

KNOW THE LAW NOW



Know the Law Now!

EDITORIAL TEAM

Lynn Tok
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THE LAW SOCIETY
OF SINGAPORE

DISCLAIMER

This book intends only to describe the law in general terms, and to make the law accessible to members of the public. This book is not intended to provide legal advice on any specific situation you might face, and you should not rely on this book as a source of legal advice.

You should always seek legal help and advice when faced with a claim or legal issue.

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Acknowledgements

In 1998, the Law Awareness Committee of the Law Society of Singapore produced the first of the “*Know The Law*” booklets. Written in plain language, it is meant to be a user-friendly booklet for members of the public on various topics of Singapore law relevant to everyday life. Over the years, the “*Know The Law*” booklets have been revised several times to ensure that the contents are accurate.

This revised edition of “*Know The Law*” booklets, titled “**Know The Law NOW! 2015**” is the result of numerous volunteer lawyers serving in the Law Awareness Committee 2015 (“the Committee”), as well as our colleagues of the Pro Bono Services Office of the Law Society of Singapore who have given of their time to make this possible. The Committee also acknowledges the kind contribution of lawyers who contributed to the content of previous editions of “*Know The Law*” booklets.

The Committee would like to express their appreciation to the President of the Law Society of Singapore, Mr Thio Shen Yi SC for his Foreword.

The Committee also acknowledges the kind contribution of **Portcullis Trust (Singapore) Ltd** in sponsoring this publication.

Finally, the Committee would like to express their gratitude to the **Editors** (Lynn Tok and Hugh Turnbull) as well as student volunteers of the NUS Pro Bono Group and the SMU Pro Bono Group for their commendable efforts towards this publication.

Foreword by

President, The Law Society of Singapore

The law is an unseen force that exists around you every-day of your life. Behind the scenes, the law provides the order and structure that makes your life what it is. The law does this by taking many forms; property law governing why you can sleep in your bed, employment law ensuring you are paid fairly and even contract law ensuring that you are entitled to your lunch from a hawker.

So invisible is the law in our daily lives, that many people have no idea how it relates to them. Some people can even come close to breaking laws they had no idea existed - and this creates big problems! A salesman who feels like he doesn't give a refund for a lemon, or an employer unfairly terminating an employee without compensation may not realise what they are doing is against the law. That is why it is the duty of everyone to KNOW THE LAW!

Since 1998, the Know the Law ("KTL") Handbook has been produced and circulated for this very reason; promoting legal awareness amongst the public. The KTL handbook is streamlined into 9 main topics to ensure user-friendliness. The KTL handbook covers all the major areas of the law which apply to individuals on a daily basis.

The Law Awareness Committee works tirelessly to keep the content relevant and we extend our gratitude to them, and the many volunteers who generously donated their time and expertise to produce content for this publication. We also thank the editorial team, and Portcullis Trust (Singapore) Ltd for their continued sponsorship.

I hope you find this book to be a useful guide to understanding the law around you.

Thio Shen Yi, *Senior Counsel*
President, The Law Society of Singapore

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PART I

THE SINGAPORE COURT SYSTEM



1 Courts of Law

The Singapore Court System consists of two tiers:

1. State Courts; and
2. Supreme Court.

STATE COURTS

The District Courts and Magistrate Courts hear both civil and criminal cases.

Coroner's Court

The Coroner's Court holds inquiries to ascertain the cause of a person's death. Such inquiries are held when there is reason to suspect that a person has died of unnatural causes.

Community Court

The Community Court was established to deal with the following categories of cases: youthful offenders (aged 16 to 18), offenders with mental disorders, attempted suicide cases, family violence cases, certain offences committed by youthful offenders under the age of 21, abuse and cruelty to animals, cases which impact on race relations issues and selected cases involving accused persons with chronic addiction problems, shop theft cases, and offenders aged 65 years and above.

Night Court

The concept of Night Courts was established to deal with the high volume of regulatory and traffic offences that are heard at the State Courts. These courts function for the convenience of the working public who would otherwise have to take time off from work in order to attend court. The operating hours are from 6.00pm onwards on Mondays to Fridays.

There are two Night Courts in the State Courts complex, each hearing a specific profile of cases.

Court 26N deals with summonses and notices issued by the various government departments such as the Housing and Development Board, the Urban Redevelopment Authority, Central Provident Fund Board, and the Accounting and Corporate Regulatory Authority.

Court 25N deals primarily with road traffic offences brought to court by the Traffic Police and regulatory offences brought to court by the Land Transport Authority.

Small Claims Tribunals (“SCT”)

If you have a claim arising from a sale or purchase of goods, the provision of services (e.g. repairs or renovation works), tortious damage to property (but not including damage arising because of a motor vehicle accident) or any contact relating to a lease of residential property for a period of less than two years, and your claim does not exceed \$10,000, you can file a claim in the SCT. However, you can also file a claim more than \$10,000 but not exceeding \$20,000 if both parties consent in writing. You must file your claim at the SCT within one year from the date on which the incident you are complaining of took place.

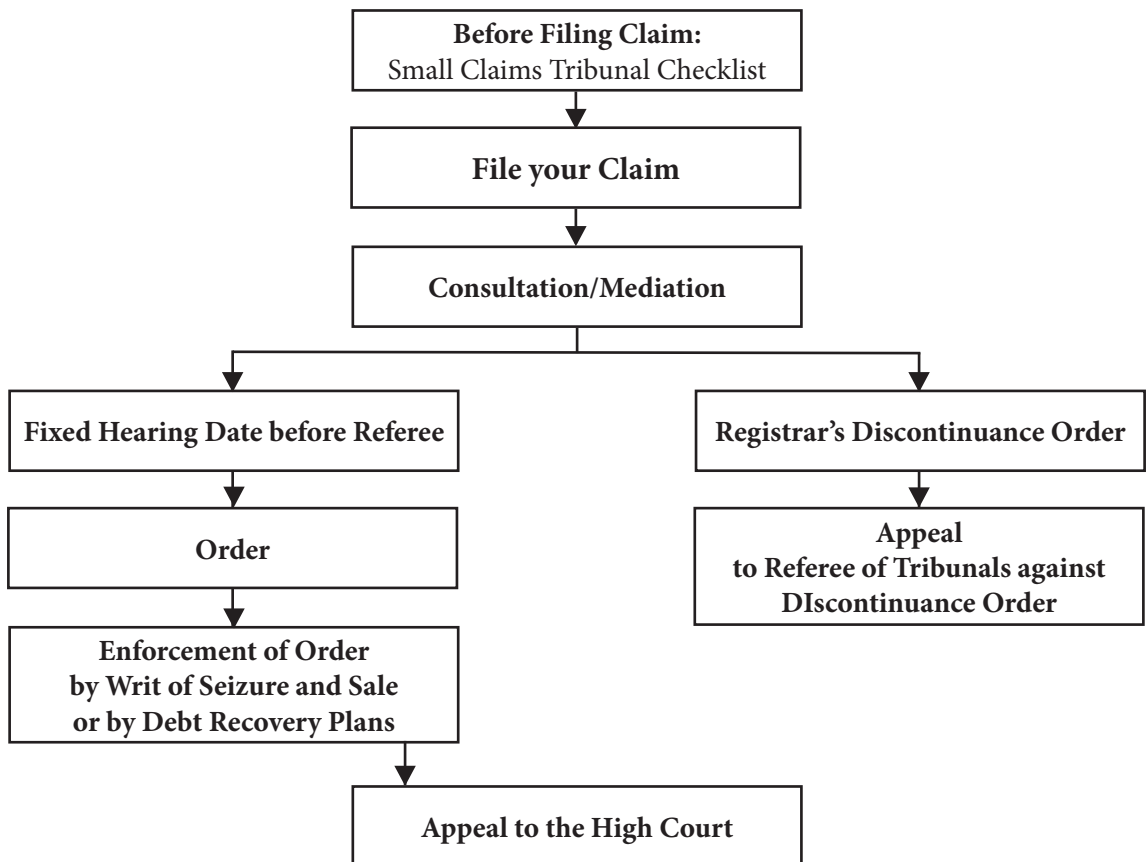
The procedure is informal, easy and inexpensive. You will first attend a consultation before the Registrar, who will mediate the claim and assist the parties in resolving the dispute. If a claim is not settled at the consultation before the Registrar, it will generally be fixed for hearing before a Referee within seven days or ten days from the date of consultation. The Referee will also explore the possibility of settling the claim before adjudicating on it. Your lodgement fee to file a claim is as below.

	Not exceeding \$5,000	Exceeding \$5,000 but not exceeding \$10,000	Exceeding \$10,000 but not exceeding \$20,000
Consumer	\$10	\$20	1% of claimed amount
Non-Consumer	\$50	\$100	3% of claimed amount

If you choose to bring a claim to the SCT, your lawyer will not be allowed to come with you, as lawyers are not permitted to represent any of the parties in proceedings before the SCT.

You may appeal against decisions of the SCT to the High Court on points of law. You will first have to apply to the District Judge for leave to appeal within 14 days of the Referee's order, and only if the application is granted can you then file a Notice of Appeal to the High Court. This Notice of Appeal must be filed within one month of the District Judge's order granting leave.

A brief overview of the procedure is set out in the flowchart below:



For more information on the Small Claims Tribunals, please refer to the following webpages:-

1. SCT Checklist	https://www.statecourts.gov.sg/SmallClaims/Pages/GeneralInformation.aspx
2. SCT Lodgment Process	https://www.statecourts.gov.sg/SmallClaims/Pages/LodgingaClaim.aspx
3. SCT Processes	https://www.statecourts.gov.sg/SmallClaims/Pages/default.aspx

Family Justice Courts

The Family Justice Courts comprise of the Family Division of the High Court, the Family Courts and the Youth Courts. The Presiding Judge of the Family Justice Courts heads the Family Justice Courts which hear family-related cases including divorce and related matters, domestic violence cases, adoption and guardianship cases, juvenile cases as well as applications under the Mental Capacity Act and probate matters.

One area of family-related cases the Family Justice Courts cover is maintenance orders. For example, if a husband neglects to maintain (financially support) his wife and children, she can apply to the Family Courts for an order that her husband makes monthly contributions to maintain her and her children.

An applicant can also apply to the Family Courts for a Personal Protection Order for herself or himself, as well as for a child if violence or threats of violence have been used by the abuser. In certain circumstances, the Family Courts can grant a Domestic Exclusion Order to prevent the abuser from entering the matrimonial home.

SUPREME COURT

The Supreme Court consists of the High Court and the Court of Appeal.

High Court

The High Court exercises original and appellate jurisdiction in civil and criminal cases. It hears cases in the first instance as well as cases on appeal from the State Courts. Generally, except for probate matters, a civil case is commenced in the High Court if the value of the claim is above \$250,000. Probate matters take place in the High Court only if the deceased's estate is above \$3,000,000, or if the case involves the resealing of a foreign grant.

In criminal cases, the High Court has the power to try all cases. In general, the High Court tries cases where the offences are punishable with death or with imprisonment for a term which exceeds ten years. The High Court has the power to pass any sentence allowed by law.

The High Court can also hear points of law in special cases submitted by a District Court or Magistrate's Court. The High Court can reverse decisions from the State Courts, or ask the State Courts to conduct a new trial on the matter.

The Singapore International Commercial Court ("SICC") is a division of the High Court and part of the Supreme Court of Singapore and it deals with cross-border international commercial disputes.

SICC matters may be heard by either one or three judges. Parties who are dissatisfied with a SICC decision can file an Appeal with the Court of Appeal and the Appeal will be heard by either three or five judges.

Court of Appeal

The Court of Appeal hears appeals on civil and criminal cases from the High Court. The Court of Appeal is presided over by the Chief Justice, and in his absence, a Judge of Appeal or a Judge of the High Court. The Court of Appeal is usually made up of three Judges. However, certain appeals may be heard by only two Judges. If necessary, the Court of Appeal may comprise five or any greater uneven number of Judges.

2 Jurisdictional Limits

CIVIL JURISDICTION

The jurisdictional monetary limits of the courts are as follows:

Small Claims Tribunal	The Small Claims Tribunal has the power to hear any claim not exceeding \$10,000 (or up to \$20,000 where both parties to the dispute agree) which arises from a dispute regarding a contract for the sale of goods or the provision of services or in tort, where there is damage caused to any property, except damage sustained in an accident arising out of or in connection with the use of a motor vehicle.
Magistrates' Court	The Magistrates' Court has the power to hear civil actions where the disputed amount does not exceed \$60,000.
District Court	The District Court has the power to hear civil actions where the disputed amount does not exceed \$250,000. Parties may also agree in writing to have the matter heard by the District Court even though the sum in dispute exceeds \$250,000. Where the plaintiff limits his claim to \$250,000, the District Court can also hear the case. The District Court also has the power to hear probate matters where the value of the deceased's estate does not exceed \$3,000,000.

High Court	<p>Generally, except for probate matters, a civil case must be commenced in the High Court if the value of the claim is above \$250,000. Probate matters take place in the High Court only if the deceased's estate is above \$3,000,000, or if the case involves the resealing of a foreign grant. The following matters are also exclusively heard by the High Court:</p> <ul style="list-style-type: none"> • Admiralty matters; • Company winding-up proceedings; • Bankruptcy proceedings; and • Applications for the admission of advocates and solicitors.
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CRIMINAL JURISDICTION

The criminal jurisdictional limits of the courts are as follows:

Magistrates' Court	The Magistrates' Court has the power to try offences where the maximum imprisonment term does not exceed five years or are punishable with a fine only. It can sentence a person to imprisonment for not more than three years, a fine not exceeding \$10,000, up to six strokes of the cane, and any other lawful sentence including a combination of the sentences it is allowed to pass.
District Court	The District Court has the power to try offences where the maximum imprisonment term does not exceed ten years or are punishable with a fine only. It can sentence a person to imprisonment for no more than ten years, a fine not exceeding \$30,000, up to 12 strokes of the cane, and any other lawful sentence including a combination of the sentences it is allowed to pass.
High Court	In general, the High Court tries cases where the offences are punishable with death or with imprisonment for a term which exceeds ten years. The High Court may pass any sentence allowed by law.

PART II

CIVIL CLAIMS



3 Civil Procedure

CIVIL CASES

Different Claim Amounts, Different Courts

The amount of the claim (e.g. for damages for breach of contract, negligence etc.) will determine which court the action is commenced in:

- Magistrates' Court – up to \$60,000;
- District Court – above \$60,000 to \$250,000;
- High Court – above \$250,000.

For instance, if your motor vehicle is totally damaged by another vehicle in a road motor accident, the amount of claim (compensation) will be based on the total sum of the value of your motor vehicle as well as other losses such as cost of renting a motor vehicle. If the total sum is \$75,000, you should commence your claim in the District Court.

The law does not require you to be represented by a lawyer unless you are a corporate entity (e.g. a private limited company).

Please note however, that this is only a general representation of a typical civil claim; there are many different routes which a claim can take. You should seek legal advice if you would like to bring a claim, if a claim has been brought against you, or if you have any other legal queries.

Procedure

The Flowchart on the next two pages sets out the procedure involved in a civil case.

Anyone who has a claim (known as the “Plaintiff”) may issue a *Writ of Summons* or an *Originating Summons* and have it served on the other party (known as the “Defendant”). If the Defendant does not dispute the Plaintiff’s claim, the Defendant may wish to get in touch with either the Plaintiff or his lawyer and settle the claim immediately. By doing so, both parties would incur less legal costs.

If the Defendant disputes the claim, the Defendant should consult a lawyer as soon as possible. If the Defendant is disputing the claim, his/her lawyer will file a document (“Memorandum of Appearance”) in Court on the Defendant’s behalf to dispute the claim. This has to be done within eight days of the receipt of the Writ of Summons or the Originating Summons. Instead of appointing a lawyer, the Defendant may also wish to file the Memorandum of Appearance by attending at the Registry of the appropriate Court to seek assistance on how to do this.

Refusing to acknowledge service of a Writ of Summons or Originating Summons when it is served does not make the service of the document invalid. It also does not prevent the Plaintiff from proceeding further.

Once the Writ of Summons or Originating Summons is successfully served, the Plaintiff can proceed after eight days to obtain an Order of Court or judgment to compel the Defendant to pay up the amount claimed if the Memorandum of Appearance is not filed in time.

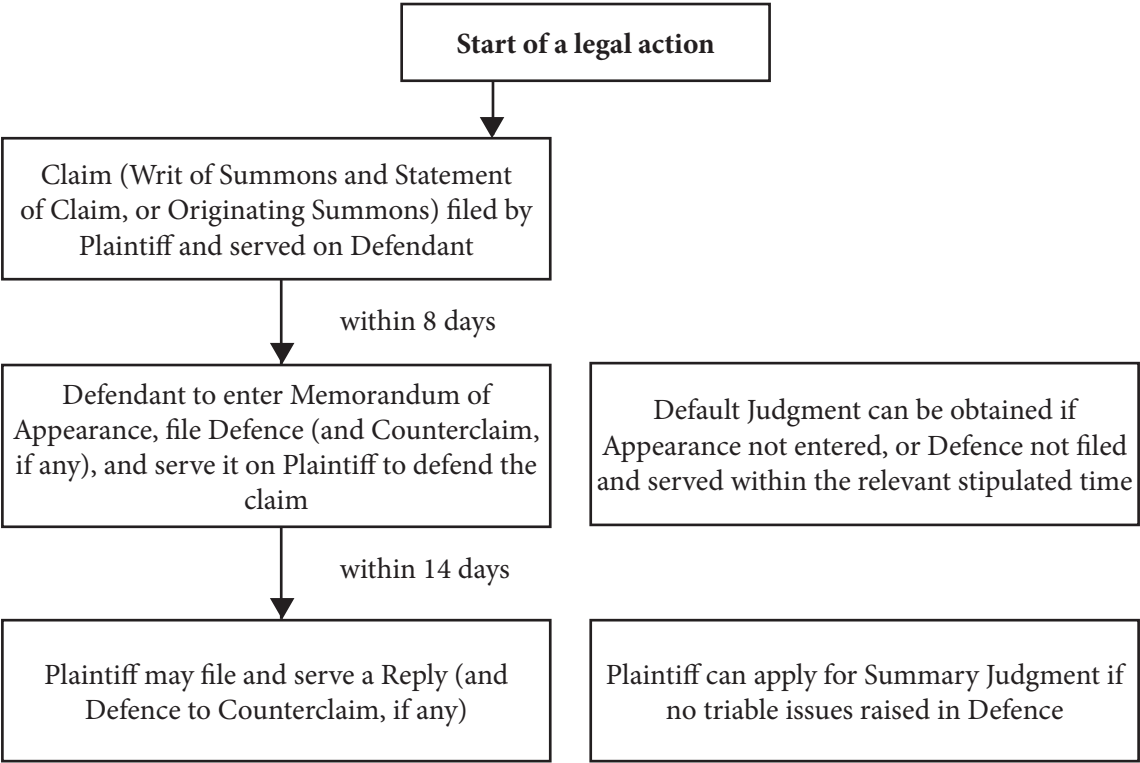
The Defendant must subsequently file his/her Defence to the claim in Court and also serve a copy of the Defence on the Plaintiff’s lawyers at their office address (or the Plaintiff’s own address of service if he/she is acting in person) within 22 days from the date that he/she was served with the Writ of Summons. If the Defendant has any Counterclaim against the Plaintiff, the Defendant can also make it in the same action brought by the Plaintiff.

The Plaintiff must serve on the Defendant his reply (and defence to a counterclaim, if any) within 14 days after the Defence (and Counterclaim, if any) has been served on him.

Appeals

Parties may appeal against any decision given by a District Judge or Magistrate to the High Court. From the High Court, parties may appeal to the Court of Appeal unless the claims are barred from appeal under the law.

GENERAL PROCESS OF A CIVIL CLAIM



Glossary

Writ of Summons or Originating Summons: Document by which legal action is commenced.

Statement of Claim: Contains the main facts relating to the claim and usually contained in the Writ of Summons.

Memorandum of Appearance: Document to be filed to indicate intention to defend claim

Defence: Contains the main facts of the defence case.

Reply: Specific, factual response to the Defence (not compulsory).

Summary Judgment: Summary procedure to obtain judgment without trial.

Before the trial

- Pre-Trial Conference(s) to manage the process of the case
- Interlocutory Applications, e.g. application for particulars, security for costs, striking out, etc.
- Summons for Directions to prepare for trial
- And finally, Setting Down the case for trial

The trial and judgement

The trial process:

1. opening statements
2. examination, cross-examination and re-examination (if any) of witnesses
3. closing submissions

Judgment may be given orally or in writing, after the closing submissions or at a later date.

Where the issues of liability and damages are bifurcated, there will first be a decision on liability. After that, if required, there will be a separate process for the assessment of the amount of damages payable. Otherwise, the judgment decides the matter both on liability and amount together.

After judgment has been obtained

APPEALS

At least one right of appeal. Leave of court may be required for further appeals.

Appeal to be filed within set period after judgment issued.

Appeal only on issues of law, obvious errors of fact, breaches of natural justice.

ENFORCEMENT OF JUDGMENT

If the party against whom judgment is obtained (i.e. judgment debtor) refuses to comply with it, apply to court to enforce the judgment (i.e. by Writ of Seizure and Sale, Garnishee, Bankruptcy or Winding-up). Where information is lacking a judgment creditor may also apply for an Examination of defendant debtor.

Glossary

Writ of Seizure and Sale: Court order authorising court bailiff to seize and sell property belonging to judgment debtor in satisfaction of judgment debt owed to judgment creditor.

Garnishee Order: Court order for a third party indebted to the judgment debtor to pay such sum (up to the full amount of the judgment debt and costs) to the judgment creditor instead.

Bankruptcy: Insolvency proceedings against individuals.

Issues of Liability: The part of a court case in which the court decides on the rights and wrongs and, if necessary, apportions blame.

Issues of Quantum: The part of a case in which a court decides how much to award in damages after the issues of liability have been decided.

Winding-up: Insolvency proceedings against companies.

Examination of Judgment Debtor: Process in which judgment debtor is compelled to furnish information regarding his/her assets to the court/judgment creditor.

GIVING EVIDENCE AT A CIVIL TRIAL

What a witness does

As a witness giving evidence in Court, your duty is to answer questions put to you by lawyers or the Judge truthfully. You should not alter your evidence to benefit anyone or try to influence the evidence of any other witness.

What to wear

You are expected to dress neatly and decently. If you want more advice on what to wear, ask the lawyer who requested you to give evidence as a witness.

SUBPOENA

What a subpoena is

A subpoena is an order that a person attend Court on a specified date and time to give evidence as a witness. Sometimes, a subpoena requires the person to produce documents and if so, the subpoena will state the documents which you are required to produce.

What to do when you receive a subpoena

Unless the subpoena is set aside by the Court, it is compulsory for you to attend Court on the stipulated day and every other day of the hearing until the case is completed. If you fail to attend, you will be guilty of contempt of Court and may be fined or imprisoned.

You may contact the firm of solicitors that served the subpoena on you and speak to the lawyer to discuss the case. Find out from him/her the type of questions that you will be asked and the location of the Court hearing the case. If necessary, arrange to meet the lawyer to discuss the case.

You may be asked to make a sworn statement of the evidence that you are to give in Court.

If you have to apply for leave and have difficulties, the lawyer may be able to give you a letter to assist you in obtaining leave. If the hearing in Court is for more than one day, find out from the lawyer approximately when you are required to attend Court so that your time may be saved.

Trials in Court are conducted in English. If you require an interpreter, inform the lawyer so that he/she can ensure that an interpreter is made available on the day of the hearing.

Evidence-in-chief

A witness's evidence-in-chief in a civil case is usually given in a written sworn statement, i.e. the affidavit of evidence-in-chief or (referred to as "AEIC").

In Court

Usually, witnesses wait outside the courtroom or in a special waiting room. Prior to giving evidence, you should not discuss the case with anyone who has witnessed the ongoing proceedings (including other witnesses who have already given evidence). When it is your turn to give evidence, the lawyer or a court clerk will call your name. You will be shown where to stand or sit.

In the witness box

When you enter the witness box, a court official will ask you to "tell the truth, the whole truth and nothing but the truth" (if you are a Christian, you will be asked to swear on the Bible).

You should address the Judge as "Your Honour".

Giving evidence can be a slow and tiring process. What you say may have to be written down as you say it. Your answers are to be addressed to the Judge. The Judge will want to make notes. You can help by speaking slowly, clearly, and ensuring that the Judge is able to record evidence.

There are three stages in the giving of evidence from the witness box:

- The first stage is called "examination-in-chief". The lawyer who asked you to come to Court will ask you for your full name, address and occupation so that everyone in the Court knows who you are. Then he will question you. If you have already given a sworn statement, i.e. an AEIC, you will be asked to confirm its contents.
- The second stage is called the "cross-examination". Lawyers representing other parties of the case may then ask you questions. The questions may relate to the matters contained in your AEIC. They may also refer you to various documents and ask you questions about these documents. When the lawyer says "I put it to you that ...", he is putting his/her case to you. He/she is merely stating his/her client's version of the facts. Do not get upset by this. If you disagree, say so.
- The final stage in giving evidence is called "re-examination". The lawyer who asked you questions in the examination-in-chief may question you some more to clarify matters arising from the cross-examination.

At any time during the proceedings, the Judge may also question you.

When you are giving evidence

Keep calm. Speak slowly. This will help you to say exactly what you mean. Although the lawyers are asking the questions, you should direct your answers to the Judge.

If you do not know, say so. You can use “I am not sure”, “I do not know”, or “I cannot remember” – depending on the situation. Do not guess.

Do not let any question or person irritate you or make you angry. He may get you to say something he wants you to say. Just tell the truth. Do not argue. Do not make jokes.

Try to answer questions simply. If you have not heard the question clearly, ask for it to be repeated. If you do not understand the question, ask for an explanation. If you wish to explain your answer in detail, ask the Judge for permission to do so.

If you need time to read a document before answering a question, ask the Judge for more time.

Tell the truth. It is your duty to tell the truth. If you lie in Court, you will be charged for telling lies in Court (“perjury”) and be fined or imprisoned.

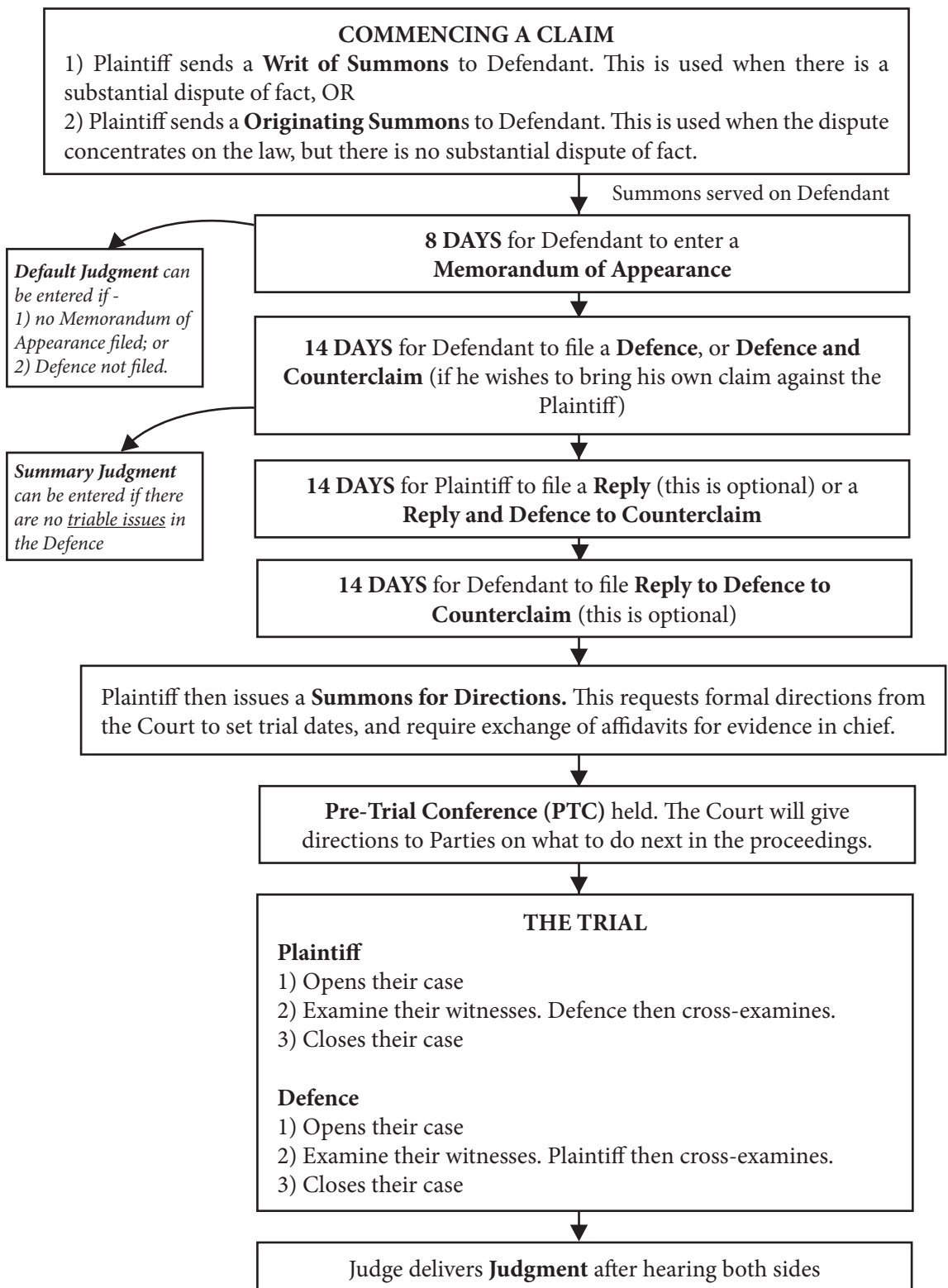
After giving evidence

When you have completed giving evidence, you may leave the witness stand with the permission of the Judge. However, the Judge may order that you be recalled as a witness, if necessary. Do not communicate with other witnesses after giving evidence.

It may be inconvenient for you to give evidence in Court. You may need to take time off from work or get someone to look after the children. But society considers your duty as a witness so important that it has given the Courts power to require you to attend Court.

Discuss your difficulties with the lawyer who wants you to give evidence or with your own lawyer. Ask him/her about expenses.

You will be allowed to claim a reasonable sum to recover your expenses of going to, remaining at, and returning from Court. Remember, by coming forward as a witness, you are assisting the Court and doing your duty as a responsible member of society.



4 Contractual and Tortious Claims

The criminal laws of Singapore prohibit certain types of behaviour that is considered undesirable. The rest of our interactions with the persons around us are governed by our civil obligations.

Contract law governs our conduct with persons with whom we have expressly entered into agreements. Apart from any contractual obligations that we have entered into, we also owe certain civil (not criminal) duties to the people around us (such as to drive carefully, not to cause a nuisance to our neighbours etc.). The breach of our non-contractual civil obligations is called a 'tort'. Breaches of contractual and non-contractual obligations may be pursued in court, and you should consult a lawyer if you believe someone has breached obligations owed to you.

This section provides an overview of our contractual and non-contractual civil obligations.

CONTRACT

A contract is an agreement between two or more parties with the intention of creating legal obligations between them. In order to be enforceable, a contract must, among other things:

- a. contain an exchange of valuable benefits by the parties: e.g. the payment of money in return for services or giving a guarantee to help a third party secure a loan;
- b. be between persons who are legally competent: e.g. persons who are not of sound mind may not be bound by the contracts they have entered into and there are limits on enforcing contracts made by minors;
- c. be entered into voluntarily: e.g. contracts that either party is forced into entering may be unenforceable; and
- d. be for a legal purpose: for example contracts to fulfill an illegal purpose (e.g. tax evasion) are generally not enforceable.

