REPORT OF THE LAW REFORM COMMITTEE

ON

LIMITATION PERIODS IN PRIVATE INTERNATIONAL LAW

SINGAPORE ACADEMY OF LAW

LAW REFORM COMMITTEE

JANUARY 2011

Author:

Yeo Tiong Min

With valuable assistance from:

Legislation and Law Reform Division, Attorney-General's Chambers
Ms Chung Yoon Joo

ISBN 978-981-08-8292-1

About the Law Reform Committee

The Law Reform Committee ("LRC") of the Singapore Academy of Law makes recommendations to the authorities on the need for legislation in any particular area or subject of the law. In addition, the Committee reviews any legislation before Parliament and makes recommendations for amendments to legislation (if any) and for carrying out law reform.

About the Report

See executive summary below.

Comments and feedback on this report should be addressed to:

Law Reform Committee
Attn: Law Reform Co-ordinator
Singapore Academy of Law
1 Supreme Court Lane, Level 6, Singapore 178879
Tel: +65 6332 4350
Fax: +65 6334 4940
Website: www.sal.org.sg

TABLE OF CONTENTS

Annexures

I. Executive Summary

1 Under the traditional common law approach, which country's limitation period law applies to a claim governed by foreign law depends on an esoteric exercise of classification. The forum always applies its own rules of procedure and never the procedural rules of a foreign country. In the context of limitation periods, what is "procedural" for the purpose of private international law has historically depended on whether the rule in question extinguished the right or merely barred the remedy. Limitation statutes in common law countries are generally drafted in the language of barring the remedy. Hence, on this approach, the common law court would invariably apply its own limitation periods even if the claim is governed by a foreign law. Whether the foreign limitation period of the governing law will be applied depends on whether the foreign limitation law extinguished the right or barred the remedy. Where both limitation laws apply, naturally the shorter of the two will bar the claim. There is a clear forum-bias on the issue of limitation periods in this approach.

2 Major jurisdictions have moved away from this approach. The United Kingdom departed from the traditional common law approach by statute in 1984. The highest courts in Australia and Canada have moved away from this historical approach. Many courts in the United States have rejected this approach. The European Union has rejected the notion of the invariable application of the law of the forum for limitation periods in two very important instruments regulating choice of law for contractual and non-contractual obligations respectively. Civil law jurisdictions have generally regarded limitation period laws as substantive in the private international law sense (and therefore applicable as part of the substantive law governing the claim). Recent developments in China confirmed this to be its position. Thus, the prevailing modern approach is to apply the limitation period law of the law applicable to the claim as a general rule.

3 The main argument in favour of applying the law of the forum to limitation periods is that it is a reflection of the public policy of shutting out stale claims from the courts. However, the modern view is that the invariable application of the law of the forum is too blunt an instrument to give effect to the fundamental public policies of the forum. A more sophisticated approach, where the forum's public policy is the rear guard, has been the preferred solution in other major jurisdictions.

4 The main reasons for preferring the modern approach are that:

(a) the distinction drawn in traditional approach between rights and remedy is illusory;

(b) the traditional approach with its forum bias encourages forum shopping; and

(c) the traditional approach goes against modern notions of international comity underlying choice of law in the somewhat intrusive and invariable application of forum rules of limitation periods.

5 The common law in Singapore is a dynamic one, and is displaying some signs that it may be moving in the same direction. But the position is unclear, and it will be necessary for the specific issue to be argued in the Court of Appeal before the matter can be settled. Legislative as opposed to common law reform has the advantages of being able to set out a clear cut-off date for a new direction, as well as the flexibility of applying a broader definition of public policy than is permissible under the common law. The proposed reform will effect the same approach for arbitration cases as well.

II. Limitation Periods in Private International Law

A. Common law approaches

6 A basic distinction is drawn in the conflict of laws between matters of substance and matters of procedure. Matters of substance are subject to choice of law analysis, while matters of procedure are always regulated by the law of the forum. The traditional common law approach towards the characterisation of limitation periods focuses on the verbal formula used in the limitation statute. One which extinguishes the right is substantive, and which bars the remedy is procedural.[1] Because the language of enforceability is used in most English statutes, the limitation provisions are generally characterised as procedural. The same technique is applied to the characterisation of foreign limitation laws. There are two problems with this traditional approach.

7 The first problem is that the focus of the method on the characterisation of the potentially applicable *rules of law* appears to be out of step with the modern approach of characterising *the issue*.[2] While the former method tests the applicability of the rule of law by its characterisation, the latter considers the relevant rule of a legal system as relevant only when the issue as characterised has an associated connecting factor pointing towards that legal system. This is more than just an academic issue. The problems associated with rule characterisation arise starkly in the context of limitation periods. Four possible scenarios may be considered, assuming that the substantive claim is governed by foreign law.

---

1 *Huber v Steiner* (1835) 2 Bing NC 202, 210; 132 ER 89.

