

# INTERIM RELIEF: NATIONAL REPORT FOR SINGAPORE

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## I INTERIM MEASURES: AVAILABILITY AND CRITERIA FOR APPLICATION

### A *Overview*

In Singapore — a common law jurisdiction — some of the more commonly sought interim measures or reliefs are prohibitory/mandatory injunctions, Mareva injunctions (otherwise known as freezing orders), Anton Piller orders (otherwise known as search orders), anti-suit injunctions, and interim payments.<sup>1</sup> Some of these reliefs may be sought before the writ is served, but are more often sought in the course of the pre-trial process.

### B *Basis of Courts' Powers*

The Singapore courts<sup>2</sup> derive their general powers to grant interim measures from section 4(10) of the *Civil Law Act*,<sup>3</sup> which states that a

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<sup>1</sup> See generally Chen Siyuan and Eunice Chua, *International Encyclopaedia for Civil Procedure, Singapore* (Wolters Kluwer, 2018), pt V. Although Singapore has strived to create an autochthonous legal system over the last few decades, it still considers parts of English jurisprudence (including the law on civil procedure) to be persuasive.

<sup>2</sup> Most claims begin in the State Courts, which for civil claims comprise the Magistrates' Courts and District Courts. The High Court has both original and appellate jurisdiction, while the Court of Appeal is the highest court of the land.

mandatory order or injunction may be granted ... by an interlocutory order of the court, either unconditionally or upon such terms and conditions as the court thinks just, in all cases in which it appears to the court to be just or convenient that such order should be made.

In addition, the *Supreme Court of Judicature Act*<sup>4</sup> provides that the courts have the power, before or after any proceedings are commenced, to provide for ‘the interim preservation of property which is the subject-matter of the proceedings by sale or by injunction or the appointment of receiver or the registration of a caveat or a *lis pendens* or in any manner whatsoever’; ‘the preservation of evidence by seizure, detention, inspection, photographing, the taking of samples, the conduct of experiments or in any manner’; and ‘the preservation of assets for the satisfaction of any judgment which has been or may be made.’<sup>5</sup>

### C *General Procedural Criteria*

In terms of procedural criteria, the general principle is that a party is required to apply *inter partes* unless the matter is clearly urgent.<sup>6</sup> Although an *ex parte* hearing still obligates the applicant to invite the respondent to the hearing, this may be dispensed with if this invitation defeats the purpose of obtaining the interim measure.<sup>7</sup> If the matter is urgent, an applicant may attend before the Duty Registrar to obtain an urgent hearing date before either a registrar or a judge of the High Court.

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<sup>3</sup> (Singapore, cap 43, 1999 rev ed).

<sup>4</sup> (Singapore, cap 322, 2007 rev ed).

<sup>5</sup> *Ibid* sch 1 [5]. See also *State Courts Act* (Singapore, cap 321, 2007 rev ed) ss 31-32, 52, which confer similar powers on the State Courts.

<sup>6</sup> *Rules of Court* (Singapore, cap 322, 2014 rev ed) O 29 r 1(2). The *Rules of Court* is subsidiary legislation passed pursuant to the *Supreme Court of Judicature Act* (Singapore, cap 322, 2007 rev ed), but contains the main corpus of civil procedure rules.

<sup>7</sup> Supreme Court of Singapore, *e-Practice Directions 2013*, pt IV.

An *inter partes* application, which is made by summons and supported by affidavit,<sup>8</sup> requires notice to be served on the other party.<sup>9</sup> The matter will then be heard in chambers, though it is possible for it to be heard in open court if the court decides otherwise.<sup>10</sup> If the application is made *ex parte*, there is a requirement of full and frank disclosure of all material facts in the affidavit; a failure to do so may lead to the discharge of the injunction.<sup>11</sup>

If the court grants the relief sought, conditions may be attached, such as undertakings as to indemnity. Generally, interim measures require draft orders (using the prescribed forms) to be prepared for the court as well. Parties may seek to vary the terms of an order for interim measures if circumstances change along the way. Decisions on interim relief can be appealed against.

#### D *Prohibitory Injunctions*

In terms of substantive criteria, if the interim measure sought is to restrain wrongful conduct, the general position is that the House of Lords decision in *American Cyanamid Co v Ethicon Ltd (No 1)* ('*American Cyanamid*')<sup>12</sup> applies.<sup>13</sup> That is, the court must first be satisfied that there is a serious question to be tried, and it does this without investigating the merits of the case and focuses instead on the evidence to determine if there are issues that demonstrate the potential for success.<sup>14</sup> If this threshold is passed, the court will consider if damages will be an adequate remedy for either party

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<sup>8</sup> *Rules of Court* (Singapore, cap 322, 2014 rev ed) O 29 r 1(3).

