

LEGAL SYSTEMS IN ASEAN – SINGAPORE
CHAPTER 2 – THE SINGAPORE LEGAL SYSTEM

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A. THE STRUCTURE OF GOVERNMENT

Singapore is a constitutional republic. Its structure of government is set out in a written constitution that is the supreme law of the land.¹ That structure is based heavily on the Westminster system of the United Kingdom, and it therefore bears several traits common to such systems of government such as the following:

¹ Constitution of the Republic of Singapore (1985 Revised Edition, 1999 Reprint) (hereafter Constitution).

- (a) Governmental power is distributed across three branches of government – the legislature, executive and judiciary – and each branch bears a different functional responsibility.
 - (i) The Legislature is made up of the President and the Parliament of Singapore. The Parliament comprises elected Members of Parliament, Non-constituency Members of Parliament and Nominated Members of Parliament.
 - (ii) The Executive is headed by the President and the Cabinet. The Cabinet is led by the Prime Minister of Singapore and other ministers appointed by the President on the advice of the Prime Minister. Other persons and bodies such as government agencies are also regarded as part of the Executive. One of these is the Attorney-General, who is appointed by the President to advise the Government upon legal matters, and, as the Public Prosecutor, to conduct criminal proceedings.
 - (iii) The Judiciary consists of the Supreme Court and Subordinate Courts, and the judges appointed to those courts.
- (b) Cabinet Ministers are required to be Members of Parliament.
- (c) There are regular and periodic elections where citizens are entitled to elect their representatives in Parliament.
- (d) The superior courts possess law-making powers through their court decisions, though such judge-made laws can be reversed by Acts of Parliament.

That said, there are some significant differences between the Singaporean model of government and the actual Westminster system.

Firstly, the Singapore Parliament's legislative powers are expressly limited by the Constitution. While all laws validly passed by Parliament are presumed to be constitutional unless proven otherwise,² Parliament cannot pass any laws that are inconsistent with the Constitution, and any law that is inconsistent with the Constitution will, to the extent of the inconsistency, be void.³ This express limit on Parliament's legislative powers sets the Singapore system apart from the Westminster system, where Parliament is sovereign and can pass any law that it deems fit.

The other distinguishing feature is that the executive branch (broadly understood) is divided into a number of independent organs. These are:

² *Public Prosecutor v Taw Cheng Kong* [1998] 2 SLR(R) 489 (Court of Appeal, Singapore) at [89]

³ Constitution (n 1) Article 4.

- (a) the Cabinet in which general executive authority is vested;⁴
- (b) the Attorney-General's Chambers, headed by the Attorney-General who, in his or her capacity as the Public Prosecutor, holds the power to institute, conduct, or discontinue criminal proceedings against any person;⁵
- (c) the Auditor-General's Office; and
- (d) the Accountant-General's Office.

Finally, although the Head of State in a Westminster system is generally ceremonial in nature, the President, being the Head of State of the Republic of Singapore, is vested with certain executive powers and is also popularly elected.

Separation of powers is a basic feature of the Constitution. This is a doctrine stating that to avoid governmental power being concentrated in a particular branch of government which could lead to abuse, such power is divided among the three branches and there is a system that enables the exercise of power by one branch to be checked by the other branches. However, there is not always a clear separation between the branches of government in all cases. For example:

- (a) **Judge-made Law.** While the Legislature is the main branch of government vested with the power to make laws, the Judiciary also takes part in law-making. As Singapore adopts a common law system, judges are regarded as creating law incrementally by articulating legal rules in the judgments they issue. These judgments can become precedents for later cases.
- (b) **Subsidiary Legislation.** Similarly, the Executive also has the power to create some types of law. As the Parliament is unable to enact all laws due to time constraints, the usual practice is for the Parliament to enact primary legislation called Acts of Parliament which sets out general legal principles. These Acts then empower Executive agencies to issue subsidiary legislation that specifies the details for implementing the Acts.⁶
- (c) **Overlapping Membership of Cabinet and Parliament.** Members of the Cabinet are also members of the Parliament. The Cabinet, which is part of the Executive, consists of the Prime Minister of Singapore and other ministers appointed by the President on the Prime Minister's advice. These ministers have to be chosen from among the Members of Parliament.

