

Class/collective actions in Singapore: overview

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OVERVIEW OF CLASS/COLLECTIVE ACTIONS AND CURRENT TRENDS

1. What is the definition of class/collective actions in your jurisdiction? Are they popular and what are the current trends?

Definition of class/collective actions

The only general process which enables a large number of persons to be directly involved in the same litigation in Singapore is through a representative action brought in the civil courts under order 15, rule 12 of the Rules of Court (Cap. 322, 2014 Rev. Ed.) (Rules of the Court). Representative actions in Singapore differ from US-style class actions because, in a representative action, all members of the class must be identified and agreed before litigation commences to enable the appointment of the representative(s) to represent them. There is no regulated procedure under which non-representative group actions can be brought in Singapore.

Under order 15, rule 12 of the Rules of Court, one or more members of a class of people (claimants/defendants) can bring or defend a claim on behalf of themselves and other members of the class who have the "same interest" in the proceedings (see *Question 5, Definition of class*).

Any judgments or orders made by the court during representative actions are binding on all the persons represented by the representative claimant/representative defendant, as the case may be. However, the judgment cannot be enforced against any non-party to the lawsuit (that is, any claimants/defendants who are not represented by the representative claimant/representative defendant) without leave of the court.

Use of class/collective actions

Singapore is generally a non-litigious society (for example, as compared to the United States), and it is quite rare for representative actions to be brought in Singapore.

Since 2000, the only representative actions brought in Singapore were two lawsuits brought under misrepresentation and breach of contract by club members, in 2002 and 2008, against the entities managing their clubs. The only other reported representative action brought before that time was a claim brought by members of a political party who sought, on behalf of a faction of the party, to impugn the validity of a party conference at which members of the other faction were elected to office.

Current trends

Representative actions remain uncommon in Singapore. However, there are increasing calls to bring representative actions in certain areas, such as consumer protection and securities law.

REGULATORY FRAMEWORK

2. What are the principal sources of law and regulations relating to class/collective actions? What are the different mechanisms for bringing a class/collective action?

Principal sources of law

The principal source of law for representative actions is order 15, rule 12 of the Rules of Court. Order 15, rule 12(1) reads: "Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13, the proceedings may be begun, and, unless the court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them".

As mentioned above (see *Question 1*), all members of the class must be identified before the commencement of proceedings in a representative action. However, order 15, rule 13 provides certain narrow exceptions that allow representative actions on behalf of certain persons (including unborn persons) who cannot be ascertained or found at the time of the launching of the action. The subject matter of these exceptions is limited to proceedings concerning one of the following:

- The administration of the estate of a deceased person.
- Property subject to a trust.
- The construction of a written instrument.

The court is empowered in such situations to appoint one or more persons to represent the class of persons who cannot be ascertained or found.

Principal institutions

Representative actions are heard either by the state courts or the High Court of Singapore (High Court), which are the two courts in Singapore that have original civil jurisdiction.

In practice, such claims will almost always be brought in the High Court, as any claims that are valued over SGD250,000 can only be brought in the High Court under section 19(4) of the State Courts Act (Cap. 321, 2007 Rev. Ed.), and most representative actions will fall into this category.

Different mechanisms

Representative actions can be brought under order 15, rule 12 of the Rules of Court or under specific statutes (for example, statutes that provide for representative action include section 85 of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev. Ed.), and section 86 of the Competition Act (Cap 50B, 2006 Rev. Ed.)).

Alternatively, the essence of a representative action (that is, the collectivisation of claims) can be achieved by joinder or consolidation. Where there is some common question of law or fact,

and all rights to relief claimed arise out of the same transaction (or series of transactions), the parties can either:

- Apply for a joinder of parties under order 15, rule 4 of the Rules of Court.
- Request the court to invoke its broad discretion under order 4, rule 1 of the Rules of Court to order the consolidation of the matters.

3. Are class/collective actions permitted/used in all areas of law, or only in specific areas?

There is no specific legislation or regulations limiting the use of such actions to only certain areas of law. However, representative actions are most commonly used in property law actions, where section 85 of the Building Maintenance and Strata Management Act enables a managing corporation to bring proceedings on behalf of the subsidiary proprietors of a building, or to defend an action on their behalf.

