

REPORT OF THE LAW REFORM COMMITTEE

ON

**TRANSFERS OF CIVIL PROCEEDINGS
BETWEEN COURTS**



**LAW REFORM COMMITTEE
SINGAPORE ACADEMY OF LAW
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About this Report

In 2002 and 2003, five cases in the Singapore Supreme Court were decided which dealt with the issue of transfer of proceedings between superior and inferior courts. These cases have highlighted certain shortcomings in the prevailing regime relating to transfers of civil proceedings and the need to rationalise the various provisions in the Subordinate Courts Act.

Recognising the need for law reform in this area, the Academy's Law Reform Committee, in December' 2003, set up a sub-committee to look into the existing lacuna in the present law and to recommend suggestions for reform. The sub-committee presented its report along with the recommendations for reform in May' 2004. The sub-committee's report and the recommendations, which have since been accepted by the Law Reform Committee, are consolidated in this publication.

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TRANSFERS OF CIVIL PROCEEDINGS BETWEEN COURTS¹

I Executive Summary of Recommendations

A. *We recommend that:*

1. There should be a general discretion to transfer civil proceedings: (i) between a Magistrate's Court and a District Court; (ii) between a District Court and the High Court; and (iii) between a Magistrate's Court and the High Court.
2. There should be one uniform regime of transfer for civil proceedings, with the following characteristics:
 - a. Transfers should continue to be triggered only by the application of a party to the proceedings and not on the court's own motion.²
 - b. Applications for transfer, whether to or from a superior court, should be made to the superior court.

1 The following are the limitations to this paper:

(1) Transfers involving the Small Claims Tribunals ("SCT") are outside the scope of this paper. The SCT is a subordinate court, under s.3(1) Subordinate Courts Act (Cap. 321) ("SCA"). S.3(3) SCA however provides that the provisions of the SCA shall not apply to the SCT, unless otherwise provided in the Small Claims Tribunals Act (Cap. 308).

(2) This paper only deals with transfers between superior and inferior courts, and not transfers between courts of the same level.

(3) This paper does not touch on transfers that are allowed under specific legislation (eg. s.3 of the State Lands Encroachments Act, Cap. 315).

(4) This paper does not touch on transfers of classes of proceedings by the Chief Justice under s.28A of the Supreme Court of Judicature Act (Cap. 322) ("SCJA") and s.41 of the Subordinate Courts Act.

2 This contrasts with the position in the UK where the power to transfer may be exercised by the relevant courts on their own volition (see e.g. s.40(3) of the County Courts Act 1984 which states that "(3) An order under this section may be made either on the motion of the High Court itself or on the application of any party to the proceedings.") The Committee did not however consider that there was a need to reform the law on this point, as this aspect of our current provisions have not been found to be lacking.

- c. The court should be empowered to transfer proceedings, whether or not they had originated from that court (i.e. or had been transferred to that court).³
- d. The court should be empowered to make such provisions incidental to the transfer, or impose such terms or conditions, as it sees fit.
- e. There should be uniformity in the grounds for transfers. These grounds should be spelled out in general terms, as it is not desirable for legislature to lay down specific rules as to when the court should exercise its discretion.⁴

Limits to the court's general powers to transfer

- f. There should be no general power to transfer only part of the proceedings (for example, an interlocutory application, or part of the claim), for the practical reason that the potential administrative problems, as well as the legal implications (in enforcement, etc), that may potentially arise are too complex. The better approach, in our view, is to have the entire case transferred, or not at all.⁵
- g. There should be no mechanism for transferring proceedings to a court which has no *subject-matter jurisdiction* over those proceedings.⁶

3 Cf. s. 37 SCA where the power to transfer an action from the High Court to the District Court is limited to “any action commenced ... in the High Court...”.

4 See *Australian Master Builders Co Pty Ltd v Ng Tai Tuan* [1987] SLR 539 per Chan Sek Keong JC (as he then was).

5 This is the position under our existing ss.37 and 38 SCA. However, where a party has obtained summary judgment for part of the claim, the court should be allowed to order the remaining part of the claim to be transferred to another court. In *Australian Master Builders Company Pty Ltd v Ng Tai Tuan* [1987] SLR 539, the High Court had granted Order 14 judgment for part of the claim. Chan Sek Keong JC (as he then was) ordered the transfer of the remaining part of the claim to the District Court. Such a transfer would not, in our view, run counter to our stated limitation, as the reference in the proposed legislation to “*proceedings in a Magistrate's/District/High Court*” must necessarily mean pending proceedings and not such parts of proceedings which have already been disposed of by summary judgment or settlement and hence are no longer “in” court.

6 For example, admiralty or bankruptcy proceedings should not be subject to transfer from the High Court to the Subordinate Courts.

In other words, the court's power to transfer should extend only to proceedings which *could have been commenced* in that other court. The transfer should only be allowed to have the effect of increasing the monetary jurisdiction of the lower court.