⁴ *ibid* Art 23(1).

⁵ *ibid* Art 35(8).

⁶ See the Interpretation Act (Chapter 1, 2002 Revised Edition) Part III; and Thio Li-ann, 'The Legislature and the Electoral System' in *A Treatise on Singapore Constitutional Law* (Academy Publishing 2012) at [06.074].

B. THE LEGISLATURE

The Constitution vests the legislative power of Singapore in the Legislature, which consists of both the President and Parliament.⁷

The Composition of Parliament

Parliament consists of three types of Members of Parliament (hereafter MPs). They are:⁸

- (a) elected MPs that are voted in during general elections or by-elections;
- (b) up to 12 Non-constituency Members of Parliament (hereafter NCMPs); and
- (c) up to nine Nominated Members of Parliament (hereafter NMPs).

Elected MPs may either represent Single Member Constituencies (hereafter SMCs) where one MP represents all the residents in an electoral district, or a Group Representation Constituencies (hereafter GRCs) where the residents in a constituency are represented by a team of MPs which must include at least one MP from a particular minority race. At each general election, the President, on the advice of the Cabinet, may either designate a GRC as one requiring either at least one MP from the Malay community, or at least one MP from the Indian or other minority communities.⁹ The geographical and demographical size of GRCs can vary from election to election, and so can the number of MPs representing each GRC. GRC teams may consist of between three to six MPs.¹⁰

NCMPs are chosen from the unelected opposition candidates with the best results at each general election (*ie*, the ‘best losers’). They do not represent any constituency but take part in parliamentary proceedings with the same rights and privileges (save for monetary remuneration) as elected MPs.

In contrast, NMPs are not allowed to vote on certain bills and motions such as bills to amend the Constitution or to levy additional taxes, the government’s annual budget, a motion of no confidence in the government, and a motion to remove the President from office.¹¹ Like NCMPs, NMPs do not represent any constituency. They are appointed by the President on the advice of a Special Select Committee of Parliament,¹² which selects NMPs from among people who have rendered distinguished public service; brought honour to the nation; or distinguished themselves in the field of the arts and letters, culture, the sciences, business, industry, the professions, social or community service, or the labour

⁷ *ibid* Art 38.

⁸ *ibid* Art 39(1).

⁹ *ibid* Art 39A(2)(a).

¹⁰ *ibid* Art 39A(1)(a).

¹¹ *ibid* Art 39(2).

¹² *ibid* Fourth Schedule, para 1(2).

movement.¹³ Although the Constitution does not expressly require this, NMPs are generally chosen from those who do not belong to any political party.

The Legislature's Law-making Function

The power of the Legislature to make laws is exercised by having bills (draft laws) passed by Parliament and assented to by the President.¹⁴ Except for certain types of bills,¹⁵ any MP may introduce any bill in Parliament.¹⁶ Debates in Parliament on bills are conducted in accordance with the Standing Orders of Parliament.¹⁷

To be validly passed, all bills have to go through three 'readings' in Parliament.¹⁸ The First Reading is where a bill is first introduced in Parliament. There is no substantive debate on the bill at this stage. After the first reading, the bill will be printed and circulated amongst MPs before the Second Reading.¹⁹

At the Second Reading, MPs debate the 'general merits and principle' of the bill.²⁰ At the end of the debate, MPs can either choose to support or reject the bill. To proceed to the next stage, a bill dealing with ordinary legislation must be supported by a simple majority of the MPs and NCMPs who are present during the debate,²¹ while a bill seeking to amend the Constitution must be supported by at least two-thirds of all MPs and NCMPs.²² If the bill does not receive the support required, it is considered as defeated and will not proceed through the legislative process any further.

