

## RESPONSES TO QUESTIONS ON CLASS ACTIONS AND GROUP LITIGATION

### QUESTION 1

Singapore's legal system is based on the Common Law (primarily English law). The Singapore Rules of Court,<sup>1</sup> which govern civil procedure, have their roots in the former English Rules of the Supreme Court.

### QUESTION 2

The only form of representative group litigation recognised by the Rules of Court is the representative action governed by Order 15, rule 12, which corresponds to the former Order 15, rule 12 of the former English Rules of the Supreme Court. There are no rules governing non-representative group litigation. [Order 15, rule 12 is attached.]

Legislation may also provide for representative proceedings in specific instances. Section 85 of the Building Maintenance and Strata Management Act (2004) enables a management corporation to bring proceedings on behalf of the subsidiary proprietors of a building or to defend an action on their behalf:

85(1) Where all or some of the subsidiary proprietors of the lots in a parcel comprised in a strata title plan are jointly entitled to take —

(a) proceedings for or with respect to the common property in that parcel against any person or are liable to have such proceedings taken against them jointly; or

(b) proceedings for or with respect to any limited common property in that parcel against any person or are liable to have such proceedings taken against them jointly,

the proceedings may be taken by or against the management corporation in the case of paragraph (a), or the subsidiary management corporation constituted for that limited common property in the case of paragraph (b), as if it were the subsidiary proprietors of the lots concerned.

(2) Any judgment or order given or made in favour of or against the management corporation or subsidiary management corporation in any such proceedings shall have effect as if it were a judgment or an order given or made in favour of or against the subsidiary proprietors.

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<sup>1</sup> 2006 Revised edition.

### QUESTION 3

Order 15, rule 12(1) states:

“Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in Rule 13, the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.”

Rule 13 (mentioned in rule 12(1)) concerns the representation of interested persons who cannot be ascertained. The key elements of a representative action are that the represented group must consist of “numerous persons” who have the “same interest” in the proceedings. In determining whether persons have the “same interest”, a Singapore court would consider, *inter alia*, cases which have been decided in other jurisdictions which apply the same rule. In *Abdul Rahim v Ling How Doong & Ors* [1994] 2 SLR 668 (the only reported Singapore case in which these words were specifically in issue and deliberated upon by the High Court), the Court ruled that members of a political party could form a class for the purpose of representative proceedings as they all had a common interest in the election of persons to the Central Executive Committee. (*John v Rees* [1970] 1 Ch 345 was followed.)

Generally, a representative action is only appropriate if the number of persons interested is too large for them to be joined as actual parties in a non-representative suit. As rule 12(1) states, the court may decide that representative proceedings are not appropriate and order the litigants to proceed, for example, in the ordinary manner.

The court may also give incidental directions. Rule 12(2) states:

“At any stage of the proceedings under this Rule the Court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons as representing whom the defendants are sued to represent all, or all except one or more, of those persons in the proceedings; and where, in exercise of the power conferred by this paragraph, the Court appoints a person not named as a defendant, it shall make an order under Rule 6 adding that person as a defendant.”

A judgment or order of the court in the course, or at the conclusion, of the representative proceedings binds the represented persons even though they are not mentioned on the record. Notwithstanding the binding nature of the judgment on represented persons, they have the right to dispute their liability.<sup>2</sup> A judgment may not be enforced against a represented person unless the court gives its leave for this purpose.<sup>3</sup>

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<sup>2</sup> Pursuant to rule 12(5).

<sup>3</sup> As provided by rule 12(3). The application for leave is governed by rule 12(4). Rule 12(6) empowers the court to make the appropriate order regarding the mode of determination of the application.

#### QUESTION 4

Under Order 15, rule 2, any person may come forward to represent a group of complainants. Although the class members are not required by Order 15, rule 12 to come forward individually, it is normal for the purpose of costs, the presentation of evidence and other litigation issues that the members of the class are ascertained and invited to join the action. For this purpose, the person who wishes to initiate the representative action may take whatever steps he considers necessary to communicate with the other members of the class.

The case of *Tan Chin Seng & Others v Raffles Town Club Pte Ltd* [2002] SGHC 278 (High Court); [2003] 3 SLR 307 (Court of Appeal) illustrates the situation just described. It involved a representative action by ten plaintiffs for themselves and on behalf of 4885 other persons. The representative plaintiffs and the other members of the class ("the class") sought rescission of a contract with Raffles Town Club Pte Ltd ("RTC") pursuant to which they had become founding members of the club. (Damages for breach of contract were also claimed as an alternative remedy to rescission.) The class alleged that certain promises had been made by RTC (through its agents) concerning the exclusivity of the club, that these statements were false and that the class had thereby been induced into entering the contract. (It had earlier been revealed in unrelated court proceedings involving RTC other persons that the club had a membership of approximately 19,000 persons. This was the primary basis on which the claimants alleged that the promise of exclusivity was false.)