3. The law should be clarified to the effect that a party intending to avail himself of reciprocal enforcement arrangements (should such be available under overseas legislation) may proceed with his claim in the High Court, even if such claim would ordinarily fall within the jurisdiction of the Subordinate Courts.⁷ If his claim has been commenced in the Subordinate Courts, he should generally⁸ be allowed to have it transferred to the High Court. Conversely, if his claim is already in the High Court, he should generally⁹ be allowed to continue to pursue his claim in that Court. This can be effected by the use of Explanations in the relevant draft provisions.
4. All the general statutory provisions on transfers should be rationalised and consolidated in the Subordinate Courts Act.

7 This would be consistent with the common law position that the exercise of the discretion to transfer can properly and should take into account differences between legal systems (see *Ex p Heiliger* (1897) 13 WN 170). See also our discussion on *Sunlink Engineering Pte Ltd v Koru Bena Sdn Bhd* at para IV (C.), pp 12-13 of this report.

8 But subject to the court's overriding discretion.

9 Again subject to the court's overriding discretion.

B. The recommendations set out above are supported by the following considerations:

1. Five cases¹⁰ decided in the Singapore Supreme Court between 2002 and 2003 had highlighted certain shortcomings in the prevailing transfer regime and had highlighted the need to rationalise the various provisions in our Subordinate Courts Act.
2. The proposed amendments are consistent with a fundamental policy underlying the rules of procedure which is that procedural considerations should be secondary to considerations of substantive justice.
3. The proposed amendments also draw upon the experience of the courts in England and Wales, which have retained a general right to transfer proceedings between themselves.¹¹

10 *Ong Pang Wee & Ors v Chiltern Park Development Pte Ltd* [2003] SGCA 9 (CA, unreported); *Tan Kok Ing v Tan Swee Meng*, MC Suit No. 12166 of 2000/N (HC, unreported); *Ricky Charles v Chua Boon Yeow* [2002] 3 SLR 307 (HC); *Sunlink Engineering Pte Ltd v Koru Bena Sdn Bhd* [2003] SGHC 120 (HC, unreported); and *Rightrac Trading v Ong Soon Heng trading as Everbright Engineering & Trading & others* [2003] SGHC 236 (unreported).

11 See ss.40, 41 and 42 of the County Courts Act 1984, the High Court and Country Courts Jurisdiction Order 1991 (SI 1991/724), and Part 30 of the Civil Procedure Rules.

II Introduction

1. At common law, there was a right to transfer by *certiorari* proceedings to the High Court, whatever the nature of the cause, the amount of the claim or the circumstances of the case.¹² The right to remove by *certiorari* was and is an unwieldy proceeding and from early times, statute law has attempted to facilitate the transfer of proceedings from inferior courts to the High Court without having to apply for an *ad hoc writ of certiorari*.¹³ Provisions for transfers of proceedings are in effect statutory attempts to restrict or modify the common law right.¹⁴
2. The common law right of transfer by *certiorari* has never been abrogated in Singapore. The general power to transfer proceedings from subordinate tribunals to the High Court is set out at Item 10 of the First Schedule to the SCJA. However, these wide powers to transfer are restricted by the provisions in the SCA and SCJA.¹⁵

12 See *Cherry v Endeane* (1886) 55 LJ QB 292; *Symonds v Dinesdale* (1848) 2 Ex 533 at 537.

13 See *Giusti Patents and Engineering Works Ltd v Maggs* [1923] 1 Ch 515.

14 The courts in England and Wales have retained a general right to transfer proceedings between themselves in order to rectify the situation where proceedings have been commenced in the wrong court and to ensure that proceedings are dealt with in the most suitable forum. The transfer provisions are set out in The Supreme Court Act 1981, The County Courts Act 1984, The High Court and County Courts Jurisdiction Order 1991 [SI 1991/724] and the Civil Procedure Rules (Part 30).