If the Second Reading of the bill receives the requisite support, it will be deemed to have been read a second time. Thereafter, it will be sent to a committee of Parliament to be examined in detail. In most cases, all the MPs who are present in Parliament during the committee stage of the bill will be deemed to form a committee – this is called a committee of the whole Parliament. If Parliament feels that a certain bill requires more scrutiny, it may commit the bill to a select committee, which is a committee formed from selected MPs. A select committee usually invites the public to give feedback on the bill being considered. At the committee stage, only the details of the bill can be discussed, and not the bill's principle which was dealt with during the Second Reading of the bill.²³ The committee has the power to make any relevant amendments to the bill.²⁴

¹³ *ibid* para 3(2).

¹⁴ *ibid* Art 58(1).

¹⁵ Those stipulated in the Constitution, *ibid* Art 59(2).

¹⁶ *ibid* Art 59(1).

¹⁷ Standing Orders of the Parliament of Singapore (2017 Reprint) (hereafter Standing Orders), Standing Orders 66 to 88.

¹⁸ Additional procedures may apply to special types of bills, such as those that are prejudicial to the rights or interests of individuals who have petitioned Parliament under SO 18 – these have to be referred to a Select Committee.

¹⁹ Standing Orders (n 17), SO 69 and 70.

²⁰ *ibid* SO 70(2).

²¹ Constitution (n 1) Art 57(1). There must also be a quorum of at least one quarter of the total number of MPs present: *ibid* Art 56.

²² *ibid* Art 5(2).

²³ Standing Orders (n 17) SO 72(1).

²⁴ *ibid* SO 72(2).

Once the committee has agreed to all the bill's clauses, either in their original or amended form, it will report the committee's findings to Parliament. After the bill has been reported from committee, the MP in charge of the bill may move a motion for the bill to be read a third time.²⁵ During the Third Reading, MPs must confine their debate to the bill's contents, and once again can no longer question the principle behind the bill.²⁶ Following the debate, MPs vote for the third and final time on the bill. If the bill receives the requisite level of support, it is considered as passed. It will then be submitted to the President for his or her assent.²⁷

Before a bill is presented to the President, it must first be sent to the Presidential Council for Minority Rights. The Council will then examine the legislation and draw to the attention of the Speaker of Parliament any differentiating measure.²⁸ A differentiating measure is 'any measure which is, or is likely in its practical application to be, disadvantageous to persons of any racial or religious community and not equally disadvantageous to persons of other such communities, either directly by prejudicing persons of that community or indirectly by giving advantage to persons of another community'.²⁹ If the Council submits an adverse report, it will be up to Parliament to decide whether to amend the bill or to decide to present the bill to the President for assent despite the differentiating measure.³⁰ The latter course of action must be supported by not less than two-thirds of the elected MPs and NCMPs in Parliament.³¹

After the procedures mentioned in the previous paragraph, the bill will be presented to the President for assent. Generally, the President has to assent to the bill on the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet.³² The President must act on the advice and assent to the bill. However, in exceptional situations, the President has discretion to withhold assent. Examples of such situations are where a bill spends past financial reserves³³ (reserves not accumulated by the Government during its current term of office), or provides for the borrowing of money, the giving of any guarantee or the raising of any loan by the Government.³⁴

Once the President has assented to a bill validly passed by Parliament, it becomes law,³⁵ and is known as an Act of Parliament (or, in short, an 'Act'). The Act then comes into operation in one of the following ways:³⁶

²⁵ *ibid* SO 75(2). Before the MP in charge moves such a motion, any MP may nevertheless give notice that he or she wishes to propose amendments to the bill: *ibid* SO 76(1) and (2).

²⁶ *ibid* SO 81(1).

²⁷ *ibid* SO 81(3).

²⁸ Constitution (n 1) Art 78(2).

²⁹ *ibid* Art 68.

³⁰ *ibid* Arts 68(3) and 68(6)(c).

³¹ *ibid* Art 68(6)(c).

³² *ibid* Art 21(1).

³³ *ibid* Art 148A.

³⁴ *ibid* Art 144(2).

