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8. CIVIL PROCEDURE

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I. Service out of jurisdiction under Order 11 rule 1

8.1 In *Man Diesel & Turbo SE v IM Skaugen SE*,[1] the appellants had applied to set aside the service of originating process out of jurisdiction under O 11 of the Rules of Court[2] on the basis that Singapore was not *forum conveniens*. The appellants sought leave to adduce affidavits that explained developments that occurred after the High Court decision below, while the respondent sought leave to adduce affidavits in response. The affidavits sought to be adduced pertained to whether Singapore would be the appropriate forum. Of the three *Ladd v Marshall*[3] requirements (non-availability, relevance and credibility), only relevance was at issue.

8.2 The Court of Appeal noted that prior to this case, it had yet to make an authoritative pronouncement on the issue of whether the court was entitled to take into account subsequent developments after the decision below. The Court of Appeal endorsed the holdings of the High Court that the court is entitled, during a setting aside of service application, to take into account subsequent events after obtaining *ex parte* leave.

8.3 The Court of Appeal then held that a court hearing an appeal in relation to a setting aside of service application is able to take into account subsequent developments after *ex parte* leave to serve out of jurisdiction was granted. The Court of Appeal gave three main reasons why a court is entitled to take this approach.

8.4 First, as a matter of principle, this approach would further the purpose of the doctrine of *forum non conveniens*, which is to locate the jurisdiction where the case may be tried more suitably for the interest of all parties and the ends of justice. Therefore, when a court is considering

1 [2020] 1 SLR 327.
2 Cap 322, R 5, 2014 Rev Ed.
3 [1954] 1 WLR 1489.

whether Singapore is the more appropriate forum, the court has to consider the forum with the most real and substantial connection at the material time, and not at the time of the previous hearing.

8.5 Second, this approach promotes coherence and consistency in the law. The Court of Appeal found that there was no reason in principle why subsequent developments can be taken into account for stay applications but not for O 11 applications.

8.6 Third, this approach furthers the interest of the parties by allowing the case to be dealt with expeditiously while saving time and costs. Lastly, the Court of Appeal also noted that only subsequent developments that are relevant to the *forum non conveniens* analysis would be taken into consideration.

8.7 As a result, the Court of Appeal allowed the admission of the affidavits of both parties.

8.8 The Court of Appeal also held that in determining whether there is a good arguable case that the claims fell under O 11 r 1, a court should not view distinct claims as a single aggregate claim but should treat the distinct claims separately. This meant that the court should assess whether each of the claims, standing alone, would have satisfied the jurisdictional gateways in O 11 r 1.

8.9 The case involved four successive ship owners which owned the vessels at different time periods. The ship owners assigned their claims against the appellants to the respondents. Two of the ship owners were Singapore-incorporated entities while the other two ship owners were not. The Court of Appeal held that only the claims from the two ship owners who were Singapore-incorporated entities satisfied O 11 r 1(*f*)(ii) while the other two ship owners' claims did not. Accordingly, since each claim had to be treated separately, only two of the claims met the jurisdictional gateways in O 11 r 1.

8.10 Lastly, the Court of Appeal also held that in determining where a cause of action arose for the purposes of O 11 r 1(*p*), the court should apply the "substance test", which is where in substance the cause of action arose. The Court of Appeal noted that this test had been applied by the High Court in *Nippon Catalyst Pte Ltd v PT Trans-Pacific Petrochemical Indotama*[4] and was also implicit in the Court of Appeal decision of *JIO Minerals FZC v Mineral Enterprises Ltd*.[5]

4 [2018] SGHC 126.
5 [2011] 1 SLR 391.

8.11 In coming to its holding, the Court of Appeal found that the case of *Distillers Co (Biochemicals) Ltd v Laura Anne Thompson*[6] stood for the "substance test" and not a separate plaintiff-centric "cause of complaint test", which the Court of Appeal considered to be a "false dichotomy".

II. Continued prosecution of claim in light of offer to settle

8.12 In *TMT Asia Ltd v BHP Billiton Marketing AG (Singapore Branch)*,[7] the appellant appealed against the decision of the High Court where the respondents had successfully struck out the appellant's claim on the ground of abuse of process. The respondents had made a settlement offer which would give the appellant all the reliefs it had sought but without admission of liability. This was not accepted by the appellant.