<sup>9</sup> Supreme Court of Singapore, *e-Practice Directions 2013*, pt IV.

<sup>10</sup> Applications may be heard by registrars or judges: see *Rules of Court* (Singapore, cap 322, 2014 rev ed) O 32 r 9. Certain types of injunction applications, however, may be more appropriately heard by judges rather than registrars: see Supreme Court of Singapore, *e-Practice Directions 2013*, pt IV.

<sup>11</sup> *The Vasily Golovnin* [2008] 4 SLR(R) 994.

<sup>12</sup> [1975] AC 396.

<sup>13</sup> See for instance *Astrata (Singapore) Pte Ltd v Tridex Technologies Pte Ltd* [2011] 1 SLR 449.

<sup>14</sup> See also *Alfred Dunhill Ltd v Sunoptic SA* [1979] FSR 337.

should the party in question succeed at trial.<sup>15</sup> If the answer is no, the court will then have to take into account all relevant considerations in deciding the appropriate balance of convenience to be struck. In this regard, the court has a wide discretion and may accord different weight to different factors as it sees fit.<sup>16</sup>

Some exceptions to the aforementioned general approach exist, such as where the respondent simply has no arguable defence such that there is essentially no dispute, or that the granting of the injunction would effectively obviate the need for a trial.<sup>17</sup> If the injunction sought is not to restrain conduct but to compel conduct (that is, a mandatory injunction as opposed to a prohibitory injunction), a court is usually more reluctant to grant it unless it is clearly necessary to achieve justice.<sup>18</sup> This is because a mandatory injunction is almost always more disruptive and invasive than a prohibitory injunction. As a result, the strength of the parties' case assumes great importance as a factor for the court's consideration.

### E *Mareva Injunctions*

Mareva injunctions, which are a collateral form of prohibitory injunctions, prevent defendants from freely exercising their rights over their assets (such as dissipating them) and may also restrain third parties (such as banks) who have power or control over those assets. Although Mareva injunctions do not create proprietary rights,<sup>19</sup> stringent conditions must be satisfied before such invasive relief is granted. Specifically: the plaintiff must have a valid cause of action over which the court has jurisdiction; the plaintiff has a good arguable case; the defendant has assets within the jurisdiction; and

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<sup>15</sup> See also *Da Vinci Collection Pte Ltd v Richemont International SA* [2006] 3 SLR(R) 560.

<sup>16</sup> See also *National Commercial Bank Jamaica Ltd v Olint Corp Ltd* [2009] 1 WLR 1405; *Post Office v Interlink Express Parcels* [1989] FSR 369.

<sup>17</sup> See Jeffrey Pinsler, *Principles of Civil Procedure* (Academy Publishing, 2013) 411–5.

<sup>18</sup> See *ibid* 415–20.

<sup>19</sup> *Cretanor Maritime Co Ltd v Irish Maritime Management Ltd* [1978] 1 WLR 966.

there is a real risk that those assets may be dissipated to defeat a potential judgment.<sup>20</sup> It is possible to seek a worldwide Mareva injunction, but because a foreign jurisdiction is involved, it will only be granted if it is obviously in the interests of justice to do so.<sup>21</sup>

#### F *Anton Piller Orders*

Anton Piller orders, which are also collateral in nature, enable plaintiffs to enter the premises of defendants to search, inspect, and seize evidence that might be destroyed before the trial. Stringent conditions must also be satisfied before such invasive relief is granted.<sup>22</sup> Specifically: the plaintiff must show an extremely strong prima facie case; the potential or actual damage must be very serious for the plaintiff; there must be clear evidence that the defendant possesses the incriminating evidence; and there is a real possibility that the defendant may destroy such evidence.