³⁵ *Ibid* Art 58(2)

³⁶ Interpretation Act (n 6) s 10(1).

- (a) The date when the Act comes in operation can either be specified in the Act itself or by a separate notification. In these cases, the Act comes into operation on the expiration of the day specified.
- (b) If no date is specified, the Act comes into operation on the expiration of the day before the date when the Act is published in the *Government Gazette*.

As mentioned previously, the Legislature can delegate law-making power to Ministers and other bodies by providing, for example, that the Minister may make rules for the purposes of carrying the Act's objects into effect,³⁷ or that the Minister may make regulations with respect for certain matters.³⁸ Such powers are exercised through subsidiary legislation, which need not receive the approval of Parliament to have legal effect. Subsidiary legislation takes effect from the date of publication unless stated otherwise.³⁹

C. THE EXECUTIVE

The President

The President of Singapore is the Republic's Head of State as well as the guardian of Singapore's financial reserves and the integrity of the public service.⁴⁰ A presidential election is held every six years. Since 2017, a presidential election will be reserved for an ethnic community if no person from that community has been elected President for five or more of the most recent consecutive terms.⁴¹

The President's role as Head of State is ceremonial in nature. In performing functions as Head of State, the President must generally act on the advice of the Cabinet.⁴² This means that the President is required to act as the Cabinet directs, and is not permitted to refuse to do so. However, the President is also vested with various discretionary powers by the Constitution to carry out a custodial role as guardian of the financial reserves and the public service. These include the following:

- (a) The power to refuse assent to any bill that is likely to spend past financial reserves.⁴³
- (b) The power to veto the appointment or dismissal of any individual to certain key public service offices, such as the Chief Justice and Judges of the Supreme Court, the Attorney-General, the Chief of Defence Force, and the Commissioner of Police.⁴⁴

³⁷ See, for instance, the Bankruptcy Act (Cap 20, 2009 Rev Ed) s 166.

³⁸ See, for instance, the Companies Act (Cap 50, 2006 Rev Ed) s 411.

³⁹ Interpretation Act (Cap 1, 2002 Rev Ed) s 23(1)(b).

⁴⁰ Constitution (n 1) Arts 17(1) and (2).

⁴¹ *ibid* Art 19B.

⁴² *ibid* Art 21(1).

⁴³ *ibid* Art 148A.

⁴⁴ For a full list of the public offices, see the Constitution, *ibid* Arts 22(1) and 22A(1).

- (c) The power to override the Prime Minister's refusal to consent to investigations by the Corrupt Practices Investigation Bureau.⁴⁵
- (d) The right to access any information concerning the Government that is available to the Cabinet, or statutory boards or government companies whose heads the President may appoint in his or her discretion.⁴⁶

The President is assisted by a Council of Presidential Advisers (hereafter CPA), which consists of eight individuals appointed at different intervals by the President, either acting in his or her own discretion, or on the advice of the Prime Minister, the Chief Justice, and the Chairman of the Public Service Commission.⁴⁷ The President is obliged to consult the CPA before exercising most discretionary powers.⁴⁸ If the President is required to consult the CPA and decides not to accept its advice, Parliament may, except in limited circumstances, override the President's decision through a parliamentary vote.⁴⁹ Amongst other requirements,⁵⁰ a resolution to override the President's decision must be supported by at least two-thirds of the total number of elected MPs and NCMPs.⁵¹

The Cabinet

The executive authority of Singapore is vested in the President and is exercisable by the President, the Cabinet, or any Minister authorised by the Cabinet.⁵² As indicated above, except where the Constitution provides otherwise, the President must act on the Cabinet's advice.