15 See *Ong Pang Wee & others v Chiltern Park Development Pte Ltd* [2003] SGCA 9, interpreting s.18(3) SCJA.

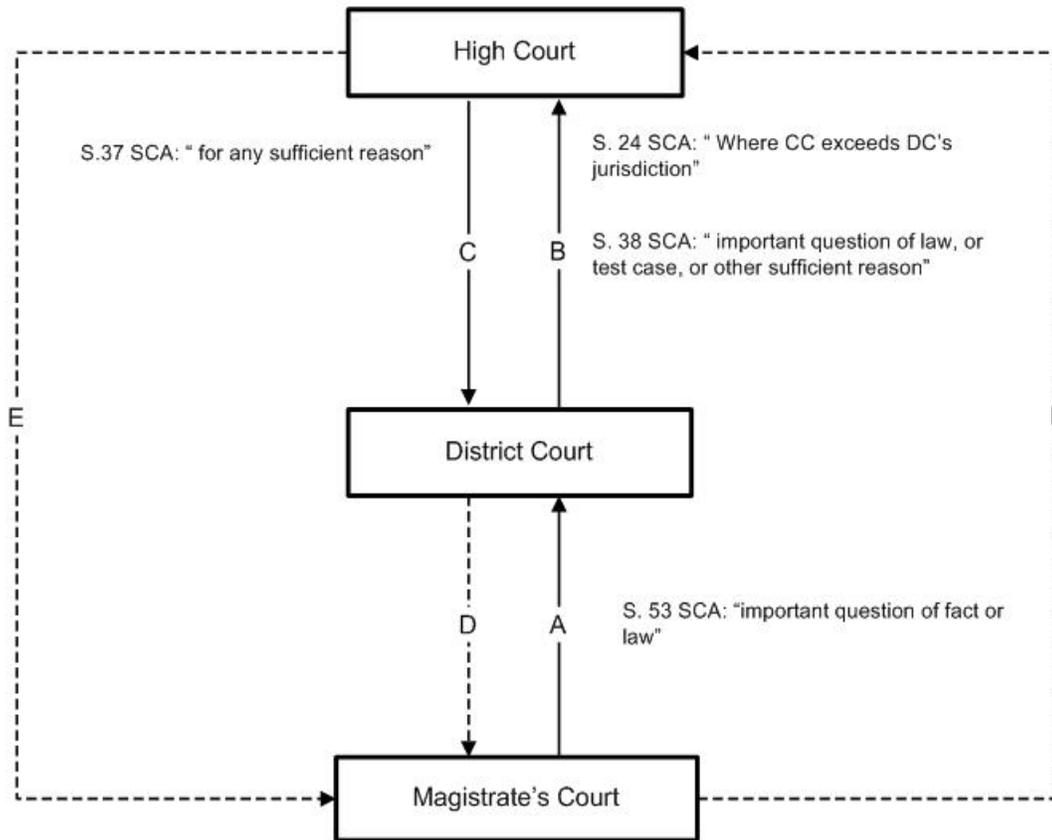
III Existing Regime Relating to Transfer of Proceedings

3. Under the current law, parties to a civil case may seek a transfer of their case in 3 situations only:
 - a. From the High Court to the District Court of “any action commenced by way of writ of summons in the High Court in the exercise of its original civil jurisdiction...for any sufficient reason” (s.37 SCA).¹⁶
 - b. From the District Court to the High Court of “any civil proceeding pending in a District Court...by reason of its involving some important question of law, or being a test case, or for any other sufficient reason” (s.38 SCA).
 - c. From the Magistrate’s Court to the District Court of an “action... on the ground that some important question of law or fact is likely to arise” (s.53 SCA).
4. These provisions are supplemented by Order 89 of the Rules of Court.

16 We see no reason why a transfer should be limited to cases commenced by writ and would recommend that this limitation be removed.

IV Limits to court's power to transfer

Transfers of proceedings between courts



5. The diagrammatical representation above highlights the gaps where the court does not have the power to transfer, or such power is restricted or in doubt. These are:

A. Transfers from the Magistrate’s Court to the High Court

*Ong Pang Wee & Ors v Chiltern Park Development Pte Ltd*¹⁷

6. The plaintiff, Chiltern Park, sued the defendants, Ong Pang Wee & Ors, in the Magistrate’s Court for \$13,433.47 as maintenance fees allegedly due to them. The defendants filed a defence and counterclaim for damages which they quantified at around \$353,900, a sum that exceeded even the jurisdiction of the District Court (\$250,000). The defendants applied to transfer the claim to the High Court. The application was dismissed. The majority of the Court of Appeal (Chao Hick Tin JA dissenting) dismissed the appeal on the ground that the High Court had no power to order a transfer from the Magistrate’s Court to the High Court.

B. Transfers from the Magistrate’s Court to the District Court

7. Although transfers from the Magistrate’s Court to the District Court (A) are allowed under section 53 SCA, there is authority to the effect that the precondition of “an important question of law or fact” has to be satisfied in every case, and that quantum alone does not suffice to satisfy this precondition:

*Tan Kok Ing v Tan Swee Meng*¹⁸

8. The plaintiff commenced action in the Magistrate’s Court for damages for personal injuries suffered as a result of a motor accident. He subsequently applied to transfer his claim to the District Court as the amount of damages arising might exceed the Magistrate’s Court limit. On appeal from the District Court (which had dismissed the application), the High Court ruled that any transfer of an action from the Magistrate’s Court to the District Court had to meet the requirements of s.53 SCA, and in this regard, for the question of law or fact to be “important”, it should affect more than the immediate interests of the parties. The learned Judicial Commissioner (as he then was) held that “*quantum in itself does not constitute*

17 [2003] SGCA 9 (unreported).

