Feedback by a Group of Small Law Practices
On the Recommendations by
the Civil Justice Review Committee (CJRC) & the Civil Justice Commission (CJC)

Preamble

1. We are a group of small law practices[1] that are: (a) members of a 'best-friends' network of law practices, accountants, private investigators and counsellors known as PracticeForte Advisory; and/or (b) members of SAL's FLIP. We welcome the opportunity to give feedback on the Recommendations by the CJRC and CJC.

2. We agree with the aims of the Recommendations to modernise Singapore's civil litigation process to enhance its efficiency and simplify procedures while ensuring fairness and justice to all litigants. While the Recommendations are wide-ranging and ambitious, we express three notes of caution.

3. First, it is very difficult to foresee all 'on-the-ground' consequences of the Recommendations. Thus, rather than a one-time transformational change, we believe that incremental changes or pilot programmes would be better ways forward. This will also give rise to better certainty in Singapore's litigation process and give confidence to both Singapore's domestic litigants and potential international litigants that Singapore wishes to attract to our international litigation hub.

4. Second, because of the aforesaid difficulty in foreseeing the consequences of the reforms, we fully support the need for a review mechanism to assess the impact of the reforms two years post their implementation.

5. Third, the Recommendations envisage a 'default track' that would apply to most civil litigation cases. 'Special cases' will be the exception. Without case law to guide parties, some other form of guidance should be provided as to what factors are taken into consideration when determining such special cases.

6. With these three general comments in mind, our specific feedback on the Recommendations are as follows.

Feedback on Recommendations (following the paragraph numbers in Annex A):

Subject	Feedback
A. General Matters	
Para 25 - Limited ability to extend time by consent	(a) Often when parties are persuaded to explore mediation as a means to resolve their dispute, parties would like the litigation process to be suspended while mediation is taking place. The purpose is generally two-fold: to save costs and as an indication of goodwill.

[1] The names of the law practices are listed in Annex A.

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	(b) The ability for parties to extend time by consent for the next step because parties are exploring mediation should be allowed.
C. Amicable Resolution of Cases	
Para 30 - Resolving disputes amicably	(a) We agree that parties must be encouraged to resolve their disputes amicably, preferably before an action is commenced in court. Having pre-action protocols in place will focus parties (and lawyers) minds on this.
D. Commencement of Proceedings	
Para 38 - Duration of originating processes reduced to 3 months with 2 extensions of 3 months each except in special cases.	(a) Should make clear that such 'special cases' include situations where the originating processes is to be served outside jurisdiction and the timeline for service is not within control of the Singapore party. One example is in jurisdictions where private service agents are not permitted.
Para 41 - Must serve Claim with 14 days in Singapore and 28 days outside Singapore	(a) Should make clear that in 'special cases', the time for service can be extended. Such 'special cases' include situations where the originating processes is to be served outside jurisdiction and the timeline for service is not within control of the Singapore party. One example is in jurisdictions where private service agents are not permitted.
Para 45 - Bare defence not submission to jurisdiction	(a) Rather than allow a party to file a bare defence, to do away with the principle that a party by 'taking a step' in the action is deemed to have submitted to the jurisdiction of the courts. Instead, require the party to file an application opposing jurisdiction within a period of time, say 21 days after notice of intention to contest. If no such application is made within the said time, then any objection to jurisdiction is waived. A court can extend the time for such an application.
F. Case Conference	
Para 58 - CMC to be handled by a docketed trial judge	(a) If the issues are procedural in nature, to have CMC before the docketed trial judge may not be the most effective use of judicial resources. This is especially so in the State Courts where the volume