LIMITATION

4. What are the key limitation periods for class/collective actions?

The duration of the limitation periods for causes of action (including those brought as representative actions) brought in the High Court are governed by the Limitation Act (Cap. 163, 1996 Rev. Ed.) (Limitation Act).

Most actions (including those founded in tort or contract, or an action to enforce a foreign judgment/arbitral award) have a limitation period of six years (*section 6(1), Limitation Act*). The period of limitation begins to run from the time the cause of action accrued. In the case of a claim in tort, this is the date on which the damage occurs; in the case of a claim in contract, this is the date on which the breach occurs (*see Lian Kok Hong v Ow Wah Foong and Another [2008] 4 SLR(R) 165*).

However, there are exceptions to the general six-year limitation period rule, the most notable of which are listed below:

- Any action for personal injury resulting out of negligence, nuisance or breach of duty has a limitation period of three years, which runs either from the date on which the cause of action accrued, or from the earliest date on which the claimant has the knowledge required to bring the action in respect of the injury suffered (whichever is the later) (*section 24A(2), Limitation Act*).
- An action in negligence, nuisance or for breach of duty may be brought at a date after six years since the cause of action accrued, provided that the claimant only first acquired the knowledge necessary, and the right to bring the action, on a date three years or more after the damage had occurred. In such a case, the limitation period is three years from the date the knowledge was acquired (*section 24A(3), Limitation Act*).
- The overriding period of limitation for an action for damages for negligence, nuisance and breach of duty is 15 years from the date that act occurred which is alleged to constitute the negligence, nuisance or breach of duty and from which the damage is attributable (*section 24B, Limitation Act*). This overriding limitation period applies even if the cause of action has not accrued during that 15-year period (*section 24B(3), Limitation Act*).

STANDING AND PROCEDURAL FRAMEWORK FOR BRINGING AN ACTION

Standing

5. What are the rules on standing for bringing a claim in a class/collective action?

Definition of class

Order 15, rule 12(1) of the Rules of Court governs the rules concerning standing to bring a claim for a representative action. The Singapore Court of Appeal has held that order 15, rule 12(1) should be applied in a "broad and flexible manner ... bearing in mind the purpose of the provision, which is to facilitate access to, and the efficacious administration of, justice" (*see paragraph 29, Koh Chong Chiah v Treasure Resort Pte Ltd [2013] 4 SLR 1204* (Treasure Resort case)).

The Court of Appeal in the Treasure Resort case analysed order 15, rule 12(1) and held that it operates in two stages:

- **Jurisdictional stage.** The claimants must show that they have the "same interest" in the proceedings. If this requirement is satisfied, the inquiry progresses to the second stage.
- **Discretionary stage.** The court considers whether to exercise its residual discretion to discontinue the proceedings as a representative action, where the overall circumstances of the case justify such a discontinuance.

At the jurisdictional stage, in order for a class of claimants to satisfy the "same interest" requirements, they must show the following on a prima facie basis (*see paragraphs 78 and 79, Treasure Resort case*):

- The class of represented persons must be capable of clear definition. The members of the class must be identified by an objective criterion bearing a rational relationship to the common issues being asserted.
- The proposed representative claimants must adequately represent the interests of the class of represented persons, and must vigorously and capably prosecute the interests of the entire class.
- There must be significant issues of fact or law common to all the claimants (the representative claimants and the persons they seek to represent). However, the claimants need not all be identically situated in relation to the defendant(s).
- All the claimants in a representative action must benefit from the relief granted by the court (that is, they must have the same interest in the relief granted).

As to the third requirement listed above, the court must compare the significance of the common issues between the claimants with the significance of the issues which differ between them, with a focus on the commonality of the issues (however, if the latter clearly outweighs the former, there is no "same interest") (*see paragraph 60, Treasure Resort case*).

At the discretionary stage, the court can consider the following factors in deciding whether to discontinue the proceedings as a representative action, notwithstanding the fact that the "same interest" requirement has been met:

- The defendant must not be barred from raising a defence which would have otherwise been available to him or her if there had been separate individual actions (*see paragraph 63, Treasure Resort case*).
- If the defendant has separate defences against different claimants, this is merely a factor to consider and does not in and of itself determine the exercise of this discretion (*see paragraph 67, Treasure Resort case*). In this regard, the Court of Appeal in the Treasure Resort case expressly departed from the English

Court of Appeal decision in *Emerald Supplies Ltd v British Airways plc* [2011] Ch 345, where the English Court of Appeal held that in such a situation, the requirement of "same interest" would not be fulfilled and a representative action could not be maintained.