The Cabinet is headed by the Prime Minister (hereafter PM), who is appointed by the President,⁵³ and includes other Ministers as may be appointed from among MPs by the President acting on the PM's advice.⁵⁴ The responsibilities of Cabinet Ministers are decided by the PM, who may choose to retain any department in his or her charge.⁵⁵ The President may also appoint, on the PM's advice, Ministers of State and Parliamentary Secretaries⁵⁶ from among MPs to assist Ministers in the discharge of their duties and functions. The Constitution also states that the Legislature may, by law, confer executive functions on other persons.⁵⁷ For instance, imposing criminal sentences on convicted persons is a legislative function that has been conferred on the Judiciary.⁵⁸

⁴⁵ *ibid* Art 22G.

⁴⁶ *ibid* Art 22F(1).

⁴⁷ *ibid* Arts 37B(1) and (2).

⁴⁸ *ibid* Arts 37IA(1) and (2).

⁴⁹ *ibid* Art 37IF(1).

⁵⁰ *ibid* Art 37IF(2).

⁵¹ *ibid* Art 37IF(2)(c).

⁵² *ibid* Art 23(1).

⁵³ *ibid* Art 25(1).

⁵⁴ *ibid* Art 25(1).

⁵⁵ *ibid* Arts 30(1) and (2).

⁵⁶ *ibid* Art 31(1).

⁵⁷ *ibid* Art 23(2).

⁵⁸ *Mohammad Faizal bin Sabtu v Public Prosecutor* [2012] 4 SLR 947 (High Court, Singapore).

The Cabinet has general discretion and control of the Government, and is collectively responsible to the Parliament.⁵⁹ In Singapore, the party in government, the People's Action Party, has held a majority of the parliamentary seats since the 1959 general elections. As a result, the Executive effectively sets the Parliament's legislative agenda. Nonetheless, the Cabinet is collectively responsible to the Parliament.⁶⁰ This means that all Ministers have to support all government decisions in public notwithstanding any private disagreements. The Parliament also acts as a check on Ministers by calling upon them to justify their actions and policies during parliamentary debates.

The Attorney-General

The Attorney-General (hereafter AG) is both the government's legal adviser as well as the Public Prosecutor (hereafter PP). The AG is appointed from among persons qualified to be appointed as a Judge of the Supreme Court by the President if he or she concurs with the PM's advice on the matter. As a matter of protocol, the AG ranks second, only behind the Chief Justice.

As the Government's legal adviser, it is the AG's duty to advise the Government on legal matters and to perform other duties of a legal character that are referred or assigned by the President or the Cabinet.⁶¹

As the PP, the AG has the power, exercisable at his or her discretion, to institute, conduct or discontinue any proceedings for any criminal offence.⁶² Such prosecutorial powers are exercised by the AG independently of the Government – the Government does not instruct the AG as to whom to prosecute or not prosecute. The courts will presume that the AG's prosecutorial decisions are constitutional or lawful until proven otherwise.⁶³

The AG heads the office known as the Attorney-General's Chambers (hereafter AGC). The AGC is split into the following functional divisions: the Civil Division, the Criminal Justice Division, the International Affairs Division, the Legislative Affairs Division, and the Financial and Technology Crimes Division.

Under the Legal Profession Act,⁶⁴ the AG also plays some roles in the regulation of Singapore's legal profession. For example, the AG may object to the admission of any individual to the Singapore Bar as advocates and solicitors of the Supreme Court of Singapore,⁶⁵ the *ad hoc* admission of a foreign lawyer to practise law in Singapore,⁶⁶ and the renewal of a lawyer's practising certificate in certain circumstances (such as when the lawyer has been convicted of an offence involving dishonesty or fraud).⁶⁷

⁵⁹ Constitution (n 1) Art 24(2).

⁶⁰ Ibid Art 24(2).

⁶¹ Ibid Art 35(7).

⁶² Ibid Art 35(8).

⁶³ *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 (Court of Appeal, Singapore).

⁶⁴ Cap 161, 2009 Rev Ed.

⁶⁵ Ibid s 12(4).

⁶⁶ Ibid s 15(4).

⁶⁷ Ibid s 25A.

