

FREE-STANDING INJUNCTIONS AND SERVICE OUT OF JURISDICTION: TIME FOR RECALIBRATION?

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Free-standing injunctions under s 4(10A) of the Civil Law Act 1909 (2020 Rev Ed) are only as effective as a claimant's ability to serve them out of jurisdiction. However, does the application of the *forum conveniens* standard in service out of jurisdiction applications sit in tension with the premise that the substantive dispute underlying free-standing injunctions lies elsewhere? This article considers that tension and evaluates the case for recalibration of the standard of "connection" for free-standing injunctions.

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I. Introduction

1 Section 4(10A) of the Civil Law Act 1909¹ ("CLA"), introduced by amendment in 2022, empowers the Singapore courts to grant interim relief in aid of foreign proceedings. Crucially, it enables a party to obtain what is commonly termed as a "free-standing" injunction from the Singapore courts, *ie*, an injunction that need not be commenced or grounded on a substantive cause of action in Singapore.

2 The power to grant a free-standing injunction is, however, only as effective as the ability to serve it. This is a critical issue for injunctions under s 4(10A) of the CLA ("s 4(10A) Injunctions") because the respondent in an application under s 4(10A) of the CLA ("s 4(10A) Application") will typically be outside Singapore's territorial jurisdiction. Service out of jurisdiction is therefore not merely incidental. It is a threshold practical necessity.

1 2020 Rev Ed.

3 The difficulty lies in the existing requirements for obtaining permission to serve out of jurisdiction under O 8 r 1 of the Rules of Court 2021 (“ROC 2021”) (read with para 63 of the Supreme Court Practice Directions 2021 (“SCPD 2021”). In particular, the requirement to demonstrate that Singapore is the natural forum (*ie*, the *forum conveniens*) is in direct tension with the very premise of a s 4(10A) Application: that the substantive dispute is being resolved elsewhere.

4 This article explores whether the current rules on service out of jurisdiction, particularly the current *forum conveniens* standard, are structurally compatible with s 4(10A) Applications or require adaptation. Drawing on the reasoning and comments in *Xu Xiangrong v Fu Xianwei*² (“*Xu Xiangrong*”) and *Allenger, Shiona v Pelletier, Olga*³ (“*Allenger*”), it argues that while the *forum conveniens* requirement should be retained as a procedural safeguard, the threshold for establishing a sufficient “*connection*”⁴ to Singapore requires recalibration in the context of s 4(10A) of the CLA.

5 Specifically, this article proposes that it should suffice for the applicant to demonstrate *some* connecting factors to Singapore, rather than satisfying the conventional *forum conveniens* standard developed for substantive disputes. This recalibration, whether achieved through incremental judicial development or targeted legislative reform, would reflect the unique character of free-standing injunctions without abandoning procedural safeguards entirely.

II. *Forum conveniens* requirement and problem

6 Section 4(10A) of the CLA provides:

Subject to subsections (10B), (10C) and (10D), a court has the power to grant interim relief in aid of proceedings in any civil or commercial matter (excluding proceedings arising out of any fiscal, monetary or revenue law or measure) which have been

2 [2025] SGHC 95.

3 [2022] 3 SLR 353.

4 See generally *Spiliada Maritime Corp v Cansulex Ltd* [1987] 1 AC 460 at 477–478.

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or are to be commenced outside Singapore, if it appears to the court to be just or convenient that such order should be made.

7 While s 4(10A) of the CLA empowers the Singapore courts to issue free-standing injunctions in aid of foreign proceedings, the requirements for service out of jurisdiction remain. Service of process is fundamental to whether the Singapore courts can exercise jurisdiction over the injunction respondent.⁵ An applicant seeking a free-standing injunction must therefore first succeed in serving originating process on the respondent, whether within Singapore or outside it, pursuant to the relevant legislative framework.⁶

8 In the context of a free-standing injunction, the applicant will typically need to serve papers out of jurisdiction. Since the proceedings are, by definition, foreign, the parties are unlikely to be from or present in Singapore.

9 The applicant must therefore seek the court's permission to effect service out of jurisdiction pursuant to O 8 r 1(1) and O 8 r 1(2) of the ROC 2021, which require the applicant to show either that the Singapore court has jurisdiction or is the "appropriate court" to hear the action.⁷ In demonstrating that the Singapore court is the "appropriate court", the SCPD 2021 states that the applicant *should* explain any relevant information showing that:⁸

- (a) there is a good arguable case that there is sufficient nexus to Singapore;
- (b) Singapore is the *forum conveniens*; and
- (c) there is a serious question to be tried on the merits of the claim.