- When considering the question of the possibility of separate defences, the court will only consider practical and realistic defences and not indulge in speculation (see paragraph 70, *Treasure Resort case*).
- The time and costs that would be saved if the representative action were allowed to proceed, as opposed to each claimant taking out a singular action (see paragraph 83, *Treasure Resort case*).
- The competing interests of the defendant: as the represented claimants are not parties to the action, they cannot be cross-examined or ordered to give discovery (see paragraph 36, *Treasure Resort case*).

The claimants only need to prove a prima facie case, and need not prove to the court that they have a strong case on the merits. In fact, the court expressly cautioned against "wandering into the realm relating to the merits of the claims pleaded in the representative action" (see paragraph 89, *Treasure Resort case*).

Potential claimant

Potential claimants must fall within the class of represented persons that is "identified by an objective criterion bearing a rational relationship to the common issues being asserted" (see paragraph 78, *Treasure Resort case*).

Claimants outside the jurisdiction

Actions in the Singapore courts can be brought on behalf of claimants residing outside of Singapore if the Singapore courts can establish jurisdiction over the case. The basis of civil jurisdiction of the District Court and High Court in Singapore is entirely statutory, and so the provisions of the relevant statutes must be satisfied before the court has jurisdiction to hear the case.

The basis of jurisdiction of the High Court is found in section 16 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev. Ed.) (Supreme Court of Judicature Act). Section 16(1) provides that the High Court will have jurisdiction to hear and try any action *in personam* where:

- The defendant is served with a writ or other originating process either:
 - in Singapore in the manner prescribed by the Rules of Court; or
 - outside Singapore in the circumstances authorised by and in the manner prescribed by the Rules of Court.
- The defendant submits to jurisdiction of the High Court.

Generally, two basic principles underpin the question of jurisdiction in cross-border disputes.

First, there must be a legal connection between the case or the defendant and Singapore. Under section 16(1) of the Supreme Court of Judicature Act, the Singapore High Court has jurisdiction over a defendant who is validly served with the originating process in or outside of Singapore. The High Court will also have jurisdiction if the defendant has agreed to submit to the jurisdiction of Singapore in an agreement with the claimant, or if in the course of legal proceedings, the defendant takes a step that unequivocally demonstrates that he or she has accepted the court's jurisdiction.

Second, the Singapore court may not exercise its jurisdiction unless it is satisfied that it is the most appropriate forum for the dispute.

Professional claimants

In early 2017, Singapore passed legislation which abolished the torts of champerty and maintenance (see section 5A of the *Civil Law Act (Cap 43; 1999 Rev. Ed.) together with the Civil Law (Amendment) Act 2017*). Under contract law, contracts affected by maintenance and champerty continue to be contrary to public policy or are otherwise illegal and therefore unenforceable unless they fall under certain permitted categories that are specified in the Civil Law (Third-Party Funding) Regulations 2017.

According to the Civil Law (Third-Party Funding) Regulations 2017, contracts regarding third-party funding are valid if both:

- The third-party funding is in relation to international arbitration proceedings and related court or mediation proceedings.
- The third-party funder must be a qualifying third-party funder, which refers to one who carries on the principal business of funding the costs of dispute resolution proceedings (in Singapore or elsewhere) and must have a paid-up share capital or managed assets of not less than SGD5 million (or the equivalent amount in foreign currency).

A third-party funder that ceases to meet, or fails to comply with, the qualifying criteria will not be able to enforce its rights under a third-party funding contract, but is still required to perform its obligations under the contract, in particular its obligation to fund the claim.

Outside of international arbitration and related court proceedings, there are limited exceptions under which third-party funding may be permitted. The Singapore High Court in *Re Vanguard Energy Pte Ltd* [2015] 4 SLR 597 (Re Vanguard Energy case) has recognised third-party litigation funding in the sphere of corporate insolvency in respect of liquidators selling the rights to the insolvent company's claims. An assignment of a cause of action or its fruits will not be champertous where either:

- The claim is incidental to a transfer of property.
- The assignee has a legitimate interest in the outcome of the litigation.
- There is no realistic possibility that the administration of justice may suffer as a result of the assignment.