2 *Macmillan Inc v Bishopsgate Investment Trust plc (No 3)* [1996] 1 WLR 387 at 391–392, 397–399, 405–407, 417–418; *Raiffeisen Zentralbank Österreich AG v Five Star Trading LLC* [2001] EWCA CIV 1223 at [26]–[29]; [2001] QB 825 at 840–841. Though it did not deal specifically with limitation periods, the Singapore Court of Appeal clearly adopted an issue-characterisation approach in *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 (CA) and *JIO Minerals FZC v Mineral Enterprises Ltd* [2011] 1 SLR 391 (CA).

8 First, both the forum and foreign limitations may be procedural. In this case, the forum limitation is exclusively applicable, so that the plaintiff may succeed in the forum even if the claim would have been time-barred by the substantive law governing the claim. This can lead to problems of forum-shopping, and worse, may prejudice debtors who may have, in reliance on foreign laws, destroyed archived documentary evidence of payment. Conversely, it may bar a claim that is still alive in the foreign country in which the transaction took place and which law governs the dispute, in circumstances where the forum is the most appropriate forum to hear the case.

9 Second, both the forum and foreign limitations may be substantive. In this case, the foreign limitation is applicable exclusively.

10 Third, the forum limitation is substantive while the foreign one is procedural. An odd result follows from the strict logic of the substance-procedure analysis: neither law is applicable.[3] Practically, a common law court is unlikely to reach this impractical conclusion, but it is not clear which of the two laws will be chosen in such a case.

11 Fourth, the forum limitation is procedural and the foreign one is substantive. In this case, another odd theoretical result follows: both are applicable. In practice, however, it means that the shorter of the two periods will apply. If the forum limitation is shorter, the foreign right is unenforceable. If the foreign limitation is shorter, then there is no right to enforce even if the forum limitation has not expired.

12 On the other hand, an issue characterisation approach would approach the problem by asking whether the issue of whether the claim could be pursued as a result of a time-limitation is a substantive or procedural one: there are only two possible answers – the application of the law of the forum or the law governing the claim. This leads on to the second problem with the traditional method of characterising limitation periods as procedural: the over-emphasis on the language of the potentially applicable law at the expense of the objectives of private international law in the characterisation process.

13 It is important to note, however, that the line between substance and procedure is drawn in different places for different purposes, and in particular, the line drawn for conflict of laws purposes need not have any bearing on the way the line is drawn for domestic purposes. The internal distinction between right and remedy may serve domestic systems well, but it should not be readily projected into choice of law

---

3 *Dicey, Morris and Collins: The Conflict of Laws* (London: Thomson, 14th Ed, 2006) at para 7-047 noted that one German court had indeed reached this conclusion, but that more recent courts had refused to follow it. In South Africa where this problem had arisen, the court had a discretion to choose which law to apply based on considerations of international uniformity and the policies underlying each rule: *Society of Lloyd's v Price* 2006 SCA 87 (RSA), noted in C Forsyth, "'Mind the Gap Part II': The South African Supreme Court of Appeal and Characterisation" (2006) JPIL 425. It may be argued that laches would still apply in such a case (*MCST No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 (CA)) to fill a lacuna, but this merely restates the application of the law of the forum, and begs the question why the equitable and not statutory law is being applied.

analysis. In *Chase Manhattan Bank NA v Israel-British Bank (London) Ltd*,[4] Goulding J said pointedly:

> Within the municipal confines of a single legal system, right and remedy are indissolubly connected and correlated, each contributing in historical dialogue to the development of the other, and, save in very special circumstances, it is as idle to ask whether the court vindicates the suitor's substantive right or gives the suitor a procedural remedy as to ask whether thought is a mental or a cerebral process. In fact the court does both things by one and the same act.

14 The modern understanding of the substance-procedure division is a purposive one. In *Tolofson v Jensen*, the majority in the Supreme Court of Canada said:[5]

> [T]he purpose of substantive/procedural classification is to determine which rules will make the machinery of the forum court run smoothly as distinguished from those determinative of the rights of both parties. …

15 It was held that time-limitations were substantive in character, and a claim that was time-barred by the law governing the tort could not be pursued in the forum even if the time had not expired by the forum limitation statute.[6]

16 In *John Pfeiffer Pty Ltd v Rogerson* ("*John Pfeiffer*"), the majority in the High Court of Australia drew the distinction between substance and procedure thus:[7]

> … First, litigants who resort to a court to obtain relief must take the court as they find it. … [T]he plaintiff cannot ask that the courts of the forum adopt procedures or give remedies of a kind which their constituting statutes do not contemplate … Secondly, matters that affect the existence, extent or enforceability of the rights or duties of the parties to an action are matters that, on their face, appear to be concerned with issues of substance, not with issues of procedure …

17 The application of the traditional approach to time limitation laws had previously been endorsed by the High Court of Australia in *McKain v RW Miller & Co (SA) Pty Ltd* ("*McKain v Miller*"):[8]

---

4 [1981] Ch 105 at 124.