8.13 The Court of Appeal found that had the appellant accepted the offer, it would have received all the reliefs sought and that there was no practical benefit to be gained from continuing the action. The court then found that the appellant's continuation of the action was for a collateral purpose.

8.14 The Court of Appeal held that seeking vindicatory relief from a formal finding of liability in the face of an open offer to agree all reliefs would only be justified in "very special circumstances". The court provided the example of a grave defamation where the defendant pleads justification but subsequently makes an offer to pay damages. In such a situation, if the plaintiff may suffer serious practical consequences from the defamation, the plaintiff should be allowed to continue with the action in order to vindicate the plaintiff's reputation completely at trial.

8.15 On the facts, the Court of Appeal held that the appellant's action was not considered a very special circumstance. Accordingly, the court did not allow the appellant to carry on with its action as it was an abuse of process, given that there would be no practical benefit to be gained from proceeding to trial.

III. Applicability of the *Riddick* principle for criminal investigation purposes

8.16 In *Amber Compounding Pharmacy Pte Ltd v Lim Suk Ling Priscilla*,[8] the plaintiffs sought to use documents, seized from the

6 [1971] AC 458.
7 [2019] 2 SLR 710.
8 [2019] SGHC 269.

defendants under a search order, for the purposes of making reports to law enforcement authorities in Singapore.

8.17 The High Court had to consider the *Riddick*[9] principle which provides that there is an implied undertaking owed to the court that a discovering party will not use a discovered document for any purpose other than pursuing the action in which discovery is obtained. The *Riddick* undertaking may be released or modified by a court where the *Beckkett*[10] conditions are met. The *Beckkett* conditions are that (a) there must be cogent and persuasive reasons for the request; and (b) the release must not give rise to any injustice or prejudice to the party who had given discovery.

8.18 No previous Singapore case had previously considered the applicability of the *Riddick* principle for criminal investigation purposes.

8.19 The High Court held that leave of court is required for the *Riddick* undertaking to be released or modified, even if the documents are to be disclosed for criminal investigation purposes. This is because of the potential serious consequences which may weigh against the party who had given discovery, as well as the fact that the implied undertaking is owed to the court and can only be modified by the court.

8.20 The High Court held that the *Riddick* principle continues to apply where disclosure is sought for criminal investigation purposes. The court added that the *Beckkett* conditions must also be satisfied and there must be special or exceptional circumstances. When conducting the balancing exercise, a court can take into account factors including the nature and severity of the potential offence, the cogency of the evidence sought to be adduced, and the prejudice that may be occasioned to the respondent from the disclosure. These factors encapsulate the considerations when determining if there is a greater public interest or policy to justify lifting the *Riddick* undertaking.

8.21 The High Court then held that the second *Beckkett* condition is modified when the disclosure is for criminal investigation purposes. This is because the mere exposure to investigation for possible offences does not, without more, amount to injustice or prejudice under the second *Beckkett* condition. If this were not the case, then an application to be released from the *Riddick* undertaking for criminal investigation purposes would never succeed. The court noted that there is a public interest in the prosecution of serious offences which may amount to exceptional

9 *Riddick v Thames Board Mills Ltd* [1977] 1 QB 881.
10 *Beckkett Pte Ltd v Deutsche Bank AG* [2005] 3 SLR(R) 555.

circumstances that justify lifting or modifying the *Riddick* undertaking. Furthermore, the High Court also held that a court has the power to retrospectively grant leave for disclosure, although this discretion would be exercised in rare circumstances.

8.22 On the facts, the *Beckkett* conditions were satisfied because the offences of making a false declaration to obtain an S-Pass and employing a foreign employee without a valid work pass were of a serious nature. This meant that the public interest in the prosecution of these offences would outweigh the public interest of upholding the *Riddick* undertaking. Furthermore, the lack of alternative civil remedies, the lack of material prejudice beyond a potential investigation into the defendant, and the cogency of the evidence all weighed in favour of allowing disclosure.

8.23 There were also other alleged offences for which lifting the *Riddick* undertaking was sought. However, the High Court disallowed these. First, the court found that mischief was generally not a serious offence, and the messages were not cogent evidence. Second, while corruption was a serious offence, the severity of the situation was not clear on the evidence and there was an adequate civil remedy for the plaintiffs through damages or an account of profits. Lastly, while offences under the Computer Misuse Act[11] had a wide range of culpability, on the facts there was other evidence available beyond the discovered documents. Furthermore, the plaintiffs had an adequate civil remedy.