(See *Re Vanguard Energy case*.)

In this regard, the court will consider if the assignment will conflict with existing public policy directed to protecting the purity or due administration of justice and the interests of vulnerable litigants, and the policy of ensuring access to justice.

Qualification, joinder and test cases

6. What are the key procedural elements for maintaining a case as a class action?

Certification/qualification

The representative claimants must pass the "same interest" requirement (see *Question, 5, Definition of class*) before the court will allow the representative action to continue.

The courts have wide case management powers under the Rules of Court to ensure that the conduct of the representative action remains fair and just. The Court of Appeal in the *Treasure Resort case* also indicated that the court will take a wide view of its case management powers specifically in respect of representative actions, to make any orders it deems fit to deal with any issues raised by the parties, and to reshape the proceedings at a later stage if they become impossibly complex or if the defendant is prejudiced (see paragraph 37, *Treasure Resort case*).

Minimum/maximum number of claimants

There is no minimum or maximum number prescribed by the legislation, but the minimum number should be at least two to give efficacy to the provisions.

Joining other claimants

The parties can apply for a joinder of parties under order 15, rule 4 of the Rules of Court where there is some common question of law or fact, and all the rights to relief claimed arise out of the same transaction (or series of transactions).

Under order 15, rule 6(1) of the Rules of Court, the court also has the power (either on its own motion or on application) to order any person to be added as a party (whether as a claimant or defendant), if either:

- That person's presence in the representative action is necessary to ensure that all matters can be effectually and completely determined and adjudicated upon.
- Between that person and any party to the action, there exists a question or issue arising out of, or relating to or connected with, any relief or remedy claimed in the matter which, in the opinion of the court, it would be just and convenient to determine as between that person and the relevant party, as well as between the parties to the action.

However, no one may be joined as a claimant without his or her consent in writing or other authorised manner (*order 15, rule 6(4), Rules of Court*).

TIMETABLING

7. What is the usual procedural timetable for a case?

Average length of proceedings

The average length of proceedings will largely depend on the number and the complexity of the issues put before a court, the amount of interlocutory applications taken out (and appealed) by the parties, the volume of documents discovered by the parties, the length of the trial (which depends on the number and complexity of issues, and the number of witnesses called), and whether the decision is appealed.

The average length of a suit in the Singapore High Court is about two years, not including an appeal. An appeal to the Singapore Court of Appeal (the final court of appeal) will usually take another one to two years.

Summary disposal of claims

The courts are empowered to give the parties a summary judgment on the facts or on a point of law (*order 14, rules 1 and 12, Rules of Court*), or to strike out a claim (*order 18, rule 19 of the Rules of Court*) where it:

- Discloses no reasonable cause of action.
- Is frivolous or vexatious.
- May prejudice a fair trial of the action.
- Is an abuse of process.

EFFECT OF THE AREA OF LAW ON THE PROCEDURAL SYSTEM

8. Does the applicable procedural system vary depending on the relevant area of law in which the class/collective action is brought?

As representative actions brought in the courts are simply a type of civil claim governed by the overriding Rules of Court which apply to

all civil claims, the procedural system to determine a representative action will not change depending on the area of law in which the claim is brought, save that the limitation periods may vary (see *Question 4*).

FUNDING AND COSTS

Funding

9. What are the rules governing lawyers' fees in class/collective actions?

Under section 107 of the Legal Profession Act (Cap. 161, 2009 Rev. Ed.) (Legal Profession Act), lawyers in Singapore are not allowed to charge under contingency fee arrangements in civil actions in the courts. However, there is an exception to this rule carved out by the courts: where a lawyer acts for an impecunious client in the knowledge that the lawyer would likely only be able to recover his or her fees and disbursements if the client were successful in the claim and could pay him or her out of those proceeds, or if there was a costs order made against the other side. This exception appears to allow contingency fee arrangements in representative actions where the class of claimants is impecunious in the same manner (see *Law Society of Singapore v Kurubalan s/o Manickam Rengaraju [2013] 4 SLR 91* (Kurubalan case)).

