

Chambers for a total of 25 years, during which period I held various appointments, including Senior State Counsel, Parliamentary Counsel and Law Revision Commissioner.

4. From January 15, 1991 to January 14, 1994, I served as a Judicial Commissioner of the Supreme Court of Singapore (a full time post equivalent to the office of a Judge of the High Court appointed for a fixed term) and for part of the said period I held other concurrent judicial appointments, which were: (a) President of the Industrial Arbitration Court; (b) President of the Copyright Tribunal; (c) Chairman of the Valuation Review Board (d) Chairman of the Income Tax Board of Review; (e) Chairman of the Tenants' Compensation Board; and (f) Chairman of the Hotels Licensing Board.

5. As a Judicial Commissioner, I heard a variety of commercial cases and criminal cases which carried the death penalty. I am now practising as a Senior Counsel, arbitrator, mediator and adjudicator. I was appointed as Senior Counsel by the Supreme Court of Singapore in January 1999. A copy of my curriculum vitae is annexed hereto as Exhibit A.

6. As background information for the purposes of the preparation of this Declaration, attorneys at the law firm of Crowell & Moring LLP provided me with copies of the complaints of the plaintiffs in *Bhatia v. Standard Chartered International (USA) Ltd.*, No. 09-CV-2410 (“*Bhatia*”) and *Tradewaves Ltd. v. Standard Chartered International (USA) Ltd.*, No. 09-CV-9423 (“*Tradewaves*”) and the Declaration of Francis Xavier, Senior Counsel, dated November 11, 2009. I am not expressing any opinion on the potential claims or defenses in the *Bhatia* and *Tradewaves* cases.

7. I have been asked to provide my views limited to the following:
- a) the civil jurisdiction of a court in Singapore;
 - b) the law in Singapore relating to the doctrine of *forum non conveniens*;
 - c) whether non-resident plaintiffs suing in Singapore may be required to provide security for the Defendants' costs and if so, an indication of the amount of the security and the form the security would take; and
 - d) the power of a court in Singapore to compel unwilling witnesses who are located outside Singapore to testify in Singapore.

8. The matters in this Declaration are within my own knowledge unless otherwise stated. Insofar as they are not within my own knowledge, they are true to the best of my information and belief, the sources and grounds of which are referenced herein.

Jurisdiction of the Courts in Singapore

9. The foundation of the civil jurisdiction of a court in Singapore is statutory. The relevant statutes are the Supreme Court of Judicature Act, Cap 322, 1999 Ed (and corresponding provisions in the Subordinate Courts Act, Cap 321, 1999 Ed). By section 16(1) of the Singapore Court of Judicature Act and section 19(3) of the Subordinate Courts Act, anyone may invoke the jurisdiction of the court provided that the defendant has been properly served with a writ of summons or its equivalent.

10. To commence civil proceedings in the High Court or the Subordinate Courts, a party may file a writ or an originating summons. Service of the originating process on the defendant is the foundation of the jurisdiction of the court. In the case of a defendant who is not a resident in Singapore, the originating process may be served on him when he is in Singapore. If the defendant is abroad, the originating process may

be served on him only with leave of the court. The rules dealing with this extended jurisdiction are stated in Order 11 of the Rules of Court: *Singapore Civil Procedure 2007*, (*Singapore Sweet & Maxwell Asia*, 2007) at pages 78 to 97.

11. It is possible that a court may not grant leave to serve a defendant abroad.

12. In a dispute involving cross border elements which could plausibly be tried in a number of competing jurisdictions, a non-resident defendant who has been served with a writ may apply to the court for a stay of the proceedings on the ground that Singapore is not the natural forum and that there is some other available forum for the trial of the disputes between the parties.

The Doctrine of *Forum Non Conveniens*

13. The doctrine of *forum non conveniens* is the legal basis upon which the court, in the exercise of its discretionary power, as reflected in paragraph 9 of the First Schedule to the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed), may decline to exercise jurisdiction, after giving due consideration to the interests of the parties and the requirements of justice, and determining that the case should be tried in another forum.

14. The doctrine as expounded in the United Kingdom case of *The Spiliada* [1987] AC 460, has been accepted and applied by the courts in Singapore in several cases (*see, e.g., Brinkerhoff Maritime Drilling Corp v P T Airfast Indonesia* [1992] 2 SLR 776, *PT Hutan Domas Raya v Yue Xiu Enterprise (Holdings) Ltd* [2001] 2 SLR 49).