10 As regards the requirement to show a good arguable case of sufficient nexus to Singapore,⁹ the applicant should refer to the

5 Yeo Tiong Min SC, *Commercial Conflict of Laws* (Academy Publishing, 2023) at para 02.003.

6 Yeo Tiong Min SC, *Commercial Conflict of Laws* (Academy Publishing, 2023) at para 02.007.

7 Rules of Court 2021 O 8 r 1(2).

8 Supreme Court Practice Directions 2021 para 63(2).

9 Supreme Court Practice Directions 2021 para 63(2)(a).

non-exhaustive factors set out under para 63(3) of the SCPD 2021, commonly referred to as the “jurisdictional gateways”.¹⁰ In the context of a free-standing injunction in aid of foreign proceedings, the potentially relevant gateways are para 63(3)(a) or 63(3)(b) of the SCPD 2021, *ie*, that “relief is sought against a person who is domiciled, ordinarily resident, or carrying on business in Singapore, or who has property in Singapore”; or that “an injunction is sought ordering the defendant to do or refrain from doing anything in Singapore”.

11 In addition to demonstrating that the case has a sufficient nexus to Singapore, the applicant will also need to show that Singapore is the natural forum, *ie*, *forum conveniens*.¹¹

12 The test to establish that Singapore is the natural forum is well settled, grounded in the common law *forum non conveniens* doctrine¹² authoritatively set out by Lord Goff of Chieveley in *Spiliada Maritime Corp v Cansulex Ltd*¹³ (“*Spiliada*”). At Stage 1 of the *Spiliada* test, the court considers non-exhaustive connecting factors such as: (a) personal connections of the parties and witnesses; (b) connections to relevant events and transactions; (c) governing law; (d) other proceedings (*lis alibi pendens*); and (e) the shape of the litigation.¹⁴ If the defendant establishes at Stage 1 that there is a more appropriate foreign forum, Stage 2 is engaged: The burden shifts to the claimant to show that substantial justice nevertheless requires Singapore to hear the case.

13 However, the requirement to show that Singapore is the *forum conveniens* when seeking permission to serve out of jurisdiction in a s 4(10A) Application presents a fundamental tension. In such an application, the connecting factors at Stage 1

10 Jeffrey Pinsler SC, *Singapore Court Practice* (LexisNexis, 2026) at para 8.1.3.

11 Supreme Court Practice Directions 2021 para 63(2)(b); see also *Cheong Jun Yoong v Three Arrows Capital Ltd* [2024] 4 SLR 907 at [40(a)] and Yeo Tiong Min SC, *Commercial Conflict of Laws* (Academy Publishing, 2023) at para 02.042.

12 Daniel Edmonds & Sarah Tulip, *Service in Civil Proceedings: Law and Practice* (Oxford University Press, 2026) at paras 8.02 and 8.188.

13 [1987] 1 AC 460.

14 See, *eg*, *Xu Xiangrong v Xu Xianwei* [2025] SGHC 95 at [71].

will invariably point away from Singapore. The substantive dispute is being fought in a foreign jurisdiction where jurisdiction is assumed to have been properly founded. It follows that that foreign jurisdiction is, by presumption, the natural forum for determining the merits. The question that arises is whether the *forum conveniens* requirement can be meaningfully applied and satisfied by a free-standing injunction applicant.

14 As shall be explored below, in two cases,¹⁵ the Singapore courts considered the *forum conveniens* requirement in connection with service-out applications involving injunctions in aid of foreign proceedings.

15 In *Xu Xiangrong*, Tan Siong Thye SJ undertook a claim-specific *Spiliada* analysis and ultimately found Singapore to be the *prima facie* natural forum across the key claim categories.¹⁶ For the s 4(10A) Application for a Mareva injunction in aid of Chinese proceedings, Tan SJ held that there were sufficient Singapore connecting factors, including the incorporation of the second to eighth defendants in Singapore and bank accounts here, and treated *forum conveniens* as a necessary doctrinal safeguard.¹⁷

16 While not directly involving a s 4(10A) Application, *Allenger* confronted the tension head-on. Although recognising powerful practical arguments to dispense with the *forum conveniens* requirement for service out of jurisdiction for injunctions in aid of foreign proceedings, Andrew Ang SJ opined (in *obiter*) that the requirement remains part of Singapore law and must be satisfied at the service-out stage. The court considered itself bound by *Bi Xiaoqiong v China Medical Technologies, Inc*¹⁸ and *PT Gunung Madu Plantations v Muhammad Jimmy Goh Mashun*,¹⁹ noted the risk of gridlock in transnational fraud cases, and

15 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95; *Allenger, Shiona v Pelletier, Olga* [2022] 3 SLR 353.