The rules governing lawyers' fees are found in sections 107 to 115 of the Legal Profession Act. In addition to the above, the following apply to representative actions in the courts:

- A law firm or solicitor may make an agreement in writing with the class of claimants/defendants for a fixed fee in respect of a representative action (*section 111, Legal Profession Act*).
- The class of claimants/defendants cannot recover more than the fixed fee agreed with the law firm/lawyer from any other person (that is, the other party in the representative action) (*section 112(2), Legal Profession Act*).
- Such fees will not be subject to taxation (*section 112(4), Legal Profession Act*).
- The law firm/lawyer may not bring an action upon such an agreement (*section 113(1), Legal Profession Act*).
- Such an agreement may be enforced or set aside by the High Court (*section 113(2), Legal Profession Act*).

10. Is third party funding of class/collective actions permitted?

Third-party funding is permitted in representative actions in limited circumstances (see *Question 5, Potential claimant*).

11. Is financial support available from any government or other public body for class/collective action litigation?

Financial support is not available. Public funding for legal aid is restricted to criminal cases and is not available for civil actions in Singapore.

12. Are other funding options available to claimants in class/collective actions?

Insurance is a permitted method of funding for civil claims in Singapore and can apply to representative actions. All other applicable restrictions on third-party funding, contingency fee arrangements and public funding will apply.

COSTS

13. What are the key rules for costs/fees in class/collective action litigation?

In Singapore, the court has absolute discretion in awarding costs in any litigation under order 59, rule 2 of the Rules of Court. Here, we are concerned only with party-to-party costs (that is, costs payable between the parties to the litigation).

The general rule is that costs follow the event (*order 59, rule 3(2), Rules of Court*). This means that the losing party will pay the winning party's costs.

There are two bases on which the court will award costs:

- Standard basis.
- Indemnity basis.

On the standard basis, the court will allow the winning party to recover a reasonable amount in respect of all costs reasonably incurred, with any doubts as to reasonableness to be resolved in favour of the losing party. On the indemnity basis, the court will allow the winning party to recover all costs except where they have been incurred unreasonably, with any doubts as to reasonableness to be resolved in favour of the winning party.

The standard basis is the default position under order 59, rule 27(1) of the Rules of Court. If indemnity costs are ordered, this is usually where:

- There has been a contractual agreement between the parties prior to the dispute stipulating that indemnity costs will apply.
- There has been a prior offer to settle which was not taken up.
- The court intends to signal its disapproval of the losing party's conduct.

Costs can either be fixed by the court, agreed upon by the parties and subsequently so ordered by the court, or submitted to the court for taxation.

Where costs are submitted to the court for taxation, the court is required under order 59, rule 31(1) (read with Appendix 1 to order 59) of the Rules of Court to consider the following factors:

- The complexity of the item, or of the cause or matter in which it arises, and the difficulty or novelty of the questions involved.
- The skill, specialised knowledge and responsibility required of, and the time and labour expended by, the lawyer.
- The number and importance of the documents (however brief) prepared or perused.
- The place and circumstances in which the business involved is transacted.
- The urgency and importance of the cause or the matter to the client.
- Where money or property is involved, its amount or value.

The party whose bill is taxed is entitled to the costs of the taxation proceedings (*order 59, rule 7A, Rules of Court*).

Key effects of the costs/funding regime

14. What are the key effects of the current costs/funding regime?

The effect of the current restrictions on third-party funding, contingency fee arrangements and the lack of public funding for civil claims is that litigants are, by and large, expected to fund their own

litigation, save where they are impecunious and/or such an arrangement would facilitate access to justice (see *Re Vanguard Energy case*, and *Kurubalan case*).

DISCLOSURE AND PRIVILEGE

15. What is the procedure for disclosure of documents in a class/collective action?

As representative actions are merely a specialised form of civil claim, disclosure of documents in representative actions is governed by the same rules that apply to all civil litigation, order 24 of the Rules of Court.

Before litigation

The court has the power to order pre-action discovery in favour of an applying party against other parties for the disclosure of documents relating to the lawsuit that is intended to be brought (*order 24, rule 6, Rules of Court, and paragraph 12, First Schedule, Supreme Court of Judicature Act*).

In making the application, the applicant must state the material facts pertaining to the intended proceedings, and whether the person against whom the order is sought is likely to be party to subsequent proceedings in court. The applicant must specify how the documents sought to be disclosed are relevant either to the issues in the proceedings intended to be commenced, or to the identity of the parties to the intended proceedings. The court must also be satisfied that ordering such disclosure will be necessary to dispose fairly of the action, or that costs will be saved in so doing, under order 24, rule 7 of the Rules of Court.