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	of cases is significantly higher than in the High Court. (b) Where appropriate, in addition to face-to-face CMCs, CMCs can be conducted either by: (i) telephone conferencing; (ii) video conferencing; (iii) email exchanges. Where appropriate, the case note or the list of issues can be in a form similar to a Redfern schedule.
Para 60/61 - When CMCs should be scheduled.	(a) Preference is to have CMCs scheduled at key points throughout the litigation process. (b) We suggest that the first CMC should take place soon after all pleadings are filed.
Para 64 - Lead Counsel to attend CMCs	(a) Junior lawyers now often attend PTCs. The requirement for Lead Counsel will limit opportunities for junior lawyers to appear in court. Although at present PTCs are mainly procedural in nature, they are still an opportunity for junior lawyers to learn some court skills. (b) To require Lead Counsel to attend may escalate rather than reduce the cost of litigation. (c) To allow for junior lawyers, who must be properly briefed about the case, to attend some CMCs. Lead Counsel should still attend key CMCs.
iii. Single interlocutory application	
Para 71 - Single interlocutory application only unless court otherwise approves	(a) The single interlocutory application is envisaged to be an enhanced summons for directions with the party marking out the potential applications in that single form. This may not be feasible in practice. Often it is not possible to determine what applications are necessary at early stages in the litigation process. Further, the dynamics of litigation often result in a party's case evolving in response to many factors such as emerging evidence or changing positions of the opposing party. If parties are forced to only make one application in most situations, it is likely that they will include all possible permutation of matters in that single application only to drop the irrelevant ones as the case progresses. This is especially so when there are no cost penalties for interlocutory applications.

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	(b) Having only a single interlocutory application will also mean that parties will have to 'front-load' all possible considerations required for the case, anticipating pleading points and evidence that may or may not be in the custody of the opposing parties. This means increased legal research and investigation up-front translating into higher up-front costs to clients. This is especially so when it subsequently emerges that certain anticipated points never arise. (c) Our suggestion is to allow for one interlocutory application for each stage of the litigation process, ie one each for (i) the commencement stage, (ii) the pleadings stage, (iii) the discovery/evidence stage, and (iv) the stage leading up to trial. This will still encourage parties to think about the progress of their case at key points of the litigation process.
iv. Case Note	
Para 73 - Case Note at pre-trial stage before directions on evidence	(a) At present, the Lead Counsel's Statement is prepared after AEICs are exchanged when legal and factual issues are well defined. Therefore a structured document like the Legal Counsel's Statement has utility. Since the Case Note is prepared before evidence is settled, parties should be allowed flexibility when preparing case notes. Other than routine volume cases, each case is unique and standardised case note templates may not be appropriate.
G. Production of Documents	
Para 78/79/81 - No general discovery following arbitration style disclosure of documents	(a) In general, the removal of general discovery will streamline the discovery process and reduce un-necessary costs. Important documents/information can still be uncovered in any specific discovery process. (b) However, in many negligence cases or cases involving fraud, there is a serious asymmetry of evidence. A claimant may not know of relevant documents because either: (i) the documents are in the possession of the defendant; or (ii) the defendant is actively hiding or destroying the documents. In such cases, a limited form of general discovery should be retained. General discovery

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	should be allowed in such cases rather than to treat such cases as 'special cases'. (c) Even if there is no general discovery, the obligation for parties to preserve evidence, whether in their favour or otherwise, must be retained. This ensures that parties do not destroy documents before any specific discovery application can be made.
H. Expert Evidence	
Para 89 - One common expert	(a) Having one common expert can be effective only if the court settles the terms of reference or list of issues for the expert's determination and there are no controversies in the areas where expert's opinion is sought. (b) However if there is differing expert opinion and there is a need for a rebuttal opinion, then in addition to the common expert, that party will need to engage his own expert to advice on and give such rebuttal opinion. This translates to additional costs for that party, one set for the common expert and the other for his own expert. In situations where one party intends to have his own expert, to do away with the need for a common expert. (c) Care must be taken to ensure that the common expert is impartial, not just with regards to parties but also to the issues (issue bias) which he is engaged to give an opinion on. In some areas, an expert's opinion is not an 'exact science' and thus may differ from expert to expert. Having only one common expert may limit the Court's options. Thus, in situations where the area of expertise is not 'well settled', having one common joint expert should not be the default position. (d) Instead there should be a 'menu' of how expert evidence is to be introduced in court. Some examples include: (i) single joint expert; (ii) each party appointing their own expert; (iii) 'hot-tubbing' of the experts; (iv) having party's experts meet before their reports are finalised; (v) have an assessor assist the judge.