In the event of a dispute, written contracts are often easier to prove than oral contracts. There is however no requirement that contracts have to be made in writing (or evidenced in writing), except where the contract relates to:

- a. any special promise by any executor or administrator to personally pay damages in relation to his role as executor or administrator;
- b. any special promise to answer for the debt, default or miscarriage of another person (e.g. a guarantee);
- c. any agreement where the valuable consideration offered by one party is a promise to marry;
- d. any contract for a transaction in land or real estate; or
- e. any agreement that is not to be performed within the space of one year from the date of contract.

Where you have a contract in writing and it has been signed, you and the other party (or parties) will generally be held to the terms of the bargain that you have reached. Nonetheless, there are situations in which a court may imply terms into the contract if the court determines that a term is so necessary to the contractual relationship that you and the other party/parties must have, at the time the contract was entered into, intended its inclusion.

Often, standard terms are included by one party to the contract as part of the contractual terms. These standard terms will generally be binding on you and the other party/parties to the contract and you should read them carefully before signing the contract.

Contracts generally cease when:

- a. it is fully performed, e.g. the completion of the sale of a house;
- b. the parties agree to stop performance, e.g. resigning from employment;
- c. when it becomes impossible to continue performance, e.g. if the contract is frustrated;
- d. one of the parties breaches a significant term of the contract and the other party chooses to terminate the contract. In such a situation, damages may be payable by the breaching party. In other circumstances, e.g. in the context of the sale of property, a court may order the breaching party to complete performance of the contract.

TORTS

When a person commits a tort (that is, a breach of a non-contractual civil obligation), he/she may be liable in damages to the victim. So, if a person drove carelessly and hit your car, that person would be liable to compensate you as the owner of the other car for the damage caused.

There is therefore a close relationship between torts and the criminal law. The same act can create criminal liability as well as civil tortious liability.

In order to recover damages, you as the victim of a tort must show that the type of damage is legally recognisable. However, this is not limited to physical injuries or damage to property and can include reputational damage (e.g. defamation), economic damage (e.g. unlawful interference with contract) or emotional damage.

In general, liability for tort may be found where:

- a. Person A acts negligently in a situation where he/she owes Person B a duty of care. The situations in which such duties are owed are usually limited to situations in which a special relationship between them exist;
- b. Person A intentionally and deliberately causes damage to Person B, such as defamation, trespassing on land, false imprisonment, or conspiracy to injure (requires more than one person to commit the tort);
- c. Person A breaches a statutory obligation and, in doing so, causes damage to Person B. The scope of liability in such situations is often limited.

5 Defamation

When you write or say something that causes someone “harm”, your words can be considered defamatory by the court, especially when those words have been read or heard by many right-thinking people. Causing harm (defamation) can be defined as causing the person to lose his credibility or reputation; causing the person to be shunned or avoided; or simply exposing the person to potential ridicule, contempt or hatred. Whether your words are explicit or implied, or whether you merely repeated what someone else has written, you can still be liable for defamation. Liability is not based on your intention to defame someone; the law is more concerned with the effect of your statements. What this means is that even if you could prove that you had no intention to defame anyone, you still would not be allowed off the hook because the court would deem that the harm or damage has been done. Defamation encompasses ‘libel’ (the term generally used for written words) and ‘slander’ (for spoken words).

The laws governing defamation in Singapore are the Penal Code and the Defamation Act.

DEFENSES TO A CHARGE OF DEFAMATION

Under Article 499 of the Penal Code, the following exceptions may not constitute defamation:

- a. It is not defamation to impute anything which is true concerning any person, if it is for the public good that the imputation should be made or published.
- b. It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

- c. It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.
- d. It is not defamation to publish a substantially true report of the proceedings of a court of justice, or of Parliament, or of the result of any such proceedings.
- e. It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a court of justice, or respecting the conduct of any person as a party, a witness or an agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.
- f. It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.
- g. It is not defamation in a person having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.
- h. It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of the accusation.
- i. It is not defamation to make an imputation on the character of another, provided that the imputation is made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.
- j. It is not defamation to convey a caution, in good faith, to one person against another, provided that the caution is intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

ONLINE DEFAMATION

It is possible to commit defamation in the online world through postings on any website, blogs and social networking sites like Facebook. Even tweets on Twitter and to an extent, SMSes and emails, may be subject to a defamation suit where one may be liable to pay damages. There is a range of defences available like justification, fair comment and qualified privilege, but one should generally be careful when making allegations of misconduct. It is always good practice to verify the source or truth of one's information.

CRIMINAL DEFAMATION

There is also the offence of criminal defamation under section 499 of the Penal Code. If you write or say something with the intention to harm, or have reason to believe that your words will cause harm to the reputation of the person, you have committed criminal defamation. There are exceptions however: it is not defamation if you are expressing an honest opinion about how the person is conducting his public functions, or about his character in relation to how he is carrying out his public functions. The penalty for criminal defamation is imprisonment for a term which may extend to 2 years, or with a fine.

BREACH OF CONFIDENCE

If you publish or upload photographs taken of another person in a private setting without authorisation, you may expose yourself to a lawsuit for breach of confidence, even though the nature of your acts of publishing is not defamatory as defined above. If, as the photographer, you know (or ought to know) that the person being photographed expects that the photos will be kept private, the court may construe that there is a relationship of confidence between the two parties. So, in publishing such photos, you may be deemed to have committed a breach of confidence. In the online world, where it is common for friends to be uploading and geo-tagging photos, it is always good practice and a courtesy to inform your friends, if they don't already know.



Harassment

PROTECTION FROM HARASSMENT ACT 2014

The Protection from Harassment Act (“POHA”), which came into force in November 2014, was introduced to strengthen harassment laws in Singapore. POHA provides for both civil remedies and criminal sanctions to better protect victims of harassment.

What kind of acts constitute harassment under POHA?

POHA protects people from acts that were carried out with intent to cause harassment, alarm or distress. Examples of such acts include:-

- Behaving in a threatening, abusive or insulting manner (for example, spray-painting insulting words on your door);
- Making of threatening, abusive or insulting words (including electronic communication like emails, blogs and FaceBook posts);
- Behaving in a manner that causes a person to fear that violence will be inflicted to you (for example, threatening you that he/she will beat you up and telling you to watch out);
- Unlawful stalking (for example, following you around, and conducting unlawful surveillance on you)

Unlawful Stalking

POHA is also the first legislation that protects people from unlawful stalking. POHA covers all unlawful stalking acts committed in Singapore and overseas.

Examples of unlawful stalking acts covered by the Act:

- Persistent communication (with telephone calls, SMSes, emails, letters) despite you telling him/her not to
- Loitering and watching you near your office or residence; and
- Following you around (for example, from your residence to work)

What can I do if I am a victim?

- You may sue the perpetrator who have harassed you. The court may order the perpetrator to pay you a sum of money as compensation.
- You may make a complaint against the perpetrator. The court may order an investigation and the perpetrator may be penalised with a fine or imprisonment. To make a complaint, go to the Complaints Counter of the Crime Registry at Level 1 of the State Courts during office hours.
- You may apply for a Protection Order against the perpetrator. The Protection Order requires the perpetrator to stop the acts of harassment/stalking. The Court can also issue an Expedited Protection Order where immediate protection against the perpetrator is required. To apply for a Protection Order, go to the Harassment Counter of the Crime Registry at Level 1 of the State Courts during office hours. Please bring along your NRIC and evidence of the harassment/stalking.

For more information on the Protection Order, please visit the State Courts website at:
[https://www.statecourts.gov.sg/Pages/Protection-from-Harassment-\(POHA\).aspx](https://www.statecourts.gov.sg/Pages/Protection-from-Harassment-(POHA).aspx)

7 Personal Injury

COMMON TYPES OF PERSONAL INJURY CLAIMS

Personal injuries may be suffered in a variety of situations. Common situations where personal injury claims arise are road traffic accidents, industrial accidents, medical negligence, assault cases, slip and fall cases, and defective product liability cases.

CAUSE OF ACTION

In whatever situation that gives rise to a claim for personal injury, you will first have to ascertain if you are able to recover compensation from the party responsible. That you have suffered injury does not necessarily mean that you will be able to recover compensation. You will need to consult a lawyer to ascertain if you have a cause of action against the party alleged to be responsible.

A party is legally responsible for your loss if the party:

- a. owes a duty to you;
- b. had failed in that duty; and
- c. by either an act or failure to do something (omission), has caused you to suffer harm and loss.

ESTABLISHING LIABILITY

In a medical negligence case, for example, you will need to show that the medical professional had failed to provide medical services in accordance with the standard applied by a responsible body of medical persons skilled in that field. In a slip and fall case, you might need to show that the person responsible had control over the premises and he/she had failed to warn you of an unusual danger that he/she ought to have known. Your lawyer will advise you on the ingredients you need to prove in Court to establish legal liability of the party responsible. Each case will turn on its facts, and therefore it is important that you ask your lawyer to evaluate the chance of success in establishing liability.

You should also explore with your lawyer if there is a prospect of your claim being defeated. In a road traffic accident case, the Defendant may allege that you have contributed to your injury if you failed to take proper safety precautions. In an assault case, the Defendant may claim that you had provoked him or he had acted in self-defence.

DAMAGES

If you can establish that your injury was caused by the wrongdoing of the other party, you will be able to recover compensation for your personal injury and consequential losses.

The large majority of claims for personal injury involve claims for physical bodily injury. While compensation is most often granted for physical suffering, personal injury is not confined to physical bodily injury. In the appropriate case, you may be compensated for mental suffering if such mental suffering constitutes a recognisable psychiatric illness such as post-traumatic stress disorder. Personal injury also encompasses diseases, where, for example, in industrial accident claims the employee may recover compensation for diseases contracted at the work place.

You should seek advice from your lawyer on the losses and claims that you can pursue to recover in Court. Your lawyer will be able to draw from precedent cases to provide an estimate of the amount of award for “pain and suffering”. “Pain and suffering” is the amount of damages to compensate you for the type of personal injury suffered by you. The amount depends on the severity of the personal injury and the lingering residual disabilities that you might be plagued with. Your lawyer will be able to advise you on the likely range of awards for specific categories or types of injuries.

As well as an award for “pain and suffering”, the Court will order the party responsible to bear the consequential losses from the injury, be it loss of wages, medical expenses and transport expenses to seek medical treatment. In appropriate cases where the ability to work is adversely affected, the Court may award compensation for loss of earning capacity/future earnings. If there is long-term medical care required, the Court will make an award for cost of future medical treatment. The amount and extent of the losses that you can recover in Court may be limited by law. Generally, the Court will only award losses that are foreseeable. Therefore, where losses are not foreseeable and are considered too remote, these claims will fail.

LIMITATION PERIOD

The law also prescribes a limited time period of three years for personal injury claims to be lodged in Court. The three-year period is calculated from the date of the incident giving rise to injury. There are exceptions to this. One exception is when the injury is latent, and the symptoms of injury have yet to appear or manifest. In such cases, the limitation period of three years starts from the earliest time that the claimant knew or ought to know that he/she has a claim for personal injuries.

The limitation period is extended for claimants who are under disability and minors. If the claimant is suffering from mental incapacity (e.g. coma), the three-year period begins from the time that the claimant is no longer under disability. In the case of a minor, the limitation period expires three years after the claimant turns 21. For a person who is in a coma, the three-year period begins from the time the claimant regains consciousness or from date of death in the event the claimant succumbs to death without recovering from the coma.

In either class of victims under disability, their claims may be brought to Court through litigation representatives. In the case of a minor, typically the claims are advanced by a legal guardian, who is usually either parent or the next-of-kin. For a claimant suffering from mental incapacity, the next-of-kin will have to apply to Court pursuant to the Mental Capacity Act for an order to allow the claim for compensation to be brought by that person on the victim's behalf.



Traffic Accidents

As of 1 June 2008, the Motor Claims Framework (“MCF”), has been introduced by the General Insurance Association of Singapore (“GIA”) and is intended to be a policy condition which motor insurers will enforce. The MCF sets out procedures for motorists to follow when their vehicles meet with an accident.

Under the MCF, all accidents, regardless of how minor, and even if the damage is not visible, must be reported to your insurer (GIA report) within 24 hours or by the next working day. This is regardless of any intention to make a claim and any private settlement.

WHAT TO DO AT THE ACCIDENT SITE

- a. Take down and exchange the: (a) registration numbers and name of insurance companies of all vehicles involved in the accident; and (b) names, NRIC/FIN Numbers, addresses and telephone numbers of the drivers, passengers, injured pedestrians and witnesses.
- b. If it is a serious accident, e.g. where someone is injured or has died, call the police.
- c. If possible take photographs of the: (a) scene of the accident, the vehicles involved and the surrounding areas; and (b) damage to your own vehicle and all other vehicles capturing the licence plate number.
- d. Call your insurer’s hotline for a tow truck in the event you need one to move your vehicle after an accident. You should not engage any unauthorised tow truck operators or repair workshops.

WHAT TO DO IMMEDIATELY AFTER THE ACCIDENT

- a. Lodge a GIA report and a police report as soon as possible. If you are hospitalised as a result of the accident, make your report as soon as you are discharged from hospital. The report must be made in English. The police report is important because it is the official written record of the accident. Your insurance company, the police and lawyers will refer to it if you make any claim for compensation. Your insurer will have the right to reject your claim or to claim from you any sums paid by them for a third party claim made against you or your driver in the event that they are not notified. This may result in a loss of your No Claim Discount upon renewal of your policy.
- b. Arrange for your damaged vehicle to be removed to the approved reporting centre for a survey to be conducted and for repairs, within 24 hours of the accident or by the next working day. If you wish to claim against the insurer of the other vehicle, you should give the other vehicle's insurer an opportunity to inspect your vehicle within a reasonable time (e.g. 48 hours).
- c. If you have been injured, see a doctor immediately and get a medical report.

HOW DO I MAKE A CLAIM?

- a. Claim against your own insurance company: Please take note of any "excess" clause in your insurance policy.
Your claim must exceed the excess amount, and your insurance company will only pay the difference between your claim and the excess amount. For example, if the excess amount is \$700 and your claim is \$500 the insurers will not pay out at all. However, if your claim is \$1,000, your insurers will only pay \$300.
- b. Claim against another person: It is advisable to see a lawyer. Please remember that lawyers can represent you only if you authorise them to do so, usually by signing a warrant to act. Please be informed that vehicle workshops are not authorised to make claims on your behalf.
- c. Claiming in hit-and-run cases: If you suffer personal injuries as a result of an accident and do not know the particulars of the other party that caused the accident, you may file a claim with the Motor Insurers' Bureau (MIB).
- d. Police Summons: If you receive a Police Summons informing you that you are facing a charge for an offence related to the accident, you should inform your insurer and seek advice from a lawyer immediately before taking any course of action. Do note that if you plead guilty, accept a warning or pay the composition fine, it can be used against you at the civil proceedings.

WHAT TO DO IF A CLAIM IS MADE AGAINST ME?

- a. If you receive a Letter of Demand from a third party driver/owner or his lawyers, you should inform your insurer **immediately**. The Letter of Demand will contain a paragraph telling you to forward the claim together with the supporting documents to your insurer.
- b. If a Writ of Summons is served on you personally, you should also immediately inform your insurer so that they can handle the matter for you themselves or appoint lawyers on your behalf to do so. It is important to remember that within eight days of the Writ of Summons being served on you, a Memorandum of Appearance (a Court document) must be filed in Court, failing which either a Final Judgment or Interlocutory Judgment can be entered against you.
- c. It is important to be mindful of these matters to avoid incurring or escalating costs for yourself.
- d. If your insurer repudiates liability under the Policy for whatever reason, you may want to engage your own lawyer to handle your case. You will bear the legal costs in such a case.

TIME LIMITATIONS FOR CLAIMS

- Non-injury motor claims: The law allows you six years to claim for property damage, that is, damage to the vehicle.
- Personal injury cases: The time limitation for personal injury cases is much shorter. An injured person has only three years from the date of the accident to make his claim. Thereafter the claim will be time-barred.

KEEPING RECORDS

For purposes of pursuing any claim and/or to defend any potential claims, you should keep a proper record of the following:

- Particulars in the paragraph of “What to do at the accident site”;
- Copies of police reports and your GIA reports;
- Medical and specialist reports;
- A list of expenses incurred, e.g. transport, medical fees and rental of car;
- Documents supporting your claim such as photographs, medical certificates, repair bills, receipts and so forth; and
- Names and particulars of witnesses.

WHAT CAN A PERSON CLAIM?

General damages: This compensates you for pain and suffering as a result of injuries caused to your person (“personal injuries”). There are guidelines issued by the Court depending on the kind and severity of the personal injuries.

Special damages: This compensates you for expenses incurred, e.g. costs of medical fees, transport, repairs to vehicle, hiring another vehicle while your vehicle is being repaired, loss of salary and CPF savings contributions before the trial. These must be specifically proved and therefore you must keep the original receipts for these expenses.

Bereavement: If it is a fatal accident, the Civil Law Act [Cap 43] entitles those listed under section 21(2) to claim for bereavement. This includes children, parents of the deceased and so forth. It is fixed at \$15,000. It is not a claim of \$15,000 per claimant. This is to be divided among the number of claimants notwithstanding how many there are.

FORUMS TO COMMENCE LEGAL ACTIONS

Any claim for non-injury motor damages (i.e. only damage to the vehicle) **below \$3,000** will proceed to FIDReC. There are no lawyers involved in this scheme. It is an avenue to resolve disputes directly between consumers and the insurance companies, which are not their own.

For claims **less than \$250,000**, your action shall commence at the State Courts. Any amount above that is within the jurisdiction of the High Court.

At the State Courts, the matter will proceed for mediation at the Primary Dispute Resolution Centre (“PDRC”). It is presided by a Judge in a mediation chamber who will consider the various accident reports and any other relevant evidence to determine the liability of the parties. Sometimes the Court will direct parties to appear in person. The mediation Judge will then give an indication of the liability of the parties, who do have the prerogative of accepting or rejecting the Court’s indication.

In the event both parties accept the indication, they can proceed to settle or negotiate the quantum. On the other hand, if you do not accept the indication of the Court, you must be prepared to proceed to trial. If this is against the advice of your insurers, you will have to bear the costs yourself if you lose the case.

If the issue of liability can be settled between parties, then parties will proceed to resolve quantum (compensation sum) either at a mediation session for quantum called the “ADCR” where an indication on quantum will be given by the presiding mediation Judge or if not settled, proceed for an Assessment of Damages hearing (“AD”). The AD is like a trial but the Court will only decide on quantum.

For matters commenced in the High Court, there is no Court mediation process as set out above. However, it is common for parties to negotiate an out-of-court settlement with the assistance of their respective lawyers.

You should bear in mind that costs continue to escalate the further one proceeds. Therefore, you must consider the practicalities and the cost consequences of any case.

DETERMINATION AT THE TRIAL/ ASSESSMENT OF DAMAGES HEARING

For liability, the Court can decide that one party is fully responsible for the accident thereby being “100% liable”. The Court can also decide that the person making the claim (“Plaintiff”) is partly responsible for the accident (i.e. contributorily negligent).

The Court will assess the degree of responsibility in percentage terms and divide the claim accordingly between the parties, e.g. if the Plaintiff is found to be 20% responsible for a \$10,000 claim, then he will only be awarded the sum of \$8,000 as damages.



Tenancy Obligations

WHAT IS A LEASE?

A lease is an interest in the land or property. The owner of the land or property can create a lease or tenancy on the land or property by establishing a legal binding relationship between parties. It is separate and different from a licence agreement.

You can have oral or written tenancy agreements created by parties. Some tenancy agreements are formed from the conduct of the parties.

PARTIES

The owner of the land or property becomes the Landlord. The Landlord will enter into a legal agreement with the party, who will become the Tenant/Lessee, who wants to lease the land or property. If the lease allows or does not prohibit, a Tenant may create a sub-tenancy from an existing lease. However, it is important to note that in the event the tenancy agreement expressly prohibits the Tenant from creating a sublease, the Landlord will have the right to terminate the tenancy for breach of the tenancy agreement.

TENANCY OR LEASE AGREEMENTS

Terms & Conditions

The agreement between the Landlord and Tenant will set out the terms and conditions of the lease/tenancy. There are certain basic terms that should be set out in a lease.

Demise Property

After determining the parties to the lease, the demised land or property must be identified clearly. Parties can create a lease for a residential property or commercial property.

For example a lease would state that: “The Landlord hereby lets and the Tenant hereby takes the property known as No. 786, Fidelio Road, #01-03, Singapore 048630.”

Duration

Parties should also state the duration of the lease. This is up to the parties whether they wish to lease the demised property in terms of years or months or weeks. The commencement and expiry date of the lease should be made clear.

An example is: “The Landlord will lease the demised property to the Tenant for a term of two (2) years, commencing from 17 May 2013 and expiring on 16 May 2015.”

Rent

There must be an agreement between the Landlord and the Tenant as the amount of rent that is payable and when it is payable. Unless expressly provided, the payment of the rent, be it weekly or monthly will determine the type of tenancy, such as whether this is a weekly or monthly tenancy. A lease for a specified period, say for two years, is a fixed term tenancy.

In some agreements, especially for commercial leases, even the mode of payment is stated in the agreement. In fact in most commercial agreements there is payment of service charge coupled with the payment of rent every month.

So a tenancy agreement may be written as follows: “The rent of Three Thousand Two hundred Dollars (\$3,200.00) is payable by the Tenant to the Landlord in advance without demand and without deductions on the 1st day of each calendar month. The first of such payment is payable on the 1st day of June 2013.”

Rental Deposit

Almost all tenancy agreements, whether for residential or commercial properties, require payment of a deposit. The purpose of the Landlord holding on to a deposit is for the Landlord’s security against any breaches which the Tenant may commit. This may be breach for payment of rental or for other forms of breaches such as damage to the demised property.

The tenancy agreement should also provide for the return of the deposit at the determination of the lease as to when and the amount to be returned, specifying whether the Landlord should be entitled to make deductions or not from the said amount.

Legal Costs

In most written tenancy agreements, there is a provision for the Landlord to claim all legal costs and expenses incurred by the Landlord from the Tenant if the Landlord has to take action against the tenant for any breach of the tenancy agreement, whether for non payment of rent or breaches of other covenants in the tenancy agreement.

LANDLORD'S AND TENANT'S OBLIGATIONS

- a. Apart from the basic terms which have been listed out above, these terms are also normally found in a lease agreement. For example a lease may make it clear that the Tenant has to pay the rent on time failing which, the possible consequences. Thus, you may find that in some leases it will say that in the event the Tenant does not pay the rent by a certain date after it is due, the Landlord is given the right to re-enter the demised property and take over possession. This will usually end the tenancy.
It is common to see the inclusion of a clause for late payment interest. This is valid. Thus, if payment is tendered late, a Tenant will be obliged to pay interest on the rental sum at a rate stipulated in the tenancy agreement.
- b. Hence, it is important for the Tenant to be aware of all the obligations imposed on the Tenant by the lease agreement. The obligations do not end with the rental payments. There is also a duty to keep the demised property in a fairly good state. Tenancy agreements would normally also state which party, that is, either the Landlord or the Tenant, is obliged to maintain different parts of the demised property (such as the maintenance of the insurance or the structure of the demised premises) or different items on the demised property (such as air-conditioning or other internal fittings).
- c. Equally important is to be aware of the responsibility of the Tenant in respect of the determination and surrender of the lease. Again it is common to find clauses in the tenancy agreement to provide that the demised property has to return to the Landlord in "vacant possession". This means that the Tenant must return the demised property to the Landlord in the state the said property was let to the Tenant with fair wear and tear excepted. Thus, if the Tenant has fixtures installed, these items must be removed before possession is returned to the Landlord and the demised property restored. All items belonging to the Tenant must be removed by the stipulated date of surrender.

In cases where the Tenant fails to return vacant possession to the Landlord, the latter may take legal action against the Tenant for damages. For items of the Tenant not cleared from the demised premises, again the Landlord may make claims against the Tenant for continued occupation of the demised premises. Some agreements will give the Landlord the right to sell off the Tenant's goods which are not cleared off from the demised premises at the end of the tenancy. The Tenant will be made liable for the costs incurred by the Landlord in such cases.

- d. By virtue of the Civil Law Act, any Tenant found to be staying on at the demised premises beyond the duration of the tenancy shall be liable to the Landlord for payment of double the monthly rent for holding over. This is applicable if no express or implied agreement exists between the parties to extend the lease or special permission granted by the Landlord for the Tenant to stay on.
- e. Note that for any loss that a Tenant may cause flowing out of the tenancy agreement, the Landlord has a duty to mitigate its loss.

QUIET ENJOYMENT

In return for the Tenant observing its obligations under the tenancy agreement, the Landlord is legally obliged to allow the Tenant quiet enjoyment of the lease of the demised property.

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Consumer Protection

The Consumer Protection (Fair Trading) Act (the “CPFTA”) and its related regulations give you enhanced consumer rights in consumer transactions. You are a consumer under the CPFTA if you are (i) an individual, who (ii) has a legal obligation to pay a supplier for goods or services that have been supplied to you or another individual.

A consumer transaction is the supply of goods or services by a supplier to a consumer, but does not include:

- a. buying any interest in immovable property (except any lease of residential property granted in consideration of rent or any time share contract); or
- b. service provided under a contract of employment.

UNFAIR PRACTICE

If you have been treated unfairly as a consumer, you should seek to resolve the dispute with the supplier. You may consider using mediation services like the Consumers Association of Singapore (“CASE”) and other industry-specific mediation facilities such as Financial Industry Disputes Resolution Centre Ltd (“FIDReC”) are available. If the dispute is not settled, you may consider filing a claim in Court or with the Small Claims Tribunal (“SCT”). Your claim can be based on the CPFTA or on general law of contract or tort.

Your claim can only be based on the CPFTA if it is not more than \$30,000 and that you have made the claim within the limitation period of 2 years. Under CPFTA, CASE can apply to Court for a declaration and injunction against the errant supplier. In order to do so, CASE must:

- a. obtain endorsement of the Injunction Proposals Review Panel that public interest is served if an injunction is granted; and
- b. invite the errant supplier to enter into a Voluntary Compliance Agreement (“VCA”) with CASE not to engage in unfair practices.

RIGHT TO CANCEL CONTRACTS MADE UNDER HIGH-PRESSURE

If you are a consumer in a timeshare or direct sales contract, the Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations 2009 allows you to cancel the contract within a five working days cooling off period. This cooling off period is targeted at situations where the consumer is subject to high-pressure sale tactics.

Direct sales contracts are consumer transactions which are entered into in two circumstances:

- a. during an unsolicited visit by a supplier; or
- b. during a visit by a supplier at the request of the consumer, during which the supplier provides goods or services which were not requested by the consumer, and which the consumer would not have expected to be part of the supplier's business.

Timeshare contracts are contracts which give an individual time share rights that are exercisable during a period of not less than three years.

During the cooling period, you should review your purchasing decision. If you decide to cancel the contract, you have to give the trader a notice of cancellation.

LEMON LAW: NON-CONFORMING GOODS

The CPFTA was amended in March 2012 to include enhanced protections for consumers. These enhanced protections have been referred to as the “Lemon Law” in the press and apply to contracts made on or after 1 September 2012.

If you are a consumer and you have purchased goods in Singapore which do not conform to the applicable contract, you have the right to require the seller to repair or replace the goods within a reasonable time and without causing significant inconvenience to you.

The types of goods covered under the Lemon Laws include:

- a. physical goods including goods purchased online;
- b. second-hand goods and vehicles;
- c. display sets, discounted items with minor defects or goods indicated as “non-refundable” or “not exchangeable”; and
- d. goods purchased under hire-purchase or conditional sale agreements (excluding rented or leased goods).

The following are not covered under the Lemon Law:

- a. services
- b. rental/leased goods
- c. real estate property
- d. consumer to consumer transactions
- e. business to business transactions

If it is disproportionately costly or impossible to repair or replace the goods, you can either (i) keep the goods at a reduced price or (ii) return the goods and receive a refund. This includes goods which contain latent defects and do not conform to the applicable contract within six months from the date on which the goods were delivered to you. Within this six-month period, it is for the seller to show that the defect did not exist at the time of delivery. Beyond this six-month period, you will need to show that the defect existed at the time of delivery to make a claim under the Lemon Law.

You will not be able to get a remedy if you:

- a. caused the defect or damage (including any defect or damage by improper care or storage);
- b. misused it causing the fault;
- c. repaired the good without authorisation;
- d. knew about the defect before buying the good; or
- e. changed your mind and do not want the product, or found that it could not perform a special function which was not part of the contract.

If your claim is fraudulent, you may be sued and you may face criminal charges.

You may refer to www.case.org.sg and www.mti.gov.sg for more information, including case studies and responses to frequently asked questions.

Consumers Association of Singapore (“CASE”)

Consumers may approach CASE to seek guidance on whether their claim is reasonable and can be supported by the law.

Consumers Association of Singapore
170 Ghim Moh Road, #05-01
Ulu Pandan Community Building
Singapore 279621
Tel: 6100 0315
Fax: 6467 9055
www.case.org.sg

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Construction and Renovation Claims

Our homes and properties are big-ticket items. To spruce them up to a desired condition for living or work can be a substantial investment, both in terms of time and money. Construction and renovation costs are not insignificant and with increased levies for foreign workers and rising costs of materials, such costs are likely to rise further. Late completion can mean losses or additional expenses, e.g. loss of profit because business cannot commence or rent for temporary accommodation.

Hence, it is important to ensure fair and adequate protection for you and the employer. Here are some areas to look out for before, during and after the construction process:

- a. Pick a reputable contractor:
 - i. The Consumer Association of Singapore (“CASE”) accredits renovation contractors under their CaseTrust scheme and they can be found at the website of CASE, <http://www.case.org.sg>.
 - ii. Another organisation, the Renovation and Decoration Advisory Centre (“RADAC”) also accredits renovation contractors and more information can be found at RADAC’s website, <http://www.radac.org.sg>.
 - iii. Lastly, ask your friends for recommendations. If your friends have had a pleasant experience with their contractor, they will probably recommend that contractor to you.
 - iv. However, this is not enough because you need a contract to legally enforce your rights and this is dealt with below.
- b. For Housing and Development Board (“HDB”) flats, only registered contractors can renovate HDB flats and they can be found at HDB’s website, <http://www.hdb.gov.sg/fi10/fi10324p.nsf/w/HomeRenoContractors>.

- c. Shop around. Request for quotations and compare them. Always compare like with like so list down what you want to do and provide the same list to a few contractors for them to quote. Generally, there are various aspects of construction work:
- i. structural works – your floor and columns
 - ii. walls and internal ceilings
 - iii. roofing
 - iv. floor finishes – tiles, marble and/or timber strips
 - v. painting
 - vi. plumbing – toilet bowls, taps and baths
 - vii. lights and switches
 - viii. carpentry – cabinets and cupboards
 - ix. doors and door handles
 - x. furniture
- d. Ensure that you negotiate your contract. Some key points to look out for:
- i. The contract should spell out clearly and in as much detail as possible the works to be done, and provide that such works should comply with industry standards. The Building and Construction Authority (“BCA”) publishes guides on good industry practice. For more information, refer to BCA’s website, http://www.bca.gov.sg/Publications/EnhancementSeries/enhancement_series.html.
 - ii. Ensure that renovation or construction period is clear so that where there is delay due to the fault of the contractor, he/she needs to pay you liquidated damages at \$X for each day of delay. A good contractor can let you have the construction schedule for the period of construction where it states the nature of the works to be undertaken from commencement to completion.
 - iii. The contract should also provide for the situation where delay is not the fault of the contractor, e.g. bad weather or if inspections/approvals by the authorities hold up execution of the works. The contractor should apply for an extension of time to your consultant (who may be an architect or an engineer) or to you, and if approved, this will push back the completion date by the number of days so extended. Liquidated damages can then run from the revised completion date if there is delay even after this revised completion date.
 - iv. Negotiate a retention sum of X% to be released after the defects liability period, which is usually 12 months from completion.
 - v. Negotiate a performance bond. In the event of defects or non-compliance with specifications that the contractor refuses to attend to, you can call on the performance bond to pay for your costs of such rectification. However, ensure that you have quotations from other contractors to justify the amount that you are calling on. Usually, you will bear the costs of the performance bond since it is intended to protect your interest.

