

Construction Law Focus

CHAN TAN & PARTNERS

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LEGISLATION - THE APPLICATION OF ENGLISH LAW ACT 1993

General

Our colonial past have left us a significant legacy in the form of English statutes that still have application to Singapore. The scope of and applicability of certain specific statutes in relation to Singapore have often been the subject of dispute from time to time in the Singapore Courts. The Application of English Law Act 1993, passed recently in parliament, is intended to achieve 2 objectives:

1. To clarify the application of English Law, particularly English statutes, in Singapore.
2. To make our commercial law independent of future legislative changes in the United Kingdom.

The 2 objectives listed above were expressed by The Minister for Law (Prof. S. Jayakumar) during the 2nd Reading of the Bill in Parliament on 12 October 1993. The importance of this Act is considerable. There are always a number of English statutes, applicable to Singapore that are relevant to construction disputes. Some notable examples are - The Unfair Contract Terms Act 1977, The Misrepresentation Act 1967 and The Sales of Goods Act 1893. For this reason, it is proposed in this issue to examine the Act in some detail.

Application of the Common Law and Equity in Singapore

Section 3 of the Act is intended to govern the application of English common law to Singapore. It is a declaratory provision and is intended to preserve the corpus of English common law (including the principles and rules of equity) subject to modifications as the circumstances may require. It would seem that the enactment of Section 3 would not change the position much as regards the application of the common law in Singapore as the position has always been that English decisions are merely persuasive and are binding only by the force

of reason and not by the operation of stare decisis. It may, of course, be argued that English case law prior to independence may be binding. It should, however, be noted that the 2nd Charter of Justice itself nonetheless provides that the application of English Law in Singapore is subject to the special circumstances in Singapore.

There has never been any real practical difficulty experienced in Singapore as regards the application of the common law in Singapore and the Courts have always had the flexibility to tailor developments in the common law to the peculiar circumstances of Singapore. In this regard, it would seem that section 3 is enacted mainly for purposes of completeness and does not appreciably change the status quo at all.

Application of English Enactments

Sections 4 & 5 of the said Act attempts to clarify the application of English Enactments in Singapore and thus in one fell swoop remove all doubts on the question of whether any particular English Enactment has force of law in Singapore. From a plain reading of Sections 4 & 5 of the said Act, it would seem that a determination of whether a particular English Enactment applies in Singapore would be done as follows:

English Enactment is listed in 1st Schedule

1. First, check the 1st schedule to see if the particular English Enactment is listed. If it is listed, it applied to the extent stated in the 4th column of the 1st Schedule.
2. Next, determine whether the particular English Enactment falls within Part II of the 1st Schedule. If it falls within Part II of the 1st Schedule, the particular English Enactment applies with amendments as at the commencement of the said Act. This means amendments to the particular English Enactment *after* the commencement of the said Act will not have force of law in Singapore automatically. Also, the particular English Enactment is subject to the modifications

stated in the 4th column of the 1st schedule and also the amendments listed in part III of the 1st Schedule.

3. The application of the particular English Enactment in Singapore can be modified if it is necessary.

English Enactment is not listed in the 1st Schedule

1. If the English Enactment is not listed in the 1st Schedule, a check will have to be done to determine whether "any other written law" in Singapore provides for the application of the English Enactment.
2. If there is "other written law" in Singapore which provides for the application of the English Enactment, it will apply according to the terms of that "other written law."

English Enactment not listed and no other written law provides for application

1. In such a situation, the English Enactment is not applicable as provided in section 5(1) of the said Act.
2. There is however a doubt as regards whether pre - charter English Enactments not listed on the 1st schedule can still be applicable. If the 2nd Charter of Justice is considered to be "other written law," then it may still be applicable if it is found to be of general application and adaptable to the conditions and wants of Singapore.

From the foregoing discussion, it would seem that sections 4 & 5 of the said Act achieves substantially the expressed intention of Parliament to clarify the applicability of English Enactments in Singapore and provide for local statute law to be independent of legislative changes in the United Kingdom although an insignificant doubt remains as regards the applicability of pre-Charter of Justice English Enactments.

Transitional Provisions

Section 6(1) provides for the repeal of Section 5 of the Civil Law Act. However, section 6(2) provides that in respect of proceedings instituted or any cause of action accruing before the commencement of the said Act, section 5 of the Civil Law Act shall continue to apply. It is to be noted that it has not been made clear whether in respect of actions or causes of action specified in Section 6(2), Sections 4 & 5 are not to be applicable. The applicability of

Sections 4 & 5 of the said Act even if an action or cause of action falls within section 6(2) can create as much legal conundrums as were created by section 5 of the Civil Law Act standing alone as the criteria for applicability of English Enactments under Sections 4 & 5 of the said Act and under Section 5 of the Civil Law Act are not consistent. For this reason alone, it is felt that the local Courts would unlikely hold that Sections 4 & 5 are applicable if an action or cause of action falls within Section 6(2) of the said Act if it should ever be faced with this question. In any event, this uncertainty will diminish and disappear with time.

Repeal of Voluntary Conveyances Act

The Voluntary Conveyances Act is repealed under Section 6(3). It would seem that regardless of whether an action or cause of action falls within Section 6(2), the Voluntary Conveyances Act is repealed. It is however to be noted that the Voluntary Conveyances Act refers to an Imperial Act 27 Elizabeth 1, c.4. The question raised would be whether the Imperial Act 27 Elizabeth 1, c.4 now applies unmitigated by the Voluntary Conveyances Act since it may be said that the Imperial Act 27 Elizabeth 1, c.4 is imported by "other written law," the "other written law" being the 2nd Charter of Justice 1826.

Precedence of Local Acts

Section 4(3) provides that if there is any inconsistency between any of the provisions of any English enactment with the provisions of any local Act in force at or after the commencement of the said Act, the provisions of the local Act shall prevail.