To succeed in such an action, and to prevent the parties from abusing this type of application to obtain all the documents relevant to the action before the beginning of the trial (which would render the normal disclosure process otiose), the courts have held that such applications should only be made where a potential claimant does not have sufficient facts to commence proceedings, and not where the claimant is already in a position to commence its claim (see the Court of Appeal decision, *Ching Mun Fong v Standard Chartered Bank [2012] 4 SLR 185*).

During litigation

There are two main sources of discovery between parties:

- General discovery.
- Specific discovery.

General discovery. Under order 24, rule 1 of the Rules of Court, during the proceedings, the parties are expected to disclose the following classes of documents that are in their power, custody or possession:

- The documents on which each party will rely.
- The documents which could adversely affect each party's own case, adversely affect another's party's case, or support another party's case.

The parties are also expected to file affidavits confirming that these documents disclosed are the only documents that they have that fall within these classes, and to explain the whereabouts of any documents falling within these classes which were previously in the party's possession, custody or power but are now no longer in their possession, custody or power. The parties are not expected to disclose material covered by privilege.

Specific discovery. Under order 24, rule 5 of the Rules of Court, the parties may also make applications to court, notwithstanding that general discovery has been ordered, for disclosures of specific categories of documents which fall within the following classes:

- The documents on which it will rely.

- The documents which could adversely affect its own case, adversely affect another party's case, or support another party's case.
- A document which may lead the party seeking discovery of it to a train of inquiry resulting in him or her obtaining information which may adversely affect its own case, adversely affect another party's case, or support another party's case.

The court will only grant such an application if it is of the opinion that it would be necessary to dispose fairly of the case or matter, or that costs would be saved in so doing (*order 24, rule 7, Rules of Court*).

16. Are there special considerations for privilege in relation to class/collective actions?

The concept of privilege applies in the Singapore context to all civil actions, including representative actions, and the parties are under no obligation to disclose privileged documents in the discovery process. The following classes of privilege are often claimed by parties in civil actions (including representative actions):

- **Legal advice privilege.** This covers all communications between the parties and their legal advisors, including legally trained in-house counsel.
- **Litigation privilege.** This covers all communications between lawyers/in-house counsel, their clients and third parties made in the context where there is a reasonable prospect of litigation, and where the communication was for the dominant purpose of litigation.

EVIDENCE

17. What is the procedure for filing factual and expert witness evidence in class/collective actions?

Evidence in the High Court

Any fact that a party wishes to prove at the trial of a representative action will be proved by the examination of a witness in open court (*order 38, rule 1, Rules of Court*).

Evidence to be given at trial, whether by factual or expert witnesses, is given by way of an affidavit of evidence-in-chief, which must be filed before the beginning of the trial. The witness then attends trial for cross-examination. If the witness defaults in attending, the affidavit will not be accepted as evidence except with the leave of the court (*order 38, rule 2(1), Rules of Court*). Evidence-in-chief (that is, the primary statement of the witness before his or her cross-examination) will not be given at trial orally, unless the court orders otherwise (*order 38, rules 2(1), 2(3) and 2(4), Rules of Court*).

Before the trial, the court will give directions setting the dates on which these affidavits of evidence-in-chief must be filed at a pre-trial conference. At trial, both factual and expert witnesses may be subject to cross-examination by opposing counsel. Following cross-examination, the witnesses can be re-examined by their own counsel.

While there is relatively little procedure governing the giving of factual evidence (except as explained above), there are several additional (and commonly used) Rules of Court governing the giving of expert evidence by party-appointed experts:

- The expert owes an overriding obligation to the court to assist it on matters within his or her expertise, which overrides his or her obligation to the appointing party (*order 40A, rule 2, Rules of Court*).
- The expert's evidence is to be given in a written report exhibited to his or her affidavit of evidence-in-chief, which must contain a

statement that the expert accepts full responsibility for the report. The expert's report must exhibit his or her qualifications, give reasons for his or her opinions reached on the issues submitted for opinion, and contain statements of belief of correctness and that the expert understands that his or her duty is to the court (*order 40A, rule 3, Rules of Court*).