- vi. Specify that the contractor should attend to any defects, outstanding work or non-compliances with specifications within seven days of such notification.
- vii. It is inevitable that there will be variations to the original contract specifications. Ensure that all variations orders are in writing and they set out precisely the works to be done and the costs. The contractor should quote their costs in writing before you agree to them undertaking any variation works.
- viii. Do not make a lump sum payment for the entire contract value before commencement of work. Payment should be progressive so after the initial deposit, subsequent payments should be for work completed up to that stage. The contractor should substantiate what work has been done and you should pay only for such work done.
- ix. CASE has provided a model renovation contract which can be found at CASE's website, <http://www.case.org.sg>.
- e. Ensure that a precondition survey is undertaken before commencement of work. This will document the state of your home or workplace before renovations start.
- f. If there are defects, outstanding work or non-compliances with specifications, you should take photographs and communicate in writing such issues to the contractor. Compile a full list of such defects, outstanding work or non-compliances with specifications.
- g. The contractor should produce as-built drawings for the completed project and this should be stated in the contract.
- h. Complaints can be made to the HDB if a contractor does a sloppy job or the completed works have defects which the contractor refuses to attend to. Other avenues include complaints to CASE who can try to persuade the contractor to attend to these defects if the contractor persistently refuses to.
- i. In the event that there is no amicable resolution, you can bring a claim in the Courts or to the Small Claims Tribunal if the value of the claim is within its prescribed limits and within one year (see Part I). If the contract provides that all disputes are to be resolved by way of arbitration, you will need to commence arbitration proceedings (see Part VIII).
- j. More information for homeowners and on resolving disputes can also be found at BCA's website, <http://www.bca.gov.sg>.

It is inevitable for defects or non-compliances to occur in a construction or renovation project. The key is to ensure that the contractor is obliged to rectify them, and within a fixed number of days so that you have certainty on your rights. All of this should be contained in the contract because your claim will be based on the contract.

Once construction is completed for a major project, you would usually need to apply for a temporary occupation permit (“TOP”) before you can move in. After defects have been cleared and all checks by the authorities completed, you should then apply for the certificate of statutory completion (“CSC”). TOP and CSC are usually applied for by your consultant who may be an architect or an engineer.

Further, ensure that the contractor obtains adequate contractors’ all risk insurance to cover third party claims and work injury compensation claims.

12 Bankruptcy/ Debt Repayment Schemes

WHAT IS BANKRUPTCY?

Bankruptcy is a legal process by which you are declared by the Court to be “insolvent”, i.e. a bankrupt. An insolvent person is someone who has no financial means to satisfy any debts as and when they become due. After you are declared as a bankrupt, the Official Assignee from the Insolvency & Public Trustee’s Office (“IPTO”) will step in and manage your financial affairs.

BANKRUPTCY PROCEEDINGS

A bankruptcy application can be made by either your creditor or yourself. All bankruptcy applications must be filed with the High Court.

The following criteria must be met:

- a. you must have some connection to Singapore (either by domicile, residence, place of business, or ownership of property in Singapore);
- b. the amount of debt is at least \$10,000;
- c. the debt is for a liquidated sum (amount that can be determined/fixed) and is due immediately;
- d. the debtor is unable to pay the debt; and
- e. if the debt is incurred outside Singapore, the debt is enforceable in Singapore by way of a judgment or award.

You are presumed to be unable to pay your debt if:

- a. you have been served with a Statutory Demand for the debt and you are unable to settle the debt within 21 days;
- b. execution on a judgment debt has been levied (e.g. seizure and sale of immovable assets) and the debt remains wholly or partially unsatisfied;
- c. you leave and remain outside Singapore with the intention of avoiding and delaying the creditor's recovery of the debt; or
- d. the Official Assignee issues one of the following:
 - i. Certificate of Inapplicability of the Debt Repayment Scheme ("DRS");
 - ii. Certificate of Failure of the DRS; or
 - iii. Revocation of the Certificate of Completion of DRS.

CONSEQUENCES OF BEING DECLARED A "BANKRUPT" BY THE COURT

A bankrupt does not wear a label that distinguishes you from any other person on the street. However, once you are declared to be a bankrupt, your activities will be greatly affected by the bankruptcy. One of the first things you must do is to make full disclosure of your assets and liabilities to the Official Assignee. The Official Assignee can sell and distribute assets to repay or reduce the your debts as he/she sees fit. You may be required to set aside part of your salary towards debt repayment.

Other consequences of being a bankrupt include:

- a. you must report any and every change in financial status, e.g. salary raise, to the Official Assignee;
- b. you cannot leave Singapore without the permission of the Official Assignee;
- c. if you are an existing director, secretary of a company, you must resign from such or any other management position immediately; and
- d. you cannot be appointed as a trustee or as a personal representative of an estate without the approval of the Court.

WHAT IS THE DEBT REPAYMENT SCHEME?

The Debt Repayment Scheme was introduced to help debtors avoid Bankruptcy. It also helps creditors recover the debts owed to them. It is essentially an instalment payment scheme administered by the Official Assignee to help you repay the debt. The maximum period of repayment is five years.

ELIGIBILITY FOR DEBT REPAYMENT SCHEME

You can only be placed under the Debt Repayment Scheme if the following criteria are met:

- a. the debt cannot exceed \$100,000;
- b. you are gainfully employed and earned a stable monthly income;
- c. you have not been made a bankrupt in the last five years;
- d. you have not been subject to a Court-based debt arrangement (e.g. Debt Repayment Scheme) in the last five years; and
- e. you are not a sole-proprietor of a business, partner of a partnership or a limited liability partnership.

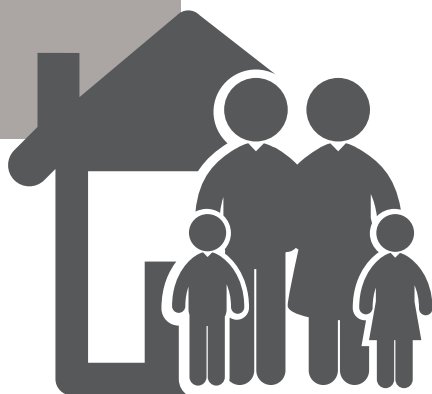
HOW DOES IT WORK?

The Debt Repayment Scheme comes into play when a bankruptcy application is filed in Court. You can then ask the Court to place you under the Debt Repayment Scheme. The Court can postpone the Bankruptcy proceedings for the Official Assignee to conduct an assessment on whether you are suitable to be placed under the Debt Repayment Scheme.

If the Official Assignee assessed you to be eligible and suitable to be placed under the Debt Repayment Scheme, the bankruptcy proceedings will be put on hold and no further Court proceedings filed against you. Meanwhile, the Official Assignee will hold a meeting with your creditors and thereafter, decide on the debt repayment plan. These debtors will commit to the Debt Repayment Scheme and repay their debts over a fixed period of time of not more than 5 years. When the debtor meets his financial obligations under the scheme, he will be released from his debts and have a fresh start thereafter. The Official Assignee will monitor all your payments. If you default on your payments, the Official Assignee will issue a Certificate of Failure of the DRS and your creditor can then resume with bankruptcy proceedings against you.

PART III

FAMILY PROCEEDINGS



13

Grounds for Divorce

Life's most difficult decisions involve our family, whether it relates to our spouse, our children, our parents, or our own future plans.

Because divorce is so personal and often highly emotional, it helps to have an experienced lawyer who knows the legal system. With guidance, you can resolve legal issues in a way that minimises the emotional stress for you and your family without compromising legal results.

Going through a divorce is not pleasant and the effect it may have on you and your child can be traumatic.

GETTING A DIVORCE

However, if you are certain you wish to proceed with a divorce, there are several requirements which you will have to meet before a Court will grant a divorce:

To obtain a divorce in Singapore:

- a. you must be married for three years;
- b. either you or your spouse must have been residing in Singapore continuously for a period of three years at the time the petition is filed;
- c. you must show the Court that the marriage has irretrievably broken down by proving one of the grounds of divorce;
- d. your marriage must be recognised as valid under Singapore law.

If you are married for less than three years, you may, with permission from the Court, proceed to file a Writ for Divorce if you can prove that you have suffered exceptional hardship or if your spouse has been exceptionally unreasonable and cruel. You are advised to consult a lawyer.

GROUNDS FOR DIVORCE

What is irretrievable breakdown?

The Court will only be satisfied that your marriage has broken down irretrievably if the Plaintiff (the person suing for divorce) proves one or more of the following factual basis:

- a. Adultery
Your spouse has committed adultery with another person and you find it intolerable to live with him/her.
- b. Unreasonable behaviour
Your spouse has behaved in such a way that you cannot reasonably be expected to live with him/her.
- c. Desertion
Your spouse has deserted or left you for a continuous period of two years without any intention of returning.
- d. Separation for three years
Your spouse and you have lived apart for a continuous period of at least three years and your spouse agrees to a divorce.
- e. Separation for four years
Your spouse and you have lived apart for a continuous period of at least four years. No consent is required from the Defendant.

Some important points to note:

- a. Even if you and your spouse “agree” to the divorce, you will still need to prove one of the five grounds for divorce above.
- b. You cannot petition for divorce on the grounds of your own adultery, unreasonable behaviour or desertion.
- c. Separation generally means that one of you has moved out of the matrimonial home. However it is possible that you may have remained in the same house (for economic reasons) but you must show that you were in fact “living apart” under the same roof, that is, you have not slept together and you have not shared meals, household chores nor living expenses or other financial obligations. For separation grounds, if you and your spouse resume living together for a continuous period of six months or more, the period of separation before you resume living together will not be considered (you will have to start counting the three or four year “separation” period over again).

How to file for divorce

See a lawyer for advice and assistance. You will be advised on whether you are eligible to file for divorce and what you are required to do. The lawyer will then prepare the necessary legal documents on your behalf.

“No fault” divorce

“No fault” divorce describes any divorce where the party seeking a divorce does not have to prove that the other spouse did something wrong. In Singapore, living apart for three years or more is required for a “no fault” divorce.

If you cannot wait (and live apart) for three years, then you will have to rely on any of the other grounds to prove “irretrievable breakdown” of your marriage; namely, that your spouse has committed adultery, displayed “unreasonable behaviour” so that you cannot be expected to live with him/her, or has “deserted” you.

Your spouse can “contest” or challenge your petition for a divorce by convincing the Court that he/she is not at fault. In addition, he/she may adopt several other defences such as:

- a. Condoned behaviour: e.g. that you knew about the affair and did not object.
- b. Acting in provocation: e.g. that the incidents of “unreasonable behaviour” cited by you were in fact provoked by or in retaliation to your action.

More often parties will not contest the divorce itself (once both parties realise that they do not wish to remain married to each other and there is no desire for reconciliation) but will challenge the other’s claim for custody of the children and other issues relating to “financial settlements” such as division of shared assets and the amount of support and maintenance each party considers a fair entitlement.

The best result can be achieved if you and your spouse work out all the troublesome issues that you are likely to disagree on, such as: Who will raise your children? What happens to the family home? How should your joint assets and liabilities be divided? You can do this with the help of an independent neutral third party called a mediator; or with the Family Court acting as a mediator.

When you are sued for divorce

You will be served with the Writ for Divorce together with several other Court documents. You should consult a lawyer if you are unsure as to the implications and procedures.

If you wish to contest the divorce, you should state so in the Memorandum of Appearance sent to you and then file a Defence and in some instances, a Counterclaim. These documents have to be filed in Court and served on your spouse’s lawyers.

Even if you do not wish to contest the divorce, you can still dispute your spouse’s claims for custody and/or care and control/access, maintenance, division of matrimonial assets, and costs of the proceedings. If the Plaintiff is your husband, you may wish to claim for maintenance as a spouse.

You must comply with Court procedure and Court-stipulated timelines. The Writ for Divorce served on you will inform you of the steps you need to take and the time within which you need to do so. Please consult a lawyer for advice and assistance.

Hearing of the divorce

The Plaintiff (the person filing for divorce) will be required to confirm the contents of the Statement of Claim and Statement of Particulars. If the Defendant does not dispute with the Statement of Claim and Statement of Particulars and has filed a Memorandum of Appearance consenting to the divorce, the case will be set down as an uncontested divorce. Once the Judge is satisfied that there is an irretrievable breakdown of the marriage, the Judge will grant an Interim Judgment (Divorce).

An Interim Judgment will usually be made final after all issues relating to custody, care and control of the children, maintenance and other ancillary matters have been settled. Generally, an Interim Judgment will only be made final after three months from date of its issue. Only when the Certificate of Making Interim Judgment Final (“Final Judgment”) has been issued by the Court can the parties enter into another marriage.

If the divorce is contested, both the Plaintiff and the Defendant will be required to appear in Court to give evidence to support their respective cases. Such proceedings are usually lengthy and may prove to be unpleasant. After hearing the evidence of both parties and your respective witnesses, the Judge will decide whether the marriage had broken down irretrievably and grant the Interim Judgment. If the Judge is not satisfied, you will not be able to proceed with the divorce proceedings.

Mandatory Mediation

With effect 1 July 2013, parties undergoing divorce proceedings with at least one child below 14 years of age must attend mediation and/or counselling at the Family Justice Courts.

The change is in line with the amendment of the Women’s Charter in 2011 to make counselling and/or mediation mandatory for all parties with at least one child aged below 21 years of age, when they commence divorce proceedings. The Child Focused Resolution Centre (CFRC) is gazetted as a Court to provide dedicated mandatory counselling and mediation for divorcing parents to focus on the welfare of their children during legal proceedings. The establishment of the CFRC is an extension of the existing alternative dispute services of the Family Justice Courts, namely the Family Resolution Chambers (FRC) and the Maintenance Mediation Chambers (MMC).

Objectives of Mandatory Mediation:

Divorce has a profound impact on children. They may be affected in many ways - emotionally, psychologically, physically, academically and financially. The CFRC was created to better safeguard the interests of the children by providing an early conciliatory forum for parents, to assist them in focusing on their children to resolve children related issues, and to empower them with information on co-parenting after divorce.

“Ancillary” matters

In a divorce proceeding, the parties may apply for:

- custody, care and control of children and access (such as visitation rights);
- maintenance;
- other ancillary matters (e.g. the division of matrimonial assets, including the matrimonial home).

14 Nullity of Marriage

Nullity is voiding or nullifying the marriage. An annulment upon being granted by the Court would essentially put you in the position you were before you were married, that is, it is as if you have never been married before.

- the marriage has not been consummated owing to the incapacity of either party to consummate it;
- the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;
- Lack of consent; the marriage was not consensual on both parties and was subject threats, mistakes, unsoundness of mind
- Mental illness rendering the person unfit for marriage
- at the time of the marriage the wife respondent was pregnant by some person other than the petitioner
- Respondent suffering from Communicable Venereal Disease prior to marriage

The above list is not exhaustive. For the Petition based on the ground of mental illness, lack of consent, pregnancy and venereal disease, the Petition must be instituted within 3 years of marriage.

WHAT ARE THE DEFENCES TO THE GRANT OF A DECREE OF NULLITY?

The Court will not grant a decree of nullity in such voidable marriages if the Respondent convinces the Court that:

- a. The Petitioner, knowing that he/she has grounds for nullity, gave the Respondent the impression that he/she would not seek such a decree; and
- b. It would be unjust to the Respondent for the Court to grant the decree.

WHAT ABOUT THE STATUS OF ANY CHILD OF A MARRIAGE THAT HAS BEEN ANNULLED?

Notwithstanding the annulment, as at the date of the decree, the child shall be deemed to be their legitimate child (if the child would have been the legitimate child of the parties to the marriage if it has been dissolved (by way of divorce) instead of being annulled).

Under certain circumstances, the court may find that the marriage should be set aside and treated as if it never took place and grant a decree of nullity. Such marriages can be divided into two types; void and voidable.

VOID MARRIAGES

If any of the following situations exist, then the marriage is considered void at law i.e. no legal marriage has ever taken place:

1. Either party is under the age of 18 years old and is married without the Minister's special permission;
2. Spouses are closely related (such relationships are set out in the Women's Charter) and the Minister's permission has not been obtained;
3. A marriage is celebrated outside Singapore fails to comply with the law of that country;
4. Either party is already married;
5. The person who solemnized the marriage does not have the authority or valid license to do so;
6. The parties are of the same sex as stated in their respective documents of identity. Undergoing a sex-change operation does not have the effect in law of altering a person's sex.

A child of a void marriage born on or after 2nd May 1975 shall be deemed to be legitimate child of his/her parents if at the date of the marriage, both or either parents reasonably believed that the marriage was valid. So he/she inherits his/her parents' assets if they die intestate (without a will).

VOIDABLE MARRIAGES

Though the marriage is legal, either party may apply to set it aside if any of the following applies: -

1. The married couple did not have sex due to one party's impotency or incapacity to do so;

2. One party of the marriage refuses, without good reason, to consummate the marriage;
3. If the marriage was not consensual on both parties and was subject threats, mistakes, unsoundness of mind;
4. At the time of marriage, either party was suffering from mental illness which makes him/her unfit for marriage;
5. At the time of marriage, the Respondent was suffering from venereal disease;
6. At the time of marriage, the Respondent was pregnant by some person other than the Petitioner.

Like a divorce, a decree of nullity only becomes absolute after 3 months. Once it becomes absolute, either party is free to marry. Any child or children born of a marriage, which has been so nullified, will remain legitimate

HOW DO I RESPOND WHEN SERVED WITH A WRIT TO NULLIFY A MARRIAGE?

You need to decide if you want to contest the annulment (e.g. because the reasons provided by your spouse were false or unjustified). You will need to provide additional evidence to counter the allegations made. In such cases, you might want to contact a legal representative and/or obtain legal advice.

If you do not wish to contest the case and both parties agree to the annulment, it will take between 4-5 months to process. Both parties will need to make a court appearance. You may wish to obtain legal representation for this as well.

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Custody of Children

CUSTODY, CARE AND CONTROL OF CHILDREN AND ACCESS

The Women's Charter defines a "child" as a child of a marriage who is under 21 years of age. "Custody" refers to the person who is granted legal decision-making authority. Whoever has custody of the child has the power to make major decisions related to religion, education and healthcare.

"Care and control" refers to which parent the child lives with on a day-to-day basis and the parent who has care and control can make decisions related to the child's day-to-day living, e.g. meals and tuition.

"Access" refers to the periods during which the parent who does not have care and control of the child is granted time to spend with the child.

It is common in divorce proceedings for parents to fight over custody, care and control of their children. It is important to note that our Courts almost always grant joint custody to both parents, save in exceptional cases where the Judge may feel it is more appropriate to give the sole custody to one parent.

Considerations for custody

When deciding who to give the custody and/or the care and control of your child to, the Judge may also consider your wishes and those of your spouse/ex-spouse and the wishes of your child (if old enough to express an opinion), but the Court considers the interest of the child as paramount.

What can the Judge decide?

The Judge may, after considering the report of a welfare officer, impose some conditions on the person to whom he grants custody and/or the care and control/access of a child to, such as prohibiting a child from being taken out of Singapore.

Access

When custody and/or the care and control/access is given to one parent, it is usual for the other parent to be given permission to spend some time with the child on a regular basis. This arrangement is called “access”. The Judge may deny access to the other parent if it is shown that such access will not be in the best interest of the child. However, this is rare.

It would be best if both parents can work out a suitable, convenient and reasonable time for access to the child. You should both decide on the time to meet, the time and place to pick up and return your child and the length of the meeting. After coming to a decision, both parents should stick to the agreement. If both of you cannot come to an agreement, you should make your wishes known to the Judge. The Judge will decide after hearing both sides.

Please understand that the process of divorce or separation will affect your child. In the interest of your child, try to compromise as much as the circumstances permit with regard to access. As far as is possible, the innocent child should not be deprived of attention and care of either parent.

Counselling and mediation processes are provided at the Family Court. Make use the services provided.

Taking your child out of Singapore

If anyone threatens to take your child out of Singapore without your consent, you may apply to Court and obtain an order to prevent him/her from doing so. If he/she disobeys the Court order, he/she may be guilty of contempt and may be fined or imprisoned (if he/she can be found).

16 Maintenance

During the course of a divorce proceeding, you can ask the Court to determine how much (if any) maintenance (financial support) to order.

When deciding on a maintenance order (whether you are entitled to an order at all, and how much), the Court will take into account your current economic circumstances; including:

- a. your financial needs or the needs of the children you are applying on behalf of;
- b. your earning capacity and other financial resources or sources of income;
- c. your spouse's current income and earning capacity or other sources of income;
- d. any mental or physical disabilities suffered by either of you;
- e. any other dependants or financial obligations borne by either of you;
- f. the standard of living enjoyed by the family before the neglect of responsibilities by your spouse or during your marriage (if the application is part of a divorce proceeding).

To apply for a maintenance order during the course of a marriage, you need to file a complaint at the Family Court, stating how much your spouse is earning, how many dependant children you have, how much you are applying for and in what circumstances your spouse has neglected/failed to provide for you or your children.

The Court will order a Summons to be sent to your errant spouse and a date will be fixed for a mediation session at the Court to see if both parties can reach an agreement on the amount. If no agreement is reached during the mediation session with the Court, a date will then be set for the trial.

At the trial, the Court will hear arguments from both parties and make a maintenance order. Any party who is unhappy with the order may appeal. Similarly, if there is a change in economic circumstances of either party after the order has been made, the parties may go back to the Court to have the amount varied.

WHO CAN APPLY FOR CHILD MAINTENANCE

Under the law, both parents are responsible for maintaining the child. Whoever has custody, care and control of the child can apply for maintenance.

In cases where a maintenance order is required urgently, an application can be made immediately at the Family Court without having to wait for the commencement or outcome of the divorce proceedings.

The Judge can order either or both parents to pay maintenance for the child.

CHILD MAINTENANCE

The decision of the Judge on how much maintenance to give to your child depends on a number of factors. The Judge will consider the basic financial needs of your child such as education, food and lodging expenses. Any physical or mental disability of your child will also affect the amount of maintenance.

- a. Period for custody or maintenance: Usually an order for custody or maintenance will automatically expire or become ineffective after your child reaches his/her 21st birthday or in the matter of the child's maintenance, when your child is financially independent. Sometimes the Judge can order maintenance for a specific period, even after your child reaches his 21st birthday, such as until the completion of his/her tertiary education.
However, if your child suffers from any physical or mental disability, the custody and/or the care and control/access or maintenance order may continue until he/she recovers from that disability, even after he/she turns 21.
- b. Varying an order of custody or maintenance: You may make an application in Court to vary or cancel the order of custody or maintenance in the interest of your child. You may do so if there is a material or important change in the circumstances since the order was made. Examples include where there is a substantial increase in the salary of either parent, change in health conditions or the remarriage of one parent.
- c. Agreement for custody or maintenance: You can make an agreement for custody and/or the care and control/access or maintenance. However, the Judge may vary the agreement if it is in the interest for the welfare of your child to do so.

MAINTENANCE FOR WIFE OR EX-WIFE

Singapore law only provides for maintenance for wives/ex-wives. If you are undergoing a divorce and do not apply for maintenance during divorce proceedings or your application for maintenance has been turned down by the Court at the conclusion of divorce proceedings, you may not subsequently apply for maintenance.

Maintenance depends on a number of factors. The Judge will consider the financial standing and earning capacity of both you and your husband/ex-husband. He will also consider the standard of living enjoyed by both of you during the marriage. Ages of the parties and the duration of the marriage are also factors considered. The Judge will try to place you in the same standard of living, as you would have enjoyed, if the marriage had not broken down.

VARYING THE ORDER OF MAINTENANCE

Either you or your husband/ex-husband may apply to the Court to vary or cancel the order for maintenance at any time, if the circumstances under which the original order was given have changed.

ARREARS OF MAINTENANCE

If your husband/ex-husband has refused or neglected to pay you the maintenance as ordered by the Judge, you may proceed to recover the arrears by filing an enforcement application to the Family Court. Please consult a lawyer.

Arrears of maintenance can only be recovered up to a period of three years before the filing of the enforcement application. Any arrears in excess of the three years therefore cannot be recovered under such application.

ENFORCEMENT ORDER

The Judge has the power to impose a fine or even sentence your husband/ex-husband to imprisonment for a term of not more than one month for each month that he is in arrears of maintenance.

You can make your complaint at the Family Court at Havelock Road. The complaint is filed in English. If you need an interpreter, you should request for one at the Family Court. You may be required to accompany the Process Server (a Court Officer) to serve the Summons on your husband/ex-husband. You should find out when and where your husband/ex-husband can be found before you file your complaint. This would save you time and effort in serving the Summons.

On the day of the hearing, you should prepare yourself by asking the Maintenance Counter in the Family Court to issue an updated record, showing the arrears of your husband/ex-husband, for the Judge if the order required him to make payment through the Court.

ATTACHMENT ORDER

The Judge also has the power to make an order that the maintenance be paid by the employer of the husband/ex-husband out of his salary if he holds a steady job and has been defaulting regularly. You should be prepared to provide the Court with the name and address of his employer.

WHEN YOU CAN REQUEST FOR MAINTENANCE

You do not have to be in a divorce proceeding to request for maintenance. As long as you are validly married, you can seek maintenance from your spouse (as described above) at any time during the course of your marriage, or during or after your divorce.

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Matrimonial Assets

In deciding on the division of matrimonial assets, the Court will take into consideration various factors including:

- the extent of contributions made by you and your spouse in money, property or work towards the acquiring of the assets and non-financial contributions made by parties;
- any debts owing by either of you which were contracted for this joint benefit; and;
- the needs of the minor children (if any) of the marriage.

Please take note that you should organise all the documents you have in support of your claim as these will have to be shown to the Court. Documents may well include pay slips, CPF statements, Income Tax assessments and documents relating to the matrimonial home amongst others.

Legal Aid Bureau

If you cannot afford a lawyer, you may apply to the government run Legal Aid Bureau for assistance. The Legal Aid Bureau is situated at:

LEGAL AID BUREAU
45 Maxwell Road #08-12
The URA Centre, East Wing
Singapore 069118
Tel: (65) 1800 325 1424 (toll-free)
Fax: (65) 6325 1402
Website: www.lab.gov.sg

Please note that you have to pass the Means Test to qualify for assistance from the Legal Aid Bureau. The Means Test is a procedure to ascertain your financial position.

18

Muslim Divorce

GOVERNING LAW

Muslim divorces in Singapore are governed by the Administration of Muslim Law Act (“AMLA”) (Cap 3).

JURISDICTION

The Syariah Court has jurisdiction to hear and determine divorces in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law. Note also that under section 35A AMLA, parties may seek leave to commence or continue proceedings in matters relating to the disposition or division of property on divorce or custody of the children.

GROUND FOR DIVORCE

- a. Divorce by way of *Talak* (pronouncement of divorce): Generally, it is easier for a husband to obtain a divorce as all he needs to do is to pronounce a *talak* against the wife. The husband does not need to provide a reason for the *talak* but the *talak* has to be confirmed by the Syariah Court as being valid before a divorce will be decreed.

A wife may nevertheless apply to the Syariah Court for a divorce on the following grounds:

- b. Divorce by way of *Khuluk* (divorce by redemption): The wife obtains a divorce by making an amount of payment to the husband as ordered by the Syariah Court in accordance with the status and means of the parties.
- c. Divorce by way of *Taklik* (breach of a condition of the marriage): The wife obtains a divorce on the basis of a breach on the husband’s part of a term or terms of a written *taklik* made at or after the marriage.

- d. Divorce by way of *Fasakh* (dissolution of the marriage on valid grounds): The wife obtains a divorce on one or more of the following grounds (per section 49, AMLA):
- i. that the husband has neglected or failed to provide for her maintenance for a period of three months;
 - ii. that the husband has been sentenced to imprisonment for a period of three years or upwards and such sentence has become final;
 - iii. that the husband has failed to perform, without reasonable cause, his marital obligations for a period of one year;
 - iv. that the husband was impotent at the time of the marriage and continues to be so;
 - v. that the husband is insane or is suffering from some chronic disease the cure of which would be lengthy or impossible and which is such as to make the continuance of the marriage relationship injurious to her;
 - vi. that the husband treats her with cruelty, that is to say:
 - habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment;
 - associates with women of ill repute or leads an infamous life;
 - attempts to force her to lead an immoral life;
 - obstructs her in the observance of her religious performance or practice;
 - lives and cohabits with another woman who is not his wife; or
 - if he has more wives than one, does not treat her equitably in accordance with the requirements of the Muslim law;
 - any other ground which is recognised as valid for the dissolution of marriage by *fasakh* under Muslim law.

PROCEDURE

- a. Registration: To start a divorce process, a party must first submit a completed Registration Form to the Syariah Court. The registration process takes about four to six weeks.
- b. Counselling: If the registration is in order, parties will then be required by the Syariah Court to attend mandatory counselling sessions conducted by the Syariah Court's accredited partners. The counselling process takes about two to four months.
- c. Originating Summons stage: If, despite counselling, one (or both) of the parties decides to proceed with the divorce, the case will be referred back to the Syariah Court and the Syariah Court will fix an appointment for the part(ies) to file a Case Statement, which sets out, inter alia, the ground for divorce he/she is applying on, in the Syariah Court. On this date, the Syariah Court will also generate an

Originating Summons fixing a date for mediation or Pre-Trial Conference, as the case may be.

- d. Mediation: At the mediation, the divorce and the ancillary matters will be discussed with a view to resolving the matter at that stage. If an agreement is reached, parties will enter a Consent Order. If no agreement is reached, a Pre-Trial Conference will be fixed for parties to take further directions in the matter.
- e. Pre-Trial Conference: At the Pre-Trial Conference(s), the Registrar gives directions towards the disposal of the matter such as the filing of affidavits of evidence-in-chief and affidavits in-reply, and fixing the hearing date for the matter to be determined.
- f. Hearing: At the hearing, the Syariah Court will make orders on the divorce and the ancillary matters. Unlike the Family Court, the Syariah Court typically hears the issues of divorce and ancillary matters in the same hearing.

In addition to the divorce, the Syariah Court also determines the following issues:

- i. Division of matrimonial assets: Matrimonial assets include all assets acquired by the parties during the marriage (whether held solely, jointly or jointly with others), assets acquired before the marriage but have been substantially improved during the marriage by the other party or both parties to the marriage and assets acquired by gift or inheritance that have been substantially improved during the marriage by the other party or both parties to the marriage. In determining the issue of division of matrimonial assets, the Court will have regard to a variety of factors including but not limited to the financial and non-financial contributions of the parties (see section 52(8), AMLA).
- ii. *Nafkah iddah*, i.e. maintenance for the wife for the period of *iddah* or three months. In determining *nafkah iddah*, the Syariah Court will take into account the means of the husband and the needs of the wife.
- iii. *Mutaah*, i.e. consolatory gift for the wife, normally calculated by the Syariah Court on the basis of a sum for each day of the marriage (the sum depends on the standard of living of the parties).
- iv. Custody, care and control of, and access to the children as well as their maintenance.
- g. *Hakam* (Arbitrator): If the wife applies for the divorce and the husband refuses to divorce the wife, the Court will then refer the matter to the *Hakam* to endeavour to effect a reconciliation and if a reconciliation cannot be effected, to decree a divorce.
- h. Appeal: If parties are dissatisfied with the order made by the Syariah Court, they may bring an appeal to the Appeal Board.

ENFORCEMENT

For the purpose of enforcement, the orders made by the Syariah Court are treated as orders made by the District that can be enforced in the District Court.

19

Domestic Violence

WHAT IS FAMILY VIOLENCE?