18 MC Suit No. 12166 of 2000/N; RAS No. 25 of 2002, unreported decision of Woo Bih Li JC, as he then was, dated 31 July 2002.

an important question of law or fact". Because of the wording of s.53 SCA, the Court was unable to transfer the action from the Magistrate's Court to the District Court, although it had expressed the desire to do so.

9. However, a different interpretation of s.53 SCA was taken in a subsequent High Court case:

Rightrac Trading v Ong Soon Heng trading as Everbright Engineering & Trading & others
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10. The plaintiff commenced action for damage to the plaintiff's crane. The action was commenced in the Magistrate's Court as the claim was originally for \$50,000. The plaintiff subsequently applied for the claim to be transferred to the District court as the value of the claim had increased to \$65,000, thereby taking it out of the jurisdiction of the Magistrate's Court. On appeal from the District Court (which had dismissed the application), the High Court ruled that section 69(3)(b) SCA empowered the Rules Committee to prescribe the "circumstances and procedure" by which proceedings may be transferred within the Subordinate Courts, and that these circumstances are provided for in Order 89 rule 4(1), which provides that a Subordinate Court may transfer a case where it is satisfied that the proceedings ought to be tried in some other Subordinate Court. The learned Judge pointed out that neither O.89 r.4 nor s.69 SCA are made subject to s.53 SCA or any other provisions of the SCA. The Court held that s.53 SCA would only apply where an application is made to transfer a Magistrate's Court claim to a District Court *when the amount is below the jurisdiction of the District Court*. When, as in this case, a claim exceeds the jurisdiction of the Magistrate's Court, the party which applies to transfer the claim to the District Court should be granted the application as of right.

19 [2003] SGHC 236, unreported decision of Lai Siu Chiu J.

C. Transfers from the High Court to the Magistrate's Court

*Sunlink Engineering Pte Ltd v Koru Bena Sdn Bhd*²⁰

11. The plaintiff company, sub-contractors, commenced a claim in the High Court against their main contractors to recover \$46,051.90 as unpaid sums under a construction contract. Although the quantum of the claim was within the Magistrate's Court jurisdiction, the plaintiff commenced action in the High Court as it intended to avail itself of reciprocal enforcement provisions under the *Malaysian Reciprocal Enforcement of Judgments Act 1958*, which it would not be able to with a judgment from the Subordinate Courts. The High Court refused to allow the claim to proceed in the High Court and ordered that the case be transferred to the subordinate courts.
12. While the refusal to allow the case to proceed in the High Court was no doubt supported by good reasons in that case,²¹ it is possible that this case might cast the wrong impression that proceedings that fall within the civil jurisdiction of the Subordinate Courts should in every case be determined in the Subordinate Courts, even where the plaintiff wished to avail itself of reciprocal enforcement procedures overseas.²²
13. Unfortunately, it is not clear from the learned Judge's Grounds of Decision whether the transfer ordered was to the District Court or to the Magistrate's Court. The High Court relied on s.37 SCA which speaks of transfers to the District Court, so we might presume the case was transferred to the District Court. However, as the amount claimed was within the Magistrate's Court's jurisdiction, the question would have

20 [2003] SGHC 120, unreported decision of Tan Lee Meng J.

21 The Court thought on the facts that it was "most unlikely" that the defendant would choose to abandon their business interests in Singapore and flee the jurisdiction just to avoid paying a small judgment sum (see paragraph 8 of the Grounds of Decision).

22 The Committee has therefore recommended that it should be clarified that a party intending to avail himself of reciprocal enforcement arrangements (should such be available under overseas legislation) may proceed with his claim in the High Court, even if such claim would ordinarily fall within the jurisdiction of the Subordinate Courts. In other words, in such a case, the fact that proceedings fall within the civil jurisdiction of the subordinate courts ought not, by itself, ordinarily constitute "sufficient reason" for transferring the proceedings to the subordinate courts (see our Recommendation at para I A. (3), pg 5 of this report).

arisen whether it could have been transferred to the Magistrate's Court if the High Court had been inclined to do so.

- D. Transfers from the District Court to the Magistrate's Court**
(There have been no judicial decisions dealing with such transfers.)

V Need for Law Reform

14. Although the learned Judicial Commissioner (as he then was) in *Tan Kok Ing v Tan Swee Meng*²³ declined to allow a transfer from the Magistrate’s Court to the District Court, and in a similar vein had declined to allow a transfer from the Magistrate’s Court to the High Court in *Chiltern Park Development v Ong Pang Wee & Ors*,²⁴ it is clear that His Honour’s ruling had been made on the basis of the existing limitations in our legislation. The need for law reform was noted in *Chiltern Park Development v Ong Pang Wee & Ors*, where His Honour stated:

“It may well be that there should be some law reform to address the situation which has arisen so that, in future, a party in the High Court can apply to have proceedings in the Magistrate’s Court transferred to the High Court, if the circumstances warrant such an order. Likewise, for the transfer of proceedings from the Magistrate’s Court to the District Court which is at present limited to an important question of law or fact.” (emphasis added)