D. THE JUDICIARY

Hierarchy of Courts

The Constitution vests the judicial power of Singapore in the Supreme Court and Subordinate Courts.⁶⁸ The Supreme Court of Singapore is made up of the Court of Appeal and the High Court. The Court of Appeal is the highest court of the country and, as the court of final appeal, only deals with appellate cases, that is, cases that have started in a lower court and have been brought before the Court of Appeal for review. The High Court hears criminal and civil (non-criminal) matters at first instance – that is, which come before a court for the first time – and also appeals from Subordinate Courts. One special division of the High Court is the Singapore International Commercial Court (SICC), which is designed to deal only with transnational commercial disputes.

The Subordinate Courts form the lower tier of the hierarchy of courts. One category of Subordinate Courts comprises the State Courts. The State Courts comprise District Courts, Magistrates' Courts, Coroners' Courts, Small Claims Tribunals and Employment Claims Tribunals.⁶⁹ While the High Court can hear all criminal cases, a District Court can generally only try an offence where the maximum imprisonment period does not exceed ten years or which is punishable with a fine only,⁷⁰ while a Magistrate's Court can generally only try an offence where the maximum imprisonment period does not exceed five years or which is punishable with a fine only.⁷¹

As for civil cases, in general claims with a value of not more than S\$60,000 will be heard by the Magistrates' Courts,⁷² while claims greater than S\$60,000 and not exceeding S\$250,000 will be heard by the District Courts.⁷³ However, certain types of cases may only be adjudicated upon by the High Court, regardless of their value. This includes bankruptcy, corporate insolvency and admiralty (shipping) cases. The High Court has jurisdiction to hear civil claims of any value, but if a claim is brought in the High Court and the plaintiff recovers a sum of money within the Magistrate's Court or District Court limit mentioned in the previous sentence, he or she will only be entitled to obtain from the defendant the legal costs that the plaintiff would have been awarded if the claim had been brought in a State Court, unless he or she can give a sufficient reason for bringing the claim in the High Court.⁷⁴

The Coroners' Courts hold inquiries to determine the causes of death of people whose bodies are found in Singapore, whether the death or cause of death occurred in Singapore, or the death occurred on board or due to an occurrence on board a Singapore-registered aircraft or vessel.⁷⁵ The Small Claims Tribunals

⁶⁸ Constitution (n 1) Art 93.

⁶⁹ State Courts Act (Cap 321, 2007 Rev Ed) s 3.

⁷⁰ State Courts Act, *ibid* s 50(1)(a) read with the Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 8(1).

⁷¹ State Courts Act, *ibid* s 51(1)(a) read with the Criminal Procedure Code, *ibid* s 7(1)(a).

⁷² State Courts Act, *ibid* s 52 read with s 2 (definition of *Magistrate's Court limit*).

⁷³ *ibid* s 19 read with s 2 (definition of *District Court limit*).

⁷⁴ *ibid* s 39.

⁷⁵ Coroners Act (Cap 63A, 2012 Rev Ed) s 24(1).

hear and determine claims relating to disputes arising out of contracts for the sale of goods or services, claims in tort for damage caused to property, and claims relating to disputes arising from contracts for residential leases not exceeding two years. Such claims must not exceed S\$10,000 or, if the parties agree, \$20,000.⁷⁶ As for the Employment Claims Tribunals, they hear and determine specified disputes between employees and employers.⁷⁷ The total amount claimed must not exceed S\$30,000 for parties that participated in tripartite mediation (mediation between an employer and employee conducted by a conciliation officer or mediator).⁷⁸ Otherwise, the claim limit is \$20,000.⁷⁹

The other category of Subordinate Courts comprises the Family Courts and Youth Courts.⁸⁰ The Family Courts deal with family proceedings involving matters such as adoption of children, divorce and the estates of deceased persons. Youth Courts deal with criminal or quasi-criminal offences by children below 14 years old or young persons aged 14 years or above and below 16 years old.⁸¹