IV. Power to grant Mareva injunction in aid of foreign proceedings

8.24 In *Bi Xiaoqiong v China Medical Technologies, Inc*,[12] the respondent had been granted a Mareva injunction at the High Court below. The appellant appealed against the granting of a Mareva injunction against her on the basis that the court did not have the power to grant the Mareva injunction where the plaintiff (respondent) had taken out foreign proceedings for the same cause of action and intended to pursue its substantive remedy using the foreign proceedings in Hong Kong.

8.25 The five-judge Court of Appeal noted that in previous cases, some members of the Court of Appeal have held differing views on the extent of the court's power to grant Mareva injunctions in support of foreign court proceedings. This decision is therefore a significant one.

11 Cap 50A, 2007 Rev Ed.
12 [2019] 2 SLR 595.

8.26 The Court of Appeal began by highlighting that its decision would be based on the specific factual context of this case. Briefly, the court highlighted that a "Mareva injunction in aid of foreign court proceedings" on the facts referred to a situation where (a) the respondent has a recognised cause of action against the appellant in Singapore; (b) the Singapore court has *in personam* jurisdiction over the appellant; and (c) the cause of action is one that has been pursued in actual proceedings. The foreign element was stated to arise because the respondents intended to pursue the same cause of action against the appellant in Hong Kong, and the Mareva injunction sought was to restrain the disposal of assets in Singapore so as to aid the enforcement of a Hong Kong judgment against the appellant.

8.27 The Court of Appeal held that s 4(10) of the Civil Law Act[13] does confer the power to grant Mareva injunctions, including those in support of foreign court proceedings. The Court of Appeal found that this was supported by an interpretation of the broad language of the text of s 4(10) as well as the legislative purpose of the provision. The legislative purpose was to facilitate the concurrent administration of the common law and equity, and therefore preserve the power of the court to grant injunctions.

8.28 The Court of Appeal then went on to consider whether granting Mareva injunctions in aid of foreign court proceedings was precluded by other restrictions upon the court's power. The Court of Appeal noted that the court's power was subject to two established conditions: (a) the jurisdiction requirement (that the court must have *in personam* jurisdiction over the defendant); and (b) the cause of action requirement (that the plaintiff must have a reasonable accrued cause of action against the defendant in Singapore). The issue on appeal was whether there was a third condition to be met: the forum requirement (whether the cause of action must terminate in a judgment rendered by the court issuing the injunction).

8.29 After considering a wide range of divergent case law across various jurisdictions, the five-judge Court of Appeal held that there was no need for the forum requirement to be met in order for a court to grant a Mareva injunction.

8.30 The Court of Appeal found that this was because the court retained a residual jurisdiction over an underlying cause of action, even where a stay of that action was sought. The court noted that stayed proceedings were temporarily halted and left open the possibility of being revived. Until such time, the action remained "alive though asleep". Therefore, on

13 Cap 43, 1999 Rev Ed.

the facts, even though the respondents were pushing for the dispute to be resolved finally in Hong Kong and even though there was a possibility that no judgment would eventually be granted by a Singapore court, this was merely a possibility and not an unmitigated fact of absolute certainty.

8.31 Furthermore, the Court of Appeal noted that a Mareva injunction in aid of foreign proceedings is ultimately still premised on, and in support of, proceedings in Singapore. The intention of a plaintiff to employ the Mareva injunction to aid foreign court proceedings, by ensuring that there are assets in Singapore to enforce the foreign judgment against, does not affect the juridical basis of the Mareva injunction. A court's power to grant the Mareva injunction continues to depend on whether the court has jurisdiction over the substantive cause of action before the Singapore court.

8.32 The Court of Appeal noted that a party's intentions can have no bearing whatsoever on the extent of the court's powers, and the existence of the court's powers does not depend on a party's intentions. However, the intentions of the plaintiff can have a bearing on how the court would exercise its power, but not on its existence.