16 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [25]–[27].

17 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [112].

18 [2019] 2 SLR 595.

19 [2018] 4 SLR 1420.

suggested that any change would have to come from legislation or the Court of Appeal.²⁰

17 For completeness, the Mareva injunction in *Allenger* was ultimately sustained because a substantive Singapore claim under s 73B of the Conveyancing and Law of Property Act²¹ tethered the action to Singapore – the injunction was therefore not free-standing. This contrasts with *Xu Xiangrong*, where a free-standing injunction under s 4(10A) of the CLA was sought and the court accepted sufficient connections to Singapore.

18 Together, *Xu Xiangrong* and *Allenger* reveal an uncomfortable procedural tension. An applicant's ability to obtain a free-standing injunction may be practically constrained by the difficulties in obtaining permission to serve out of jurisdiction. This undermines the very *raison d'être* of the legislative amendment: to empower the courts to grant free-standing injunctions.

19 It is therefore worthwhile considering whether the traditional *Spiliada* test for *forum conveniens* should be departed from, or at least modified, in the context of s 4(10A) Injunctions.

III. Re-thinking the *forum conveniens* requirement

A. The case for departing from the *forum conveniens* requirement

20 The argument for dispensing with the *forum conveniens* requirement is that it is structurally incompatible with s 4(10A) of the CLA. If the injunction is in aid of *foreign* proceedings, the starting premise is that the substantive dispute has no connection to Singapore. Retaining a connecting-factor analysis effectively undermines the very purpose of the provision.

21 On this approach, service out of jurisdiction for a s 4(10A) Application ought to be permitted so long as: (a) the relevant

20 *Allenger, Shiona v Pelletier, Olga* [2022] 3 SLR 353 at [124]–[147] and [154].

21 Cap 61, 1994 Rev Ed.

“jurisdictional gateway” is satisfied (in this case, para 63(3)(a) or 63(3)(b) of SCPD 2021); and (b) there is a serious question to be tried on the merits. The question is whether this would strip the defendant of procedural safeguards by permitting the Singapore courts to assume jurisdiction without adequate justification.

22 As Andrew Ang SJ observed in *Allenger*:²²

Having considered the submissions and authorities at great length, I find these arguments advanced by the Plaintiff to be eminently persuasive. *I would have been inclined to adopt its submission that the requirement for forum conveniens would not be necessary in situations such as the present*, in particular where transnational fraud is alleged and the principles of territoriality are, as it were, being exploited by the alleged fraudster. The obstacle to that, however, is that the change advocated for by the Plaintiff is one that is directly at odds with the observations of the Court of Appeal in *Bi Xiaorong v China Medical Technologies, Inc* [2019] 2 SLR 595]. [emphasis added]

B. The case for retaining the forum conveniens requirement

23 The case for retention rests principally on procedural safeguards. Before the court exercises jurisdiction over a foreign defendant through an injunction, it should be satisfied that it has *in personam* jurisdiction over that defendant. The importance of *in personam* jurisdiction is underscored in *PT Gunung Madu Plantations v Muhammad Jimmy Goh Mashun*,²³ and *Allenger*.²⁴

24 The warnings of Tan SJ in *Xu Xiangrong* are instructive. As a procedural safeguard, an applicant should be required to show that Singapore is the appropriate forum, ensuring the court has some basis for asserting jurisdiction,²⁵ lest its processes be abused.

25 The *forum conveniens* requirement also preserves the foreign defendant’s procedural right to challenge jurisdiction. In *Xu Xiangrong*, the court treated *forum conveniens* as the

22 *Allenger, Shiona v Pelletier, Olga* [2022] 3 SLR 353 at [142].

23 [2018] 4 SLR 1420 at [49]–[50] and [61]–[63].

24 *Allenger, Shiona v Pelletier, Olga* [2022] 3 SLR 353 at [130].

25 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [48].

doctrinal safeguard against extraterritorial jurisdiction without proper justification. The force of this reasoning should not be lightly dismissed: Jurisdiction freely asserted is jurisdiction easily abused.

IV. A middle path: recalibrating the standard of “connection” to Singapore

26 This article argues that procedural safeguards should not be abandoned. The defendant must retain the ability to challenge the Singapore court’s exercise of jurisdiction. To that end, some requirement to demonstrate a connection between the application and Singapore should be maintained.

27 However, given the unique character of free-standing injunctions in aid of foreign proceedings, the standard for establishing that connection ought to be reconsidered. Rather than requiring the claimant to satisfy the stringent *Spiliada* standard demonstrating that Singapore is *the* natural forum, it should suffice for the claimant to show that there are *some* valid connecting factors pointing towards Singapore such that the exercise of jurisdiction under s 4(10A) of the CLA is appropriate.