The action against RTC was initiated by two members of the club (A and B). They created an internet web page which enabled all the members of the club to express their views concerning the circumstances and the possibility of an action against RTC. It soon became clear that many members were dissatisfied and wished to take official action. A number of matters had to be ascertained prior to proceeding with litigation. In the first place, only the founding members who directly contracted with RTC were qualified. Persons who had subsequently bought their memberships from members of the club had no *locus standi* against RTC. It was also necessary to determine (a) whether the members wishing to join the class would be willing to contribute to the costs of the proceedings and (b) who would give evidence on behalf of the class against RTC. For the purpose of acquiring the relevant information regarding these issues, questionnaires were sent to all interested members.

*Tan Chin Seng & Others v Raffles Town Club Pte Ltd* is the only case in recent years to have raised issues relating to representative actions (see my response to question 6). Therefore, I do not have sufficient information to be able to respond to the more specific questions in Question 4.

#### QUESTION 5

Not applicable.

#### QUESTION 6

In the last 5 years, there is only one reported case involving representative proceedings pursuant to Order 15, rule 12: *Tan Chin Seng & Others v Raffles Town Club Pte Ltd* (see above).

Representative proceedings may be instituted without the approval of the court, although the court has the discretion pursuant to Order 15, rule 12(1) to terminate the action.

#### QUESTION 7

Please see account of *Tan Chin Seng & Others v Raffles Town Club Pte Ltd* under Question 4.

Order 15, rule 12 does not require members of the class to be informed, although they normally would be. The courts do not have oversight authority in the notification process although there is nothing to prevent the court from raising the issue in the course of case management. As to how class members may be kept informed regarding developments in the suit, in *Tan Chin Seng & Others v Raffles Town Club Pte Ltd* this was done primarily through the internet (via web page). (See my response to question 4.)

#### QUESTION 8

Not applicable.

#### QUESTION 9

There is no specific case management procedure for representative proceedings. However, as general case management is an integral part of the Singapore court process, the court is empowered to give administrative directions as it deems fit in the interest of justice, expedition and economy.

### QUESTION 10

Because of the paucity of cases involving representative proceedings in Singapore, I am not able to provide information concerning negotiation and settlement. *Tan Chin Seng & Others v Raffles Town Club Pte Ltd* (see my response to question 4) was litigated throughout.

### QUESTION 11

The issue of remedies in representative proceedings has not yet arisen for deliberation by a Singapore court. Should it do so, the court would consider the terminology of Order 15, rule 12 and the common law principles (including the latest developments in various jurisdictions) concerning this provision (which corresponds to the former English Order 15, rule 12 and rules elsewhere).

The issue of remedies did not arise in *Tan Chin Seng & Others v Raffles Town Club Pte Ltd* because all the members of the class were in an identical position as founding members of the club (they all had the “same interest” within the meaning of Order 15, rule 12(1)).

All members of the Club sought the same remedy of rescission (the return of the fee of S\$28,000 which they each paid) and, in the alternative, damages for breach of contract. They failed in the rescission claim and were granted S\$1000 each (for breach of contract) by the High Court. The Court of Appeal increased the amount to S\$3000.

### QUESTION 12

Generally, the claimants themselves.

### QUESTION 13

There are no special rules relating to payment of attorneys’ fees in representative litigation. The courts have no specific responsibility for determining or approving fees except on ordinary taxation at the conclusion of the proceedings.

Because of the paucity of cases involving representative proceedings in Singapore, I am not able to provide information concerning the specific questions.

As in the case of *Tan Chin Seng & Others v Raffles Town Club Pte Ltd*, the members of the class would normally be required to undertake to contribute to

the costs of the attorneys representing them. This would involve a commitment to pay a sum up to a maximum limit.

Regarding the benefits of the costs arrangement in *Tan Chin Seng & Others v Raffles Town Club Pte Ltd*, many of the members of the class would not have been able to afford pursuing independent proceedings against RTC, which reportedly had a large reserve of funds. The distribution of potential costs liability between close to 5000 persons greatly ameliorated the financial burden of the litigation.

#### QUESTION 14

In *Tan Chin Seng & Others v Raffles Town Club Pte Ltd*, the trial took 20 days. This is a relatively long period for a trial and one of the contributing causes may have been the fact that all ten representative plaintiffs gave evidence for themselves and the class. The agreement of the parties to try the issue of liability first (ie, separately from damages) may have expedited the trial.

#### QUESTION 15

The issue of whether Order 15, rule 12 is an adequate mechanism for representative proceedings is presently under deliberation. The procedures in other jurisdictions are being considered. These include the broader class action available in countries such as the U.S. and Australia, and the English group litigation order. As yet, there is no official report concerning reform.

#### QUESTION 16

There are no discernable trends because of the infrequency of the representative action.