Judges

The Supreme Court consists of the Chief Justice, Judges of Appeal, Judges of the High Court, Senior Judges, Judicial Commissioners and International Judges. Senior Judges are judges who have ceased to be a Judge of the Supreme Court and are then appointed for a specified period to sit in the High Court or Supreme Court to hear and determine any case or classes of cases as specified by the Chief Justice, while Judicial Commissioners are persons qualified for appointment as Judges of the Supreme Court appointed for a specified period or to hear a specific case as specified by the Chief Justice to facilitate the disposal of business in the Supreme Court. International Judges are foreign lawyers, judges and academics who are appointed to serve as judges of the SICC.⁸² The High Court consists of the Chief Justice and Judges of the High Court, while the Court of Appeal consists of the Chief Justice and the Judges of Appeal.⁸³ The Chief Justice can require a Judge of Appeal to sit in the High Court, or a High Court Judge to sit in the Court of Appeal; and Senior Judges, Judicial Commissioners and International Judges to sit in either Court.⁸⁴

The Judges of the Supreme Court are appointed by the President on the recommendation of the Prime Minister.⁸⁵ The Prime Minister must consult with the Chief Justice before giving his advice to the President as to the appointment

⁷⁶ Small Claims Tribunals Act (Cap 308, 1998 Rev Ed) ss 5(1) and (4) read with s 2 (definition of *prescribed limit*).

⁷⁷ Employment Claims Act 2016 (No 21 of 2016) s 12.

⁷⁸ Employment Claims Act, *ibid* s 2(1) read with the Industrial Relations Act (Cap 136, 2004 Rev Ed) s 30F (definition of *tripartite mediation*).

⁷⁹ Employment Claims Act, *ibid* s 12(7) read with the Employment Claims Regulations 2017 (S 136/2017) reg 17.

⁸⁰ Family Justice Act 2014 (No 27 of 2014) s 5.

⁸¹ Family Justice Act (n 80) s 35(1) read with the Children and Young Persons Act (Cap 38, 2001 Rev Ed) s 2 (definitions of *child* and *young person*) and s 33.

⁸² Constitution (n 1) Art 95(4).

⁸³ *ibid* Arts 94(2) and (3).

⁸⁴ *ibid* Arts 94(4)–(6).

⁸⁵ *ibid* Arts 22(1)(a) and 95.

of Judges of Appeal, Judges of the High Court, Senior Judges, Judicial Commissioners and International Judges.⁸⁶ All Supreme Court judges have to be ‘qualified persons’ as defined by the Legal Profession Act⁸⁷ and/or a member of the Singapore Legal Service for an aggregate period of at least ten years.⁸⁸

The State Courts are headed by a Presiding Judge who is a Judge or Judicial Commissioner of the Supreme Court.⁸⁹ District Courts are presided over by District Judges, and Magistrates’ Courts by Magistrates.⁹⁰ In most cases, a District Judge must have been a qualified person under the Legal Profession Act for not less than seven years, and a Magistrate must have been a qualified person for not less than three years.⁹¹ The Family Justice Courts are also headed by a Presiding Judge who is a Judge or Judicial Commissioner, and Family Courts and Youth Courts are presided over by District Judges and Magistrates.⁹²

Court Proceedings

In the majority of cases, court proceedings at first instance are heard by one judge.⁹³ However, proceedings before the SICC may be heard by a single judge or three judges.⁹⁴ Most matters before the Court of Appeal are heard by three judges, though for an important case the Chief Justice may direct that a larger uneven number of judges sits to hear the appeal.⁹⁵

Singapore adopts an adversarial approach in litigation, as compared to an inquisitorial approach. This means that judges take a less active approach in the proceedings and rely heavily on the lawyers representing the parties to conduct the proceedings. During the litigation process, the lawyers are responsible for submitting documents, presenting evidence and expert opinions, examining witnesses, and generally deciding how the case is to be fought in their clients’ interests.⁹⁶

E. SOURCES OF LAW IN SINGAPORE

Legislation

The Interpretation Act defines *written law* as:⁹⁷

⁸⁶ *ibid.*, Art 95(6).

⁸⁷ Legal Profession Act (Cap 161, Rev Ed 2009) s 2.