8.33 The Court of Appeal held that, on the facts, it was appropriate to exercise its power and grant a Mareva injunction against the appellant. This was because (a) the respondents had a good arguable case on the merits of their claim; (b) there was a real risk of dissipation of assets by the appellant; and (c) there was no inordinate delay by the respondents, which meant that the application was not an abuse of process. However, the Court of Appeal cautioned that if the plaintiff has no intention of pursuing an action in Singapore at all and wants a "free standing injunction" for collateral purposes (as opposed to merely preserving its right to pursue an action in Singapore as a matter of case management, which was the situation on the facts) then the court should not exercise its power to grant a Mareva injunction.

V. Factors for leave to extend time for an offshore decision application in the Singapore International Commercial Court

8.34 In *AKRO Group DMCC v Discovery Drilling Pte Ltd*,[14] the defendant sought to be represented by a registered foreign lawyer. In order for the registered foreign lawyer to appear on the defendant's behalf, there needed to be a decision that the proceedings were an "offshore

14 [2019] 4 SLR 222.

case". Therefore, the defendant brought applications for an extension of the time within which they could bring an application for an offshore decision to be made.

8.35 The Singapore International Commercial Court ("SICC") noted that an application for a decision that the action was an offshore case should have been made within 28 days of the close of pleadings under O 110 r 36. The SICC also noted that the court has the power to extend the time within which to bring an application for a decision that the action is an offshore case. The SICC held that the nature of the claims; the need that gave rise to the application (namely, a dispute with the defendants' lawyers); and the procedural history of the matter were important matters to be taken into account. The conduct of the parties, complexity of the claim, and importance of the matter would also be taken into consideration.

8.36 On the facts, the SICC granted the leave to extend the time within which the defendant could bring an application for an offshore decision to be made. The SICC noted that the defendant became aware of the necessity for an offshore decision when its Singapore lawyers were granted leave to withdraw and the defendant sought to retain a registered foreign lawyer to represent it. When the defendant became aware that an offshore decision was necessary, it acted promptly and diligently in applying for an extension of time to bring the application for an offshore decision. Furthermore, the plaintiff made no appearance and did not take part in the proceedings after the defendant made allegations of fraud and conspiracy – factors that the SICC also took into account.

VI. No requirement for leave to appeal disclosure orders in a creditors' winding up

8.37 In *Taylor, Joshua James v Sinfeng Marine Services Pte Ltd*,[15] the defendants in each matter sought a declaration that it did not require leave to appeal to the Court of Appeal against disclosure orders made pursuant to s 285 of the Companies Act.[16] The plaintiffs were liquidators of Coastal Oil Singapore and had successfully obtained disclosure orders against the defendants, which sought to appeal these orders.

8.38 The High Court declared that the defendants did not need leave to appeal against the disclosure orders. The High Court noted that leave to appeal was required where the subject matter of the appeal related to

15 [2019] SGHC 248.
16 Cap 50, 2006 Rev Ed.

an interlocutory application. The High Court also noted the Court of Appeal decision in *Pricewaterhousecoopers LLP v Celestial Nutrifoods Ltd*[17] ("*Nutrifoods*"), which held that disclosure orders under s 285 of the Companies Act were interlocutory orders.

8.39 However, the High Court found that the decision in *Nutrifoods* was made in the context of ongoing compulsory winding-up proceedings, which were materially different from a creditors' voluntary winding-up. This was because there would be no ongoing winding-up proceedings in a creditors' voluntary winding-up situation. Therefore, the court found that a s 285 application in such a situation was more akin to an application for pre-action interrogatories rather than an interlocutory application.

VII. Framework for adducing fresh evidence on appeal

8.40 In *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)*,[18] the appellant argued that the respondent's quantification of a debt was wrong because its valuation of the global depository receipts was unreasonable. The appellant filed a summons for leave to adduce fresh evidence in the form of a valuation report prepared by Deloitte, which allegedly showed that the global depository receipts were worth much more than the respondent's valuation.

8.41 The Court of Appeal developed a framework to provide guidance in future cases, namely, a two-step analysis when dealing with an application to adduce fresh evidence on appeal. This analysis deals with the *Ladd v Marshall* requirements and how they should be applied in different situations.