15. In the Court of Appeal, although the majority in *Ong Pang Wee v Chiltern Park Development* ruled against allowing a transfer from the Magistrate’s Court to the High Court, the learned dissenting Judge, Chao Hick Tin JA, considered that it was Parliament’s intention to allow cases to be transferred from the Magistrate’s Court to the High Court. His Honour thus sought to give full effect to the Parliamentary intention by according a wide interpretation to the word “provision” in s.52(2).²⁵ His Honour stated:

“46. ... Ordinarily, in an action in contract or tort, a plaintiff would commence his action in either the High Court, the District Court of the Magistrate’s Court, depending on the estimated quantum of his claim. But sometimes, subsequent events may occur which render the original estimation

23 See para IV B. (8), pp 10, 11 of this report for a summary of this case.

24 See para IV A. (6), pg 10 of this report for a summary of this case.

25 S.52(2) SCA states:

“(2) In exercising its jurisdiction under subsection (1), a Magistrate’s Court shall be subject to the same limitations and provisions as are applicable to a District Court under this Act.”

too conservative. Thus, the usefulness of ss 22 and 23. Otherwise, it would mean that a plaintiff would have to discontinue the action and start afresh. Section 24 is also such a facilitative provision. I am unable to see any cogent reasons why these very useful provisions should be denied to litigants in the Magistrate's Court. In my view, s 52(2) renders ss 22-24 applicable to the Magistrate's Court. Why should a litigant in the Magistrate's Court be so discriminated against and handicapped? There is no logic in it.

"47. It may be asked, if it was the intention of Parliament that ss 22-24 should apply to the Magistrate's Court, why did it not so provide directly instead of doing it in such a seemingly roundabout manner. While I agree that the draftsman could have been more explicit, like identifying the specific provisions which are intended to be rendered applicable by s 52(2) instead of just using the terms "limitations" and "provisions", but this is really a matter of drafting style. ..." (emphasis added)

16. In our view, there are potentially many reasons justifying a transfer, for example:
- a. Circumstances may change which, through no fault of any party, require proceedings commenced in one court to be carried on in another.²⁶
 - b. The claim might be one for continuing damages, the quantum for which would obviously depend on when judgment is actually entered; and the case could simply have taken longer than expected to be disposed of.
 - c. The allowable damages (for example in cases involving defamation or personal injuries) might have been raised by judicial precedent after the filing of the action in a forum which then becomes inappropriate.
 - d. There might be a situation where there is a counterclaim, or there are related claims, which would be better disposed off in a single consolidated proceeding, and this might not be possible under the present regime.²⁷

26 As alluded to by Chao Hick Tin JA in the *Chiltern Park* case (para 46).

27 The learned Judge of Appeal Justice Chao Hick Tin JA in the *Chiltern Park* case addressed the issue of the "risk of two trials (on the same or related facts) with possibly differing results, not to mention the waste in terms of time and costs" (words in brackets added).

- e. The claim might have been filed in the wrong court through inadvertence or oversight.
17. It should be noted that most of the situations set out above (with the sole exception of (e)) are situations which arise through no fault of the party.
18. At this juncture, it may be asked why a party who discovers that his claim has been commenced in a wrong or inappropriate judicial forum, might not simply restart his claim afresh in the appropriate court? For the party seeking the transfer, we consider that there are two main issues (in addition to the wasted time and energy): (1) costs; and (2) expiry of the limitation period.
19. A claim may have proceeded to an advanced stage, perhaps even to trial, before the inadequacy of the forum becomes known. The party seeking to withdraw his claim may be ordered to bear the costs of the whole action, including the legal costs of the other party, disbursements, including stamp and hearing fees, and of course, his own legal fees. The total costs may be prohibitive. Where the need for transfer arises through no fault of the party, it will be patently unfair to impose such costs and inconvenience on him due to the law's lack of flexibility in allowing a transfer.
20. Secondly, the claimant will only have the flexibility of restarting his action afresh if the limitation period has not expired.
21. In relation to limitation periods, even if a party has been at fault in making the procedural mistake of commencing a suit in the wrong court, this does not mean that he should be denied his remedy. More than a century ago, in *Cropper v Smith*,²⁸ Bowen LJ gave voice to

“a well-established principle that the object of the court is to decide the rights of the parties and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights.”

28 (1884) 26 Ch D 700.