The Women's Charter defines family violence as -

1. Intentionally putting, or attempting to put, a family member in fear of hurt;
2. Causing hurt to a family member by an act which would cause and result in hurt;
3. Confining or restraining a family member against their will;
4. Intending to cause anguish to a family member through continual harassment by verbal abuse, psychological or emotional abuse.

Examples of family violence include -

- Physical hurt such as slapping, hitting, pushing;
- Unwanted sexual acts;
- Insulting or humiliating a person, whether through actions or verbally;
- Threatening using blackmail, destroying property or using emotions to manipulate someone;
- Unreasonable control of another person's behaviour and activities, or their relationships;
- Preventing someone from leaving the house or a confined area.

The Women's Charter protects everyone - regardless of their age and gender.

GETTING HELP

If you are a victim, or know or suspect someone who is a victim of domestic violence, you should seek help immediately. There are several ways of getting help, depending on the severity and regularity of the domestic violence -

1. There are organizations who provide assistance for victims of domestic violence;

2. Get medical attention - See a doctor at your nearest hospital or clinic, and ensure that your physical injuries are recorded. This will serve as documentary evidence of the abuse;
3. Report to the police - You can call the police or go to the nearest police centre to make a report. This will be necessary if you wish to apply for a Protection or Expedited Order (please see below). The police can provide you with a referral letter to go to the hospital for medical examination and treatment;
4. Seek temporary shelter - Approach a Family Service Centre or the Police if you wish to go to a crisis centre in the event you need to leave your home urgently to escape domestic violence. Alternatively, stay temporarily with any friends or relatives whom you trust;
5. Apply for legal remedies: Personal Protection Order, Expedited Order or a Domestic Exclusion Order (please see below). You do not need a lawyer to obtain these orders, although it is useful if you can afford to pay for a lawyer. These organizations offer free preliminary legal advice -
 - AWARE - Call the helpline at 1800-774-5935 to fix an appointment;
 - Singapore Association of Women Lawyers' Pro Bono Legal Consultation Clinics - Call to check first if you qualify for free legal consultation;
 - The Law Society of Singapore - Call to register first and make an appointment;
 - Neighbourhood Community Center - They may be holding regular legal clinics;
6. Penal Code Offences - You can make a police report or take out a private summons, if you have been hurt by someone who is not a family member, such as a person whom you are in an intimate relationship with, but not married to. If the injuries are minor, this is an offence of "Hurt"; if major, such as causing blindness or deafness, permanent disfigurement, fracture or dislocation of bones, then these would fall under "Grievous Hurt".

PERSONAL PROTECTION ORDER ("PPO")

You can apply for a Personal Protection Order ("PPO") against the family member who is the offender at the Family Court. The PPO protects the following persons against family violence -

1. spouse or former spouse;
2. a child, including adopted and step children;
3. father, mother, in-laws or siblings of the offender;
4. any other relative or a person who is unable to look after himself or herself, who in the opinion of the court should be regarded as a "family member".

However, the PPO is not available to protect parties who are in intimate relationships, but not married to each other.

The Court can make the following orders under a PPO -

1. The offender cannot use violence against the victim;
2. The offender cannot seek help from, or incite anyone else to commit violence against the victim.

However, you will need to go through a trial before the PPO is granted, unless the offender willingly consents to a PPO. Any medical or police reports which you have made will be useful during the trial in obtaining a PPO.

You can apply for a PPO at the Protection Order Services of the Family Court, or go to any of the following locations to lodge a complaint by video-link to the Family Court -

- a. Centre for Promoting Alternatives to Violence (“PAVE”)
 - Blk 211 Ang Mo Kio Avenue 3
 - #01-1446
 - Singapore 560211
 - Tel: 6555 0390
- b. SAFE@TRANS
 - Blk 410 Bedok North Avenue 2
 - #01-58
 - Singapore 460410
 - Tel: 6449 9088
- c. Project START Care Corner FSC (Queenstown)
 - Blk 88 Tanglin Halt Road
 - #05-01
 - Singapore 141088
 - Tel: 6476 1481

The Court can also require you, the offender and your family to undergo counselling. In addition, it can issue a mandatory Counselling Order (“CGO”). The CGO is meant to assist the offender to stop abusing you and/or other family members, including your children.

EXPEDITED ORDER (“EO”)

If the situation is urgent and you are in danger of immediate violence, you can also seek an Expedited Order (“EO”) to be served on the offender under the Women’s Charter, regardless of your gender.

The EO is a temporary PPO that can be given in the offender’s absence. However, you must show that there is imminent, immediate danger of physical injury to you. The EO is valid for 28 days or when the trial begins, whichever is earlier.

DOMESTIC EXCLUSION ORDER (“DEO”)

A Domestic Exclusion Order (“DEO”) is a drastic measure made by a Court, and will be taken only in exceptional circumstances, usually after a PPO has been breached. Under a DEO, the Court may make the following orders -

1. That the offender leaves the home;
2. That the offender be prohibited from entering the home or some portion of the home;
3. That the applicant be permitted to enter and remain in the home.

The DEO does not affect the offender’s ownership of the house, it only restricts the right of the offender to occupy or move freely throughout the home.

BREACH OF PPO, EO OR DEO

If the offender breaches the PPO, EO or DEO, you should inform the police immediately. The penalties for such breach are as follows -

1. Any person who intentionally or knowingly breaches a PPO or EO can be imprisoned for up to six months and/or fined up to \$2,000;
2. A repeat offender can be jailed for up to a year and/or fined up to \$5,000;
3. If the offender has assaulted you and caused you physical harm, the offender can be charged for criminal offences under the Penal Code, which carry longer heavier sentences.

If the offender is charged under the Penal Code, for the offence of either “Hurt” or “Grievous Hurt”, the relevant penalties are as follows -

1. Hurt: Imprisonment up to 2 years and / or fine up to \$5,000;
2. Grievous Hurt: Imprisonment up to 10 years, and fine or caning.

20 Adoption

Every year, some 700 adoption petitions are brought before the Family Justice Courts. About 40% of these are local adoptions. While a large number of petitioners adopt a non-related child, the Court also handles petitions to adopt stepchildren, relatives and natural issues.

For all adoption petitions, Child Welfare Officers from the Ministry of Social and Family Development (“MSF”) conduct social investigations to assess the prospective adopter(s)’ readiness and suitability to adopt, their ability to provide for the child’s basic needs and examine the adopter(s)’ bonding and relationship with the child.

Adopting a child can be an enriching and fulfilling experience. However, it is also a lifelong responsibility. Hence, it is important that all prospective adopters give due consideration to the reasons for adopting a child and the responsibilities it entails.

Adopting a child brings major changes to one’s lifestyle. In their investigations, MSF officers must be satisfied that the child’s “best interests” have been met. Prospective adopter(s) must be physically, emotionally, psychologically and financially ready to parent a child.

GUARDIAN AD LITEM

MSF took over the role of guardian ad litem (Court-appointed guardian) from the Attorney-General’s Chambers with effect from 1 January 2003. The Director of Social Welfare of MSF will issue consent to be the guardian ad litem for adoption proceedings.

To obtain consent from the Director of Social Welfare to act as guardian ad litem, applicants should forward the relevant documents to MSF for perusal expeditiously. At least seven working days should be provided prior to the hearing date, hearing of application for dispensation and the application for the Director of Social Welfare to act as guardian ad litem. This will allow consent to be issued in a timely manner and minimise

any unnecessary delay to the adoption proceedings. In addition, applicants should file the Child Welfare Officer's affidavit in Court within one week upon its receipt.

Prospective adopters must:

- a. be at least 30 years of age, and if a couple, the younger of the prospective adopters should not be more than 55 years of age;
- b. be financially stable, with an annual household income of at least \$32,000;
- c. be physically and mentally healthy;
- d. have not more than five children;
- e. be Singapore citizens; and
- f. have no criminal records for seizable offences, including but not confined to, child abuse, sexual offences, violent offences and drug abuse and other offences which will make them unsuitable for adoption.

The prospective adopters should be Singaporeans. However, applications will be processed if one spouse is a Singapore citizen and the other is a Permanent Resident and the future domicile of the couple is in Singapore.

Prospective adopters may wish to contact the accredited agencies to ascertain if they meet the basic eligibility criteria.

The accredited agencies will also follow up with post-placement reports on the child and provide administrative and support services for the prospective adopters.

The accredited agencies are competent and qualified to conduct home study reports and have fulfilled the stringent standards of accreditation set by MSF. The agencies will assess the applicants and prepare reports on their eligibility and suitability to adopt and provide counselling and educational services to the prospective adopters. The agencies are:

- a. Touch Community Services Limited
Ms Teo Seok Bee
Tel: 6370 7302
Fax: 6377 0121
E-mail: seok.bee@touch.org.sg
- b. Fei Yue Community Services
Mrs Seah Kheng Yeow
Tel: 6416 2177
Fax: 6569 5868
E-mail: seahkhengyeow@fyics.org
- c. Students Care Service
Ms Morene Sim
Tel: 6289 5873
Fax: 6286 6230
E-mail: morene_sim@students.org.sg

WEBSITES AND HOTLINES

For further information on adoption, you can refer to the Family Town website at www.familytown.gov.sg. Alternatively, they can contact the Adoption Hotline at 6355 6388 where a Duty Officer is available to answer queries related to adoption matters from 8.30am to 5.00pm on Mondays to Fridays and from 8.30am to 1.00pm on Saturdays.

For further information on the filing of adoption petitions, you can also refer to the Court's website at www.familyjusticecourtsingsingapore.gov.sg.

PART IV

CRIMINAL PROCEEDINGS



21

Arrest and Investigation

ARREST

When can you be arrested?

The police can arrest you when they reasonably suspect you of committing a serious offence and wish to take you into custody for investigations or to charge you in Court. A few examples of such offences are: drug trafficking, possession or consumption of drugs, rape, outraging of modesty, theft, robbery, cheating, criminal breach of trust, rioting and causing serious hurt.

How is an arrest made?

This is done by informing you that you are arrested and by touching or by holding you if you are likely to attempt an escape. In such a case, you will usually be handcuffed. Unless you willingly submit to custody, reasonable force may be used to arrest you. You may ask the officer for his/her official identification and the reason for your arrest.

What happens after you are arrested?

On arrest, you may be searched and brought to a police station for questioning. Pending questioning, you may be detained in a lock-up. You will be required to surrender whatever you have on you (including your mobile phone, computer, vehicle). A list of these things will be made and you will be asked to confirm it. A copy of this list will be given to you. If the police search your residence or workplace, they may seize anything they find as evidence.

Women may only be searched by a female officer and with strict regard for decency.

You may be detained for a maximum period of 48 hours from the time of your arrest. If the officer wants to detain you for more than 48 hours, he/she must bring you to

Court. During this period you may be taken out for searches. More on this is set out under the section “*Can you be detained during an investigation*” below.

Being charged for an offence after arrest

You may be arrested before, during or after investigation. You may be required to give a statement. If the police decide to charge you, they will ask you to sign a Cautioned Statement asking you to state your defence. More on this is set out under the section on “Cautioned Statement” below.

If you are formally charged, you will be produced in Court. If you are to be charged in Court, your fingerprints may be taken by an officer and you may be photographed at the Criminal Records Office, Criminal Investigation Department (“CID”). This means that there is a record of your finger prints and negatives at the CID.

However, if you are acquitted of the offence in Court or if the charge is withdrawn, you or your lawyer can write to the CID for the return of the record of your fingerprints and negatives.

Must you be told the reason for your arrest?

Upon your arrest, you are entitled to know the reason for your arrest.

Telling your family or lawyer of your arrest

When you are arrested and detained, you can request to make a call to your family or a lawyer telling them of your arrest. You may also request visits by your family or a lawyer. These requests may be refused if it will interfere with the investigation carried out by the officers. The law allows you to consult a lawyer of your choice.

INVESTIGATION

When can you be charged in Court?

You can be charged in Court after investigations have been carried out. This investigation is necessary to decide if there is any evidence of a crime having been committed by you.

Who can investigate you?

- Police officers;
- Central Narcotics Bureau (“CNB”) officers;
- Corrupt Practices Investigation Bureau (“CPIB”) officers;
- Immigration officers;
- Customs officers; and
- Commercial Affairs Department (“CAD”) officers and any other officers who are given the power to investigate under the law.

When can investigations start?

Immediately, if a police report is made against you or if you are suspected of being involved in an offence for which you can be arrested without a warrant.

Examples of such offences are:

- Theft
- Cheating
- Housebreaking
- Robbery
- Extortion
- Rioting
- Causing serious injury
- Taking drugs
- Possession of drugs
- Disturbing the peace
- Possession of stolen property

What can an investigating officer do?

Some of the powers of an investigating officer are as follows:

- a. to order a person to go to a police station or other place for questioning and for taking of a statement;
- b. to record what you have to say and ask you to sign it;
- c. to search a place and take away things to be used as evidence;
- d. to seize property or possessions, which may be exhibits in the case.

Can you be detained during investigation?

As mentioned above in the section on “*What happens after you are arrested*”, you can be detained for a maximum period of 48 hours from the time of your arrest. Before the end of 48 hours if you are not released, the officer investigating your case must produce you in Court.

You are generally not able to speak to a lawyer while you are under investigation.

However, if the officer wants to detain you for more than 48 hours, then he must bring you to Court. In Court the officer must tell the Judge the reason(s) why he wants to detain you further. The Judge will consider the reason(s) given and then decide whether you are to be further detained.

You can ask the Court for permission to contact your family and for an opportunity to speak with or engage a lawyer. If you feel you have been mistreated during the investigation, you should inform the Court and if necessary, ask for permission to see a doctor. You should also inform the Court if you do not agree with any statements you have been made to sign during investigation, or if the police made any promises about the charges or sentence.

If the officer does not wish to further detain you, he may let you go on a personal promise (bond) or put you on police bail to make sure you go back to the station or attend Court when told to do so, and in this case you will likely need to provide a bailor.

Your bailor may have to prove his means by depositing cash, fixed deposit certificates, passbooks, car log books or title deeds to a property, share certificates or valuables, etc.

In certain cases, bail may not be offered, such as if your release on bail will hamper police investigation. Your chances of being released on bail depends on several factors, including whether you have been arrested or detained for a bailable or non-bailable offence, the probability that you will appear in Court, public safety considerations, and the necessity of preparing your defence well.

Statements

The law provides for the taking of two kinds of statements:

- a. a Witness Statement, (or sometimes called an Investigation Statement); and/or
- b. a Cautioned Statement from a person being charged.

Generally, if accused of a crime, you are required to give both kinds of statements. If you do not understand English, you should inform the police officer and you will be interviewed in a language that you understand. If you have a defence that shows you are innocent of the offence that you have been alleged to have committed, you should inform the officer and make sure this is recorded in your statements. After giving any statement, read the statement carefully and make sure everything recorded is accurate before you sign it. You have a right to amend or delete any part of your statements.

Witness Statement (also known as the “Long Statement”)

This statement is given when the police question you about the facts and circumstances of the case with which you may be acquainted. You are bound to answer truthfully, i.e. you cannot lie. However, you have a right to choose not to make a statement with regard to any matter which will expose you to a criminal charge. You can ask for permission to talk to your lawyer before giving a witness statement, but your request may be rejected if it interferes with investigation.

Your lawyer should request for a copy of your witness statement to be disclosed at the Criminal Case Disclosure Conference (“CCDC”).

Cautioned Statement

You are required to give this type of statement upon being charged with an offence. If you are charged, the investigating officer will warn you by written notice served on you before you make your statement. In the notice, the charge is set out and you will be asked whether you wish to say anything in answer to the charge. The notice also advises you to mention whatever facts you intend to rely on in your defence at the trial. For example, if you did not commit the crime or you were elsewhere when the crime took place, you

should say so. If you have a defence, you should always say so in the Cautioned Statement. Your defence may not be believed if you fail to mention it in your Cautioned Statement but instead you choose only to raise it later at trial. If you did not commit the offence, you should make this clear and ensure it is set out in the Cautioned Statement.

The charge must be explained to you. If you do not understand the charge, you should tell the investigating officer. If you need an interpreter to translate the questions for you into a language that you can understand, ask for one. Please note that you have no right to speak to a lawyer before giving or signing the Cautioned Statement.

When you say anything in your defence, the investigating officer must record it or you may write it down yourself. This will be your Cautioned Statement. The officer must read it over to you. If it is what you have told him, you must sign it. If there are any mistakes, you should insist that corrections be made. The investigating officer should ensure that the interpreter remains present during the signing if necessary.

Your lawyer will advise on how best to proceed if, after consulting him, you wish to correct or amend the Cautioned Statement.

Do you have the right to remain silent when you are warned and after?

You may remain silent, not make a statement and only reveal your defence for the first time in Court. However, if you do so, there is a danger that the Judge may think you have subsequently made up your defence and can decide not to believe you. However, if you have already made a statement of the facts that support your defence, spoken at length to the investigating officer, and made numerous witness (long) statements over many days, your silence may not necessarily be disadvantageous to you.

Can everything you say be used against you at your trial?

Yes, if your statement was given voluntarily and is relevant to your case.

What is a voluntary statement?

A voluntary statement is one given without any inducement, threat or promise. It is a statement given of your own free will. Your statement is therefore not voluntary if it was made because of any promise, threat or inducement made to you by the police or the investigating officer.

Can you ask the police for copies of your statements or reports?

You or your lawyer can write to the police for a copy of your Cautioned Statement and First Information Report. A First Information Report is the first report received by the police about an offence, it may be a Police Report or the transcript of a “999” call. You have to pay for these documents. However, the police will not give you a copy of other statements you may have made, or statements of witnesses.

BEING CHARGED

The investigating officer will fix the date for the “first mention”, when you will be formally charged in Court. When charged in Court, the charge will be read to you and explained by the Prosecution. When charged in remand, the charge should be read and explained to you no longer than 48 hours after your arrest.

Each offence alleged to be committed by you will be listed as a separate charge. The charge or charges (may be more than one charge) against you should contain names, particulars, date and time, names of victims, names of other co-offenders, property involved in the offence, the type of crime alleged, and punishment.

You must tell the Court if you are unclear about the charge(s). If you need an interpreter, ask for one. The Court will provide an interpreter to translate the charge to the language that you can understand.

In Court, two issues may be discussed:

First is the issue of bail (see “**Bail bond**” below). If bail is offered, you will be asked to provide the bail sum, to arrange for a bailor, and ordered to return to Court on another specified date. If bail is not offered then you will be held on remand (in custody).

Second is how you are going to plead. After the charge is read and explained to you, you will be asked how you wish to plead to the charge. You can choose to plead guilty (admit to the charge) or claim trial (not admit to the charge).

If you are not sure of how to plead, or you wish to consult or be represented by a lawyer, you may request the Court for some time (an adjournment). If an adjournment is allowed, you must return on another day. You may use this time to see a lawyer, whether by engaging a Defence counsel or seeking one through the Criminal Legal Aid Scheme (“CLAS”).

A charge can be amended/changed by the Prosecution, which should give you the amended copy of the charge sheet.

BAIL BOND

What is bail?

Bail is a security either in cash or by an undertaking given to the Court or to the Police to ensure that you, once charged, will return to report when required. The purpose of bail is two-fold: (i) to secure your attendance; and (ii) to minimise the risk that you will flee. In the State Courts, all bail applications are processed by the Bail Centre.

When a person may be released on bail?

A person may be released on bail depending on the type of offence. The offence can be bailable or non-bailable. If an offence is non-bailable (unless the punishment is death or life imprisonment), the Magistrate or District Judge has still has discretion over whether or not bail should be allowed.

Conditions of bail

Once you are on bail, you cannot leave Singapore without the permission of the Court or the police officer. The bailor(s) (or surety) must also give consent. Bail amount can also be increased in this situation. You may be asked to surrender your passport to the police. Bail may also have other conditions, such as not to commit any offence while on bail or not to interfere with witnesses.

Consequences of “jumping bail”

If you “jump bail” or fail to attend and report (either to Court or to the police) when required, a warrant of arrest may be issued against you. If there are no valid reasons, the bail may be forfeited and the bailor can be ordered to pay a penalty. You may not be offered bail again.

The bailor’s duties

The bailor (or a surety) is the person furnishing security. Depending on the amount of bail, the police officer or Court may allow for about two bailors. When the bailor agrees to this, he is said to be “standing bail”.

A bailor must be at least 21 years old, must not have any outstanding criminal matters against him, must not be an undischarged bankrupt, should be a citizen or a Permanent Resident of Singapore. A bailor(s) does not need to be a family member and can be a friend, colleague, or representative from the Consulate or Embassy. If no suitable bailor can be found, you will have to remain in remand prison.

A bailor has duties. He must follow the requirements set out on the bail form, such as staying in contact with you and making sure that you attend Court hearings. If

you fail to attend, the bailor has to “show cause” (or reasons and evidence) that he took all reasonable efforts to contact you. You are advised to remain in regular contact with your bailor. If you refuse to follow his advice, he can ask the Court to relieve him of his duties and you may be held in remand.

Withdrawal of bailor

A bailor may withdraw at any time before the case is completed. If there is no substitute bailor, you will be remanded until conviction or acquittal. The bailor can then take back the items which he has deposited with the Court. This is processed by the Finance Section of the State Courts.

Return of bail

A bailor’s duties end when the Court has made a decision (for example, when you are found to be not guilty of the offence (“acquitted”), or found to be guilty of the offence (“convicted”) and sentenced).

Amount of bail

The amount of bail depends on several considerations, which include: the type of offence, severity of the offence, previous offences, number of charges, or personal circumstances.

If bail is under \$15,000, cash is not required. The bailor must make a declaration that he has collateral of at least that amount. Acceptable collateral includes moveable household items, including jewellery, which is fully paid and not under any instalment plan.

If bail is above, \$15,001, there are more requirements. The bailor is required to pay the full amount into Court, or agree to freeze part of his bank account. Acceptable collateral is considered as the following:

- a. Physical cash/Cashier’s Order – Must be provided with copies of bank statement, passbook, and cheque book for the purpose of refund. Cashier’s Order must be payable to “Registrar, State Courts”. Cash bail is usually refunded within 21 working days from the conclusion of the case.
- b. Savings account – passbook/account statement. The account holder must be present. The savings account should not have pre-arranged GIRO transactions. The account will be frozen until the end of the case. It should be a solo account, unless two sureties are granted by Court. As the accused person, you cannot be a joint account holder.
- c. Fixed/Time Deposit – Must be in Singapore Dollars, with minimum of six (6) months to maturity. The account holder must be present and it must be a solo account unless the Court grants two sureties. Likewise with a savings account, you as the accused person cannot be a joint account holder.

Ultimately, the High Court has the power to grant bail to any accused, release him on personal bond or vary the amount or conditions of the bail or personal bond as required. The High Court can also impose other conditions for the bail or personal bond as it thinks fit.

Please visit the State Courts' website below for more information:
<https://www.statecourts.gov.sg/CriminalCase/Documents/DutiesOfABailor.pdf>

PRE-TRIAL CONFERENCE (“PTC”)

If you decide to claim trial to the charge, the case will be fixed for a Pre-Trial Conference (“PTC”). A PTC is an administrative conference where the Court asks for an update on the status of the matters proceeding to trial. You can expect a Judge to be present during a PTC.

A centralised PTC Court usually hears the PTCs. The Criminal Mentions Court will inform you which Court your PTC is to be held at during the first and second mentions. Community Court matters are heard in Community Courts.

At the PTC, the Court will inquire into and/or deal with the following matters: Whether you are pleading guilty or electing to claim trial to the present charges. The Court will want to be updated on timelines and progress regarding your case. If you are pleading guilty, the Court may provide directions for the Prosecution to forward a draft Statement of Facts (“SOF”) before the date of pleading guilty.

Your lawyer may advise on whether to tender a written Mitigation Plea or do so verbally.

If you are claiming trial, and the case is one that qualifies for Criminal Case Disclosure Conference (“CCDC”), a CCDC date will be fixed. The Court may enquire into other issues that need to be resolved, such as time required for obtaining reports (i.e. medical, forensic, toxicology, psychiatric, or other expert reports). A list of witnesses and documents to be relied on should be produced.

If your lawyer briefs the Court with an update of representations made to the Attorney-General’s Chambers (the “AGC”) on your behalf, the Court will give directions for him/her to submit further representations to the AGC.

CRIMINAL CASE MANAGEMENT SCHEME (“CCMS”)

The Criminal Case Management Scheme (“CCMS”) involves a separate meeting between the Prosecutors from the AGC and your lawyer to have an informal discussion on your case. Here Prosecutors and your lawyer identify the issues in dispute and/or discuss a plea bargaining deal, where you may be asked to consider pleading guilty to less and/or reduced charges, which carry a lighter sentence. Your lawyer, while taking instructions from you, can also advise on matters related to claiming trial or pleading guilty to less and/or reduced charges. At this stage, no Judge is present.

CRIMINAL CASE RESOLUTION (“CCR”)

If the CCMS meeting does not resolve your case, it may proceed to the Criminal Case Resolution (“CCR”) process. In a CCR, a Senior District Judge will sit as a neutral mediator with the Prosecution and your lawyer to facilitate discussions on certain areas, such as evidence and legal issues, or indicate a sentence if requested and if appropriate. The CCR process is generally only available where you are represented by a lawyer and have reasonable prospect of settling the case early. If you still wish to claim trial, the CCR process assists to note issues in dispute and then allocate trial dates in an efficient manner. If you wish to plead guilty, but you disagree with the facts set out in the Statement of Facts or Mitigation Plea, the CCR process may facilitate a resolution.

CRIMINAL CASE DISCLOSURE CONFERENCE (“CCDC”)

The Criminal Case Disclosure Conference (“CCDC”) applies to an offence which is specified in the Second Schedule of the Criminal Procedure Code 2010 and is to be tried in the District Court.

If your lawyer advises that there may be a CCDC for your case, you can instruct him/her on whether or not you want to be part of this process.

The purpose of a CCDC is for the Prosecution and your lawyer to settle the following matters before a Court:

- a. To set out the Case for the Prosecution and the Case for the Defence.
- b. Issues of fact or law on which the trial Judge is to decide.
- c. List of witnesses to be called by the Prosecution and the Defence.
- d. The statements, documents or exhibits which both Prosecution and Defence intend to admit at trial.
- e. The trial date.

The Case for the Prosecution should contain what they intend to rely on at your trial. These include, the charge(s) which the Prosecution intends to proceed with at the trial, summary

of the facts in support of the charge(s), list of names of the witnesses for the Prosecution, list of exhibits that the Prosecution wants to admit at the trial, and any statement you made at any time that was recorded by an officer of a law enforcement agency,

The Case for the Defence should contain your facts of your defence, list of the names of witnesses you and/or your lawyer wish to rely on, list of exhibits your lawyer intends to submit, objections (if any), and issues of fact and points of law in support of such an objection.

REPRESENTATIONS

Representations are made by your lawyer on your behalf verbally or in the form of a letter written to the Prosecution at any stage of proceedings, including before you have been charged.

Representations are written to the Prosecution as soon as possible and cannot be made after you have admitted to the charge and the statement of facts and entered an unconditional plea of guilt. The Judge will not know of the contents of the representations.

Your lawyer, depending on the case, can request the following in relation to the charge or anticipated charges:

- a. Withdraw the charge amounting (or not) to an acquittal.
- b. Withdraw the charge upon a stern and/or conditional warning.
- c. Amend the charge based on your personal circumstances considering the severity of the crime. This includes reducing the charge(s) to a lesser offence in the same class of offences, particularly where you do not have a valid defence.
- d. Take into consideration (“TIC”) charges for sentencing purposes.
- e. Ask the Prosecution for its position on sentencing.
- f. Negotiate with the Prosecution to come up with a common Statement of Facts.

After taking your instructions, your lawyer will ask or write to the Prosecution to raise certain legal issues, facts and circumstances surrounding the charge(s). When telling your lawyer what happened, you should not lie, for providing false information carries serious consequences, and is punishable with imprisonment.

The Prosecution may decide to agree to the contents of the representations, to impose conditions or to reject the contents of the representation. If the contents of the representations are rejected, the charges against you remain. You can instruct your lawyer on whether you wish to claim trial, plead guilty or make more representations on your behalf.

PLEADING GUILTY

Your plea of guilt to the charge(s) means that you admit fully to the offence and the Statement of Facts (“SOF”) that is read to you.

The SOF, which is prepared by the Prosecution, is supposed to be an objective summary of the facts of the charge, its particulars and how the offence was committed. It also helps the Court to determine the appropriate sentence for you. Upon receiving the SOF, you should go through the facts with your lawyer and instruct him on their accuracy. If you dispute any of the facts contained in the SOF, you should make this clear to your lawyer.

You must understand the nature and consequences of pleading guilty and be prepared to accept whatever punishment the Court may give. Leniency may be shown if you plead guilty at an early stage.

The Court will ask whether you agree or disagree with the SOF, totally or in part. If you disagree with the SOF on important issues, the Court will not accept your guilty plea and will direct you to claim trial to the charge. If you agree fully to the SOF, the Court will record your guilty plea and convict you.

If you do not agree to some important facts in the SOF or the Prosecution disagrees with some parts of your mitigation plea, a “Newton Hearing” may be held. A Newton Hearing is a type of mini-trial to determine factual issues.

You can only withdraw your guilty plea in very special circumstances, such as if you are able to demonstrate that you did not know the consequences of pleading guilty, did not know the elements of the offence, or were pressurised into pleading guilty.

If you are a youthful offender who is eligible for punishment by probation or reformatory training, the Court can call for both probation reports and reformatory training reports during which time you may be remanded.

As a consequence of your guilty plea, a conviction will be recorded against you and you will be sentenced accordingly. Any conviction/sentence forms part of your criminal record.

Mitigation

A mitigation plea is an address by your lawyer to the Court on the date you plead guilty, to assist the Court in choosing an appropriate sentence that justice requires.

A mitigation plea states specific reasons for the Court to consider imposing a lighter sentence on you than it normally would. For example, family background, educational qualification, medical history, employment history and other personal circumstances which gave rise to the offence.

The Court looks at mitigating factors such as:

- a. when you pleaded guilty;
- b. your remorse;
- c. whether you have committed a crime for the first time;
- d. your willingness to “restore” the victim to the position he/she was in before the crime (e.g. repayment);
- e. no serious harm to victim;
- f. cooperation with the police;
- g. whether you planned to commit the crime and/or prepared to do so with others; and
- h. long standing good character.

Supporting evidence is useful for these purposes.

You will also be asked by Court if you wish to state any facts or circumstances to explain the reason(s) why you committed the offence and why the Court should be lenient in sentencing you. If you have chosen to plead guilty, this is your opportunity to explain yourself and plead for leniency.

SENTENCING

Sentencing principles

If you have pleaded guilty or if the Court finds you guilty, it will decide on the appropriate sentence guided by sentencing principles, such as, retribution, deterrence, prevention, proportionality and public interest.

In considering the appropriate sentence, the Court considers the factors such as a sentence that was meted out in previous cases before the Courts, type of offence, your personal circumstances, the likelihood of you re-offending and the role that you played in committing the crime.

Before the Court decides on a sentence, the Prosecuting Officer may apply to read to the Court a Victim Impact Statement. Here, the Court may assess the effect of the offences on the victim and then consider an appropriate sentence.

Depending on the circumstances of the case, some types of sentences can run concurrently (sentences that run at the same time) or consecutively (one after another).

If you have pleaded guilty but are dissatisfied with the sentence, you must file a Notice of Appeal against the sentence within 14 days. On appeal, the sentence may be increased or decreased, and bail amount is likely to be increased.

Sentencing options

Depending on the case and the circumstances and whether there are previous convictions, the sentencing options for adults are fine, imprisonment, police supervision, preventive detention, corrective training, caning, community sentences and orders, death penalty and probation (in special circumstances). Both female offenders and elderly offenders above the age of 50 are not subject to caning.

For youthful offenders between 16 years and 21 years of age, probation and reformative training are possible sentences.

For offenders with mental disabilities, community based sentences are available, including a mandatory treatment order.