8.42 In the first stage, a court should consider the nature of the proceedings below and evaluate the extent to which it bears the characteristics of a full trial, or whether it more closely resembles an interlocutory appeal. In appeals against a judgment after a trial or a hearing bearing the characteristics of a trial, the interests of finality assumed heightened importance, and a court should apply the *Ladd v Marshall* requirements with its full rigour, subject to the second stage. On the other hand, in interlocutory appeals or appeals arising out of hearings that lack the characteristics of a trial, a court would remain guided by the *Ladd v Marshall* requirements although it is not obliged to apply it strictly.

17 [2015] 3 SLR 665.
18 [2019] 2 SLR 341.

8.43 In the second stage, if a court finds under the first stage that the *Ladd v Marshall* requirements are to be applied strictly, then the court should then determine if there are any other reasons why the *Ladd v Marshall* requirements should be relaxed in the interests of justice. The Court of Appeal found that such cases broadly fell into three categories: (a) where the new evidence reveals a fraud perpetrated on the trial court; (b) where the applicant was prevented from adducing fresh evidence at the hearing in circumstances, which amounted to a denial of natural justice; and (c) where the subject matter of the dispute engenders interests of particular importance to the litigant or society at large. In these categories, the court should determine whether the *Ladd v Marshall* requirements should be relaxed in the particular circumstances of the case so as to achieve justice on the facts.

8.44 In the final analysis, the court is in every instance conducting a balancing exercise between the interests of finality of proceedings and the entitlement of a successful respondent to rely on a judgment in his favour on the one hand, and the right of an applicant to put forth relevant and credible evidence to persuade the appellate court that the justice of the case lies with him.

8.45 The Court of Appeal also adopted its comments from *Public Prosecutor v Mohd Ariffan bin Mohd Hassan*[19] and stated that these were relevant to civil cases as well. Therefore, a court would need to consider the proportionality of allowing the application and admitting the further evidence, which requires assessing the balance between the significance of the new evidence on the one hand, and the need for swift conduct of litigation as well as any prejudice that might arise from the additional proceedings. In assessing proportionality, the court would consider factors such as whether the evidence sought to be adduced could be addressed by the respondent by way of a reply affidavit and whether any prejudice caused to the respondent could be compensated by costs. This is contrasted against the inquiry as to whether the interests of the applicant would be irreparably harmed should the application be refused.

8.46 On the facts, the Court of Appeal found that in light of the nature of the proceedings below, the criterion of non-availability under *Ladd v Marshall* ought not to be strictly applied in the present case. While winding-up hearings were on substantive merits, they did not bear the characteristics of a full trial. This was because there was limited taking of evidence and any evidence was purely by affidavit without oral evidence or cross-examination of witnesses. Winding-up hearings also involved compressed timelines with limited time for parties to refine their cases.

19 [2018] 1 SLR 544.

Furthermore, the Deloitte report was relevant to the appeal. Lastly, the considerations of proportionality prevailed because the winding-up of a company was draconian and largely irreversible, whereas allowing the Deloitte report to be adduced would not cause any prejudice that could not be compensated by a costs order.

VIII. Relation between Singapore judgment enforceability and the examination of judgment debtor process

8.47 In *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd*,[20] the respondent had obtained an arbitration award against the appellant, and a Singapore judgment to enforce the award in Singapore. However, the Maldivian courts declined to enforce the arbitration award. In relation to the examination of judgment debtor process in Singapore, the appellant sought to have questions relating to its assets in the Maldives disallowed on the basis that the Singapore judgment was not enforceable there.

8.48 The High Court held that questions relating to assets in a jurisdiction where a Singapore judgment could not be enforced could properly be asked as part of examination of judgment debtor proceedings. The court held that O 48 r 1(1) of the Rules of Court stipulated that once a judgment or order for payment was made, the court could order an oral examination be made on any property, wherever it might be situated. This was to allow information to be obtained to allow the judgment creditor to determine how to enforce the judgment or order. Therefore, The High Court held that the examination of judgment debtor process was not constrained by whether the Singapore judgment being enforced was recognised or enforceable in the jurisdiction where the assets are located. This process is also not delineated by the type of property or its location.