22. His Lordship added:
- “I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other parties.”*
23. In a similar vein, our own Court of Appeal in *‘The Virginia Rhea’*²⁹ stressed this same principle, albeit in the context of an application for leave to amend a writ, when it held that all amendments ought to be allowed *“for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings”*. The Rules of Court reflects the principle in *Cropper v Smith* by providing (at Order 2 rule 1) that any non-compliance with the Rules shall be treated as a mere irregularity and may be cured by the court.
24. In most instances, commencing a suit in the wrong court is an error which can be redressed with an appropriate order of costs (but not costs of the whole action). Applying the principles referred to above, such an error should not affect the substantive justice of a cause or matter, unless irretrievable prejudice has been occasioned.
25. An unduly inflexible regime for transfers is inconsistent with established principles. With respect to the expiry of limitation periods, the Rules of Court already allows the court, if it thinks it just to do so, to grant leave to amend a writ, to change, for example: the name of a party; the capacity in which a party is suing; and to add or substitute a new cause of action; after the expiry of the limitation period.³⁰
26. It is felt that the unduly restrictive aspects of the present regime may also encourage the development of undesirable litigation practices. For instance:
- a. Lawyers may turn to practising defensive litigation and advise their clients to commence actions in a superior court.
 - b. As a consequence of defensive litigation, parties and their legal advisers may be tempted to inflate their claims in order to justify commencing the action in the superior court thus raising

29 [1983] 1 MLJ 198 (HC); [1985] 2 MLJ 1 (CA).

30 See Order 20 rule 5.

expectations and dampening the prospects of an amicable settlement.

- c. It will also lead to the utilisation of a superior court's judicial resources in situations where the resources of a lower court would have been adequate.
 - d. Parties might be obliged to proceed with related suits in different Courts where the existing regime does not permit transfer.
27. The Committee therefore considers that law reform is urgently required to allow courts more flexibility to transfer cases between courts so that cases may be dealt with in as efficient a manner as possible.

VI Proposed Subordinate Courts (Amendment) Bill 2004

28. The Law Reform Committee suggests that law reform to rationalise this area of law should proceed by way of legislative amendment. It is further suggested that it would be logical to group together, in one part of the Subordinate Courts Act, all the provisions that relate to transfer in civil proceedings.³¹
29. These provisions may be consolidated under a new sub-heading “*Transfers of Civil Proceedings*” and inserted after the sub-heading “*Jurisdiction of Magistrates' Courts*” (ss.51-54) in Part IV of the SCA.
30. Provisions to implement the above recommendations are set out in the proposed draft bill at *Appendix A*.

31 Presently, provisions on transfers of civil proceedings are found scattered throughout the SCA (ss. 24, 37, 38 and 53). A provision on costs in transferred cases is found in s.40 SCA.

Subordinate Courts (Amendment) Bill

Bill No. 00/2004.

Read the first time on

20xx.

A BILL

intituled

An Act to amend the Subordinate Courts Act (Chapter 321 of the 1999 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Subordinate Courts (Amendment) Act 2004 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 New sections 54A to 54G

2. Part IV of the Subordinate Courts Act is amended by inserting, immediately after section 54, the following sections:

“Transfers of Civil Proceedings

General power to transfer from Magistrate’s Court to District Court

[*new; adapted from s.38 SCA; mirrors s.54B below*]

54A.—(1) Where it appears to a District Court, on the application of a party to any civil proceedings pending in a Magistrate’s Court, that the proceedings, by reason of its involving some important question of law, or being a test case, or for any other sufficient reason, should be tried in the District Court, it may order the proceedings to be transferred to the District Court.

(2) An order under subsection (1) may be made on such terms as the court sees fit.

Section 38, Subordinate Courts Act, Cap. 321

General power to transfer from District Court to High Court

38. Where it is made to appear to the High Court, on the application of a party to any civil proceeding pending in a District Court, that the proceeding by reason of its involving some important question of law, or being a test case, or for any other sufficient reason, is one which should be tried in the High Court, it may order the record to be transferred to the High Court.

General power to transfer from subordinate courts [OR District Court or Magistrate’s Court] to High Court [s.38 SCA, widened to include MC to HC transfers]

54B.—(1) Where it appears to the High Court, on the application of a party to any civil proceedings pending in a subordinate court, that the

proceedings, by reason of its involving some important question of law, or being a test case, or for any other sufficient reason, should be tried in the High Court, it may order the proceedings to be transferred to the High Court.

5 (2) An order under subsection (1) may be made on such terms as the court sees fit.

Explanation.—The intended enforcement overseas of any judgment obtained in the High Court, under any enforcement arrangements currently in force, would ordinarily be sufficient reason for transferring the proceedings to the High Court.

10 **General power to transfer from High Court to subordinate courts**
[OR District Court or Magistrate’s Court] [*s.37 SCA, widened to include HC to MC transfers with new subsection (3) to prevent subject-matter jurisdiction being increased in a downward transfer*]

15 **54C.**—(1) Subject to subsection (3), a party to any civil proceedings pending in the High Court may for any sufficient reason at any time apply to the High Court for an order that the proceedings be transferred to a subordinate court.

20 (2) The High Court may thereupon, if it thinks fit, and on such terms as it sees fit, order that the proceedings be transferred accordingly notwithstanding any other provision of this Act.