⁸⁸ Constitution (n 1) Art 96.

⁸⁹ State Courts Act (n 69) s 8A.

⁹⁰ *ibid* ss 9(1) and 10(1).

⁹¹ *ibid* ss 9(3) and 10(2).

⁹² Family Justice Act (n 80) ss 12–14.

⁹³ See, for example, the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) s 10(1) (High Court).

⁹⁴ *ibid* s 18G.

⁹⁵ *ibid* s 30(1).

⁹⁶ Kevin Tan, ‘Civil and Criminal Legal Aid in Singapore’ in *The Singapore Legal System* (2nd edn, NUS Press 1999) 447.

⁹⁷ Interpretation Act (n 39) s 2(1).

- (a) the Constitution and all previous Constitutions having application to Singapore;
- (b) any Acts of Parliament, Ordinances and enactments (that is, statutes) by whatever name called; and
- (c) subsidiary legislation made under such enactments;

that are in force in Singapore. Written law is also known as legislation.

The Constitution is the supreme law of Singapore. Thus, all other laws must be consistent with the Constitution to be valid.⁹⁸ Statutes enacted by the Legislature come second in the hierarchy of sources of law, followed by subsidiary legislation, and then common law rules laid down by judges. This means that subsidiary legislation must be consistent with statutes, and that the Legislature can enact statutes and the Executive can issue subsidiary legislation to override common law rules if they feel that particular rules are not appropriate.

When judges interpret legislation, they apply various principles and rules. In particular, they must adopt a purposive approach.⁹⁹ This means a court is required to prefer an interpretation of a provision of a written law which promotes the purpose or object underlying the law to one which does not promote that purpose or object.¹⁰⁰ The starting point of finding out this purpose or object is the text of the provision to be interpreted and its textual context. Thereafter, other materials, such as statements made in Parliament when the bill that led to the law was debated, can be looked at to help the court ascertain the meaning of the provision.¹⁰¹ A purposive interpretation is also adopted when a court has to interpret a statutory provision which can be interpreted in two or more ways. The purposive approach takes precedence over any common law interpretative approaches such as the plain meaning rule and strict construction rule.¹⁰²

Common Law

As mentioned above, legal principles and rules laid down by the courts in their judgments – collectively known as the common law – are another source of law in the Singapore legal system. Selected judgments of the High Court and Court of Appeal are published in a series of law reports called the *Singapore Law Reports*. Even though the Parliament can override the common law by enacting statutes, common law principles and rules nevertheless play a significant role in the regulation of public and private activities in Singapore. For instance, a fairly large part of contract and tort law, and administrative law (the law governing the activities of public bodies) comprises common law.

⁹⁸ Constitution (n 1) Art 4.

⁹⁹ Interpretation Act (n 39) s 9A.

¹⁰⁰ *ibid* s 9A(1).

¹⁰¹ *Tan Cheng Bock v Attorney-General* [2017] 5 SLR 424 (High Court, Singapore).

¹⁰² *Public Prosecutor v. Low Kok Heng* [2007] 4 SLR(R) 183, [44] (High Court, Singapore).

Effect of International Law

International law is the law that regulates relationships between nations. When it comes to the application of international law domestically, Singapore adopts a dualist system. This means that international law rules must be ‘incorporated’ or made a part of the domestic laws of Singapore in some way to have legal effect.¹⁰³ This can be done by Parliament enacting a statute, or by the courts recognizing a rule of customary international law as a common law rule. However, the hierarchy of laws must be respected. Thus, judges cannot declare that a rule of customary international law is part of domestic law if it is contrary to an existing statutory rule enacted by the Legislature. Likewise, the Legislature can override judicially incorporated customary international law rules by enacting a statute.¹⁰⁴

The views expressed in this article are that of the authors alone. They do not necessarily reflect the views or opinions of the ASEAN Law Association or the organisations which the authors are currently associated with.

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¹⁰³ *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129, [28]–[29] (Court of Appeal, Singapore).

¹⁰⁴ *ibid* [29]–[33].