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J. Court Hearings and Evidence	
i. Court hearings	
Para 98/99 - Judge's involvement during trial	(a) In the present adversarial process, lawyers are familiar with the principle that judges are not to 'descend into the arena'. There should be clear guidelines available to lawyers so that lawyers understand what a judge can and should not do under the proposed regime.
ii. Evidence	
1. Factual witnesses	
Para 105 - Court's control of evidence from witnesses	(a) If the court is to control the necessity, scope and manner in which evidence is adduced from witnesses, then certain archaic principles like the rule in *Browne v Dunn* should be done away with or modified.
M. Reforms to Framework of Legal Costs	
Para 117 - fixed costs regime	(a) We applaud the decision to withdraw the Recommendation for solicitor-client scale costs. We reiterate that solicitor-client scale costs is a blunt instrument that fails to fully account for a number of variables in each case, namely the complexity of the case, experience and expertise of the lawyer, experience of the client with the litigation process, and the need for equality of arms. (b) We agree with the principle that party-party costs should be raised to equate to solicitor-client costs. A successful party should not be out-of-pocket for their costs. (c) Therefore, there should not be scale costs for party-party costs. If there is such a scale costs, the successful party will, in most situations, be out-of-pocket for their own costs. (d) At best, party-party scale costs might be suitable for the types of cases that are fairly homogenous as to the amount of work involved. Such cases are likely to be of lower claim quantum and are probably

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	in the practice areas of: (i) motorcar accident claims; and (ii) bank debt collection claims. (e) In such cases, it could be said that the need for transparency, better certainty of charges and access to justice trumps the negative implications of scale costs.
N. Enforcement of Judgments and Orders	
Para 121 / 123 - Private enforcement	(a) Allowing private enforcement improves time efficiency since clients do not have to wait very long for execution. However, the criteria would have to be drawn up on who can be a private enforcement officer. (b) We suggest that the following groups of persons be allowed as private enforcement officers: (i) lawyers; (ii) former court bailiffs; (iii) accountants; (iv) ex-police & enforcement officers; and (v) private investigators. These are groups already with some of the requisite skill sets to carry out enforcement processes. Training is also required to ensure that any gaps in the skill sets are addressed. (c) Further, the private enforcement officer should have the right to seek from the judgment debtor information about his assets. This right should be balanced against an over-inquisitive private enforcement officer. We suggest a modified form of the present examination of a judgment debtor ("EJD") where the questions will be by the private enforcement officer supervised by a judicial officer. The questions should not be limited to the assets of the judgment debtor at the time of the examination but can be about past assets. This will prevent any potential hiding of assets by the judgment debtor. In the appropriate situation, the judicial officer can issue a post-judgment mareva to prevent further hiding of assets. Appropriate enforcement orders (ie garnishees, seizure and sale orders etc) can also be issued immediately after the EJD.
S. Review Mechanism to Assess Implementation of Recommendations	
Para 135 - review mechanism	(a) As it is very difficult to foresee all 'on-the-ground' consequences of the Recommendations, we fully support the need for a review mechanism to assess

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	the impact of the reforms two years post their implementation.

Contact Details

7. We would be happy to provide further clarification on our feedback if it will assist the Ministry in their deliberations. Our contact details is as follows:

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ANNEX A

List of Law Practices Giving This Feedback

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2. Eden Law Corporation	(a) June Lim (b) Andrew Ohara (c) Low Seow Ling (d) Amalina Kamal
3. Stoa Law Corporation	(a) Derek Tan
4. Ong Ying Ping ESQ	(a) Ong Ying Ping (b) Chew Zijie
5. Amy Lim Law Practice	(a) Amy Lim
6. Rajan Chettiar LLC	(a) Rajan Chettiar (b) Delia Tan