25 (3) An application under subsection (1) may only be made in respect of such proceedings as could have been commenced in the subordinate court to which the application relates, if the value of the claim had been within the District Court limit or the Magistrate’s Court limit, as the case may be.

30 *Explanation.*—The fact that the proceedings fall within the civil jurisdiction of the subordinate courts would not, by itself, ordinarily constitute sufficient reason for transferring the proceedings to the subordinate courts, if enforcement overseas is intended of any judgment obtained in the High Court under any enforcement arrangements currently in force.

Section 37, Subordinate Courts Act, Cap. 321

General power to transfer from High Court to District Court

37. —(1) In any action commenced by way of writ of summons in the High Court in the exercise of its original civil jurisdiction, any party may for any sufficient

reason at any time apply to the High Court for an order that the proceedings be transferred to a District Court.

(2) The High Court may thereupon, if it thinks fit, order that the proceedings be transferred accordingly notwithstanding any other provisions of this Act.

General power to transfer from District Court to Magistrate’s Court
[*new; mirrors s.54C above which is based on s.37 SCA.*]

5 **54D.**—(1) Subject to subsection (3), a party to any civil proceedings pending in the District Court may for any sufficient reason at any time apply to the District Court for an order that the proceedings be transferred to a Magistrate’s Court.

10 (2) The District Court may thereupon, if it thinks fit, and on such terms as it sees fit, order that the proceedings be transferred accordingly notwithstanding any other provision of this Act.

(3) An application under subsection (1) may only be made in respect of such proceedings as could have been commenced in the Magistrate’s Court if the value of the claim had been within the Magistrate’s Court limit.

15 **Transfer of counterclaim from subordinate courts [OR District Court and Magistrate’s Court] to High Court** [*s.24 SCA, widened*]

20 **54E.**—(1) Where, in any civil proceedings pending in a subordinate court, any counterclaim or set-off and counterclaim of any defendant involves a matter beyond the District Court limit, any party to the proceedings may apply to the High Court, within such time as may be prescribed by Rules of Court, for an order that the whole proceedings, or the proceedings on the counterclaim or set-off and counterclaim, be transferred to the High Court.

25 (2) On any such application the High Court may, as it thinks fit, and on such terms as it sees fit, order —

- (a) that the whole proceedings be transferred to the High Court; or
- (b) that the whole proceedings be tried in the subordinate courts; or

(c) that the proceedings on the counterclaim or set-off and counterclaim be transferred to the High Court and that the proceedings on the plaintiff's claim and the defence thereto other than the set-off (if any) be tried in the subordinate courts.

5 (3) Where an order is made under subsection (2)(c), and judgment on the claim is given for the plaintiff, execution thereon shall, unless the High Court at any time otherwise orders, be stayed until the proceedings transferred to the High Court have been concluded.

10 (4) Where no application is made under subsection (1) or where on such an application it is ordered that the whole proceedings be tried in the subordinate courts, such subordinate court shall have jurisdiction to try the proceedings, notwithstanding any other provision of this Act.

Section 24, Subordinate Courts Act, Cap. 321

Transfer of counterclaim from District Court to High Court

24. —(1) Where, in an action founded on contract or tort in a District Court, any counterclaim or set-off and counterclaim of any defendant involves a matter beyond the jurisdiction of the District Court, any party to the action may apply to the High Court, within such time as may be prescribed by Rules of Court, for an order that the whole proceedings, or the proceedings on the counterclaim or set-off and counterclaim, be transferred to the High Court.

(2) On any such application the High Court may, as it thinks fit, order either —
(a) that the whole proceedings be transferred to the High Court;
(b) that the whole proceedings be tried in a District Court; or
(c) that the proceedings on the counterclaim or set-off and counterclaim be transferred to the High Court and that the proceedings on the plaintiff's claim and the defence thereto other than the set-off (if any) be tried in a District Court.

(3) Where an order is made under subsection (2) (c), and judgment on the claim is given for the plaintiff, execution thereon shall, unless the High Court at any time otherwise orders, be stayed until the proceedings transferred to the High Court have been concluded.

(4) Where no application is made under subsection (1) or where on such an application it is ordered that the whole proceedings be tried in the District Court, the District Court shall have jurisdiction to try the proceedings, notwithstanding

any other provisions of this Act.

Transfer of counterclaim from Magistrate’s Court to District Court
[*new, adapted from s.24 SCA*]

5 **54F.**—(1) Where, in any civil proceedings pending in a Magistrate’s Court, any counterclaim or set-off and counterclaim of any defendant involves a matter beyond the Magistrate’s Court limit, any party to the proceedings may apply to the District Court, within such time as may be prescribed by Rules of Court, for an order that the whole proceedings, or the proceedings on the counterclaim or set-off and counterclaim, be transferred to the District Court.