28 Any procedural challenge brought by the defendant would then focus on whether the connecting factors relied upon by the claimant make it sufficiently appropriate for the Singapore courts to exercise their jurisdiction under s 4(10A) of the CLA, which presents a more calibrated inquiry than the traditional *Spiliada* analysis.

29 An alternative to wholesale abolition is therefore to modify the *forum conveniens* requirement in the context of s 4(10A) of the CLA: retain some connecting-factor analysis, but lower the threshold. Rather than requiring the claimant to demonstrate that Singapore is *the* natural forum under the full rigour of *Spiliada*, it should be sufficient to show *some* valid connecting factors with Singapore (as the respondent’s assets being located here, or the Singapore court’s coercive powers being capable of practically enjoining the defendant), enough to

make it appropriate for the court to exercise jurisdiction under s 4(10A) of the CLA.

30 This recalibrated standard would preserve the core function of the *forum conveniens* inquiry, as a check against the unwarranted extraterritorial exercise of jurisdiction, without imposing a test that is, by design, potentially difficult or impossible to satisfy in the context of s 4(10A) of the CLA.

31 Turning to implementation, as Ang SJ points out in *Allenger*, two potential avenues present themselves:

- (a) legislative amendment to the ROC 2021 or the SCPD 2021, which would provide certainty but requires parliamentary intervention; or
- (b) incremental judicial development, which is more flexible but risks certainty and inconsistency. Several subsidiary questions arise: What would constitute a *valid* connecting factor? What threshold of connection should suffice?

32 Relatedly, it should also be considered which of the two avenues (legislative or judicial) offers the more practical and satisfactory path forward.

33 In the author's humble view, incremental judicial development is the preferable path. The courts are well placed to determine, case by case, the level of "connection" to Singapore required for the court to be considered an "appropriate court"²⁶ and to assume jurisdiction for the purposes of issuing a free-standing injunction.

34 It is crucial to recognise that the SCPD 2021 is, by definition, "only intended to regulate court practice and procedure".²⁷ They do not have the force of law,²⁸ and there is

26 Rules of Court 2021 O 8 r 1(1) and O 8 r 1(2).

27 Ian Mah & Aaron Yoong, *Service Out Under the New Rules of Court* (2023) 35 SAcLJ 174, at para 34.

28 Jeffrey Pinsler SC, *Singapore Court Practice* (LexisNexis, 2026) at para 8.1.3; Ian Mah & Aaron Yoong, *Service Out Under the New Rules of Court* (2023) 35 SAcLJ 174 at para 34, citing *BNP Paribas v Polynesia Timber Services Pte* (cont'd on the next page)

no technical requirement to demonstrate *forum conveniens* for the purpose of service out of jurisdiction. Whether to grant permission to serve out remains within the court's discretion.

35 Consistent with the Civil Justice Commission's 2017 report, it is submitted that the courts can, in determining a service-out application pursuant to O 8 r 1(1) and O 8 r (2)(a) of the ROC 2021, take a "much broader, all-encompassing inquiry"²⁹ to determine whether the Singapore court is an "appropriate court" to assume jurisdiction for the purpose of issuing a free-standing injunction.

36 This approach would allow the courts to incrementally identify the connecting factors that make the Singapore court an "appropriate court", without exhaustively foreclosing new or relevant types of connecting factors depending on the circumstances. It would give practical bite to the court's power to issue free-standing injunctions.³⁰

V. Conclusion

37 The interplay between service out of jurisdiction and s 4(10A) Injunctions exposes a latent tension in Singapore's procedural framework. The *forum conveniens* requirement under the SCPD 2021 has the potential to constrain the utility of free-standing injunctions in aid of foreign proceedings. A recalibrated approach, one that retains procedural safeguards while acknowledging the distinctive nature of s 4(10A) Applications, merits serious consideration.

Ltd [2002] 1 SLR(R) 539 at [37]; *Odex Pte Ltd v Pacific Internet Ltd* [2008] 3 SLR(R) 18 at [29]–[30]; and *Tan Hup Yuan Patrick v The Griffin Coal Mining Co Pty Ltd* [2014] 4 SLR 221 at [15].

29 Ian Mah & Aaron Yoong, *Service Out Under the New Rules of Court* (2023) 35 SAclJ 174 at para 35, citing the Civil Justice Commission, *Civil Justice Commission Report* (29 December 2017) at p 16.

30 As forewarned in *Allenger, Shiona v Pelletier, Olga* [2022] 3 SLR 353 at [136]–[142], where the requirement to show *forum conveniens* was exploited by the alleged fraudster.