Community Based Sentences (“CBS”)

Youthful offenders and mentally unwell accused persons may qualify for community based sentences. A Court appointed psychologist and social worker who works with the Community Court assesses the case and suitability of sentencing, and post-sentencing follow-up action.

After sentencing

After sentencing, the Court may order that a sentence start from the date that you were in remand.

There are different prison rules and regulations that control remission (one-third sentence discount) and the Home Detention Scheme. This is not decided by the Court.

Property that may have been seized by the police may or may not be returned. Once in prison, letters to and from family/friends are screened, and there can be a total two prison visits every month.

25 Trial and Appeal

TRIAL

Claiming trial

If you decide to claim trial to the charge, the case is fixed for a Pre-Trial Conference (“PTC”) (see above). At the PTC, the Court will inquire into matters that need to be resolved and fix a date for trial after outstanding issues are ironed out. You may need to furnish Court bail. If the case is one that falls under the Criminal Case Disclosure Conference (“CCDC”), there are timelines to follow. Essentially, the Prosecution has to give you and your lawyer the “Case for the Prosecution” which contains all charges, statements, witnesses and evidence that the Prosecution intends to use at the trial. After this, your lawyer must give the Court and the Prosecution, the “Case for the Defence” which should also contain your defence(s), lists of witnesses, exhibits, and objections (if any) on matters in the Case for the Prosecution.

Procedure at trial

The Prosecution should state the nature of the offence you have been charged with and the evidence that he/she is relying on to prove that you are guilty. The Prosecution may examine its witnesses, who can be cross-examined by your lawyer. After cross-examination, the Prosecution may re-examine its witness.

After the Prosecution concludes its case, your lawyer may request the Court to dismiss the case against you on the ground that there is no case to answer. The Prosecution may respond to this.

Upon the close of the Prosecution’s case at the trial, if the Judge is satisfied that there is sufficient evidence which, if accepted, may support the charge(s) against you, you will be asked by the Court to state your defence (including calling any witnesses and

producing any documentary evidence). If no defence is presented, you may be found guilty and convicted.

However, if the trial Judge finds that the Prosecution's evidence in support of the charge is lacking or from examination of the evidence is not convinced of your guilt beyond reasonable doubt, then the Court must acquit you, i.e. find you not guilty.

If your lawyer raises a reasonable doubt in the Prosecution's case, then you may be acquitted and released. If not, you will be found guilty and convicted. Alternatively, the Court may consider the actions that warrant conviction under an amended charge.

Witnesses

You must ensure that the witnesses testifying in your defence turn up for the trial. If you are unsure about whether the witness is willing to turn up, an application at the Crime Registry may be made for a Summons to a Witness to be issued, at a nominal fee.

Court decorum

You should be dressed appropriately and address the Judge as "your Honour", the Prosecution as "the learned Prosecutor" and the witness by their surname, i.e. "Ms Tan".

Subpoena

This is an order for a person to attend Court on a specified date and time to give evidence as a witness or to produce documents.

If a subpoena is issued to anyone, it is compulsory for that person to attend Court on the stipulated day and every day of the hearing until the case is completed. If the party fails to attend without valid excuse, he/she will be found guilty of contempt of Court and may be fined or imprisoned.

A person served with the subpoena may contact a firm of solicitors to speak to them to discuss the case and he/she may be asked to make a statement that is to be given in Court. He/she may find out from the solicitors when it is necessary to attend Court and may also let them know whether an interpreter is required.

APPEAL

If you are dissatisfied with the conviction, you may appeal against it.

If you have pleaded guilty to a charge and are dissatisfied with the sentence, you may appeal against the sentence only.

If you wish to appeal against conviction or sentence, you should inform your lawyer immediately. A Notice of Appeal against conviction, sentence or order must be filed at the Crime Registry **within 14 days** from the date of judgment or sentence. After the application is filed, the Court can address the issue of bail and the bail amount pending appeal.

The Judge will release the “Grounds of Decision” after which you have to file a Petition of Appeal within 14 days of such release, which states the grounds on which you are dissatisfied with the conviction or sentence.

The Prosecution can also appeal against both sentence and/or conviction.

MAGISTRATE'S COMPLAINT

A Magistrate's Complaint can be submitted by anyone who wishes to seek recourse for a crime that he/she believes has been committed against him/her. The person submitting the "Complaint" should do so in a standard Magistrate's Complaint form, accessible via the State Courts' website on the same topic, here: <https://www.statecourts.gov.sg/CriminalCase/Documents/MagistrateComplaintForm.pdf>

The Complainant must affirm or swear to the truth and accuracy of the matters stated in the application form before a Magistrate. If the Magistrate is satisfied that the application is in order, the Magistrate may do the following:

- a. Issue a Notice to both the Complainant and Respondent.
- b. If the Respondent's address or particulars are not available, the Magistrate may direct the police to ascertain the particulars and thereafter issue a Notice to both the Complainant and Respondent.
- c. Issue a Summons against the Respondent provided that the charge(s) are available.
- d. Direct the police to conduct an investigation into the Complaint.
- e. Dismiss the Complaint.

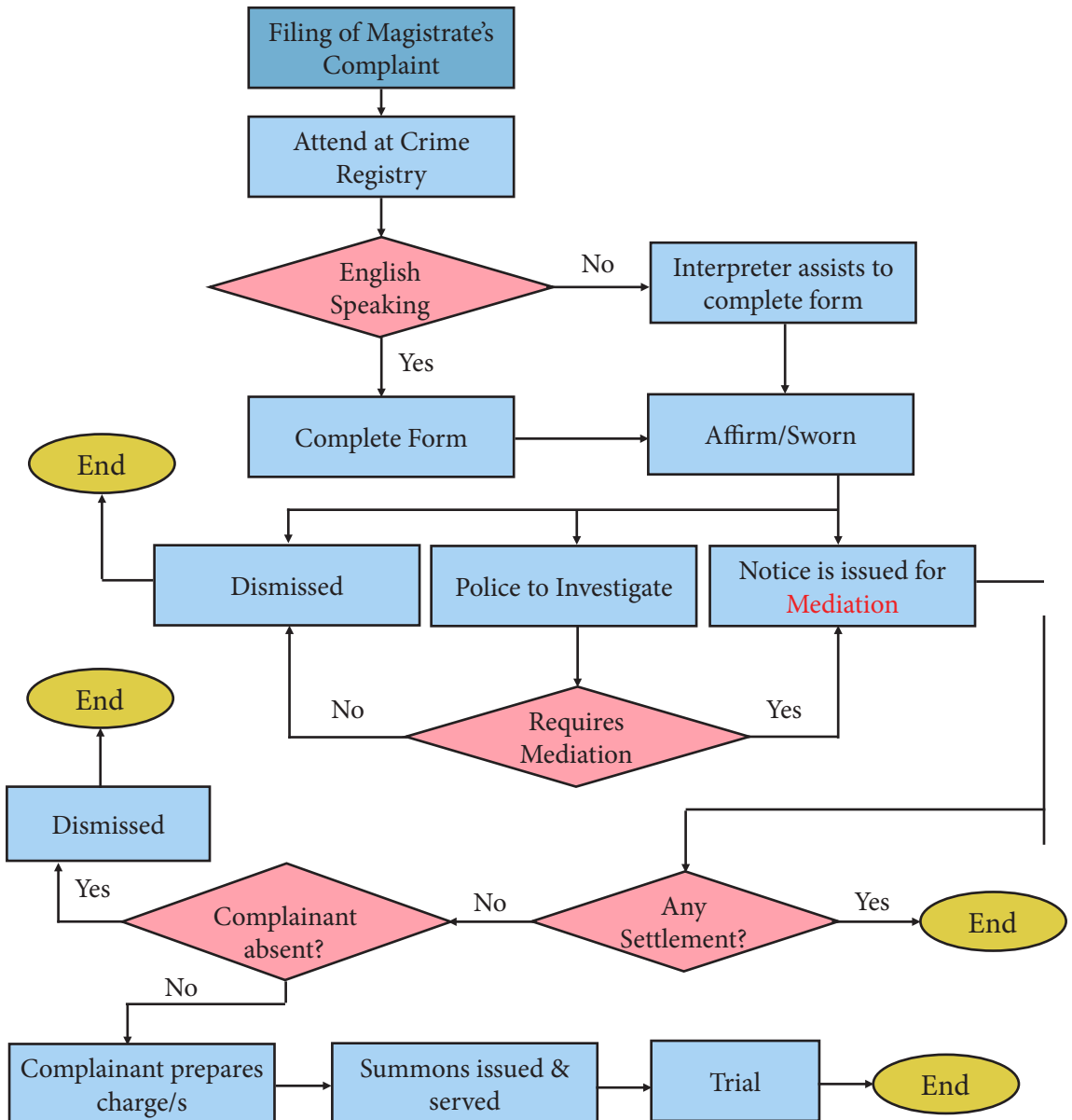
If a Notice is issued to both the Complainant and the Respondent, the Crime Registry prepares a notice to inform parties of when a Criminal Mediation will take place. The Complainant must attend. Otherwise, the Magistrate (Judge) will strike out the Complaint.

At the Criminal Mediation, the following can happen:

- a. The Magistrate may refer both parties to a Community Mediation Centre where there are a panel of trained and respected mediators or to a Court Mediator. Here, if there is an agreement, the parties can sign a Settlement Agreement. If there is no agreement, there will be a fresh Notice with another date to attend before the Magistrate.

- b. Any person who fails to comply with the order of the Magistrate made under (a.) [above] shall be guilty of contempt of court and action may be taken against him under section 8 of the State Courts Act (Cap. 321).
- c. The Magistrate may also mediate the matter. If there is no settlement agreement here, the Complainant may wish to proceed to trial by way of a Private Summons (there is a small fee payable for each summons).

For a flowchart on the filing of a Magistrate's Complaint, see the State Courts' depiction below.



PRIVATE SUMMONS

If the Magistrate hearing the Complaint is not able to get the parties to settle and the Complainant wishes to proceed, the Magistrate or Judge will give directions on when charges, prepared by the Complainants need to be drawn up and served on the Defendants.

The Complainant pays a nominal sum for the issuance of the Private Summons.

Essentially, the Complainant will then prosecute these cases (usually through his/her appointed counsel).

Service of Summons

The Complainant must formally serve the Summons on the Respondent. This is to give the Respondent notice of the Complaint started against him.

Method of service is either by personal service to the Respondent by hand, by the Complainant and an authorised person (usually Court Process Server or appointed lawyer on behalf of the Complainant).

If personal service is not possible, Court's approval for an alternative suitable method for service should be obtained.

A Private Summons cannot be served on a Respondent who resides outside Singapore.

If the Complainant is unable to determine the Respondent's current address, the Complaint cannot proceed.

Hearing of Summons

Once the Summons is served, there is a hearing. If the Respondent pleads guilty, the Court immediately passes a sentence. If there is a trial, parties have to give their respective cases, evidence (including calling and cross examining of witnesses) and arguments in open Court. The Court will decide in the end whether the Respondent is guilty of the offence(s) charged.

PART V

EMPLOYMENT MATTERS



EMPLOYMENT LAW

The Employment Act (“EA”) tells you about your rights and obligations as an employee.

You are an employee under the EA, unless you are a person employed as a seaman, a domestic worker or in a managerial or executive position. However, Part IV of the EA gives additional protection to non-managerial/non-executive employees who earn no more than \$2,500 per month including contractual allowances but excluding travelling and housing allowances (“Part IV employees”). Part IV of the EA provides for rest days, hours of work, holidays, annual leave, payment of retrenchment benefit, priority of retirement benefit, annual wage supplement and other conditions of service.

Singapore law does not prescribe any form of employment contract. Employment contracts need not even be in writing, although this is customary and the terms and conditions of employment for both EA and non-EA employees will generally be set out in the employment contract or contract of service. The terms for EA employees must not be less favourable than those provided for by the EA.

SALARY

Under the EA, your salary must be paid at least once a month (not necessarily on the first day of a calendar month) and within the first seven days of each salary period. All salary must be paid in legal tender and be paid into your personal or joint account or by cheque to you. If your employer does not comply with the above, he is guilty of an offence and can be fined up to \$15,000 or jailed for six months.

Employers' Central Provident Fund ("CPF") contribution obligations

Employers are prohibited from requesting their employees to waive CPF contributions. All CPF contributions must conform to the rates stipulated in the CPF Act, based on the employees' wages.

CONDITIONS OF WORK

There are seven issues which will be applicable only to you if your monthly income is less than \$2,500 per month.

- a. Working hours
 - i. Generally, you are not required to work more than eight hours a day (or 44 hours a week). There are, however, exceptions to this general rule.
 - ii. You can:
 - Work for nine hours in one day (but still not exceeding 44 hours a week), if you agree to work less than eight hours a day on one or more days, or work five (or less) days a week.
 - Work for 48 hours a week (or 88 hours over two weeks), if you agree to work less than 44 hours every alternative week.
 - Work unlimited hours and on rest days, if there is an accident, or if the work is essential to the life of the community, defence or security, or if there is urgent work to be done to machinery or plant or an interruption of work which was impossible to foresee.

If you work more than the hours above, you are working overtime.
- b. Overtime

You cannot do overtime work for more than 72 hours a month. If you work overtime, you should be paid at least 1.5 times your "hourly-rate of pay". Payment for overtime work must be made within 14 days after the last day of the salary period.
- c. Rest time

You are entitled to have at least one rest day a week which need not be a Sunday. You are allowed to have a rest period after working continuously for six hours. However, if the nature of your work is such that it must be done continuously, then you must have a 45-minute meal break within eight hours.
- d. Shift workers

As a shift worker, your hours of work may differ from those of other workers. Section 38 of the EA sets out the standard working hours for non-shift workers (discussed in "Working hours" and "Overtime"). Section 40 sets out the working hours requirement for shift workers.

Under the section:

- You can be required to work more than six consecutive hours without a break, or more than eight hours (but not more than 12 hours) a day, or more than 44 hours a week (but not more than an average of 44 hours per week over a period of three weeks).
- You can claim overtime, if you work more than an average of 44 hours per week over a period of three weeks.

You must consent in writing to working on shift. Sections 38 and 40 of the EA must be explained to you; otherwise, your consent will not be valid.

e. Annual leave

If you have served an employer for a period of not less than three months, you shall be entitled to paid annual leave of seven days in respect of the first 12 months of continuous service with the same employer and an additional one day's paid annual leave for every subsequent 12 months of continuous service with the same employer subject to a maximum of 14 days of such leave which shall be in addition to the rest days, holidays and sick leave to which the employee is entitled under sections 36, 88 and 89 of the EA respectively.

Your employer can forfeit your annual leave if you absent yourself from work for more than 20% of the number of working days in the month or year or are dismissed on the grounds of misconduct.

f. Retrenchment and retirement benefits

Retrenchment

Your employer can retrench you if you are no longer needed or if there is a reorganisation of your employer's business. Your employer need not give any reasons and he cannot be stopped from employing new workers after a retrenchment exercise. Retrenchment benefits are payable only if your contract of service (or a collective agreement if you a union member) says so or if your employer decides to pay you "ex-gratia" (gratuitous) retrenchment benefits.

Your employer will also have to give you notice of retrenchment. Affected employees should be informed of the impending retrenchment before notice of retrenchment is given. The duration of notice will depend on what is stipulated in the contract of service. If the notice period is not stipulated, it will be the period as set out under the section below on "Termination of Contract of Service".

Retirement

The EA says that if you have worked for less than five years with your employer, you are not entitled to any retirement benefits. The EA, however, does not say that if you have worked for at least five years with your employer, you are automatically entitled to retirement benefits. The amount of retirement benefits is not stated in the EA and must be negotiated between yourself (or your trade union) and your employer.

The Retirement and Re-employment Act (“RRA”) came into effect on 1 January 2012. The objective is to provide employees with the opportunity to work beyond their retirement age. Under the RRA, an employer is required to offer re-employment to an employee who meets the eligibility criteria, namely, the employee:

- has reached the statutory minimum age of 62 or a contractual retirement age not exceeding 65 (“older employee”);
- has been assessed by the employer as having at least satisfactory work performance; and
- is willing and medically fit and able to continue working.

If an older employee is offered re-employment by the employer, both can enter into a new contract (for a period of at least one year) with the job scope and terms to remain the same, unless varied based on reasonable factors including the employee’s productivity, performance, duties and responsibilities and the wage system. If the employer is unable to offer a suitable alternative job to an older employee, despite making reasonable attempts to do so, the employer must offer the older employee an Employment Assistance Payment (“EAP”).

TERMINATION OF CONTRACT OF SERVICE

Termination on notice

In general, an employment contract may be terminated on notice given by either party (unless the contract is for a fixed term). EA employees must be given (and must give) notice in writing. The period of notice for either you or your employer to terminate your contract of service should be stated in your contract. It should not be less than the following guidelines in the EA:

Period of employment	Period of notice
less than 26 weeks	not less than 1 day
26 weeks but less than 2 years	not less than 1 week
2 years but less than 5 years	not less than 2 weeks
5 years or more	not less than 4 weeks

For managerial/executive level employees, where the employment contract does not provide for a notice period, then “reasonable notice” must be given. As to what constitutes “reasonable notice”, factors such as the nature of the employment, qualifications of the employee and period of employment may be considered. In practice, the employer may

refer to the notice period applicable to other employees in the same category as the employee in question.

Either you or your employer can choose to waive your right to notice. Either party can also choose not to wait for the notice period to expire. In this case, the party who does not wish to wait for the expiry of the notice period must pay the other salary in lieu of notice.

There is no legal requirement to state the reason for termination with notice, so long as the termination is effected in accordance with the employment contract.

Termination without notice

Notice of termination need not be given if there has been a breach of the terms and conditions of the contract of service. For example, if your employer fails to pay your salary within seven days after it is due, or if you feel that you have been asked to do something which involves danger, violence or disease which is not included in the contract of service, you may leave your employment without giving notice. (It is advisable to seek advice from your lawyer or the Ministry of Manpower before doing this). On your part, your employer need not give you notice of termination if you absent yourself from work for more than two days without prior leave or without reasonable excuse or attempting to inform your employer.

The employer can, instead of dismissing you, do the following:

- instantly downgrade you; or
- instantly suspend you without pay for a period not exceeding one week.

Summary dismissal

In most cases, the employment contract specifies the “cause” or grounds on which the employer may summarily terminate employment, not all of which need to be fault-based (e.g. bankruptcy is a common ground for summary dismissal). The employer must ensure that the situation it intends to rely on falls within the wording of the specified grounds, and that there is evidence to prove such grounds on at least a balance of probabilities.

In addition, as long as the contract does not explicitly prevent the employer from doing so, an employer is entitled to rely on section 14(1) of the EA to summarily dismiss you if your conduct is inconsistent with the conditions of the contract.

Procedure for summary dismissal

There is no statutory procedure to be followed for summary dismissal, other than “due inquiry”. Though the EA does not specify what constitutes “due inquiry”, Ministry of Manpower (“MOM”) guidelines prescribe that the employee must be told of the allegations against him and be given an opportunity to explain himself. The Tripartite Alliance’s guidelines on Fair Employment Practices (“TAFEP”) also provide that a decision to

dismiss an employee should be based on properly documented proof of poor performance or misconduct.

In addition, if any procedure leading to dismissal is set out in the employment contract, such as a disciplinary procedure, the employer must comply with such procedure.

Appealing against termination

Employees who feel that they were unfairly terminated can appeal to the Minister of Manpower within one month of dismissal. If the termination was carried out with notice and in accordance with contractual terms, the onus is upon the employee to prove that the dismissal was done “without just cause or excuse”. This means that an employer failed to provide good reason for the termination (e.g. poor performance) and did not communicate his concern to the employee prior to termination. If unfair dismissal is proven, the Minister may order payment of compensation or (rarely) reinstatement by the employer.

MATERNITY/CHILDCARE LEAVE

Under the Child Development Co-Savings Act (“CDCA”), female employees are entitled to 16 weeks of paid maternity leave (4 weeks immediately before and 12 weeks immediately after delivery), provided that the conditions set out in the CDCA are met. An employee who is covered under the EA, but not under the CDCA, will be entitled to 12 weeks of maternity leave – of which 8 weeks are paid leave.

Some general rules apply:

- To be entitled to gross pay during maternity leave, you must have worked for your employer for at least 3 months before delivery of the child.
- You must inform your employer at least 1 week before you commence your maternity leave and also inform your employer of the date of when confinement begins. If you fail to give the notice without good reason for doing so, you will only be entitled to half pay.
- It is illegal for your employer to ask you to give up your maternity leave, or to terminate your contract while you are on maternity leave.
- During maternity leave, you are not allowed to claim for sick leave, unless it is provided for in the employment contract.
- Employees who meet the eligibility criteria under the CDCA will also be entitled to childcare, paternity, shared parental and adoption leave provided under such laws, a summary of which is set out in the next page.

S/N	Leave Type	Description
1	Shared Parental Leave (conditional)	Male employees are entitled to share 1 week of their spouse's 16 weeks of maternity leave subject to mutual agreement and provided she qualifies for Government Paid Maternity Leave. Consequently, her entitlement will be reduced to 15 weeks. Shared parental leave is to be consumed continuously, or flexibly (per mutual agreement by employer and employee) within 12 months of the birth of the child.
2	Paternity Leave (conditional)	Male employees may apply for 1 week (5 working days) of Government-paid paternity leave on each occasion of the birth of the employee's child, regardless of number of children. Leave is to be taken within 16 weeks after the birth of their child or may be consumed flexibly within 12 months of the birth of the child (per mutual agreement by employer and employee).
3	Adoption Leave	Female employees are entitled to 4 weeks of Government-paid adoption leave if the child is below the age of 12 months at the point of 'formal intent to adopt'. The leave must be consumed before the child's first birthday. Adoptive fathers are also eligible for 1 week of Government-paid paternity leave subject to similar conditions.
4	Childcare Leave (conditional)	(For employees with children who are Singapore Citizens) Employees with children below 7 years old are entitled to 6 days of childcare leave. Leave is non-transferable between spouses and unused leave cannot be carried over nor encashed. Parents whose child is aged 7–12 years (inclusive) are given 2 additional days of extended childcare leave per year.

BONUS

Bonus is a one-time payment usually paid to employees at the end of the year to reward them for their contributions to the company.

Payment of bonus is not compulsory. However, it is a contractual obligation for the employer to pay bonus if it is provided for in the employment contract or collective agreement.

MAKING A COMPLAINT

If you have any disagreement with your employer about your salary, the terms of your contract or your rights under the Act, you can make a complaint to the Ministry of Manpower. The fee for making a complaint is \$3.00.

You must do so within one year from the incident you are complaining about occurred. However, if your complaint relates to matters surrounding termination of your contract, you must complain case within six months from the date you left your employment.

The Commissioner will then summon the party complained against and conduct an inquiry into the complaint. Prior to this, the Commissioner may hold a preliminary inquiry where parties are given a chance to settle the matter. If a settlement is reached, the Commissioner shall make an order and the order shall be effective without further inquiry.

At the inquiry, the Commissioner will hear evidence from all sides to the dispute and then make the necessary order. The order can be to dismiss the claim or to order a party to pay a sum of money to satisfy the claim. This order can be made in the absence of one party if that party fails to attend the inquiry.

Any party not satisfied with the Commissioner's order can appeal to the High Court within 14 days of the decision.

WHAT DO YOU DO IF YOU ARE INJURED WHILE YOU ARE AT WORK?

You can make a claim under the Work Injury Compensation Act (“WICA”). WICA is administered by the Ministry of Manpower (“MOM”).

WICA aims to provide a quick and simplified process for obtaining compensation for workplace injuries. The alternative is an expensive and time-consuming civil lawsuit against your employers.

Unlike civil lawsuits against the employer, compensation is payable under WICA on a “no-fault basis”, as long as an employee suffers an injury arising out of and in the course of his employment. There is also a fixed formula in the Act on the amount of compensation to be awarded, and capped so that the financial liability on the employer is limited.

WHO CAN CLAIM COMPENSATION UNDER WICA?

Anyone who sustains injuries or who contracts occupational diseases arising out of his/her work, or the estates of employees who die in a work-related accident, are entitled to claim work injury compensation. WICA covers all employees engaged under a contract of service or apprenticeship, regardless of their salary.

Notable Exceptions – Self-employed persons, independent contractors, domestic workers, members of the Singapore Armed Forces, officers of the Singapore Police Force, the Singapore Civil Defence Force, the Central Narcotics Bureau and the Singapore Prison Service are not covered by WICA.

WHAT IS COVERED UNDER WICA?

You can make a claim under WICA for personal injury by accident arising out of and in the course of your employment, i.e. arising during working hours or while on official duties, including accidents that happen while travelling to and from your place of work in company-provided transport (not by public transport), and injuries sustained abroad while on overseas assignments.

WHAT ARE THE COMPENSATION BENEFITS UNDER WICA?

Subject to the maximum amounts prescribed by WICA, you or your estate, as the case may be is/are entitled to claim:

- a. medical expenses, including medical consultation, hospitalisation, treatment and surgery, artificial limbs and surgical appliances;
- b. compensation for Permanent Incapacity or Death; and/or
- c. wages while on medical leave.

WHAT ARE THE LIMITS / MAXIMUM AMOUNT THAT CAN BE CLAIMED UNDER WICA?

- a. For medical expenses, these must be incurred within one year from the date of the accident, or up to a cap of \$30,000 per accident, whichever is reached earlier.
- b. For Permanent Incapacity, the maximum is \$218,000 but not less than $\$73,000 \times [\% \text{ loss of earning capacity}] + \text{a further } 25\% \text{ if you suffer permanent total incapacity (i.e. you suffered } 100\% \text{ loss of earning capacity)}$.
- c. For death, the compensation amount payable to your dependants is subject to a maximum of \$170,000 but no less than \$57,000.
- d. For medical leave wages, full pay up to 14 days outpatient medical leave, and full pay up to 60 days hospitalisation. Once this limit is reached, two-thirds of salary is payable up to a maximum period of one year following the date of the accident.

WHAT IS THE TIME LIMIT FOR FILING A CLAIM UNDER WICA?

The time limit for filing a claim with the MOM is one year from the date of the accident. After this one-year period, no claims under WICA will be entertained.

WHAT IS THE PROCEDURE FOR FILING A CLAIM UNDER WICA?

The steps for filing a claim under WICA are:

Step 1

You must submit a claim application form to MOM within one year from the date of accident.

Step 2

You are required to undergo a medical examination to assess the extent of the injury. Your employer will submit the Medical Report Form for Work Injury Compensation to the treating clinic or hospital and pay the requisite medical report fees.

Step 3

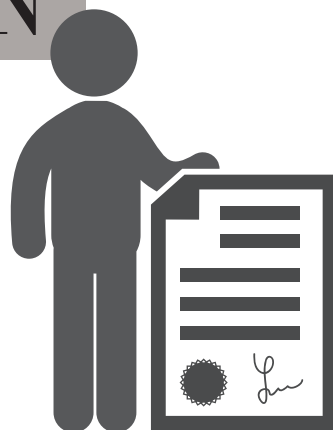
The treating clinic or hospital will send the completed medical report to the MOM; upon which the MOM will assess the compensation amount and issue a Notice of Assessment (which states the amount of compensation payable) to you, your employer and your insurer. If you wish to object to the amount of compensation, you may do so within 14 days of date of service of the Notice of Assessment. The MOM has discretion whether or not to accept objections filed after the 14-day period.

Step 4

If there are no objections to the Notice of Assessment, the assessment is final and conclusive on the 15th day and your employer has 21 days to make payment of the assessed compensation amount to you.

PART VI

ESTATE PLANNING AND ADMINISTRATION



29

Making a Will and Intestate Succession

WHAT IS A WILL?

A Will is usually made to provide for the administration and distribution of a person's assets (his/her "estate") upon his/her death.

SOME TERMS YOU SHOULD KNOW

- | | |
|------------------|---|
| "Testator": | The person making a Will. |
| "Beneficiaries": | Those who will inherit or benefit under the Will. |
| "Executor": | A person that the Testator appoints to attend to all the necessary formalities prior to distribution of the estate such as making the application for a Grant of Probate, paying your debts and testamentary expenses, and converting all your assets into cash, provided that this is in accordance with the Will. |
| "Trustee": | A person that the Testator appoints to attend to the distribution of your assets in accordance with your instructions as contained in your Will. The Testator usually appoints the same person as the Executor and Trustee. |
| "Intestate": | A situation where a person passes away without leaving behind a validly executed Will. |
| "Testate": | A situation where a person passes away leaving behind a validly executed Will. |

WHO CAN MAKE A WILL?

If you are 21 years and above and of sound mind, you may make your own Will and change it at any time during your life without consulting a lawyer. However, the risk is that your home-made Will may be ineffective or invalid, causing your beneficiaries to suffer unnecessary expense. It is therefore in your interest to consult a lawyer who can advise you and draft your Will for you according to the law.

However, if you are a soldier in active military service, or a mariner or a seaman at sea, you may make a Will even though you are below 21 years of age.

WHO CAN YOU APPOINT AS YOUR EXECUTOR/TRUSTEE?

Under the laws of Singapore, an Executor and Trustee must be over the age of 21 years or above and cannot be an undischarged bankrupt. Usually, the Testator appoints a family member or a close friend to be the Executor and Trustee. Apart from satisfying the legal requirements, the person(s) appointed should have some understanding of your financial position and assets to be able to effectively give effect to the instructions in your Will. It is possible to appoint more than one Executor and Trustee (called joint Executors and Trustees). It is also possible for your Will to provide for a substitute or alternate Executor and Trustee, especially if you feel that your first choice of Executor and Trustee may pass away before you do.

CAN YOU PROVIDE FOR THE CARE OF YOUR CHILDREN IN THE WILL

Under the local Guardianship of Infants Act, the father and/or mother of an infant has the right to appoint a guardian for their young children in the event of said parent's death.

If only one parent passes away, the Guardianship of Infants Act provides that the surviving parent shall have the right to guardianship. However, this right of guardianship may be exercised solely by the surviving parent, or jointly together with any guardian appointed by the deceased parent in his or her Will.

Where the surviving parent and the guardian appointed by the deceased parent are unable to jointly exercise their rights to guardianship, and such a dispute is brought to the Court, the Guardianship of Infants Act provides that the Court shall have regard to "the welfare of the infant as the first and paramount consideration". In other words, the question of guardianship or upbringing of the child in question is always decided with reference to the child's best interests.

WHO CAN YOU NAME AS YOUR BENEFICIARIES?

You can choose to give your assets to your family members, your friends or even an organisation.

In your Will, you should state clearly the person(s) or organisation(s) to whom you wish to give away your property and assets to by including their full name and identification number.

You are also able to give away your assets to beneficiaries under the age of 21. However, if there are beneficiaries who are minors (persons under the age of 21 years) named in your Will, it will be preferable to have at least two Executors/Trustees to administer or hold any assets for the benefit of these minor beneficiaries.

DISTRIBUTION OF YOUR ASSETS

It is possible for you to leave specific assets or specific sums of money to a specified beneficiary. For example, your Will could be drafted to provide that:

- all your shares in a particular company be given to your business partner;
- your immovable property be given to your niece; and/or
- the sum of \$100,000 be given to your wife.

Alternatively, instead of disposing of your estate asset by asset (and bearing in mind that assets can change through time), you may choose to bequeath your entire estate to one or more persons in certain percentages. For example, your Will can be drafted to provide that your entire estate be given to your wife and son in equal shares.

WHAT ASSETS CAN YOU INCLUDE IN A WILL

Generally, assets that are in your sole name can be given away in your Will, with the exception of the assets specifically named in the next section. Some of the assets that you may be able to give away include your house, car, shares, proceeds from your insurance policies, monies in your bank accounts, cash and jewellery.

WHAT ASSETS CANNOT BE INCLUDED IN A WILL

Not all assets can be disposed of in a Will. For example, you cannot dispose of assets which do not legally belong to you. In addition, there are special rules relating to your Central Provident Fund ("CPF") monies, certain types of insurance policies and assets which you own jointly with another.