#### G *Anti-suit Injunctions*

Anti-suit injunctions are sought to restrain proceedings in another jurisdiction. The principles in the Privy Council's decision in *Société Nationale Industrielle Aerospatiale v Lee Kui Jak*<sup>23</sup> applies,<sup>24</sup> in that such injunctions, while not directed to the foreign court in question but at the litigating party, will only be granted if the ends of justice require it and will only be granted against a party who is amenable to the jurisdiction of the court. The court will also consider other factors such as whether the proceedings are vexatious or oppressive, and

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<sup>20</sup> See *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd* [2006] 1 SLR(R) 112; *Bahtera Offshore (M) Sdn Bhd v Sim Kok Beng* [2009] 4 SLR(R) 365; *Teo Siew Har v Lee Kuan Yew* [1999] 3 SLR(R) 410; and *Front Carriers Ltd v Atlantic & Orient Shipping Corp* [2006] 3 SLR(R) 854 for each of the propositions respectively.

<sup>21</sup> *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2002] SGHC 202.

<sup>22</sup> *Asian Corporate Services (SEA) Pte Ltd v Eastwest Management Ltd (Singapore Branch)* [2006] 1 SLR(R) 901.

<sup>23</sup> [1987] AC 871.

<sup>24</sup> *John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428.

whether the foreign proceedings are in breach of an agreement between the parties.<sup>25</sup>

## H *Interim Payments*

Finally, plaintiffs who have an established case may be entitled to a payment of money before the trial begins.<sup>26</sup> Enabling a deserving plaintiff to obtain ahead of time a portion of the damages or debt owed to him or her helps ameliorate any pecuniary hardship he or she may be subject to while litigating the claim, and to a lesser extent also protects his or her position should the defendant dissipate assets to defeat a potential judgment.<sup>27</sup> Generally, the court must be satisfied that the plaintiff's claim will succeed before it considers granting such relief. Therefore, this relief will be inappropriate if there is a substantial dispute of fact or if the legal issues are complex.

## II EFFECTIVENESS OF INTERIM MEASURES AND CONTROVERSIES

The Singapore courts have, in recent times, had occasion to delineate the parameters for the use of court-ordered interim measures in aid of arbitration proceedings. This has become an increasingly important area of procedural law in light of Singapore's position as a pro-arbitration jurisdiction and a leading dispute resolution hub in the Asian region. Interim measures can be critical in arbitral proceedings, which have become increasingly prolonged and complex. The concern that evidence or property may be dissipated or destroyed before a decision is rendered, or before an award is enforced, is

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<sup>25</sup> See also *Evergreen International SA v Volkswagen Group Singapore Pte Ltd*, [2004] 2 SLR(R) 457.

<sup>26</sup> See *Supreme Court of Judicature Act* (Singapore, cap 322, 2007 rev ed) sch 1 [15]; *Rules of Court* (Singapore, cap 322, 2014 rev ed) O 29 rr 10–17. It should be noted that it is possible to combine this application with an application for summary judgment.

<sup>27</sup> Pinsler, above n 17, 428.

especially grave since the parties (and their assets) are often to be found in different jurisdictions. Interim measures are thus crucial in maintaining the integrity of the arbitration process and ensuring that awards are meaningful.<sup>28</sup> The efficacy of the interim measures available in Singapore is therefore best explored in this context.

In this regard, one of the most significant recent decisions was that of the Court of Appeal in *Maldives Airports Co Ltd v GMR Male International Airport Pte Ltd*,<sup>29</sup> where the court provided a definitive interpretation of section 12A(4) of the *International Arbitration Act*,<sup>30</sup> which grants the court the power to grant an injunction in urgent cases in aid of arbitration for the purpose of preserving evidence or assets. In that case, the respondents had sought an interim injunction restraining the appellants and their employees from taking any step to (a) interfere with the respondent's performance of its obligations under an agreement, and (b) take possession or control of the Male International Airport. Section 12A(4) of the *International Arbitration Act* states that if the case is one of urgency, the High Court may, on the application of a party or proposed party to the arbitral proceedings, make such orders (including a power to grant interim injunctions or any other interim measure) as the High Court thinks necessary for the purpose of preserving evidence or assets.

The Court held that the meaning of 'assets' under section 12A(4) included contractual rights, though not all contractual rights might be the subject of a preservation order under the provision. The contractual rights which fell within the meaning of 'assets' in section 12A(4) were those which, if lost, would not adequately be remediable by an award of damages. On this definition, the respondent in the case did not have any contractual rights which could be protected. The respondent did nevertheless have an interest in the land on which the Male International Airport was situated under a lease that was conferred by the agreement, and this was an

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<sup>28</sup> See generally J J Spigelman, 'Freezing Orders in International Commercial Litigation' (2010) 22 *Singapore Academy of Law Journal* 490.

<sup>29</sup> [2013] 2 SLR 449.

