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27 May 2020

Mr Christopher Tan
The Honourable Registrar,
State Courts
1 Havelock Square
Singapore 059724

BY EMAIL

STATECOURTS_Registrar@StateCourts.gov.sg

Dear Sir,

SUBMISSION ON PROPOSED OMNIBUS REGISTRAR'S CIRCULARS FOR ASYNCHRONOUS HEARINGS VIA ELITIGATION

1. The Council of the Law Society of Singapore ("**the Council**") would like to thank the State Courts ("**SC**") for this invaluable opportunity to review and comment on the draft omnibus Registrar's Circular for asynchronous hearings via eLitigation ("**the draft RC**").
2. As a preliminary point, we commend the SC for this innovative, technologically facilitated offering to aid the hearing of civil justice matters while being sensitised to public health consideration and without compromising the quality of access to justice to litigants and their lawyers.
3. As requested, we respectfully submit our comments on the draft RC in this letter for consideration by the SC.
4. The Council consulted the Civil Practice Committee, the Personal Injury/Property Damage Committee, and the Small Law Firms Committee ("**the Committees**") on the draft RC. In addition to our comments on the draft RC, the Committees have raised two practical issues that have arisen due to the implementation of government restrictions designed to curb the spread of COVID-19. We will write via separate letter to the SC on those issues .

Feedback on the Proposed Omnibus Registrar's Circular for Asynchronous Hearings

5. The Council acknowledges the continuing need for vigilance in the fight against the COVID-19 pandemic and is wholly supportive of the implementation of appropriate safeguards by the SC. As such, the Council agrees that civil hearings should be conducted virtually or with reduced physical attendance of counsel as far as is practicable to contain the contagion and eliminate the epidemic from our land.
6. The Council proposes that the SC consider allowing additional categories of matters to be heard via video and/or telephone conferencing. This would allow counsel to present their clients' case orally while also complying with the spirit of safe distancing in the context of the post-Circuit Breaker phased approach. The proposed additional categories of matters are:

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- (a) paragraph 4(viii) of the draft RC - orders to be made on any contested interlocutory application, Originating Summons or RA, *where all parties are represented* and agree to have all orders (including costs) for the full disposal of the relevant application determined by the Court, based solely on affidavits and written submissions (“**Documents-Only Hearing**”);
 - (b) asynchronous hearing of *ex parte* summonses; and
 - (c) asynchronous hearing of Summonses for Directions (“**SFDs**”).
7. The Council considers that the use of video and/or telephone conferencing for these matters will valuably complement asynchronous hearings. This is especially relevant for cases governed by Order 108 of the Rules of Court. It is submitted that having to file written submissions may be contrary to the intention of Order 108, Rule 1(3) of the Rules of Court, which is to have matters dealt with in a fair, expedient, and inexpensive manner.
8. Secondly, the Council notes that Annex B2 of the draft RC sets out a SFD Single Joint Expert (“**SJE**”) Form. The Committees have given feedback that the current practice of selecting SJE involves the filing and service of affidavits by each party; guidance would be appreciated as to whether the proposed SFD SJE Form will replace the practice of having parties file SJE affidavits. The Council is supportive of SJE affidavits being replaced by the proposed SFD SJE Form as this upholds the spirit and object of Order 108 Rule 1(3) of the Rules of Court.
9. Additionally, the Council considers that other types of hearings may be suitable to be heard virtually or with reduced physical attendance of counsel, such as:
 - (a) Assessment of Damages Court Dispute Resolution Conferences;
 - (b) pre-trial conferences for setting down cases for trial; and
 - (c) all contested applications.
10. In this regard, the Council wishes to enquire as to whether the SC is developing any plans for the above types of hearings to be conducted via asynchronous, video conference, and/or telephone conference hearings.
11. In relation to paragraph 5 of the draft RC, the Council proposes that the State Courts consider allowing the Request to be filed at least three working days before the next hearing as opposed to five days before. This would be consistent with various time frames set out in the SC Practice Directions; for example, paragraphs 27, 71(11), and 71(12(b) of the Practice Directions prescribe three days for written submissions in contested matters, bundles of authorities for trial, and plaintiff’s opening statements for trial respectively.
12. Lastly, the Council proposes that the draft RC be amended to allow the prescribed timeframe for filing of the Request to be dispensed with at the SC’s discretion if a valid reason is provided.

Concluding Remarks

13. In summary, the Council respectfully requests that the SC consider the following: issues regarding the draft RC:
 - (a) additional categories of matters be made eligible to be heard by video and/or telephone conferencing as well as via asynchronous hearings;
 - (b) guidance be issued as to whether the proposed SFD SJE Form will replace the current practice of filing SJE affidavits;
 - (c) additional categories of matters be made eligible to be heard via asynchronous hearings;
 - (d) timeframe for the filing of Requests under paragraph 5 of the draft RC be reduced to three working days; and

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(e) the draft RC be amended to provide the SC with discretion to dispense with the prescribed timeframe for the filing of Requests if valid reason is provided.

14. Going forward, the Council would be pleased to engage in further dialogue on these matters with the SC, particularly so as to ensure a smooth transition with minimal inconvenience and disruption to the Courts and members of the profession as we move out of the Circuit-Breaker period in a phased manner.

15. If the SC has any further queries, Ms Ting Lim, Manager of the Representation and Law Reform Department, can be contacted by email at huiting@lawsoc.org.sg.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gregory Vijayendran', with a horizontal line drawn across the bottom of the signature.

Mr Gregory Vijayendran, SC
President, The Law Society of Singapore