Money in your Central Provident Fund (“CPF”)

Under the laws of Singapore, the savings in your CPF Ordinary, Special, Medisave and Retirement Accounts as well as any discounted SingTel shares cannot be distributed under your Will. However, the CPF Act provides a means for you to make a nomination such that your nominee(s) will be entitled to the funds in your CPF Account in the proportion specified by you regardless of what is stated in your Will. In the absence of such nomination, your CPF assets will be distributed in accordance with the Intestate Succession Act (for non-Muslims) and the Administration of Muslim Law Act (for Muslims) even if you have specifically disposed of these assets in your Will. This nomination can be made by completing the CPF Board’s prescribed Nomination Form and returning it to the CPF Board. Your signature on the Nomination Form must be witnessed by two witnesses who have to be above 21 years of age. The witnesses cannot be nominees.

If you get married after making a nomination, your nomination made before marriage is automatically cancelled, unless you say that it was made in contemplation of marriage. Therefore, you ought to make a new nomination after marrying.

Your CPF nomination is not automatically revoked in the event that you get divorced. You may also revoke your CPF Nomination by completing the CPF Board’s Notice of Revocation of Nomination Form and returning it to the CPF Board.

Insurance policies

If you have an insurance policy in which the proceeds are payable upon your death (i.e. death benefits), the distribution of the payment of such death benefits depends on whether you have nominated any beneficiaries under that insurance policy.

Where you have not nominated any beneficiaries or where you nominate “the estate” as the beneficiary the death benefits from those policies will be distributed in accordance with your Will. Where you pass away without leaving a valid Will, the death benefits will be distributed in accordance with the Intestate Succession Act.

If the deceased had nominated beneficiaries to receive the death benefits of any insurance policy, then the following rules will apply.

- Where you have nominated your spouse and/or children to receive the death benefits from any insurance policy, and such nomination took place before 1 March 2009, then the death benefits from those policies will be distributed in accordance with your nomination. Even if the deceased later executes a Will in which he alters the beneficiaries of such death benefits, the earlier nomination will prevail. This is because under the law of Singapore, when such a nomination is made in favour of a spouse or children, a statutory trust is created, which cannot be revoked. This remains true even if you have divorced your spouse since the nomination.
- Where your insurance policy is effected on or after 1 March 2009, the manner in which the death benefits are distributed depends on the type of nomination you made:

- **Trust (Non-Revocable) Nomination:** In this type of nomination, you nominate your spouse or children to receive the death benefits, who will be entitled to receive the same. Even if you subsequently execute a Will altering the beneficiaries named in the Trust (Non-Revocable) Nomination, the Will would have no impact and your spouse or children would still be entitled to the death benefits. You may revoke such a Trust (Non-Revocable) Nomination in your lifetime if, for example, you obtain the written consent of all the beneficiaries agreeing to such revocation.
- **Revocable Nomination:** In this type of nomination, if you make a Will after making a Revocable Nomination and that later Will specifically disposes of the death benefits from the insurance policy in question, the terms of your Will would prevail over the Revocable Nomination. This means that if you bequeath the death benefits to beneficiaries who are different from those stated in the Revocable Nomination, the death benefits will be paid to the beneficiaries stated in the Will and not those in the Revocable Nomination.

When preparing your Will, it is therefore extremely important for you to be aware of:

- who you have nominated to be the beneficiaries of the death benefits under each of your insurance policies;
- whether any nominations you have previously made can be revoked; and
- whether you can legally alter the beneficiaries of such death benefits by your Will.

Joint assets

You may have assets which you own jointly with another person. Property that may be jointly owned includes movable property such as joint bank accounts and immovable property such as residential property. Where a person owns an asset together with another, and one of the owners passes away, the general rule (except for assets held as tenants-in-common for immovable properties as explained below) is that the surviving joint owner is entitled to the whole of the joint asset. This is known as the right of survivorship. The right of survivorship applies to both testate and intestate cases, except in very special circumstances. As such, where the asset belonging to you is jointly owned with another and your Will provides that the joint asset is to be given to a beneficiary who is not the surviving joint owner, it is only in very rare and exceptional cases that the clause in your Will is preferred over the right of survivorship.

In deciding whether or not you may dispose of your share of jointly owned immovable property in your Will, you must consider the manner in which such immovable property is legally held. At law, immovable property may be held as joint tenants in a “joint tenancy” or as “tenants-in-common” in a “tenancy-in-common”.

Joint tenancy: Where immovable property is held in a “joint tenancy”, each of the joint tenants share equal ownership of the property and have an equal undivided right to the property. The right of survivorship, as explained above, will apply.

Tenancy-in-common: Where immovable property is held as a “tenancy-in-common”, each of the joint owners owns an identifiable share of the immovable property. For example, you may own a 60% share of your residential property and your spouse may own the remaining 40% as tenants-in-common. Where the immovable property is held in a “tenancy-in-common”, the principle of survivorship does not apply and both you and your spouse may dispose of your respective share of the immovable property in your Wills. Alternatively, if you pass away without leaving a Will, your share of any immovable property owned as a tenant-in-common will be distributed in accordance with the Intestate Succession Act.

The manner of holding and the specific share of each owner is stated on the documents conferring the title of immovable property on the owners, e.g. the Certificate of Title.

ASSETS NOT DISPOSED OF IN YOUR WILL

Where you pass away leaving behind a Will which does not deal with all of your estate, those assets not disposed of in your Will will be distributed in accordance with the rules under the Intestate Succession Act, discussed below. This scenario is known as “partial intestacy”. It is therefore crucial to include a “residuary clause” in your Will to ensure that partial intestacy will not occur.

WITNESS YOUR WILL

The Testator has to sign the Will in the presence of at least two witnesses, present at the same time. These two witnesses must sign the Will in the presence of the Testator and in the presence of each other. It is important to note that witnesses cannot be beneficiaries of the Testator’s estate or the spouse of any of the beneficiaries as any clause in the Will where the Testator makes a gift to such beneficiary or to the spouse of the beneficiary will be void.

In an application for a Grant of Probate, if the Court has any doubts as to the proper execution of the Will by the Testator, the Court may require the two attesting witnesses to give evidence that the Will was properly executed in accordance with the Wills Act. It is therefore very important to ensure that the Will is properly executed. The names and identification numbers of the two witnesses (and the interpreter, if the Will was interpreted to the Testator, prior to his execution) should also be stated on the Will.

CHANGING YOUR WILL

Never attempt to change your Will by crossing parts out or adding words in or by attaching anything to it. If you do so your Will may become ineffective or invalid. If you wish to change your Will, either a fresh Will should be made, or a Supplemental Will (“a Codicil”) prepared.

It is good practice to destroy the originals and copies of any previous Wills made by you so as to avoid any confusion as to which Will is to take effect in the event that a new Will is executed. This should be the case even if the new Will contains a Revocation Clause as it will prevent the situation whereby your family locates only the earlier Will and not the latest Will which expresses your most recent intentions. While the situation may be rectified upon subsequent location of the latest Will, such rectification will understandably come at a cost.

REVIEWING YOUR WILL

If you marry or remarry, your Will is nullified or cancelled unless the Will is expressed to have been made in contemplation of your marriage.

You should review your Will if any of the following happens:

- a. if you change your name or anyone mentioned in the Will changes his name;
- b. if an Executor or Trustee dies or becomes incapable of carrying out his duties owing to ill-health;
- c. if a beneficiary dies;
- d. if you subsequently sell or part with any property mentioned in the Will;
- e. if there is any significant change in circumstances, e.g. when you acquire property or assets which have not been mentioned in your Will.

It is advisable to review your Will regularly.

MAKING KNOWN YOUR WILL

Although a Will is a private document, it is important that your family and especially your Executors know that you have a Will and where you have kept it. It is not advisable to lock your will in a safe. If you wish, your lawyer will look after it for you. You should then give your Executors your lawyer’s name and address. You may also register your Will at the Wills Registry.

The Wills Registry is maintained by the Insolvency and Public Trustee’s Office. As the Wills Registry does not accept copies of the Will, the contents of the Will remain confidential. Although registration of the information set out above is not compulsory, registration with the Wills Registry is encouraged as it provides a simple means for your loved ones to ascertain the location of your Will when you pass away. Furthermore,

registration is free of charge.

BENEFITS OF LEAVING A WILL

Having a Will drawn up and executed has many benefits to the Testator as well as to his family, including the following:

- It allows you, the Testator, to dictate how your assets are to be distributed. This gives you the right to dictate specifically whom you wish to give your assets to and in what proportion or shares. Muslims may only dispose of one third of their assets in their Will as the remaining two-thirds are distributed according to the Inheritance Certificate issued by the Syariah Court.
- It allows you to decide who you wish to appoint as the Executor of your estate once you pass away. The Executor is the person who will be responsible for carrying out your instructions as set out in your Will.
- It allows you to appoint guardians for your children which is particularly important in the event that both you and your spouse pass away leaving young children. You may decide to appoint a person whom both you and your spouse trust to bring up and care for your children properly.
- A Grant of Probate in the case of testacy involves fewer steps and is therefore almost always faster and less complicated than an application for a Grant of Letters of Administration in the case of intestacy.

VALIDITY

Under the laws of Singapore, a Will is considered valid only if it conforms to the legal requirements set out in the Wills Act. These requirements are:

- it has to be in writing;
- it must be signed by the Testator; and
- it must be signed by at least two witnesses.

There is no legal requirement for a Will to be in the English language in order to be valid, as long as it is properly executed in accordance with the Wills Act. However, if the Will is not in the English language, after the Testator's death, an English translation must first be obtained for the purposes of the application to Court for a Grant of Probate. As you may imagine, there are costs and delays associated with obtaining such a translation. It is therefore common practice to have a Will drawn up in English and then formally interpreted to the Testator in a language he is familiar with prior to executing the Will. A Will can be handwritten or typed as long as it is in a document form and properly executed in accordance with the Wills Act. A verbal declaration of the Testator's intentions does not constitute a valid Will.

IF YOU DO NOT MAKE A WILL (NON-MUSLIMS)

If you pass away without leaving behind a validly executed Will, you are said to have died “intestate” and your assets will be distributed according to the rules of intestacy as laid down in the Intestate Succession Act provided you are not of the Muslim faith. The Intestate Succession Act applies to all deceased persons who were domiciled in Singapore and did not practice the Muslim faith. While the question of “domicile” is a question of fact involving various factors, your domicile is generally the county which you consider your home. If you are a Singaporean and have lived in Singapore for the majority of your life, then in all likelihood, you will be considered to be domiciled in Singapore.

The Intestate Succession Act sets out the people who will inherit a share in your estate and the proportion in which they are entitled to take. Generally, your estate will be distributed to your family members and descendants in the following priority:

- first, to your spouse, children, grandchildren (and other descendants);
- second, to your parents;
- third, to your brothers, sisters, nephews and nieces;
- fourth, to your grandparents; and
- fifth, to your uncles and aunts.

The definition of “child” under the Intestate Succession Act means legitimate children (i.e. children born to a woman when she is validly married, or subsequent marriage of the parents of illegitimate children) and includes any child adopted pursuant to the adoption laws in Singapore, Malaysia or Brunei. In other words, illegitimate children are not entitled to inherit under the Intestate Succession Act. Where a person is divorced, his ex-wife or her ex-husband is no longer considered a “spouse” who is entitled to inherit under the Intestate Succession Act.

The specific rules under the Intestate Succession Act relating to the distribution of your estate in the event that you pass away intestate are explained below.

Rule A

Where you pass away leaving a surviving spouse and children, your spouse will inherit 50% of your estate and the remaining 50% will be inherited by all your children in equal shares.

Rule B

Where you pass away leaving surviving children but no surviving spouse, then your children will inherit your estate in equal shares.

In situations covered by Rule A and Rule B, if any of your children have passed away before you, and have themselves left children (i.e. your grandchildren), then such grandchildren will inherit their parent’s share of your estate in equal shares.

Rule C

Where you pass away leaving a surviving spouse but no surviving children or grandchildren (or other descendants), then your spouse will inherit 50% of your estate and the remaining 50% will be inherited by your parents in equal shares.

Rule D

Where you pass away without leaving a surviving spouse, children or grandchildren (or other descendants), then your parents will inherit your estate in equal shares. In the case where you are survived by only one parent, then that parent will inherit your entire estate.

Rule E

Where you pass away leaving a surviving spouse but no surviving parents, children, or grandchildren (or other descendants), then your spouse will inherit your entire estate.

Rule F

Where you pass away without leaving a surviving spouse, parents, children or grandchildren (or other descendants), then your brothers and sisters will inherit your estate in equal shares. In this scenario, if any of your brothers and sisters have passed away before you and have themselves left children (i.e. your nephews and nieces), then such nephews and nieces will inherit their parent's share of your estate in equal shares.

Rule G

Where you pass away without leaving a surviving spouse, parents, children, grandchildren (or other descendants), brothers, sisters, nephews or nieces, then your grandparents will inherit your estate in equal shares.

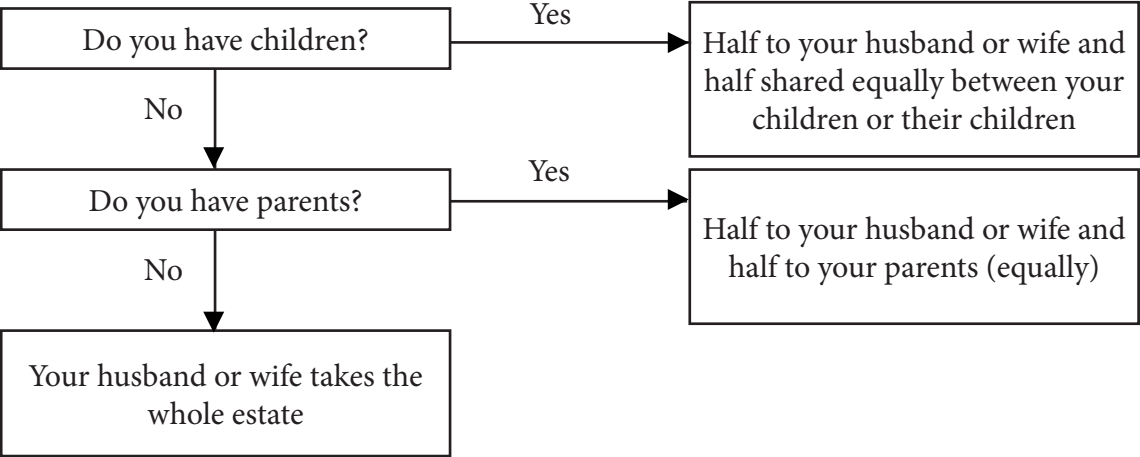
Rule H

Where you pass away without leaving a surviving spouse, parents, children, grandchildren (or other descendants), brothers, sisters, nephews, nieces or grandparents, then your surviving aunts and uncles will inherit your estate in equal shares.

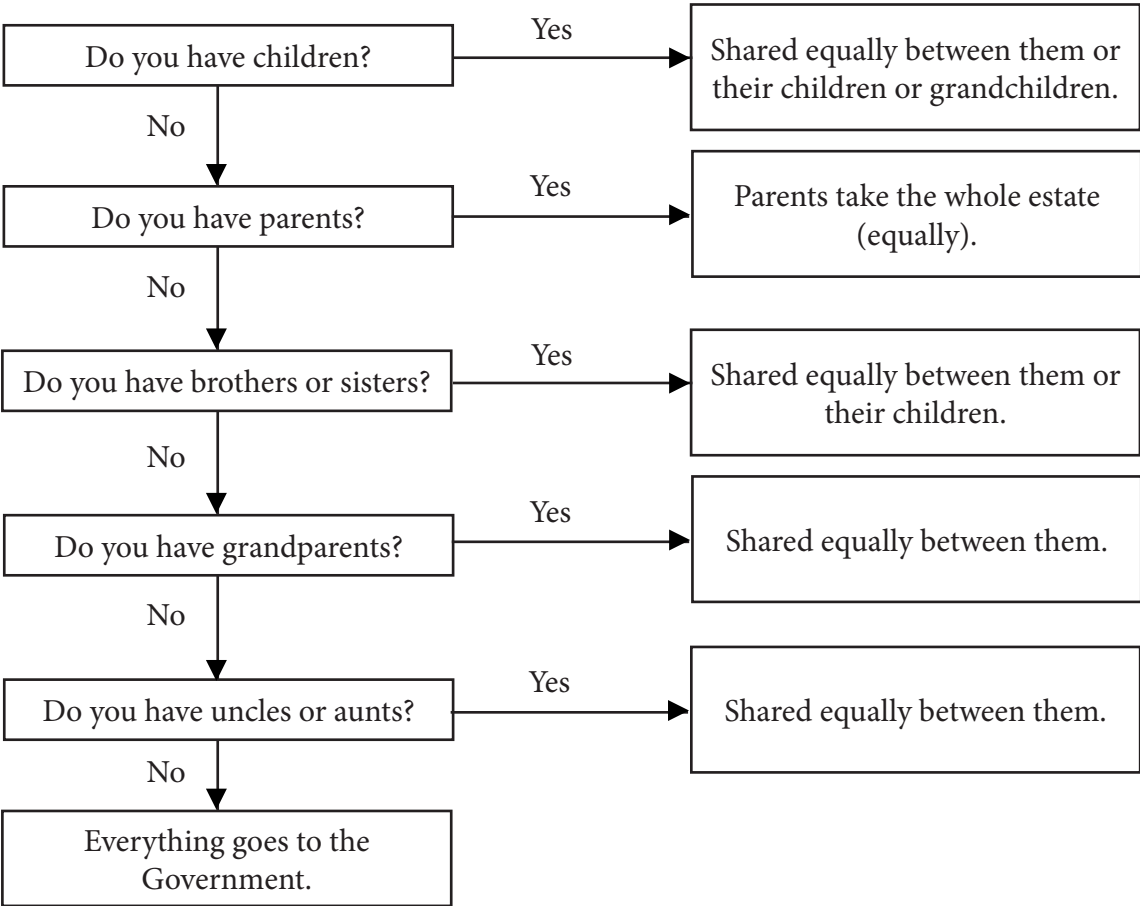
Rule I

If the distribution of your estate under the above Rules A to H is not possible, then the government of Singapore will be entitled to the whole of your estate. This could take place, for example, in situations where the deceased person has no living relatives. The flowchart on the next page illustrates the right of inheritance where the deceased died intestate:-

If you are married



If you are not married (that is single, widowed or divorced)



Your lawyer can advise you about these rules and how they apply to you. If you die without making a Will, your estate may be distributed to persons to whom you do not intend to give anything. Conversely, persons to whom you intend to give, such as a favourite niece or close friend, may not stand to inherit any part of your estate under the rules of intestacy. Therefore, if you wish to provide especially for your family members, friends or a charity after your death, you should consider making a Will as it will be easier and more convenient.

In addition, you cannot choose the people who will look after your estate if you do not make a Will.

Where you pass away intestate, the people tasked with looking after your estate are called “Administrators” instead of Executors although they will have the same responsibilities. They have to apply to Court for “Letters of Administration” instead of the Grant of Probate and the procedure is generally more complicated and lengthy. For example, the Administrators will have to provide two guarantors unless they get approval from the Court dispensing with such guarantors.

ADMINISTERING THE ESTATE

Upon the death of a person who has left assets, it is usually necessary for another person to apply to the Court for the authority to deal with those assets. These Court proceedings are known as “probate proceedings” and the law governing these proceedings is set out in the Probate and Administration Act. Upon the successful conclusion of a probate proceeding, the Court will issue a document known as a Grant of Representation (“Grant”). The Grant bears the Court’s seal and authorises the person named in the Grant (called an Executor in testate cases and an Administrator in intestate cases) to administer your estate in accordance with the law. In the event that you pass away and leave a Will, the Executor named in the Grant must also deal with your estate in accordance with the terms of your Will.

The Grant is known as a Grant of Probate in testate cases and a Grant of Letters of Administration in intestate cases.

Applying for a Grant is a relatively straightforward process with the help of a solicitor. There are three main steps involved in an application for a Grant:

- a. making a formal application for a Grant to the Court by filing the requisite documents;
- b. filing a Schedule of Assets; and
- c. extracting the Grant from the Court.

The Court will only issue the Grant after it is satisfied that all procedural requirements are met. However, the Executors have the power by virtue of the Will to act even before the Grant is issued. For example, the Executors may pay or release debts and transfer property or assets.

With the Grant, the Administrator or Executor can then begin to administer the deceased's estate. The Grant authorises the Administrator or Executor to do the following:

- open and manage a bank account in the name of the estate of the deceased;
- approach the bank where the deceased had bank accounts and request that those accounts be closed and the proceeds in such accounts be paid to the estate;
- sell, transfer or otherwise deal with the deceased's shares and other movable properties; and
- sell, transfer or otherwise deal with any immovable properties owned by the deceased solely or as a tenant-in-common.

The above list is not exhaustive. In testate cases, the Executor must also ensure that his actions are mandated by and in accordance with the terms of the deceased's Will.

PUBLIC TRUSTEE MAY ADMINISTER SMALL ESTATES

Where the value of the deceased's estate is less than \$50,000 and the deceased died intestate, his family member may approach the Public Trustee to administer the deceased's estate. If the Public Trustee agrees to administer the estate, there is no need for a separate Administrator to apply for a Grant of Letters of Administration and the Public Trustee will administer the estate in accordance with the Intestate Succession Act. The Public Trustee will charge a prescribed fee for this service.

The application can be made to the Public Trustee by completing their online application form and submitting the requisite documents. The Public Trustee is unlikely to agree to administer the Deceased's estate in the following situations:

- the deceased's estate exceeds \$50,000 in value;
- there are conflicting claims to the deceased's estate or disputes between the beneficiaries;
- the deceased's estate has outstanding debts and liabilities;
- the deceased had shares in private companies (whether foreign or local);
- the deceased was a partner or sole-proprietor in a firm or other business;
- the deceased was the sole lessee of a House and Development Board ("HDB") flat and there is a beneficiary of the estate who is a minor; or
- there are pending lawsuits which involve the deceased.

INHERITANCE (FAMILY PROVISION) ACT

As highlighted above, one of the benefits of executing a Will is the right to choose your beneficiaries.

However, this right to distribute your assets to whomever you wish is subject to the provisions of the Inheritance (Family Provision) Act. The Inheritance (Family Provision)

Act comes into effect where you pass away leaving a Will which does not adequately provide for your dependant(s). These dependant(s) can apply to Court for a reasonable provision of maintenance from your estate even though they are not beneficiaries under your Will. The Court has the power to order that your estate make payment to these dependant(s) either as a lump sum or on such terms that the Court deems fit. A dependant is defined under the Inheritance (Family Provision) Act as:

- your spouse;
- your unmarried daughter(s);
- your son who has not attained the age of 21 years; and
- your son or daughter who, by reason of some mental or physical disability, is incapable of managing himself or herself.

An Advanced Medical Directive (“AMD”) is a legal document that becomes effective when a terminally ill patient becomes unconscious or incapable of exercising rational judgment so that he becomes unable to communicate his wishes to his treating doctor. Under the Advanced Medical Directives Act, you may execute an AMD stating that you do not wish to receive extraordinary life-sustaining treatment such as artificial ventilation to prolong your life in the event that you become terminally ill, that is, when you become ill with no reasonable prospect of temporary or permanent recovery. This excludes palliative care so you will continue to receive pain medication, food and water. A person who has the power to make an AMD cannot be mentally disordered, and must have attained the age of 21 years.

The AMD Forms can be obtained from most polyclinics and hospitals as well as online from the Ministry of Health website at <http://www.moh.gov.sg>. The AMD Form must be witnessed by two witnesses, one of whom must be a doctor. The other witness must be over the age of 21 years. According to section 3 of the AMD Act, a witness shall be a person who to the best of his knowledge —

- a. is not a beneficiary under the patient’s will or any policy of insurance;
- b. has no interest under any instrument under which the patient is the donor, settlor or grantor;
- c. would not be entitled to an interest in the estate of the patient on the patient’s death intestate;
- d. would not be entitled to an interest in the moneys of the patient held in the Central Provident Fund or other provident fund on the death of that patient; and
- e. has not registered an objection to operate an AMD.

The completed AMD Form must be returned to the Registrar of AMDs at the Ministry of Health before it can take effect. You will be sent an acknowledgement upon successful registration of your AMD.

You may revoke your AMD orally or in any other way in which you can communicate, in the presence of at least one witness. Also, you may revoke your AMD any time by completing a prescribed Revocation Form in the presence of at least one witness who is over 21 years of age. The Revocation Form should be sent to the Registrar of AMDs. Alternatively, the AMD can be revoked by writing to the Registrar of AMDs.

Before a medical practitioner acts in accordance with the AMD, you must be certified by 3 doctors (2 of whom must be specialists) to be terminally ill. If there is disagreement between the doctors on whether you are terminally ill, the doctor-in-charge can review it. If there is still no agreement, the Ministry of Health will appoint three additional specialists to review your case. If all the three appointed specialists still cannot certify that you are terminally ill, the AMD cannot take effect.

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Lasting Power of Attorney

It is now possible for you to make plans for yourself and how your assets are to be managed in the event that you lose mental capacity. Under the Mental Capacity Act, you may execute a Lasting Power of Attorney (“LPA”) if you are at least 21 years old, have mental capacity to make a LPA and is not an undischarged bankrupt. A LPA is a legal document appointing another person (called a “Donee”) to make decisions on your behalf should you lose your mental capacity in the future and be unable to make such decisions yourself.

DONEES

One advantage of executing a LPA is that it allows you to appoint a Donee of your choice to be your decision-maker, rather than having the Court appoint a Deputy to be your decision-maker. There is no maximum number of Donees that can be appointed. However, you may not want to appoint too many Donees as complications may arise when these Donees cannot agree on the decisions to be made.

The Donee should be someone trustworthy, reliable and competent to make decisions that you have authorised.

A personal welfare Donee must be an individual who is at least 21 years old when the LPA is signed. Do note that a company or business cannot be appointed as a personal welfare Donee.

A property and affairs Donee must:

- be an individual who is at least 21 years old when the LPA is signed;
- be a licensed trust company as prescribed by the Mental Capacity Regulations; or
- be an individual who is not an undischarged bankrupt.

POWERS OF A DONEE

You may, in your LPA, authorise a Donee to make decisions about your personal welfare, for example, where you are to live and decisions regarding your health care. You may also authorise the Donee to make decisions about your property and affairs and direct how your assets are to be managed while you are alive.

You may choose to give him/her:

- a. general powers for all your personal welfare and/or property and affairs; or
- b. only specific powers as indicated in your LPA.

There are two versions of LPA available to cater to the different needs of individuals:

- a. LPA Form 1 contains mostly checkboxes for Donors to grant general powers to their Donees with the option to select basic conditions or restrictions to these powers. This form can be self-completed by the Donors.
- b. LPA Form 2 contains mostly free text spaces where individuals can give specific powers to their needs. This form is to be drafted by a lawyer.

Your Donee may only make decisions on your behalf if you, the Donor, lacks capacity, or if your Donee reasonably believes that the Donor lacks capacity to make those decisions. Should you regain your capacity again, the Donee should step aside to allow you to manage your own affairs again.

The LPA also ceases to have any effect when you pass away. As discussed in the earlier chapter, your Will or the Intestacy Succession Act takes effect upon your death.

HOW TO MAKE AN LPA

You will need to do the following:

- a. Complete the LPA (LPA Form 1 or LPA Form 2).
- b. Bring the LPA form to a certificate issuer who must be one of the following:

- A practising lawyer
- A psychiatrist
- An accredited medical practitioner

The certificate issuer will sign on the LPA Form as a witness for the Donor, to certify that the Donor understands the purpose of the LPA and the scope of the authority conferred under it, that there is no duress or undue pressure used to induce the Donor to create an LPA and nothing else that would prevent an LPA from being created.

If making an LPA using LPA Form 2, please visit a lawyer to draft the Annex to Part 3 of your LPA.

- c. Complete the LPA Application Form.

- d. Submit the completed LPA Application form by post.
 - I. Documents to submit
 - Completed LPA Form
 - Completed Application Form
 - Clear photocopies of NRIC (front & back of NRIC) of donor, donee(s) and replacement donee(s) [if any]
 - II. Mail completed LPA documents to OPG by post
- e. Singapore Citizens need not pay any fee for LPA Form 1, whereas a payment of \$200 is required for LPA Form 2. Singapore Permanent Residents and Foreigners are required to pay for application fees which will be notified by OPG.
- f. After verification by OPG to ensure the application can be accepted, there will be a mandatory 6 weeks waiting period, after which your LPA will be registered if there are no valid objections raised.

REVOCATION/CANCELLATION OF THE LPA

Revocation of a LPA may be done by completing a revocation form and notifying your Donees as well as the Public Guardian.

Apart from your revocation of your LPA, a LPA will be cancelled or the appointment of the Donee will be terminated in the following circumstances:

- You or your Donee dies.
- Your Donee lacks mental capacity to act as a Donee.
- Your Donee formally declines the appointment as a Donee.
- There is a divorce between your Donee and you; applicable if your Donee is your spouse and you have not stated otherwise in your LPA.
- You or your Donee becomes a bankrupt or if your Donee is a licensed trust company, the company is liquidated, wound up, dissolved or under judicial management (Note: this applies to the property and affairs Donee only).
- A Court order is made to cancel the LPA or your Donee's powers; this can happen if your Donee has not acted in your best interest.

A standard actual LPA, application forms, and the revocation form are available from the Office of the Public Guardian and from their website. The standard LPA may not be suitable for you if you have more complex instructions. In which case, you will need to engage a lawyer to draft the LPA for you.

Where you have lost mental capacity and you have not registered a valid LPA, the Mental Capacity Act allows another person to apply to Court to be appointed as your Deputy. Once so appointed, the Deputy can then make decisions concerning your personal welfare, property and affairs, subject to any restrictions imposed by the Court. Unlike the

LPA which allows you to nominate a Donee, you will not be able to nominate the person whom you wish to be appointed as your Deputy.

More information on the LPA is available at the website of the Office of the Public Guardian at <http://www.publicguardian.gov.sg/>.

32 Muslim Inheritance Laws, Estate Administration and Estate Planning

This chapter gives a broad overview of Muslim inheritance and estate matters based on the Shafi'i school of Sunni jurisprudence. All references to the male gender include the female gender unless the situation otherwise requires.

In Singapore, the estate of a deceased Muslim must be distributed in accordance with Islamic inheritance laws. The overarching Islamic principle is that the estate distribution should be achieved in a manner that is fair and just. The estate of the deceased must be properly administered and properly accounted for to the beneficiaries. Careful and effective estate planning, achieved in a manner which is fair and just, can overcome certain limitations of Islamic intestate inheritance laws.