<sup>30</sup> (Singapore, cap 143A, 2002 rev ed) ('*International Arbitration Act*').

asset capable of being preserved under section 12A(4). As such, the Court had the power under the Act to grant the injunction.

Having decided that it had the power to grant the injunction, the Court then had to exercise its discretion to determine whether the injunction should be granted. In order to do so, the Court applied the principles set out in *American Cyanamid Co v Ethicon Ltd*, and the assessment was one of a balance of convenience. The Court relied on the guiding principle that it should take whichever course appeared to carry the lower risk of injustice if the course ultimately turned out to be the wrong one. On the facts, the Court decided that the balance of convenience did not favour the grant of the injunction.

It is further interesting to note that in July 2010, the Singapore International Arbitration Centre ('SIAC') became the first international arbitral institution based in Asia to introduce provisions that permitted a party to seek the appointment of an 'emergency arbitrator' to deal with requests for urgent interim relief.<sup>31</sup> Schedule 1 of the SIAC Rules<sup>32</sup> contains the provisions relating to the appointment of emergency arbitrators. Briefly, they require a party to apply for the appointment of an emergency arbitrator together with or following the filing of a notice of arbitration. The President of the SIAC Court of Arbitration will then decide if the application is to be accepted. If so, the President will proceed to appoint an emergency arbitrator from SIAC's panel of arbitrators within one business day. Unless parties agree, an emergency arbitrator cannot form part of the main arbitral tribunal when it is eventually constituted. In 2012, the *International Arbitration Act* was amended to provide for the enforceability of the awards and orders issued by emergency arbitrators in Singapore-seated arbitrations. There have yet to be any reported cases seeking enforcement of an award or order issued by an

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<sup>31</sup> Vivekananda N, *The SIAC Emergency Arbitrator Experience* (2013) Singapore International Arbitration Centre <<http://www.siac.org.sg/2013-09-18-01-57-20/2013-09-22-00-27-02/articles/338-the-siac-emergency-arbitrator-experience>>.

<sup>32</sup> Singapore International Arbitration Centre, *Arbitration Rules of the Singapore International Arbitration Centre* (2016).



emergency arbitrator in Singapore and this will be a development worth looking out for.

### III FUTURE DEVELOPMENTS IN THE AREA OF INTERIM RELIEF

The most major development in the dispute resolution sphere has been the establishment of the Singapore International Commercial Court ('SICC').<sup>33</sup> The SICC is a division of the High Court, with the Chief Justice of Singapore, or a Judge as appointed by the Chief Justice, as its President. The SICC is seised of jurisdiction to hear a case where the action is international and commercial in nature and the action is one that the High Court may hear and try in its original civil jurisdiction. The judges hearing cases in the SICC are drawn from an international panel of jurists as well as current judges of the Singapore Supreme Court.

The procedures in the SICC were not meant to be governed by domestic rules of procedure. During the second reading of the Supreme Court of Judicature (Amendment) Bill,<sup>34</sup> the Minister for Law stated that procedural rules governing the SICC will differ from the High Court.<sup>35</sup> First, cases before the SICC will not be bound by the rules of evidence that are applicable under Singapore law. Secondly, the *Rules of Court*<sup>36</sup> may provide for different procedures and practices to be followed in the SICC. The Report of the Singapore International Court Committee<sup>37</sup> states that the rules and

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<sup>33</sup> Denise Wong, 'The Rise of the International Commercial Court: What is it and will it Work?' (2014) 33 *Civil Justice Quarterly* 205.

<sup>34</sup> This Bill has since been passed – see *Supreme Court of Judicature (Amendment) Act 2014* (Act 42 of 2014) (Singapore).

<sup>35</sup> Singapore, *Parliamentary Debates* (4 November 2014) (K Shanmugam, Second Reading Speech of Supreme Court of Judicature (Amendment) Bill).

<sup>36</sup> *Rules of Court* (Singapore, cap 322, 2014 rev ed).

<sup>37</sup> Singapore International Commercial Court Committee, *Report of the Singapore International Commercial Court Committee* (November 2013) <<http://www.sicc.gov.sg/documents/docs/Annex%20A%20-%20SICC%20Committee%20Report.pdf>>.

practice directions governing the SICC will follow international best practices, and particular reference will be made to the English Commercial Court Guide.

The precise procedural rules governing the SICC will take some time to develop and it will be interesting to see whether the interim measures available are specifically tailored to suit the international cases that are expected to fill the Court's docket.