8.49 The High Court noted that its decision was consonant with the purpose of the examination of judgment debtor process as well as the Court of Appeal decision in *PT Bakrie Investindo v Global Distress Alpha Fund I Ltd Partnership*,[21] where it was held that examination of judgment debtor proceedings does not involve execution but only information gathering. The court also noted that it was departing from the long-standing authority of *Indian Overseas Bank v Sarabjit Singh*,[22] where it was held that enforceability in the jurisdiction of the assets was

20 [2019] SGHC 291.
21 [2013] 4 SLR 1116.
22 [1990] 3 MLJ xxxi.

a requirement for questioning to be allowed in examination of judgment debtor proceedings.

8.50 As a result, the High Court dismissed the appeal and allowed the questions relating to assets in the Maldives, where the Singapore judgment would not have been enforceable in.

IX. Setting aside a final garnishee order

8.51 In *Harmonious Coretrades Pte Ltd v United Integrated Services Pte Ltd*,[23] the appellant appealed against the decision of the High Court setting aside a final garnishee order that the appellant had obtained against the respondent. The respondent had successfully set aside the final garnishee order on the ground that the debt which it owed to the third party was extinguished due to a superseding adjudication determination.[24] A key issue on appeal was whether the court had the inherent power to set aside a final garnishee order.

8.52 The Court of Appeal held that the courts retained a residual discretion to set aside a judgment or court order so as to prevent injustice, and noted the three circumstances in which a court could set aside a judgment or order of court as set out in *Ong Cher Keong v Goh Chin Soon Ricky*.[25] The final garnishee order did not fall into any of the three circumstances. The court then found that it retained the residual discretion to set aside the final garnishee order because O 92 r 4 of the Rules of Court preserves the inherent powers of the court. This is the first case where the Court of Appeal has recognised that the court has the inherent power to set aside a final garnishee order in circumstances where it is needed to prevent injustice.

8.53 The Court of Appeal cautioned that this inherent power was not a licence for litigants to make frivolous applications to set aside judgments or court orders and it should never become a back-door appeal or an opportunistic attempt to relitigate the merits of a case.

8.54 On the facts of the case, the Court of Appeal found that the second adjudication determination did not supersede the first one. Each adjudication determination was enforceable independently in their own right unless or until impugned on the grounds provided in legislation. Accordingly, the Court of Appeal held that the debt created by the first

23 [2019] 1 SLR 206.

24 The adjudication determination was made under the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed).

25 [2001] 1 SLR(R) 213 at [44]–[46].

adjudication determination was not extinguished; therefore, there was no injustice because the respondent would in fact be paying a debt that it owed if the final garnishee order were enforced. Furthermore, the Court of Appeal also held that the fact that the third party to whom the debt was owed was insolvent did not result in any injustice.

X. Cost awards in the Singapore International Commercial Court

8.55 In *B2C2 Ltd v Quoine Pte Ltd*,[26] the plaintiff sought recovery of costs and disbursements from the main action[27] on a generous measure while the defendant submitted that the cost guidelines in Appendix G to the Supreme Court Practice Directions remained relevant. The main action had been transferred from the High Court to the SICC and at the time of the transfer, parties had indicated that the SICC costs regime under O 110 r 46 would apply and not O 59 which applied to High Court proceedings.

8.56 The SICC noted that different policy considerations underlie litigation in the SICC, whose cases normally involve commercial entities with disputes of an international dimension. While the social policy of enhancing access to justice underlies the approach to assessing reasonable costs, other polices are also at play. A successful commercial litigant should not be out of pocket if it has prosecuted its claim or defence sensibly and without enhancing the cost of litigation oppressively. The SICC held that O 110 r 46 of the Rules of Court and para 152 of the SICC Practice Directions indicate that a successful litigant can expect to receive reasonable compensation for the expenditure that they have properly incurred, noting that proportionality of the costs to the value of the claim was also relevant.

8.57 While the court retains a discretion to take Appendix G into consideration in an appropriate case, it will be rare for this to be done to any great extent where there has been a specific order that O 110 r 46 and not O 59 of the Rules of Court would apply. This is because it is inconsistent with an order that O 110 r 46 applies for any significant weight to be attached to Appendix G. If the costs are considered to be commercially reasonable, it should not be modified by reference to Appendix G.

26 [2019] 5 SLR 28.
27 [2019] 4 SLR 17.

8.58 On the facts, there was an order that O 110 r 46 should apply with no mention of Appendix G. The SICC therefore held that it was not appropriate for any material weight to be placed on Appendix G when awarding costs to the plaintiff.