MUSLIM INHERITANCE LAWS

a. Sources of Muslim inheritance laws

These are primarily:

- i. Syariah (Islamic law), including the law on Muslim Wills, *faraid* which governs intestate succession whether in whole or in part, (and *fatwas* by Majlis Ugama Islam Singapura ("MUIS", the Islamic Religious Council of Singapore)).
- ii. Statutory laws, including:
 - Administration of Muslim Law Act (Cap 3 of Singapore Statutes) ("AMLA") ((i) Muslim Wills and insurance nominations must be in accordance with Syariah laws of the school of Muslim law professed by him; (ii) the intestate estate of Muslims shall be distributed according to Muslim law);
 - section 26 of CPF Act (Cap 36) (Central Provident Fund ("CPF")) funds of a member who has made a nomination(s) shall not form

- part of the estate of the deceased member);
 - section 73 of the Conveyancing and Law of Property Act (Cap 61) (life policy for the benefit of family shall not form part of the estate of the life insured);
 - section 49L of the Insurance Act (Cap 142) (policy moneys subject to trust created under this section shall not form part of the estate of the policy owner). (Note: Presently, under AMLA, revocable insurance nomination under section 49M(2) forms part of the estate. However, MUIS has issued a *fatwa* in 2012 stating, *inter alia*, that revocable insurance nomination is a valid form of *hibah* (gift) and does not form part of the estate of the policy owner).
- iii. Civil law, including common law principles of joint-tenancy (property held in joint tenancy is subject to right of survivorship of joint owner and may not form part of the estate of the deceased joint owner).

b. How property passes after death

Generally, a Muslim estate will be distributed in accordance with *faraid*, which is described as “that section of the Islamic law that deals with the distribution of the estate of a deceased person among his heirs in accordance with Allah’s decree in the Holy Quran and according to the hadith or tradition of the Messenger’s Allah (S.A.W.)” – see <http://www.muis.gov.sg/cms/services/Inheritance.aspx?id=9342> for further explanation. If there is a Will, up to one-third of the estate shall be distributed in accordance with the Will and the remainder shall be distributed in accordance with *faraid*. A Muslim may also transfer his assets during his lifetime by way of existing provisions within the civil law framework such as CPF or insurance nominations or by way of instruments recognised by Muslim law such as the *nazaar* (vow) or *hibah ruqba*. In all cases, those who are entitled to the estate may agree to give up all or any part of their share to others they wish to benefit: you are always free to give away what is yours. It is also permissible for the inheritance to be divided equally if all are agreeable.

c. Muslim Wills (“Wasiyyah”)

A Muslim Will must conform with Syariah in form and content. Not more than one third of the net estate can be willed away to ensure enough is left for *faraid* heirs who are dependants (parents, spouse, children). Heirs who will inherit under *faraid* cannot be beneficiaries under the Will to ensure shares as among themselves are not enlarged beyond what is stipulated under Syariah. The intent is to avoid discontent and disharmony among family members. A charity can be a beneficiary under a Muslim Will provided the charity exists for purposes permissible under Syariah, otherwise it is invalid.

The testator can name the executor of his estate in his Will. The testator may also, in his Will, appoint a guardian for his minor children. He may appoint a

trustee, who need not be a Muslim, to manage his children's inheritance while they are minors.

There must be two male witnesses to the Will, but two females can be substituted for one male. Witnesses cannot be beneficiaries to the Will. A Will is invalid if it is written by a minor, written under duress, or by a person without the proper mental capacity.

d. Faraid

Faraid, the Muslim law on intestate succession, seeks to effect an equitable distribution of the estate in a fair and just manner which is likely to maintain family harmony. For instance, males get two shares for every share given to his female counterpart because males are expected to assume financial responsibility for the women. Female heirs are always entitled to a portion of the estate, regardless how small, while males who are residuary heirs may take all (if there are none with prior rights) or nothing (if those with fixed shares and prior rights exhaust the estate).

Faraid determines with certainty:

- the persons who are entitled to benefit (“*Waris*” or the lawful heirs);
- the precise shares of each beneficiary (these may be “fixed” shares, being a pre-determined part of the net estate, or it may be a “variable” share, being a pre-determined portion of the residuary estate after distribution of fixed shares);
- precise mathematical adjustments to shares to avoid incongruities or to achieve fairness such as:
 - ▶ proportional reduction of each share (“*aul*”) where fractional shares awarded exceed the whole;
 - ▶ proportional appreciation of each share (“*radd*”) where the estate is not exhausted by fixed share heirs;
 - ▶ between husband and wife who are lawful heirs, where the husband gets less than his wife, their shares are pooled and re-adjusted such that the husband gets double his wife's entitlement. The rationale is to avoid discord in marital relations, and to emphasise the trust placed on male relations to discharge their financial responsibility to their female charges;
- the ultimate residuary beneficiary, which is “*Baitulmal*” (Muslim community fund administered and managed by MUIS), if any part of the intestate estate is unclaimed by lawful heirs. This ensures finality to the process of estate administration.

Shares of faraid heirs

The shares of those who are likely to inherit in the usual cases are shown below. All relationships stated are with the deceased. This is not a comprehensive list.

Heirs	Shares
Husband If there is no child or grandchild surviving the deceased If there is a surviving child or grandchild of deceased	1/2 1/4
Wife If there is no child or grandchild surviving the deceased If there is a surviving child or grandchild of deceased	1/4 1/8
Son If there is no daughter (if more than one son, they share equally) If there is a daughter (he shares with his sister, but is entitled to two shares for every share given to her)	Residuary Residuary
Daughter If sole daughter If two or more daughters (the daughters' portion is shared equally among them) If there is a son, (she shares with her brother, but is entitled to one share for every two shares given to him)	1/2 2/3 Residuary
Father If there is a son or grandson surviving the deceased If there is no son or grandson surviving the deceased	1/6 Residuary
Mother	1/6
Paternal Grandmother (her portion is shared with maternal grandmother) If Father survives	1/6 Nil
Paternal Grandfather If Father survives If child or grandchild survives If no father, child or grandchild survive	Nil 1/6 Residuary
Maternal Grandmother (her portion is shared with paternal grandmother) If Mother survives	1/6 Nil
Brothers If father, son or grandson survives If no father, son or grandchild survives	Nil Residuary
Sister If father, son or grandson survives If sole sister If two or more sisters (they share equally) If Brother survives (they share 2:1 with Brother)	Nil 1/2 2/3 Residuary

ESTATE ADMINISTRATION

This is a brief outline of estate administration.

- a. Determine what assets belong to the estate
 Determine with care what assets actually belong to the estate. If the deceased has nominated beneficiaries of his CPF account or insurance policies, the nominees are entitled to these monies for their own use, not the estate. MUIS *fatwas* acknowledge CPF nominations and insurance nominations are new forms of *hibah* or permissible gifts by the deceased. If the deceased held property as a joint tenant, the survivor takes all, and the property does not fall into the deceased's estate. If husband and wife are Malays, each may be entitled to share in matrimonial property (*harta sepencarian*), and on the demise of either, the survivor may claim half of the matrimonial property in his own name, and share as a *faraid* heir in the remainder which falls into the deceased's estate.
- b. Determine the liabilities of the estate
 Apart from obvious liabilities such as debts owing by the deceased, other liabilities of the estate include medical, funeral and testamentary expenses.
- c. Determine the list of potential beneficiaries
 Find out if there is a Will and, if so, who the beneficiaries under the Will are. If Will beneficiaries are also *faraid* heirs, resolve the conflict as to entitlement first. Determine who the *faraid* heirs are who survived the deceased. If they then die before distribution of the deceased's estate, their shares go to their own estates but do not fall back into the estate of the first deceased.
- d. Obtain the Certificate of Inheritance (*Sijil Warisan*)
 Application is made online to the Syariah Court for a Certification of Inheritance ("*Sijil Warisan*"). A fee is chargeable, currently \$46. The applicant must identify the deceased, the beneficiaries, state the relationship of beneficiaries to deceased, and make a Statutory Declaration that the information given is correct. The system automatically computes the shares of the heirs, and the Certificate states the names of each heir and their precise share.
- e. Apply to Court for Letters of Administration or Grant of Probate
 If the deceased died intestate, any beneficiary can apply for Letters of Administration to appoint an authorised person to deal with the estate provided person(s) with prior rights have renounced the rights to apply for Letters of Administration. If an executor is appointed in the deceased's Will, the executor applies for a Grant of Probate. You may need to work with a lawyer to make the application.
- f. Dealing with estate and distribution
 The administrator or executor has the authority to deal with the estate. He must pay off the debts of the deceased and other estate liabilities. If there are beneficiaries under a Will, the net estate (up to one-third) is distributed to them, then the remainder is distributed to *faraid* heirs according to the shares specified in the Certificate of Inheritance.

g. Accounting to beneficiaries

Finally, the administrator or executor must account to the beneficiaries for their dealing with the estate until such time that their duties are completed. If any beneficiary is dissatisfied with any aspect of estate administration, he may seek legal redress.

ESTATE PLANNING

The limitations of Muslim inheritance laws can be avoided or minimised by careful estate planning. Bear in mind the overarching Syariah principle of just and fair distribution to your dependants. We list below some estate planning tools and strategies.

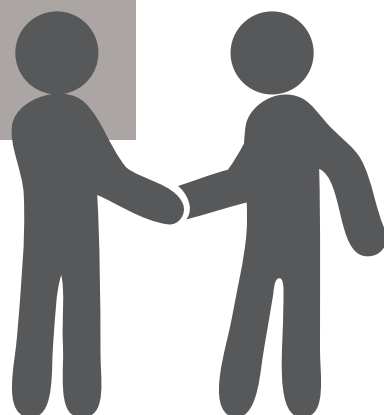
- a. Hold property as joint tenant with intended beneficiary.
- b. Open joint bank account with intended beneficiary.
- c. Nominate the intended beneficiary to your CPF monies or your life insurance policy.
- d. Make a gift to your intended beneficiary during your lifetime.
- e. Execute a hibah al-ruqba instrument to make a gift to a Donee on condition that Donee survives donor, failing which, the gift fails and reverts to donor. Hibah al-ruqba has been likened to a joint tenancy as the survivor takes all.
- f. Execute a nazar (vow) instrument of conditional transfer. Nazar must comply with religious requirements including but not limited to correct intention and non-abuse. A nazar whose purpose is to defeat the entitlement of a lawful heir may fail the test for religious compliance. In addition, if the nazar works as a testamentary disposition, it is subject to the one-third limit for Muslim Wills.
- g. Create a trust for intended beneficiaries or charities.

CONCLUSION

These are the main issues that you are likely to be confronted with on Muslim estate matters. You should consult the appropriate professional advisers on these matters especially if you face complex circumstances.

PART VII

TRANSACTIONAL MATTERS



PURCHASING A HOUSE OR FLAT

When buying a house (“House”) or a flat (“Flat”), you should seek advice from your lawyer on the following:

Types of residential properties

“Landed property”:	properties that are built on land lots by which a single title is given to the owner of both the land and the building on the land, e.g. bungalows, semi-detached houses, terrace houses.
“Condominiums”:	private residential buildings which are subdivided in title into various strata title lots, each of which is owned by different owners.
“HDB”:	public residential housing built by the Housing and Development Board.

Title

The title to the House and the Flat may be:

- freehold, i.e. an absolute title and you own the property forever;
- an estate in perpetuity, i.e. an estate forever subject to the payment of a quit rent;
- leasehold, i.e. a lease for 99 years or 999 years. At the end of the leasehold, you no longer own the House or Flat and the property will have to be surrendered to the government; and
- certain properties where the title may still be under the common law lease (under the old conveyancing system) for 99 years or 999 years with no interest in the land or with a proportionate fractional share in the land subject to the lease.

Area of House or Flat

You are advised to check with your lawyer the land area of the House or floor area of the Flat (as the case may be). You may also want to consult a qualified surveyor if you suspect any discrepancy in the boundary line or encroachment or if you require the actual area of the House or Flat.

Financing

Before you decide to purchase a House or Flat you should ensure that you have sufficient funds available to complete the purchase. If you are financing your purchase with your Central Provident Fund (“CPF”) funds and/or a loan you should contact the CPF Board and the lender bank/finance company in advance to sign all relevant application forms and furnish all relevant information and documents to ensure that the CPF funds and/or loan would be approved and the funds will be available.

You should enquire to the CPF Board and your eligibility for bank financing as early as possible, preferably before you pay the upfront deposit. In addition to the purchase price you will have to make provision for the stamp fees, lawyer’s fees, disbursements, property tax, maintenance funds, loan processing fees, etc. You can request your lawyer to give you an estimate of such stamp fees, costs and disbursements that will be incurred in the purchase, CPF charge and mortgage. Stamp fees on the purchase (approximately 3% of the purchase price) and additional stamp fees (if applicable) will have to be paid in advance under the recent amendments to the law.

Property agents

Property agents are required to be registered with a new statutory board called the Council for Estate Agencies. You are able to check a public registry of estate agencies and agents to “check on the agency or agent that you are engaging”: see Council of Estate Agencies website: <http://www.cea.gov.sg/cea/app/newimplpublicregister/publicregister.jspa>.

The Register will display the name, photographs, licence/registration number, the company that the agent is working for, and validity period and records of offences committed or disciplinary actions taken, if any.

MANNER OF OWNERSHIP

If you are buying the property with one or more persons, you have to choose the manner of ownership:

a. Joint tenants

Joint tenants must hold the property equally. If A and B are joint tenants, then upon the death of A, A’s interest in the property will automatically revert to B.

Even if A had left a Will, A's interest in the property will not be distributed in accordance with A's Will. The right, title and interest of A passes to B, irrespective of any direction to the contrary in the Will of A or the intestacy rules. In other words, the survivor of the two will be entitled to the entire property. This is the right of survivorship.

b. Tenants-in-common in equal (or other specified) shares

Tenants-in-common may hold the property in equal shares or in other proportions of shares (i.e. one-third/two thirds or one-quarter/three-quarters). If A and B elect tenancy-in-common, on the death of A, the right, title and interest of A passes to his estate to be distributed according to his Will or according to the intestacy rules under the Intestate Succession Act if he has no Will.

RESIDENTIAL PROPERTY ACT

Only Singapore citizens and approved persons can purchase landed "residential property" as defined in the Residential Properties Act. Foreigners are eligible to purchase units in condominiums or apartments which are not landed dwelling houses. Foreigners who wish to purchase landed property in Singapore must first seek the approval of the Controller of Residential Property. In general, the application for approval will be considered favourably if the foreigner is a permanent resident, one who is of economic benefit to Singapore and one who possesses professional qualifications which are of value or benefit to Singapore.

YOUR LAWYER'S ROLE IN A PROPERTY PURCHASE

When you purchase property, your lawyer's responsibilities are:

- a. Review the terms and conditions of the contract to ensure that your interest is protected and explain these terms and conditions to you.
- b. Conduct searches on the title of the property to ensure that you will be given title to the property that is identified in the contract and which you have negotiated to buy.
- c. Send routine queries to various government departments to ensure that there are no adverse regulatory notices or government schemes that will affect the property you wish to purchase.
- d. Pending completion of your purchase, your lawyer will lodge a caveat against the title to the property – this serves to notify the public (and any third party interested in the property) that you have a valid interest or claim to the title of the property arising from the contract for the sale and purchase.
- e. If you are using a bank loan to finance this purchase, your lawyer will also liaise with the bank's lawyer who is responsible for preparing the mortgage to secure the loan. In some cases, your bank will also appoint the same lawyer to represent its interest.

- f. Your lawyer will be responsible for liaising with the bank and the CPF Board (or their lawyers) to ensure that your housing loan and your CPF funds are in place and ready for drawdown to order to complete the purchase within the agreed completion period.
- g. Complete the Sale – this is a technical term referring the payment of the contracted sale price (from you as the buyer) in exchange for the signed conveyance of title called the “Instrument of Transfer” which effectively transfers the ownership of the property from the current owners to yourself (as the new owner).

PROCEDURES FOR PURCHASE

Generally, legal contracts for the sale and purchase of property take two forms:

- a. an Option to Purchase; or
- b. a Sale and Purchase Agreement.

An Option or Agreement/contract for the purchase of a House or Flat can be formed in many ways, e.g.:

- a. by correspondence;
- b. by the exercise of an Option;
- c. by the parties signing an Agreement/contract;
(which are often prepared by brokers) and Agreements/contracts are documents that create legal rights and obligations, dealing particularly with:
 - the title of the property;
 - the mode of payment;
 - discharge of encumbrances;
 - schemes and other matters affecting the property, e.g. road widening;
 - vacant possession or subject to tenancy;
 - the date of completion;
 - delay in completion;
 - other special terms.

But whatever form the legal contract takes, these terms must be present in order for the contract (for the sale of property) to be legally enforceable:

- a. Identification of the property offered for sale
- b. Price
- c. Completion Date

The contract must be in writing and signed by the owner or his authorised representative. You are advised to consult your lawyer immediately after paying the booking fee and obtaining the prescribed Option to Purchase the property. The lawyer will then investigate the title and advise you on the terms of the prescribed Agreement before you accept the same by exercising the Option to Purchase.

THE LAW SOCIETY'S CONDITIONS OF SALE

Most contracts for the sale and purchase of property in Singapore will incorporate standard terms called the Singapore Law Society's Conditions of Sale 1999 or the more recent Singapore Law Society's Conditions of Sale 2012. If the terms of the Sale and Purchase Agreement or of the Option are silent on certain points, then the provisions of these conditions will apply. These conditions may also be modified by express terms in the contract, for example, it is common for the sale to be subject to the property being unaffected by road widening schemes.

PURCHASE FROM AN UNLICENSED HOUSING DEVELOPER

You are advised to consult your lawyer before paying the booking fee as unlicensed developers are not required to comply with the Housing Developers (Licensing and Control) Act or the Rules made thereunder. The unlicensed developer is free to mortgage the land and there are no statutory safeguards to ensure that the progress payments from the purchaser would be utilised to pay off the mortgage loan. In the event the unlicensed developer defaults in his mortgage payments or if he gets into financial difficulties he may not be able to complete the development. Further, you may have difficulty obtaining approval to use your CPF funds to buy a property or in obtaining a mortgage from a bank or finance company to finance your purchase of the House or Flat in view of the risks involved.

LEGAL COSTS

The lawyer's fees do not include stamp fees or disbursements properly incurred by the lawyer.

SELLING YOUR HOUSE OR FLAT

a. Option/Agreement

You can sell your House or Flat by

- granting an Option to the purchaser; or
- entering into an Agreement/contract.

Options (which are often prepared by brokers) and Agreements/contracts are documents that create legal rights and obligations, dealing particularly with:

- title;
- discharge of encumbrances;

- vacant possession or subject to tenancy;
- the date of completion;
- liability for property tax, maintenance fees or sinking fund;
- other special terms.

You should consult your Lawyer before accepting or signing the Option or Agreement/contract. This is to ensure that your interests are protected.

b. Stakeholding

The deposit on exercise of the Option or signing of the Agreement/contract will normally be held by the vendor's lawyers as stakeholders. This is because the sale will normally be subject to:

- the discharge of encumbrances like mortgage and CPF charge;
- the title being in order;
- satisfactory replies to legal requisitions to the various government departments.

The deposit is therefore held by the vendor's lawyers as stakeholders to assure the purchaser that the deposit will be kept safely until completion of the purchase.

Where you are buying property which is under construction, the Singapore Academy of Law will hold a portion of the purchase monies as stakeholders until the expiry of the defects liability period provided in the Agreement/contract.

c. Goods and Services Tax ("GST")

GST is not payable on residential property at present. However, as some residential properties (e.g. shophouse with a Flat above) may involve a commercial component you should seek advice from your lawyer on this as GST will be payable for the commercial component of the property.

YOUR LAWYER'S ROLE IN A PROPERTY SALE

When you sell Property, your lawyer's primary responsibility is to ensure that on completion, you are ready to deliver the title to the property free from your mortgage and CPF charge. This requires your lawyer to liaise with your bank's and CPF Board's lawyer for payment, out of the sale proceeds, of the outstanding loan amount and refund of your CPF funds sufficient to discharge the bank's mortgage and CPF charge.

HDB FLATS

You are advised to contact the HDB directly in respect of the sale and/or purchase of HDB flats. The HDB has devised their own form of Agreement/contract for the purchase of HDB flats.

34 Intellectual Property Protection

WHAT IS INTELLECTUAL PROPERTY (“IP”)?

IP refers to creations of the human mind. Some common examples of IP are inventions, product brands, films, and computer software.

There are several types of IP. Each type covers different creations and is governed by different laws in Singapore. You can read more about them on the website of the Intellectual Property Office of Singapore (“IPOS”) (www.ipos.gov.sg). The types of IP which you are likely to encounter in your day-to-day activities are trade marks, patents, registered designs, copyright, and trade secrets. These five types are explained in more detail below.

Depending on the type of IP which you wish to protect, you may need to register the IP with IPOS in order to obtain protection for the IP under Singapore law.

The law gives you, as the IP owner, an exclusive right to use your IP. IP is also considered a form of property which you, as the owner, can licence, assign, or sell to third parties.

IP protection is territorial. This means that IP which is protected in Singapore may not enjoy the same recognition or protection overseas. If you wish to obtain overseas protection for your IP, you may need to register your IP separately in those countries.

The recourse which you can seek in an action for use of your IP without your consent include: (i) an injunction to stop the infringing action; (ii) damages for the loss suffered; and/or (iii) the profits gained by the infringing party at your own expense.

WHAT IS A TRADE MARK?

A trade mark is a sign which is used by a trader to distinguish its goods and services from those of other traders.

Registering your trade mark with IPOS gives you an exclusive right under the Trade Marks Act to use your trade mark, and prevents others from using signs which are identical or similar to your own registered trade mark.

To register a trade mark, you will need to provide: (i) a distinctive sign which you wish to use as a trade mark; and (ii) a description of the goods and services on which the trade mark would be used.

Registered trade marks are valid for ten years from the date of filing. You can make your registered trade mark last indefinitely by renewing it at the end of every ten years. There are two symbols which you can use to indicate that your sign is a trade mark:

- The ® symbol, if your trade mark has been successfully registered.
- The ™ symbol, if your trade mark has not been registered, which denotes that the mark is being used as a trade mark.

WHAT IS A PATENT?

A patent is a monopoly right granted to an owner of an invention to use and exploit its invention.

Registering your invention with IPOS gives you an exclusive right under the Patents Act to use the invention, and prevents others from making, selling and using your invention.

You should consider the following issues before applying for a patent:

- Is my invention patentable? Your invention must satisfy three criteria: (i) it must be new and never before publicly disclosed; (ii) it must contain an improvement over existing technology and cannot be obvious to someone who is skilled in that field of technology; (iii) it should be useful and have some form of practical application in the industry.
- Do I own the invention? The rule of thumb is that an invention belongs to the inventor, unless the inventor developed it in the course of work, in which case, it belongs to the employer.
- How do I prepare a patent application? The patent application and accompanying patent specification(s) need to fulfil certain legal and technical criteria. You may wish to engage a lawyer or a registered patent agent to help you with your patent application.

Once granted, a patent is valid for 20 years from the date of filing, subject to payment of an annual renewal fee.

WHAT IS A REGISTERED DESIGN?

The Registered Designs Act allows a designer to register and protect the external look or appearance of a product (e.g. its shape, configuration or pattern) which the designer

intends to manufacture. Some examples of product designs which have been registered under the Registered Designs Act are those for furniture, bags and cameras.

Registering a product design with IPO gives you an exclusive right under the Registered Designs Act to the overall look of the whole or part of your product design. The right enables you to stop others from making and dealing with products incorporating the registered design without your permission.

You should consider the following issues before applying to register a product design:

- Does my product design satisfy registration criteria? Your product design must satisfy two criteria: (i) it must be new and never before publicly disclosed; and (ii) it must be industrially applied to an article (i.e. more than 50 copies of the article have been or are intended to be produced for sale or hire).
- Do I own the product design? The rule of thumb is that a product design belongs to the designer, unless the designer created it in the course of employment (in which case, the employer owns the product design), or if the product design was commissioned (in which case, the person commissioning the design owns the product design).

Once granted, a registered design is valid for an initial period of five years from the date of filing the registration, and can be renewed every five years for up to a maximum of 15 years.

WHAT IS A COPYRIGHT?

Copyright protects the rights of creators in their works. The various kinds of works which are protected by copyright include literary works, artistic works, dramatic works, musical works, films, television broadcasts, etc.

Unlike for trade marks and patents, you do not have to register your work in order to obtain copyright protection in Singapore. Protection under the Copyright Act arises automatically if: (i) your work is an original work; (ii) your work has been expressed in tangible form (i.e. recorded or put down in writing); and (iii) you, as author/creator of the work, were a Singapore citizen or resident in Singapore (if you were not, your work still qualifies for protection if first publication of your work took place in Singapore).

The general rule is that the author/creator owns the copyright in work created, unless the author/creator created the work in the course of employment (in which case, the employer owns the copyright), or if the work was commissioned (in which case, the commissioner owns the copyright).

As copyright owner, you enjoy exclusivity to a bundle of rights which subsist in your work. The bundle of rights and duration of copyright protection varies depending on the type of work and whether it has been published. For instance, in the case of a published literary work:

- The bundle of rights comprise: (i) the right to reproduce the work; (ii) the right to publish the work; (iii) the right to perform the work in public; (iv) the right to communicate the work to the public; and (v) the right to make an adaptation of the work and to do any of the aforementioned acts in relation to the adaptation.
- Protection of the work starts from the time of creation/publication, and lasts for the life of the author/creator and another 70 years from the end of the year in which the author/creator died.

It is not crucial to display the © symbol on your copyrighted work as it simply functions as a notice of copyright and does not give you any substantive or additional rights in the work. Failure to display the © symbol does not mean that you have waived your copyright in the work.

If you wish to use materials protected by copyright (e.g. photocopying a book), you should bear in mind that consent is needed to do anything that only the copyright owner has the exclusive right to do unless it is a situation that falls under the “fair dealing” exception or other exceptions to copyright infringement which are set out in the Copyright Act.

WHAT IS A TRADE SECRET?

A trade secret is information or an idea which usually has commercial value, is important to the business, and is not known to the public. A trade secret is usually only disclosed to certain key individuals within the business organisation. The leak of a trade secret may have harmful consequences to the business.

Trade secrets are protected in Singapore by the law of confidentiality. There is no requirement to register trade secrets. A trade secret can be protected indefinitely provided relevant measures are put in place to safeguard the information and ensure that it is not leaked out.

The various measures which you can take to protect trade secrets are:

- Establishing that the information is confidential.
- Ensuring that the information is only disclosed to a limited number of people on a need-to-know basis.
- Ensuring that anyone who is aware or has access to the information signs a Non-Disclosure Agreement. For employees, a confidentiality clause can be included in their employment contract. You may wish to consult with a lawyer on what should be included in the Non-Disclosure Agreement or employment contract.

The unauthorised disclosure of a trade secret constitutes a breach of confidence for which you can take legal action in Court.

35 Starting a Business

Starting a business? Manage your business risks by making sure that you establish a good foundation for a growing business.

REGISTRATION

The Accounting and Corporate Regulatory Authority (“ACRA”) is the relevant governing body responsible for registering and regulating business entities in Singapore and its website (<http://www.acra.gov.sg/>) should be the first stop for any person who wishes to do business in Singapore.

Before carrying on a business, the law requires you to register your business with ACRA. Which business structure you use will depend on your business needs. There are four main types of business structures. They are:

Sole proprietorship

A sole proprietorship must only have one business owner. It is not a separate legal entity. This means that as the business owner, you are personally liable for all debts and losses of the business. All profits of the business form part of your personal income and will be taxed at the relevant rate of personal income tax.

Partnership

A partnership must have at least two partners and like a sole proprietorship, is not a separate legal entity. Each partner is personally liable for the debts and losses of the partnership and partnership profits form part of each partner’s personal income.

Limited liability partnership

A limited liability partnership is a hybrid vehicle. It is a separate legal entity and there will not be any recourse against the partners personally. However, partnership profits are taxed in the hands of each partner at the relevant rate of personal income tax.

Private limited company/public company

A company is a separate legal entity and in most cases, recourse is limited to the assets of the company. A company's profits are also taxed in the hands of the company at corporate income tax rates. A company must have at least one shareholder and one director who are ordinarily resident in Singapore. For more information on the main differences between the business structures and also how to register each business structure, kindly visit ACRA's website set out above.

If you have an existing business overseas and are still evaluating business opportunities in Singapore, you may also consider setting up a representative office in Singapore. There are a number of restrictions on the business activities of the representative office and further information may be found on the website of the International Enterprises Singapore: <https://roms.iesingapore.gov.sg/>.

LICENCES

The Online Business Licensing Services Portal (<http://licences.business.gov.sg>) provides information about the licences required for any business. A new business owner only needs to select his business activity and a list of licences and permits required for that business activity would be shown to him.

TAX

The rate of tax and period of assessment will differ depending on the type of business structure used. Personal income tax is charged on a tiered basis and the rate currently ranges from 0–20% depending on the amount of income earned. Each period of assessment begins on 1 January and ends on 31 December. Corporate income tax on the other hand is chargeable at a flat rate of 17% and the period of assessment depends on the company's financial year. The Inland Revenue Authority of Singapore ("IRAS") is the relevant governing body and more information can be found at its website: <http://www.iras.gov.sg/irashome/default.aspx>.

GST

The Goods and Services Tax ("GST") is charged on any supply of goods or services made in Singapore. The rate of GST is currently 7%. You will not need to register your business for

GST purposes unless the total value of goods and services supplied exceeds or is expected to exceed \$1 million. Further information on GST registration and how to administer it may also be found on IRAS' website.

EMPLOYEES

You may need to hire employees in the course of your business. Certain minimum requirements are stipulated by law, such as the minimum number of days of paid leave and sick leave. You must by law protect the safety and health of your employees. For further information, kindly refer to the Ministry of Manpower's website: <http://www.mom.gov.sg/Pages/default.aspx>.

Employers are also encouraged to adopt fair and merit-based employment practices. Further information is available at the Tripartite Alliance for Fair Employment Practices' website: <http://www.tafep.sg/index.asp>.

CPF

Employers must contribute to the Central Provident Fund ("CPF"), which applies to employees who are Singapore citizens or permanent residents. Employer contribution rates vary depending on the age of the employee and the amount of wages earned. Please refer to the CPF website for the relevant contribution rates: <http://mycpf.cpf.gov.sg/Employers/Gen-Info/cpf-Contrib/ContribRa.htm>.

BUSINESS PREMISES

In this modern business era, there are many options available to business owners, besides office-based working.

To help reduce the cost of start-ups, the Singapore Government has relaxed the rules on home offices. Both the Housing and Development Board ("HDB") flats and private homes can now be used as home offices. HDB's website at: <http://www.hdb.gov.sg> provides more detailed information on the HDB Home Office Scheme. In addition, the Jurong Town Corporation ("JTC") also has various premises specially designed for start-ups. For more information, visit JTC's website at: <http://www.jtc.gov.sg>.

ASSISTANCE SCHEMES FOR SMALL AND MEDIUM ENTERPRISES

The Singapore Government actively promotes entrepreneurship by the giving of grants. Assistance schemes also help local enterprises.

Enterprise One (<http://www.enterpriseone.gov.sg>) is a portal managed by SPRING Singapore which provides business owners with comprehensive information on how to start, grow and sustain one's business. In addition, any business owner requiring business advisory services can approach any of the five Enterprise Development Centres managed by SPRING Singapore (<http://www.spring.gov.sg>).

BANK ACCOUNTS

It is important for any business to establish a business bank account that is separate from any personal account. Do speak to the various banks to find out the services that best suit your needs.

ACCOUNTING SYSTEM

Without proper records, no business owner will know if he is making or losing money. It is important for a start-up company to establish an accounting system which would track expenses and income based on categories that will continue to be relevant as the business evolves and grows. Certain business structures are also required by law to maintain accounting and other records. In certain circumstances, such records must be lodged with ACRA.

The IRAS Software Register (<http://www.iras.gov.sg>) sets out the list of software which are compliant with the requirements set out in the e-Tax Guide. In addition, IRAS has partnered the Info-communications Development Authority of Singapore ("IDA") to provide a subsidy to businesses which purchase any of the listed accounting software. For more information, kindly visit the IDA's website at: <http://www.ida.gov.sg>.

NETWORKING

One of the most common and cost efficient methods of promoting your business and meet others in the industry is to join trade associations or the local Chamber of Commerce.