- The court may direct that the experts attend a discussion (commonly known as a conclave) to discuss the issues arising at the trial and to prepare a joint statement (commonly known as a joint expert report) (*order 40A, rule 5, Rules of Court*).
- The court may direct that the experts may give evidence concurrently as a panel with the consent of the parties (commonly known as "hot-tubbing"), where the experts may be cross-examined by counsel, questioned by the court or question one another with leave of the court (*order 40A, rule 6, Rules of Court*).

DEFENCE

18. Can one defendant apply to join other possible defendants in a class/collective action?

Joining other defendants

A defendant is entitled to add another party as a third party to the claim where the defendant claims:

- That such a third party would owe him or her a contribution or indemnity.
- Against the third party the relief claimed by the claimant(s).
- That the issue in the action should be determined amongst the parties, including the third party.

(*Order 16, rule 1, Rules of Court*.)

The claimants can also apply to join more defendants. Under order 15, rules 6 and 12 of the Rules of Court, upon the application of the claimant(s), the court is empowered to appoint a person as a defendant to represent the class of defendants being sued, and to join that person to the action notwithstanding that the claimant has not named him or her as a defendant.

Rights of multiple defendants

Common interest privilege. This allows one co-claimant/defendant to share privileged materials with other co-claimants/defendants who have a common interest in the subject matter to which the privileged materials relate, without any loss of legal privilege (whether subject to legal advice privilege or litigation privilege). Such sharing of privileged materials does not amount to a waiver of privilege except as between the provider of the materials and the recipients.

Joint retainers. It is common for multiple claimants/defendants in the same action to be represented by the same solicitor using a joint retainer. However, the solicitor must be careful not to expose himself/herself to a position where he/she is acting in conflict of interest between the co-claimants/defendants.

DAMAGES AND RELIEF

19. What is the measure of damages under national law in the field of class/collective actions?

Damages

In Singapore, there is no special method of calculating damages owed to claimants in the event of a successful representative action, and damages will be calculated on the prevailing legal principles of causation and remoteness of damage.

However, as there is a requirement under representative actions that the entire class of claimants must have the same interest in the relief granted by the court, it appears that a standard sum of liquidated damages may not be requested in a representative action where the sum of damages may vary from claimant to claimant. It may be better to seek a declaration that damages are payable to each claimant (which clearly benefits the entire class), and let each claimant apply for an assessment of damages (which is what the claimants did in the Treasure Resort case).

Recovering damages

A winning claimant has a range of enforcement options under orders 45 to 51 of the Rules of Court, which include:

- Writs of execution.
- Writs of seizure and sale of property.
- Examination of judgment debtors.
- Garnishee proceedings.
- Stop orders relating to the sale of shares owned by the judgment debtors.
- Appointment of receivers by way of equitable execution.

However, winning claimants require leave of the court to enforce their judgment against defendants who are not a party to the representative action (where the defendants also form a class and are represented by certain members of the class): this is expressly provided for under order 15, rule 12(3) of the Rules of Court.

Interest on damages

The court has the power to award interest on the judgment at such rate as it thinks fit and from any period between the date on which the cause of action arose and the date of the judgment (*section 12, Civil Law Act*). The default rate of interest under the Rules of Court is currently set at 5.33%.

20. What rules apply to declaratory relief and interim awards in class/collective actions?

Declaratory relief

The High Court has the power to grant all reliefs and remedies at law and in equity, including declaratory relief and injunctive relief.

Interim awards

The High Court has the power to grant an interim injunction under order 29, rule 1 of the Rules of Court upon an application by a party. The court must be satisfied that there is a serious question to be tried (that is, the claim must not be frivolous or vexatious), and that the balance of convenience lies in favour of granting the injunction. In the latter requirement, the court will consider whether damages would be an adequate remedy if the claimant succeeds at the trial. If damages would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction will normally be granted, however strong the claimant's claim appears to be at that stage.

The High Court may also grant a Mareva injunction (that is, an injunction freezing the defendant's assets) if there is good, credible and cogent evidence that:

- The claimant has a good arguable case.
- The defendant has assets in our outside of Singapore.
- There is a real risk of the judgment being unsatisfied if the Mareva injunction is not issued (that is, the defendant is prepared to effect, or is in the process of or has shown a propensity towards, the dissipating of his or her assets out of the jurisdiction).

