreign judgment must be recognised, or recognised and enforced, in the same manner and to the same extent as a judgment issued by the High Court, if the foreign judgment satisfies the requirements for such recognition, or recognition and enforcement, in Part 3. The recognition or enforcement of a foreign judgment may only be refused in the circumstances provided in Part 3. The application for recognition, or recognition and enforcement, of a foreign judgment is to be made to the High Court.

Clause 14 provides for the circumstances in which the High Court must refuse to recognise or enforce a foreign judgment, or must set aside an order that recognises or enforces a foreign judgment.

Clause 15 provides for the circumstances in which the High Court may refuse to recognise or enforce a foreign judgment, or may set aside an order that recognises or enforces a foreign judgment.

Under clauses 14 and 15, the Minister may prescribe, by regulations made under clause 22, additional circumstances in which the High Court must or may refuse to recognise or enforce a foreign judgment, or must or may set aside an order that recognises or enforces a foreign judgment. These allow the Minister to give effect to any declaration that Singapore may make under Article 20 of the Convention.

Clause 16 further provides that the High Court may refuse to recognise or enforce a foreign judgment, or may set aside an order that recognises or enforces a foreign judgment, if, and to the extent that, the foreign judgment awards damages (including exemplary or punitive damages) in excess of compensation for the actual loss or harm suffered by the party awarded the damages.

Clause 17 provides for when the High Court must or may refuse to recognise or enforce a ruling on a preliminary question in any proceedings resulting in a foreign judgment, or a foreign judgment based on such a ruling.

Clause 18 deals with the recognition or enforcement of a foreign judgment based on a contract of insurance or reinsurance.

Clause 19 requires the High Court to recognise, or recognise and enforce, a severable part of a foreign judgment if an application is made for the recognition, or recognition and enforcement, of that part, or if only that part is capable of being recognised, or recognised and enforced, under the Bill.

Clause 20 provides for the circumstances in which a judicial settlement must be enforced in the same manner and to the same extent as a judgment issued by the High Court. A judicial settlement, also described as “*transaction judiciaire*” in paragraph 207 of the Explanatory Report, is defined in clause 2(1) as a contract approved by a court of a Contracting State (other than Singapore), or concluded before a court of a Contracting State (other than Singapore), in the course of proceedings, being a contract between the parties to proceedings before that court, by which those parties end those proceedings, and which is recorded by that court in an official document. However, a judicial settlement does not include a consent order or consent judgment.

PART 4

MISCELLANEOUS

Part 4 contains general provisions.

Clause 21 states that the Bill does not affect the enforcement of a choice of court agreement, the recognition or enforcement of a judgment, or the enforcement of a judicial settlement, under any other written law or rule of law, if the Bill does not apply to the choice of court agreement, judgment or judicial settlement (as the case may be).

Clause 22 enables the Minister to make regulations for carrying out the purposes and provisions of the Bill. In particular, regulations may be made to provide for the recognition and enforcement of a judgment given by, and for the enforcement of a judicial settlement approved by or concluded before, a court of a Contracting State (other than Singapore) designated in a choice of court agreement which is not an ECC agreement. This allows the Minister to give effect to any declaration that Singapore may make under Article 22 of the Convention.

Clause 23 empowers the Rules Committee and the Family Justice Rules Committee to make Rules of Court and Family Justice Rules, respectively, for regulating the practice and procedure in the courts in relation to any matter under the Bill.

Clause 24 contains saving and transitional provisions. The clause also enables the Minister, for a limited time after the commencement of the Bill, to prescribe provisions of a saving or transitional nature consequent on the commencement of the Bill.

PART 5

RELATED AMENDMENTS TO OTHER ACTS

Part 5 contains related amendments to other Acts.

Clause 25 inserts a new section 2A in the Reciprocal Enforcement of Commonwealth Judgments Act to exclude from the application of that Act any judgment which may be recognised or enforced in Singapore under the Bill.

Clause 26 inserts a new section 2A in the Reciprocal Enforcement of Foreign Judgments Act to exclude from the application of that Act any judgment which may be recognised or enforced in Singapore under the Bill.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