The key business associations in Singapore are:

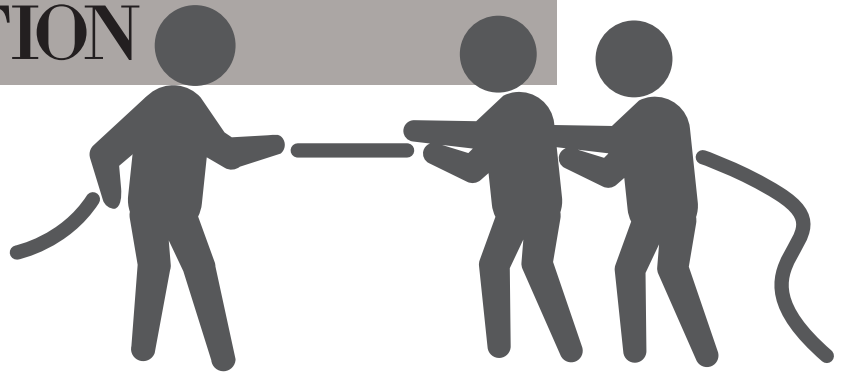
- a. Association of Small and Medium Enterprises ("ASME");
- b. Singapore Business Federation ("SBF").

The four local Chambers of Commerce in Singapore are:

- a. Singapore Chinese Chamber of Commerce & Industry ("SCCCI");
- b. Singapore Malay Chamber of Commerce & Industry ("SMCCCI");
- c. Singapore Indian Chamber of Commerce & Industry ("SICCI"); and
- d. Singapore International Chamber of Commerce & Industry ("SICC").

PART VIII

ALTERNATIVE DISPUTE RESOLUTION





The Singapore Mediation Centre

Traditionally, disputes are resolved by the Courts, i.e. litigation. Litigation is at its core an adversarial process and very often, relationships are much frayed after a trial. Commercial parties now increasingly turn to arbitration which can also have the same effect on relationships as litigation because of the “us versus them” framework. In both litigation and arbitration, a neutral third party has been picked to determine the disputes between the parties, and such determination is usually final and binding, subject to any appeals or review by the Courts.

On the other hand, mediation is a voluntary non-adversarial process that is completely in the hands of the parties. No one can force another to mediation unless it has been agreed to. At the mediation, the mediator cannot force any position on any party and the mediator decides nothing. At best, the mediator can offer suggestions or make recommendations. Mediation is not about deciding who is right or wrong, or who is innocent or at fault, or who wins and who loses. Mediation is about looking forward, finding a palatable and practical solution to the issues having regard to the different interests.

One of the institutional mediation organisations in Singapore is the Singapore Mediation Centre (“the SMC”). The SMC boasts a settlement rate of 75%, of which 90% settled within a day. The SMC’s panels of mediators come from all walks of life, retired Judges of the High Court of Singapore, District Judges, senior lawyers, Senior Counsel, architects, accountants, quantity surveyors, engineers and senior officers and captains of industry. SMC mediations also require the parties, and the mediator, to keep all information shared in the mediation confidential.

Because the mediation process is consensual, parties can appoint more than one mediator and can even chose their preferred mediators but extra charges may apply. It is not mandatory for parties to attend mediation with lawyers although they are welcome because they can sometimes facilitate the mediation process and finalise the settlement agreement.

The SMC offers the following mediation schemes:

- Commercial Mediation: A mediation scheme for any civil dispute; particularly suitable for large complex commercial disputes. SMC's mediation fees start from \$963 (inclusive of GST) per party per day for one mediator. The fees increase in tandem with the quantum in dispute.
- Small Case Commercial Mediation Scheme: A low-cost mediation scheme for disputes under \$60,000. The mediation fees start from \$80.25 (inclusive of GST) per party.
- Matrimonial Mediation Scheme: A scheme designed to cater to divorcing couples in dispute over issues of custody of children, spousal maintenance, division of family assets and other financial matters. SMC's mediation fees amount to a sum of \$2,140 (inclusive of 7% GST) per party per day for one mediator, regardless of quantum of dispute.

You can apply for mediation by sending a written request for mediation or by filling in the relevant application form, and submitting them to the SMC by email, fax or mail.

Generally, individuals should attend the mediation in person. In the case of a corporate entity, it should appoint an authorised representative with the mandate to settle to attend the mediation. A SMC mediation usually proceeds as follows:

- The mediator will begin with an introduction of the parties, including the mediator himself/herself.
- The parties will then be invited to share their opening statements and concerns.
- Items for discussion at the mediation are then drawn up. This serves as a guide for the purposes of the mediation.
- The mediator then discusses with each party privately, without the other party, and at a suitable point in time, may speak with the parties jointly. The mediator can also speak with a party without that party's lawyers present, or with that party's lawyers only.
- If a settlement is reached, the terms of settlement will be reduced into writing.

Contact:

1 Supreme Court Lane, Level 4, Singapore 178879

Telephone: +65 6332 4366

Fax: +65 6333 5085

37 THE COMMUNITY MEDIATION CENTRE (“CMC”)

The Community Mediation Centre aims to handle disputes relating to neighbourhood disputes, family disputes (excluding family violence), and disagreements between friends, among others. CMCs do not handle cases that may involve legal and commercial issues.

The CMCs are open on weekdays (full day) and Saturday (half day). Apart from a nominal administrative charge, no charges are imposed for mediation services.

For more information, please see the Community Mediation Centre website at <https://www.mlaw.gov.sg/content/cmc/en.html>.

Enquiry line: 1800-CALL-LAW (1800-2255-529)

Fax: (65) 6221 1802

Email: OneMinLaw@mlaw.gov.sg



Financial Industry Disputes Resolution Centre (“FIDReC”)

FIDReC uses a combination of mediation and adjudication to resolve disputes between financial institutions and consumers. Financial institutions that are members of FIDReC include banks and insurance companies.

FIDReC deals with disputes up to certain limits:

- for claims between insured persons and insurance companies – up to \$100,000; and
- for disputes between banks and consumers, capital market disputes and all other disputes (including third party claims and market conduct claims) – up to \$50,000.

A matter should be referred to FIDReC within six months of receiving the final reply letter from the financial institution. If the matter cannot be resolved by mediation (i.e. a settlement cannot be reached), the matter will proceed to adjudication. The adjudication is binding on the financial institution, but not on the consumer. If the consumer is dissatisfied with the outcome, the consumer may still seek recourse to the Courts (subject to any limitation periods applicable).

There is no charge for filing a complaint. However, if the matter goes to the adjudication stage, an adjudication fee is payable.

For more information, please see the FIDReC website at www.fidrec.com.sg.

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The Law Society Arbitration Scheme (“LSAS”)

The LSAS was set up by The Law Society of Singapore to give members of the public access to a quick and cost-effective way to resolve civil and commercial disputes. It adopts a simple procedure with an emphasis on speedy resolution of disputes with a view to saving costs for parties. In cases where the claims do not exceed \$60,000, the arbitration is conducted on a documents-only basis (i.e. no oral evidence by witnesses) in order to keep costs low.

The arbitrator’s fees where the sum in dispute is less than \$60,000 are limited to 10% of the sum in dispute (subject to a minimum of \$2,000). For disputes involving a larger sum, the arbitrator’s daily rate varies with the sum in dispute.

For queries on the LSAS, please email PBSO at represent@lawsoc.org.sg.

PART IX

LEGAL SERVICES



40 Engaging a Lawyer

Laws affect almost every part of your life, and lawyers are trained to give legal advice and services, and to represent you in Court. Seeing your lawyer early can save you a lot of time, trouble and money. Lawyers can provide a range of important and useful services. For example:

- If you wish to buy or sell a house, your lawyer will advise you of the procedures involved, check all documents on your behalf and ensure that the title to the house is good.
- If a family member has passed away, your lawyer will apply to the Court so that the possessions and properties of the deceased can be passed on according to the law or the dead person's wishes.
- If you face a problem with your spouse, your lawyer will advise you on the law relating to divorce, separation, maintenance and custody of your children.
- If you have been charged with a criminal offence, or are being sued, your lawyer will advise you on matters relating to your defence and may represent you in Court.
- If you have been asked to sign a contract, your lawyer will advise you on your rights and duties under the contract, and may suggest changes to the wording of the contract to protect your interests.
- If you are starting a company, social enterprise, or non-profit organisation your lawyer will advise you on the best structure for running your organisation, and rights and responsibilities in running the organisation.

THE LAWYER-CLIENT RELATIONSHIP

You must be able to build a relationship of trust and confidence with your lawyer.

- Solicitor-client privilege: All communications between the lawyer and Client, which are carried out with the purpose of obtaining legal advice and/or relates to potential litigation are protected by the solicitor-client privilege.
This means that your lawyer cannot reveal, under ordinary circumstances, what you have told him/her about your situation. Please ensure you tell your lawyer everything, so that he/she can give you accurate legal advice and represent your case properly for you.
- Your lawyer's firm: When you hire a lawyer, you are also hiring the law practice the lawyer works for. All members of the law practice and its staff have the same duties of confidentiality toward you and your matter as does your own lawyer.
- Conflict of interest: Your lawyer is acting for you alone, and in the main cannot represent or be involved personally with someone who may be against your interests in your matter. To do so would be a conflict of interest.
- Your instructions: Your lawyer will try to obtain from you what you hope to achieve within the law and the lawyer's professional duties. Your lawyer cannot follow instructions from you that would break any law, or breach the lawyer's duties to the Court or to the legal profession.

CHOOSING A LAWYER

The Law Society of Singapore has an online directory of the names, addresses and other useful information of all practising lawyers in Singapore, and may be accessed at <http://www.lawsociety.org.sg/>. You can also search the list of law practices that have advertised specialist practice areas. The Law Society is not permitted to recommend lawyers to you.

The recommendations of friends, family and third parties who have faced similar legal problems may also be helpful in your selection.

You should be independently satisfied that your lawyer has the necessary expertise, knowledge and experience to assist you in your matter. You should also be satisfied that your lawyer is in a position to give you independent legal advice, for example, lawyer acting for an opposing party in a dispute cannot represent you.

You may seek a second opinion from another lawyer without the knowledge of your current lawyer, but be aware that the second lawyer should not improperly influence you to discharge your current lawyer.

DUTIES YOUR LAWYER OWES YOU

Lawyers are required under their professional conduct rules to:

- exercise diligence and honesty in their dealings with you;
- inform you of matters relating to their legal fees;
- expeditiously render statements of accounts upon your request;
- undertake work in such a manner so as not to unnecessarily or improperly escalate their legal fees;
- complete any work on your behalf within a reasonable time;
- provide you competent representation;
- keep you reasonably informed of the progress of your matter;
- generally respond to your telephone calls and/or short message services (SMS) promptly and keep appointments made with you;
- clearly explain proposals of settlements, other offers or positions taken by other parties which affect you;
- keep your information regarding your matter confidential, even after your lawyer stops acting for you;
- advance your interest unaffected by another person's interest; and
- generally evaluate with you if the consequence of your matter justifies the expense or the risk involved.

MEETING YOUR LAWYER

Before you see your lawyer:

- a. think about all the information the lawyer will need and gather it in advance;
- b. list the events as they happened;
- c. collate all important papers and supporting documents;
- d. list the names, addresses, and telephone numbers of everyone involved in your matter;
- e. list the questions or issues you wish to discuss with your lawyer during the meeting.

The more organised you are, the less time you will spend during your meeting thus reducing the time-costs chargeable to you by your lawyer.

To avoid future disputes, clarify the likely legal fees involved. Enter into a proper fee agreement (preferably in writing) which sets out these charges clearly. Inform your lawyer in advance of any budgetary constraint.

When you meet with your lawyer:

- a. tell the lawyer everything important;
- b. answer your lawyer's questions fully, even if you may not understand the purpose of the question at the time;
- c. ask questions to clear all your doubts.

A full and thorough discussion of the issues will help the lawyer give you a realistic expectation of the prospects for success in what you are hoping to achieve, as well as a realistic estimate of the fees you can expect to pay should you proceed. Be mindful that your lawyer may not be able to give you advice at the first meeting. The law changes often, and your lawyer may need to first check on new laws or on decisions previously made by the Court.

WORKING WITH YOUR LAWYER FOLLOWING THE FIRST MEETING(S)

Arrange to correspond and have follow-up meetings with your lawyer at agreed times. Ask for copies of correspondence and documents filed in Court, and if you do not understand the documents, have your lawyer explain these.

- Be honest with your lawyer: It is difficult for your lawyer to give you the best advice if you do not provide full and frank disclosure of your matter and documents as early as possible and as soon as new issues arise.
- Manage your expectations: Your lawyer is not in a position to guarantee that you will succeed as many factors are beyond your lawyer's control and the final decision is with the Court. Always evaluate your case with your lawyer at regular intervals.
- Control your legal costs: Although you need to keep your lawyer fully informed of your matter, do remember that your lawyer may charge accordingly for his/her time spent on your matter. Focus your communication with your lawyer to the essential facts and information of your matter.

LEGAL FEES

Your lawyer is entitled to charge fair and reasonable fees for legal work done on your behalf. As no two matters are completely alike and some matters require more time and expertise to resolve, fees may vary between clients and cases. Legal expenses will generally comprise fees and disbursements. Disbursements are out-of-pocket expenses, and can include costs for filing and serving documents, long-distance calls, photocopying, subpoena fees (i.e. for summoning another person to Court), and medical or other reports.

It is important that you speak to your lawyer about your expectations on the scope of work you require your lawyer to perform, because lawyers have different ways of calculating fees, depending on the types of services required and the lawyer's billing practices. The usual methods are:

- Hourly rate: This is the usual way of billing, especially for a Court case. The amount of time you will require your lawyer's services will not be known at the outset.

- **Fixed rate:** This method is often used for a standard transaction for example drafting of an uncomplicated Will, an uncontested divorce, or the incorporation of a new company. The fee is a fixed amount regardless of the amount of time actually spent by the lawyer working on the matter.

It is preferable to enter a written fee agreement at the outset. Note that lawyers are not permitted to enter into contingency/conditional fee agreements for contentious matters. Contingency/conditional fee agreements are agreements in which the lawyer's fees are payable only in the event of success in the case or are proportionate to the amount which may be recovered by you in the case.

For contentious matters, your lawyer must also explain to you:

- that you are personally liable for payment of your own legal fees to your lawyer;
- if you lose, you may have to pay part of your opponent's legal fees as well as your own;
- if you win, your opponent may not be ordered to pay the full amount of your own legal fees and may not be able to pay what has been ordered; and
- the circumstances under which a lawyer can be discharged.

Your lawyer may ask you to pay a "retainer" (basically a deposit) before starting work on your matter. This money is meant to meet expected costs and disbursements. If the retainer is not completely used, the lawyer will refund you the remaining amount.

You should always ask for a receipt from the law practice for monies you have paid. This should indicate if the money is paid into the law practice's client account for your benefit (e.g. monies held on trust for you for the purchase of a house) or is paid into the law practice's office account (e.g. the moneys were paid to settle a bill from the law practice).

DISPUTES OVER FEES

The Law Society of Singapore offers a legal costs dispute resolution scheme to assist lawyers, their clients and third parties to resolve disputes on legal costs amicably and economically. The scheme provides for mediation as the first step to resolve such disputes. If mediation is unsuccessful, parties can move on to the simple and expedited arbitration process. Visit the Law Society's website at <http://www.lawsociety.org> to find out more about the scheme.

DISCHARGING YOUR LAWYER'S SERVICES

You may change your lawyer at any time. However, you should pay any outstanding costs to your current lawyer before engaging another lawyer unless there are exceptional reasons for not doing so. Where the outstanding fees of the current lawyer are not agreed or paid, that lawyer is entitled to request an undertaking that it retains the property of your case file (a "lien").

Your lawyer can discharge himself/herself if:

- his/her discharge does not cause significant harm to your interest and you are fully informed of the consequences and voluntarily assent to it;
- your lawyer reasonably believes that continued engagement in the case or matter would likely have a serious adverse effect upon his/her health;
- you breach an agreement with your lawyer regarding fees or expenses to be paid or regarding your conduct;
- you make material misrepresentations about the facts of the case or matter to your lawyer;
- your lawyer has an interest in the case or matter which is adverse to your interest;
- such action is necessary to avoid contravention by your lawyer of the Legal Profession Act or any subsidiary legislation thereunder; or
- any other good cause exists.

If your lawyer discharges himself/herself, he/she has to take reasonable care to avoid foreseeable harm to you, including:

- giving due notice to you;
- allowing reasonable time for substitution of a new lawyer;
- co-operating with your new lawyer; and
- subject to the satisfaction of any lien your lawyer may have, paying to you any money and handing over all papers and property that you are entitled to.

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Pro Bono Legal Aid and Assistance for the Community

A legal problem can cause untold emotional stress and give rise to tension between family and friends. Often, people have not budgeted for such contingencies, especially when the family income barely meets daily expenses. Things are made worse by the fact that legal answers are hard to come by.

The law is a mystery to many people, with procedures and jargon which are often confusing and even intimidating. Many people simply cannot afford to see a lawyer, and as a result seek informal advice from those around them, often receiving inaccurate information in the process with no way to verify it.

Others may wish to extend support to the needy amongst us, but may need a helping hand in doing so. Starting and running a non-profit organisation or a social enterprise is a valiant and very worthy cause, but even here the legal landscape can be a tricky one to navigate.

Help is at hand, however. A number of organisations, including the Law Society of Singapore's Pro Bono Services Office ("PBSO"), provide legal information and assistance to the community. These agencies and services are listed below, and include legal clinics and pro bono legal aid in a range of legal matters.

THE PRO BONO SERVICES OFFICE ("PBSO")

The PBSO is an initiative by the Law Society of Singapore to help bring free legal assistance to those in need in our community. It is part of the Law Society's stated mission to ensure access to justice for all.

The PBSO's work is supported by volunteers who give generously and selflessly of their time and expertise for the needy in the community, and by financial contributions from individual lawyers, law practices, private donations and key stakeholders such as the Ministry of Law, the State Courts, the Singapore Academy of Law and various community partners.

Programmes run by the PBSO aim to (i) serve the community, (ii) support their volunteers, and (iii) assist or collaborate on pro bono initiatives with other agencies to deliver on the Law Society's mission to ensure access to justice.

The PBSO also runs ongoing programmes aimed at delivering legal information to targeted members of the community, including youth, the elderly, and workers and include talks, information booklets, legal clinics and workshops.

More information on these services and the PBSO's varied pro bono initiatives can be found online: <http://probono.lawsoc.org.sg/>.

LEGAL CLINICS

Community Legal Clinic

The PBSO runs regular Community Legal Clinics to provide free preliminary legal advice to members of the public on personal legal issues.

The Clinics are helmed by volunteer lawyers. In general, the volunteer lawyer on duty will give one-off oral legal advice to help the applicants understand the nature of his problem, rights and obligations under the law, and the channels available for resolution. Each session usually lasts for about 20 minutes. Legal guidance given is of a general and preliminary nature. The Clinics do not offer legal representation to the clients.

Applicants must be:

- facing a legal issue on a personal (not a business or professional) matter, on which he/she has not previously received legal advice or representation;
- unable to afford a lawyer;
- a Singaporean or Singapore Permanent resident residing in Singapore.

Clinic sessions are held at the following locations:

North West Community Development Council

(Monday, 7.00pm–9.30pm)

Woodlands Civic Centre

900 South Woodlands Drive #06-07

Singapore 730900

South East Community Development Council

(Tuesday and Thursday, 7.00pm–9.30pm)

South East CDC

Singapore Post Centre

10 Eunos Road 8 #02-01

Singapore 408600

South West District

(Wednesday, 7.00pm – 9.30pm)

The JTC Summit #03-11

8 Jurong Town Hall Road

Singapore 609434

(Near Jurong East MRT Station)

Central Singapore District

(Thursday, 7.00pm – 9.00pm)

HDB Hub Via Biz Three Lift Lobby 1, #07-11

490 Lorong 6 Toa Payoh

Singapore 310490

(Near Toa Payoh MRT Station)

To register, please call us at +65 6536 0650 or send an email our office at: *probonoservices@lawsoc.org.sg*. Alternatively, you may speak to our PBSO Officer directly at the Community Justice Centre located at Level 1, The State Courts of Singapore.

Registration is required before an appointment is made for consultation at the Community Legal Clinic. Some basic information and documentation will be collected at the registration, for the lawyers to familiarize themselves with your issues before the day of the Clinic. The more details you provide, the better prepared the lawyers can be.

Please be prepared to provide the following information:

1. Personal details: Name, NRIC, Citizenship, Age, Marital Status, Gender, Residential Address, Contact Information.
2. Any relevant court dates and deadlines - e.g. hearing dates
3. The name of any adverse party / parties (e.g. employer, spouse, landlord, tenant, etc) / ; lender / creditor, bank, financial institution, insurance company
4. Dates of any agreements, contracts and durations of events (e.g. length of marriage, dates of employment, number of months in default)
5. Factual background of issue (e.g. Amount of debt/loan, damages/injuries suffered, type of property & ownership (e.g. HDB, jointly owned);
6. Detailed description of issue
7. For Divorce matters, please also include: Number of Children, Custody arrangements, Maintenance agreements, Division of matrimonial assets, details of how each party has contributed to the household, whether it is a Muslim marriage. If either of both spouse is foreign or has spent time overseas, please also include citizenship and visa status, where they got married, where they have lived since then and whether they have been living together continuously, how long each of them has lived in Singapore.

Please also send in:

1. Copies of any contracts, agreements, correspondence, written evidence
2. Copies of Writs served, court orders made, police reports

After registration, an appointment will be arranged for you to meet the lawyer at one of the Community Legal Clinics.

We also provide this booklet, “*Know the Law NOW! 2015*” which may answer some of your questions and help to provide you with more information about your situation. It is written in layman’s terms and intended for the general public, not legally trained professionals.

You may also want to visit the LegalHelp website at www.legalhelp.com.sg, which is a platform for members of the public in Singapore – anyone in need of legal help – to pose their questions to members of the legal fraternity or other members of the public who share similar experiences for guidance. LegalHelp is supported by a network of local lawyers who have volunteered to contribute their time and effort to help those in need.

In the event that you do not qualify for our Community Legal Clinic, please see our PBSO’s website at <http://probono.lawsoc.org.sg> for a list of other clinics where you may seek free legal advice.

PBSO’s email address: probonoservices@lawsoc.org.sg

Community Justice Centre

The Community Justice Centre (CJC) is an independent charity with IPC (Institute of Public Character) status conferred. Based in the State Courts, the CJC is committed to ensuring litigants in person (LIPs) have access to justice through community partnership.

As an integrated one-stop hub, CJC aims to provide a wide range of support services for the litigants in Person (LIPs) and their family members. It will provide free practical and emotional support to LIPs in need as well as free legal advice at the legal clinics. Through the support of the CJC, the LIPs should be able to better present their case, follow proceedings and understand judicial rulings or pronouncements in their respective cases.

Many LIPs have to deal with the burden of underlying emotional distress, financial difficulties and other social issues in addition to their legal problem. In collaboration with other social services agencies, the CJC also hopes that the underlying social problems and concerns for the litigants and their family members can be addressed. It is this combination of legal and emotional support that makes CJC unique. The CJC will always be near at hand to guide LIPs through the challenges of their legal problem, providing direct and immediate assistance on the ground.

Walk in address:
 1 Havelock Square
 Level 1 State Courts Complex
 Singapore 059724
 Telephone: +65 6557 4100

Email: *help@cjc.org.sg*

Primary Justice Project

The Primary Justice Project (PJP) is a joint collaboration between the State Courts, the Law Society, the Community Justice Centre and other justice stakeholders. The PJP encourages the public to explore amicable settlement of disputes before taking legal action in court as it provides an interim step between self-help and commencing action in the courts.

Under this scheme, a party who has a dispute may approach any lawyer listed on the Primary Justice panel. These lawyers provide basic legal services geared towards resolving the disputes at an early stage. When both parties to a dispute are represented by Primary Justice lawyers, the lawyers will work with their clients to negotiate a resolution to the dispute. They may also suggest the use of dispute resolution methods such as mediation, in which a third party helps to facilitate the negotiation of a settlement. The PJP is administered by the Community Justice Centre.

This scheme is particularly suitable for the following types of cases:

- a. Civil claims of less than \$60,000 and which fall outside the Small Claims Tribunals' jurisdiction, including consumer claims, tenancy disputes, MCST disputes, defamation and employment disputes; and
- b. Divorce matters where most ancillary matters are close to settlement.

Walk in address:
 1 Havelock Square
 Level 1 State Courts Complex
 Singapore 059724
 Tel: +65 6557 4100

Email: *help@cjc.org.sg*

Other legal clinics

Legal clinics for the public are also run at a number of organisations, including Community Clubs and Centres, Family Service Centres, and voluntary welfare and non-profit organisations. These are subject to respective clinics' eligibility criteria.

A list of legal clinics can be obtained by contacting PBSO:

Telephone: 6536 0650
Email: ProBonoServices@lawsoc.org.sg

CRIMINAL LEGAL AID

Non-capital criminal cases

Criminal Legal Aid Scheme (“CLAS”): The Law Society’s Criminal Legal Aid Scheme assists needy persons who are unable to pay for a lawyer to defend criminal charges. It is open to all persons in Singapore regardless of nationality.

CLAS will assign qualified volunteer lawyers in private practice to provide legal representation in criminal cases predominantly to eligible Defendants in Singapore wishing to claim trial, for cases falling within 15 specific statutes as follows:

- a. Arms and Explosives Act
- b. Arms Offences Act
- c. Computer Misuse Act
- d. Corrosive and Explosive Substances & Offensive Weapons Act
- e. Dangerous Fireworks Act
- f. Enlistment Act
- g. Explosive Substances Act
- h. Films Act
- i. Miscellaneous Offences (Public Order and Nuisance) Act
- j. Misuse of Drugs Act
- k. Penal Code
- l. Prevention of Corruption Act
- m. Sections 65(8) and 140(1)(i) of the Women’s Charter
- n. Undesirable Publications Act
- o. Vandalism Act

Applicants must:

- intend to plead guilty or be claiming trial [Note: mentally-ill accused persons and youthful offenders (16–18 years old) are eligible for legal aid under CLAS regardless of their plea] for charge(s) relating to any of the offences listed above; and
- satisfy the means test, which includes an income test and a disposable asset test. This means that the applicant’s income and disposable assets must not be above a certain threshold.

The Law Society reserves discretion to grant aid in deserving cases where the application fails the CLAS criteria. Applicants are entitled to appeal against a rejection by writing to the Chairman of the CLAS Committee.

CLAS volunteer lawyers do not receive any payment for the legal services they provide. In most cases, the volunteers also do not claim money paid on behalf of the accused persons and consider it part of their contribution towards pro bono work. CLAS also receives the invaluable support of volunteer interpreters from all parts of Asia including Thailand, Myanmar, Bangladesh, and, of course, Singapore.

To register and for more information:

Walk-in address:
1 Havelock Square, 5th Floor
State Courts Complex
Singapore 059724
Telephone: 6536 0650

Email: CLAS@lawsoc.org.sg
Website: <http://probono.lawsociety.org.sg/>

Capital criminal cases

Legal Assistance Scheme for Capital Offences (“LASCO”): Under the Supreme Court’s Legal Assistance Scheme for Capital Offences, accused persons facing criminal charges in the High Court punishable with the death penalty may be assigned legal representation by volunteer lawyers on the LASCO’s Register of Counsel.

Under the scheme, anyone facing a capital charge is eligible to be assigned counsel. No means test or other qualifying condition is required. In most cases, two counsel will be assigned – one to lead, and one to assist. It is usually open to the lead counsel to propose an assistant. Alternatively, an assisting counsel will be appointed by the Supreme Court Registry.

CIVIL LEGAL AID

The Legal Aid Bureau (“LAB”)

The LAB is part of the Ministry of Law and provides legal aid in a wide range of civil matters.

These civil matters include:

- Divorce
- Variation or enforcement of Court orders on ancillary matters in divorce (e.g. maintenance of ex-wife and children, division of assets and properties)
- Adoption
- Custody of children
- Monetary claim
- Claim for compensation in injury or medical negligence cases
- Estate matters, including the application for a Grant of Letters of Administration or Probate (documents authorising the personal representative(s) of a deceased to deal with and distribute the deceased’s assets)

LAB’s services include:

- Legal advice: Oral advice by LAB lawyers on questions of Singapore law and the practical steps you may take in the circumstances of your case.
- Legal aid: Representations by a legal aid lawyer in civil proceedings in the Court of Appeal, the High Court, the District Courts, the Magistrate’s Courts, the Syariah Court as well as proceedings under the Women’s Charter.
- Legal assistance: Drafting of various legal documents including deeds of separation (separation from spouse before deciding on a divorce) and deeds of severance of cohabitation.
- Counselling: Available for applicants who are emotionally distressed over marital or other personal issues.

Applicants must:

- be a Singapore citizen or a Singapore Permanent Resident;
- satisfy the means test – that is, the applicant’s income and disposable assets must not be above a certain threshold; and
- satisfy the merits test – that is, there must be reasonable grounds to grant the applicant legal aid.

Under the Legal Aid and Advice Act, LAB may not give legal aid for civil proceedings in respect of defamation, breach of promise to marriage, inducement of spouse to leave the other, relator actions, applications under Parliamentary Elections Act or Presidential Act, judgment Summons and judgment debt payment by instalments.

Note also that legal aid will not be granted to applicants who admit full liability of the claim against them, and who seek assistance in negotiations with their creditors, e.g. for instalment payments or a reduction in payment.

Applicant's contribution

Applicants may be required to make a small financial contribution for the service rendered. This contribution typically ranges, but will depend on the applicant's financial means, the nature and complexity of the case, the amount of work done in his/her case and the amount of money recovered for him/her.

Applicants' contributions are paid into the Legal Aid Fund. Legal costs and interest paid by the opposing party are also paid into this Fund. It is from this Fund that assigned solicitors are paid an honorarium for the assistance rendered to the applicant.

To register and for more information:

Walk-in address:
45 Maxwell Road #08-12
The URA Centre East Wing
Singapore 069118
Telephone: 1800 2255 529
Fax: 63251402

E-mail: OneMinLaw@mlaw.gov.sg
Website: <https://www.mlaw.gov.sg/content/lab/en.html>

HELP FOR COMMUNITY-SERVING ORGANISATIONS

Community Organisation Clinic

The PBSO runs Community Organisation Clinics to assist organisations in Singapore with an objective to meet community concerns, providing basic legal, accounting and/or human resources advice on operational issues.

Applicants must be:

- a non-profit organisation (e.g. a charity or voluntary welfare organisation) or social enterprise based in Singapore;
- geared towards meeting community concerns or needs (i.e. beneficial to the community in Singapore as a whole, and not confined to sectional interests or group of persons based on race, creed, belief or religion);
- in need of basic legal, accounting and/or HR advice and information on operational issues.

Each session usually lasts for about 30 minutes, and will involve legal, accounting and/or HR personnel, depending on the nature of enquiry. Advice given is of a general and preliminary nature. The Clinics do not offer legal representation to the applicants.

To register and for more information:

Walk-in address:
1 Havelock Square, 5th Floor
State Courts Complex
Singapore 059724
Telephone: 6536 0650

Email: probonoservices@lawsoc.org.sg
Website: <http://probono.lawsociety.org.sg/>

Project Law Help

The PBSO's Project Law Help programme matches eligible community-serving organisations with law firms that are willing to provide free non-litigation commercial legal services.

These legal services could include:

- corporate law (e.g. advice on contracts with suppliers, indemnity agreements for corporate sponsors, drafting pledges for donors);
- employment law (e.g. drafting or reviewing employment contracts);
- intellectual property law (e.g. advice on copyright, data protection, website use);
- property law (e.g. lease terms); and
- other legal matters not involving Court litigation advice or representation.

Applicants must be:

- a non-profit organisation (e.g. a charity or voluntary welfare organisation) or social enterprise based in Singapore;
- geared towards meeting community concerns or needs (i.e. beneficial to the community in Singapore as a whole, and not confined to sectional interests or group of persons based on race, creed, belief or religion);
- in need of legal advice and/or representation for a corporate non-litigation matter/transaction concerning the organisation;
- with limited or no financial resources to pay for such legal advice/representation.

Successful applicants work directly with the law firm assigned, with assurance that all legal matters of the voluntary welfare organisation are handled in professional confidence by the volunteer law practice.

To register and for more information, email PBSO at probonoservices@lawsoc.org.sg.