This is provided for under section 4(10) of the Civil Law Act and section 18(2) of the Supreme Court of Judicature Act (SCJA), when read together with paragraph 5 of the First Schedule of the SCJA.

A claimant may also apply for an order requiring the defendant to make an interim payment at any stage of the proceedings, under order 29, rule 10 of the Rules of Court. However, under order 29, rule 11 of the Rules of Court, an order for an interim payment will only be made where:

- The defendant has admitted liability.
- Judgment has been obtained against the defendant, for damages to be assessed.
- The court is satisfied that the claimant would obtain judgment for a substantial sum of money if the case went to trial.

The amount ordered will only be a reasonable proportion of the damages which, in the opinion of the court, are likely to be recovered by the claimant.

SETTLEMENT

21. What rules apply to settlement of class/collective actions?

Settlement rules

The Singapore courts encourage the parties to settle their dispute out of court. order 22A of the Rules of Court governs the procedure for a party to make a formal offer to settle. Under order 22A, rules 1 and 2 of the Rules of Court, a party to any proceedings may serve on any other party an offer to settle any one or more of the claims in the proceedings at any time before the court disposes of the matter in which the offer is made.

There are cost implications for not accepting a reasonable offer to settle. Under order 22A, rules 9(1) and 9(3) of the Rules of Court, if a reasonable offer to settle was made and not accepted, and the judgment in favour of the offeror turns out to be better than the offer that was made, the offeror is entitled to costs:

- On a standard basis, up to the date the offer was made.
- On an indemnity basis, after the date the offer was made.

After the parties enter into a settlement, the settlement agreement is a form of contract and so contract law governs the operation of the settlement agreement. A party who breaches the terms of a settlement agreement will be regarded as in breach of contract and will be liable for damages.

Separate settlements

There are no special rules regarding separate settlements. However, in a representative action, settlement should be made by the group of claimants as a whole. Lawyers should be aware that if different settlement offers are obtained for different people belonging to the same class of people in an action, the lawyer may then be exposed to a conflict of interest.

APPEALS

22. Do parties have a right to appeal decisions relating to class actions, such as a decision granting or denying certification of a class action?

As representative claimants do not need the leave of the court to institute representative proceedings under order 15, rule 12 of the Rules of Court, it is the defendant that commonly takes out the application under order 15, rule 12 for an order to discontinue the proceedings as a representative action. Such an application is usually taken out before trial and heard at first instance before an assistant registrar of the High Court. An appeal lies as of right to a

judge of the High Court for any party from this decision. A further and final appeal lies to the Court of Appeal from the decision of the judge of the High Court.

Any decision of the court following the trial of a representative action that finally determines the rights of the parties can be appealed without leave of the court.

ALTERNATIVE DISPUTE RESOLUTION

23. Is alternative dispute resolution (ADR) available in class/collective actions?

The Singapore courts strongly encourage the use of alternative dispute resolution mechanisms, such as mediation. It does not appear that mediation has ever been used in a representative action scenario, but there is no reason why it could not apply.

Under the Supreme Court Practice Directions, lawyers are required to advise their clients of the alternative methods of resolving their dispute, together with the costs consequences if the parties unreasonably refuse attempts to mediate their dispute. This extends to representative actions.

PROPOSALS FOR REFORM

24. Are there any proposals for reform concerning class/collective actions?

At present, there do not seem to be any proposals to reform the law concerning representative actions in Singapore. Representative actions are currently fairly rare in Singapore.

However, there are increasing calls for class action in certain sectors, such as in consumer protection or share price and stock market manipulation cases. For example, in mid-2018, the bike-sharing firm, oBike Asia Pte Ltd (oBike) suddenly announced its exit from the Singapore market and went into liquidation, resulting in USD4.6 million (SGD6.3 million) in deposits being owed to more than 100,000 customers. The deposits owed to each customer ranged from SGD19 to SGD50. The absence of a US-style class action available in Singapore meant that each oBike customer would have to sue oBike individually to recover their deposit and/or submit their claims (along with the relevant supporting documents, such as credit card statements) to the liquidators, who would then examine and adjudicate on all claims received. Naturally, the potential complexity and time involved in this led to many customers forgoing their deposits. Further, even where claims were lodged, oBike still failed to return the deposits to many customers. This case has sparked off further discussion concerning whether class actions should be available in Singapore to protect the rights of customers in similar cases.

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