15. In considering an application for a stay of proceedings on the ground of *forum non conveniens*, the Court of Appeal has said in *The "Rainbow Joy"* [2005] 3

SLR 719; [2005] SGCA 36 at paragraph 16, that it will first determine whether there is some other available forum, having competent jurisdiction, which is more appropriate for the trial of the action. In determining that issue, the court will look to see what factors there are that point in the direction of another forum as being the forum with which the action has the most real and substantial connection, *e.g.* availability of witnesses, the convenience or expenses of having a trial in a particular forum, the law governing the transaction and the places where the parties reside or carry on business. If the court concludes that there is a more appropriate forum, it will ordinarily grant a stay.

16. If a case filed in Singapore had a common factual backdrop with other cases pending in a foreign forum and the parties are non-residents of Singapore, a Singapore court is more likely than not to grant a stay and direct the parties to litigate in the foreign forum if the court is satisfied that the foreign forum is a more appropriate forum for the case to be tried.

Security for the Defendants' Costs

17. The following Editorial Introduction which appears in Singapore Civil Procedure 2007 explains the requirement for the provision of security for a defendant's costs by a plaintiff who ordinarily resides outside of Singapore:

“The court has a discretionary power, at any stage of the proceedings, to order a person in the position of plaintiff to give security for his opponent's costs. The basis for this principle is to enable the defendant to recover costs from the plaintiff from a fund within the jurisdiction in the event the claim against him proves to be unsuccessful. The underlying rationale is that while it is up to a plaintiff to decide on whether to run the risk of suing a party who may not be good for costs, a defendant has no comparable choice and consequently, the law regards him more favourably, but only slightly. The principal sources of law are

[Order 23 of the Rules of Court] and s. 36(1) of the Supreme Court of Judicature Act, ...”

18. The provisions of Order 23 rule 1 of the Rules of Court which are material state:

“Security for Costs (O. 23 r. 1)

1.-(1) Where, on the application of a defendant to an action or other proceeding in the Court, it appears to the Court ---

(a) that the plaintiff is ordinarily resident out of the jurisdiction;

...

then, if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant’s costs of the action or other proceeding as it thinks just.

19. A defendant can make an application for security for costs at any stage of the proceedings and in practice, a defendant asks for costs at various stages of the proceedings. For example, after the statement of claim has been served, a defendant may put in an application for security for costs. If he succeeds in his application, the defendant may later make another application, say, during the discovery stage, and yet another application before the commencement of the trial after the dates for hearing have been fixed. In practice, a defendant cannot get security for his full costs and the courts usually award a sum to cover half or two-thirds of his costs of defending the action brought against him. Unless a losing party is ordered to pay costs on an indemnity basis, a successful party in a suit in the High Court is usually awarded costs in the range of S\$12,000 to S\$15,000 for each day of the trial. In the case of a party from overseas, he may ask for the reimbursement of the costs incurred for his stay in Singapore and these costs may be claimed as disbursements. The court will decide

whether the expenditures were necessary and whether the amount requested is reasonable.

20. Order 23 rule 2 provides that when an order is made requiring any party to give security for costs, the security shall be given in such manner, at such time, and on such terms (if any), as the Court may direct. Usually a defendant asks a court to order a plaintiff to pay a sum of money into court as the security for his costs or, in the alternative, for a bond or guarantee from a local bank or financial institution for the payment of the said amount. Usually there will be arguments between the parties on the wording of the bond or guarantee as different banks have their own format and almost all bonds or guarantees issued by banks will have a cap on the lifespan of the bond or guarantee.

21. A plaintiff who fails to comply with an order requiring him to provide security for costs will have his action dismissed.

Compelling Unwilling Foreign Witnesses

22. The attendance of an unwilling witness to appear at a hearing or deposition to be held in Singapore is often secured by a subpoena issued by the court. However, a Singapore court will not issue a subpoena compelling the attendance of a witness who is not within the jurisdiction: *see* Order 38 rule 18(2) of the Rules of Court and paragraph 38/19/9 of *Singapore Civil Procedure 2007*, (*Singapore Sweet & Maxwell Asia*, 2007).

23. If a party is unable to call a witness whose evidence is necessary for his case, then the court may be invited to draw an adverse inference against the party for not calling the witness.

Executed on May 3, 2010, at the law offices of GOH Phai Cheng LLC,
Singapore.

A handwritten signature in black ink, appearing to read "Goh Phai Cheng", written in a cursive style. The signature is positioned above a horizontal line.

GOH PHAI CHENG, S.C.