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New civil procedure rules (Rules of Court 2021) for the General Division of the High Court (excluding the Singapore International Commercial Court ('SICC')) have been gazetted and will be implemented on 1 April 2022. The reform is intended to modernise the litigation process and improve efficiency.[1] New rules for the SICC have also been gazetted and will similarly come into operation on 1 April 2022.

This update focuses on the rules which apply to the General Division of the High Court (excluding the SICC). New rules which are of particular interest from a conflict of laws point of view include changes to the rules on service out. The new Order 8 rule 1 provides that:

'(1) An originating process or other court document may be served out of Singapore with the Court's approval if it can be shown that the Court has the jurisdiction or is the appropriate court to hear the action.

…

(3) The Court's approval is not required if service out of Singapore is allowed under a contract between the parties.

…'

The current rules on service out is to be found in Order 11 of the Rules of Court. This requires that the plaintiff ('claimant' under the new Rules) establish that (1) there is a good arguable case that the action fits within one of the heads of Order 11; (2) there is a serious issue to be tried on the merits; and (3) Singapore is *forum conveniens*.[2] The heads of Order 11 generally require a nexus to be shown between the parties or subject-matter of the action to Singapore and are based on the predecessor to the UK Civil Procedure Rules Practice Direction 6B paragraph 3.1. The wording of the new Order 8 rule 1(1) suggests a drastic departure from the current Order 11 framework; however, this is not the case.

There will be two alternative grounds of service out: either the Singapore court 'has the jurisdiction' to hear the action or 'is the appropriate court' to hear the action. The first ground of service out presumably covers situations such as where the Singapore court is the chosen court in accordance with the Choice of Court Agreements Act 2016,[3] which enacts the Hague Convention on Choice of Court Agreements into Singapore law. The second ground of service out i.e. that the Singapore court is the 'appropriate court' to hear the action could, on one view, be read to refer only to the requirement under the current framework that Singapore is *forum conveniens*. However, the Supreme Court Practice Directions 2021, which are to be read with the new Rules of Court, make it clear that the claimant still has to show:[4]

'(a) there is a good arguable case that there is sufficient nexus to Singapore;

(b) Singapore is the *forum conveniens*; and

(c) there is a serious question to be tried on the merits of the claim.'

The Practice Directions go on to give as examples of a sufficient nexus to Singapore factors which are substantively identical to the current Order 11 heads.[5] As these are non-exhaustive examples, the difference between the current rules and this new ground of service out is that the claimant may still succeed in obtaining leave to serve out even though the action does not fit within one of the heads of the current Order 11. This is helpful insofar as the scope of some of the heads are uncertain; for example, it is unclear whether an action for a declaration that a contract does not exist falls within the current contractual head of service out[6] as there is no equivalent to the UK CPR PD 6B paragraph 3.1(8).[7] Yet at the same time, the Court of Appeal had previously taken a wide interpretation of Order 11 rule 1(n), which reads: 'the claim is made under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A), the Terrorism (Suppression of Financing Act (Cap. 325) or any other written law'.[8] The phrase 'any written law' was held not to be read *ejusdem generis*[9] and would include the court's powers, conferred by s 18 of the Supreme Court of Judicature Act read together with paragraph 14 of the First Schedule, to 'grant all reliefs and remedies at law and in equity, including damages in addition to, or in substitution for, an injunction or specific performance.'[10] This interpretation of Order 11 rule 1(n) arguably achieves much the same effect as the new 'appropriate court' ground of service out.

The new Order 8 rule 1(3) is to be welcomed. However, it is important to note that a choice of court agreement for the Singapore court which is unaccompanied by an agreement to permit service out of Singapore will still require an application for leave to serve out under the 'has jurisdiction' ground (if the Choice of Court Agreements Act is applicable) or the 'appropriate court' ground (if the Choice of Court Agreements Act is not applicable).

Other provisions in the new Rules of Court 2021 which are of interest deal with a challenge to the jurisdiction of the court. A defendant may challenge the jurisdiction of the court on the grounds that the court has no jurisdiction to hear the action or the court should not exercise jurisdiction to hear the action. A challenge on either ground 'is not treated as a submission to jurisdiction'.[11] This seemingly contradicts the established common law understanding that a jurisdictional challenge which attacks the existence of the court's jurisdiction (a setting aside application) does not amount to a submission to the court's jurisdiction, whereas a jurisdictional challenge which requests the court not to exercise the jurisdiction which it has (a stay application) amounts to a submission to the court's jurisdiction.[12] Further to that, the provisions which deal with challenges to the exercise of the court's jurisdiction are worded slightly differently depending on whether the action is commenced by way of an originating claim or an originating application. For the former, Order 6 rule 7(5) provides that 'The challenge to jurisdiction may be for the reason that – … (b) the Court should not exercise jurisdiction to hear the action.' For the latter, Order 6 rule 12(4) elaborates that 'The challenge to jurisdiction may be for the reason that – … (b) the Court should not exercise jurisdiction because it is not the appropriate Court to hear the action.' The difference in wording is puzzling because one assumes that the same types of challenges are possible regardless of whether the action is commenced by way of an originating claim or originating application – eg, challenges based on *forum non conveniens*, abuse of process or case management reasons. Given use of the word 'may' in both provisions though, it ought to be the case that the different wording does not lead to any substantive difference on the types of challenges which are permissible.

[1] See media release here.

[2] *Zoom Communications v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 (CA).

[3] Cap 39A.

[4] Supreme Court Practice Directions 2021 (To be read with Rules of Court 2021), p 72.

[5] *Ibid*, pp 72-73.

[6] Rules of Court, Order 11 rule 1(d).

[7] 'A claim is made for a declaration that no contract exists …'.

[8] *Li Shengwu v Attorney-General* [2019] 1 SLR 1081 (CA).

[9] *Ibid*, [168]-[170].

[10] *Ibid*, [161].

[11] Rules of Court 2021, Order 6 rule 7(6) (originating claim); Order 6 rule 12(5) (originating application.

[12] *Zoom Communications v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 (CA).