(2) On any such application the District Court may, as it thinks fit, and on such terms as it sees fit, order —

(a) that the whole proceedings be transferred to a District Court; or

(b) that the whole proceedings be tried in a Magistrate’s Court; or

15 (c) that the proceedings on the counterclaim or set-off and counterclaim be transferred to a District Court and that the proceedings on the plaintiff’s claim and the defence thereto other than the set-off (if any) be tried in a Magistrate’s Court.

20 (3) Where an order is made under subsection (2)(c), and judgment on the claim is given for the plaintiff, execution thereon shall, unless the District Court at any time otherwise orders, be stayed until the proceedings transferred to the District Court have been concluded.

25 (4) Where no application is made under subsection (1) or where on such an application it is ordered that the whole proceedings be tried in a Magistrate’s Court, the Magistrate’s Court shall have jurisdiction to try the proceedings, notwithstanding any other provision of this Act.

Costs in cases transferred from one court to another [*s.40 SCA, widened*]

54G.—(1) Where proceedings are ordered to be transferred —

30 (a) from the High Court to a subordinate court;

- (b) from a subordinate court to the High Court; or
- (c) from one subordinate court to another,

5 the costs of the whole proceedings both before and after the transfer shall, subject to any order made by the court which ordered the transfer, be in the discretion of the court to which the proceedings are transferred, and that court shall have power to make orders with respect thereto and as to the scales on which the costs of the several parts of the proceedings are to be paid.

10 (2) As regards so much of the proceedings in any action transferred from the High Court to a subordinate court as takes place in the High Court before the transfer —

- (a) the costs thereof shall be subject to section 39; and
 - (b) the powers of the High Court under section 39 (4) to make an order allowing costs on the High Court scale or on the subordinate courts scale, shall, subject to any order of the High Court, be exercisable by the subordinate court.
- 15

Section 40, Subordinate Courts Act, Cap. 321

Costs in cases transferred from one court to another

40. —(1) Where an action, counterclaim or matter is ordered to be transferred —

- (a) from the High Court to a District Court; or
- (b) from a District Court to the High Court,

the costs of the whole proceedings both before and after the transfer shall, subject to any order made by the court which ordered the transfer, be in the discretion of the court to which the proceedings are transferred, and that court shall have power to make orders with respect thereto and as to the scales on which the costs of the several parts of the proceedings are to be paid.

(2) As regards so much of the proceedings in any action transferred from the High Court to a District Court as takes place in the High Court before the transfer —

- (a) the costs thereof shall be subject to section 39; and
- (b) the powers of the High Court under section 39 (4) to make an order allowing costs on the High Court scale or on the subordinate courts scale, shall, subject to any order of the High Court, be exercisable by the District Court.

Section 39, Subordinate Courts Act, Cap. 321

Costs of certain actions commenced in High Court which could have been commenced in a subordinate court

39. —(1) Where an action founded on contract or tort or any written law to recover a sum of money is commenced in the High Court which could have been commenced in a subordinate court, then, subject to subsections (3) and (4), the plaintiff —

- (a) if he recovers a sum not exceeding the District Court limit, shall not be entitled to any more costs of the action than those to which he would have been entitled if the action had been brought in a District Court; and
- (b) if he recovers a sum not exceeding the Magistrate's Court limit, shall not be entitled to any more costs of the action than those to which he would have been entitled if the action had been brought in a Magistrate's Court.

(2) For the purposes of subsection (1) (a) and (b), a plaintiff shall be treated as recovering the full amount recoverable in respect of his claim without regard to any deduction made in respect of contributory negligence on his part or otherwise in respect of matters not falling to be taken into account in determining whether the action could have been commenced in a subordinate court.

(3) Where a plaintiff is entitled to costs on the subordinate courts scale only, the Registrar of the Supreme Court shall have the same power of allowing any items of costs as a District Judge or Magistrate would have had if the action had been brought in a subordinate court.

(4) In any action, the High Court, if satisfied —

- (a) that there was sufficient reason for bringing the action in the High Court; or
- (b) that the defendant or one of the defendants objected to the transfer of the action to a subordinate court,

may make an order allowing the costs or any part of the costs thereof on the High Court scale or on the subordinate courts scale as it may direct.

(5) This section shall not apply in the case of any proceedings by the Government.

(6) This section shall not affect any question as to costs if it appears to the High Court that there was reasonable ground for supposing the amount recoverable in respect of the plaintiff's claim to be in excess of the amount recoverable in an action commenced in a subordinate court.

Repeal of sections 24, 37, 38, 40 and 53

3. Sections 24, 37, 38, 40 and 53 of the Subordinate Courts Act are repealed.

EXPLANATORY STATEMENT

This Bill seeks to amend the Subordinate Courts Act (Cap. 321) to

Clause 1 relates to the short title and commencement.

Clause 2

Clause 3

5

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in extra financial expenditure.