5 [1994] 3 SCR 1022 at 1071–1072 (para 86 of transcript).

6 Specific legislative provisions in the provinces of Alberta (Limitations Act, RSA 2000, c L-12, s 12) and Saskatchewan (Limitations Act, SS 2004, c L-16.1, s 27) direct the courts to apply the limitation period law of the forum even in claims governed by foreign law. In such cases, the result is the application of both the forum and the foreign limitation periods (*Castillo v Castillo* 2005 SCC 83; [2005] 3 SCR 870). Bastarache J in the Supreme Court of Canada observed that there did not appear to be any legislative purpose served by subjecting the defendant to the shorter of the limitation periods of two laws (at [21]).

7 [2000] HCA 36; (2001) 172 ALR 625 (HCA) at [99].

8 (1991) 174 CLR 1 at 42–44, per Brennan, Dawson, Toohey and McHugh JJ, endorsing Menzies J in *Pederson v Young* (1964) 110 CLR 162 at 166.

> It is a well-established principle that statutes of limitation, except where title is affected, are rules of procedure only and form part of the *lex fori*. The reason why such statutes are so regarded is that they relate to the remedy and not the right.

18 This did not create a practical problem in Australia in the interstate context. The Australian Law Reform Commission had reviewed the problem in the context of inter-state conflict of laws and recommended that limitation periods be characterised as substantive for choice of law purposes,[9] and the major states had followed the recommendations.[10] In any event, the common law stated in *John Pfeiffer* has been considered to be consistent with the intra-Australian position,[11]and the same reasoning has since been extended to international cases.[12] Thus, the principle stated above in *McKain v Miller* is no longer good law in Australia.[13]

19 The modern common law approach to the classification of substance and procedure in the conflict of laws in English law is not entirely clear. The traditional common law rule as it applied to limitation periods had been replaced by the Foreign Limitation Periods Act 1984 ("FLPA") which provided for the general application of the law governing the cause of action to the issue of limitation period. This statute is itself being marginalised in the UK by the Rome Convention on the Law Applicable to Contractual Obligations from 1991[14] (now superseded by the Rome I Regulation on the Law Applicable to Contractual Obligations ("Rome I")[15]), and the Rome II Regulation on the Law Applicable to Non-Contractual Obligations ("Rome II").[16] Both instruments mandate that time limitations are governed by the law applicable to the obligation being enforced (thereby practically effecting a substantive characterisation), so that there is

---

9 Australian Law Reform Commission Report No 58, *Choice of Law* at para 10.33.

10 Section 5 of the Choice of Law (Limitation Periods) Act 1993 (NSW) (Annex A); s 78(2) of the Limitation Act 1969 (NSW); s 5 of the Choice of Law (Limitation Periods) Act 1993 (Vic); s 5 of the Limitation Act 1985 (ACT); s 5 of the Choice of Law (Limitation Periods) Act 1994 (WA); s 38A of the Limitation of Actions Act 1936 (SA); ss 25A–25E and 32C of the Limitation Act 1974 (Tas); s 5 of the Choice of Law (Limitation Periods) Act 1994 (NT); s 5 of the Choice of Law (Limitation Periods) Act 1996 (Qld), s 43A(2) of the Limitation of Actions Act 1974 (Qld).

11 *Blunden v Commonwealth* [2003] HCA 73; 218 CLR 330.

12 *Neilson v Overseas Projects Corporation of Victoria Ltd* [2005] HCA 54; (2005) 223 CLR 331; *O'Driscoll v McDermott* [2006] WASCA 25. This extension is significant as previous statements from the High Court of Australia suggested that the same issues may be characterised differently depending on whether the conflicts is an inter-state or international one: *Regie National des Usines Renault SA v Zhang* [2002] HCA 10, (2002) 210 LR 491 at [76].

13 Notably, The Western Australian Court of Appeal in *Tipperary Developments Pty Ltd v The State of Western Australia* [2009] WASCA 126 has refused to follow the leading English common law authority of *Leroux v Brown* (1852) 12 CB 801; 138 ER 1119 which had decided that a statutory rule of the forum requiring a contract to be in writing to be enforceable was necessarily a rule of procedure in the conflict of laws sense.

14 Contracts (Applicable Law) Act 1990 (c 36) (UK).

15 Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations ("Rome I"), OJC L177/6 of 4.7.2008.

16 Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ("Rome II"), OJC L199/40 of 31.7.2007.

no scope for applying the FLPA. The two instruments together cover almost the entire field of obligations within civil and commercial law. The FLPA continues to apply in cases not governed by either of the two instruments. But whether the position is governed by Rome I, Rome II or FLPA, time limitations are governed by the law applicable to the claim.

20 The majority of the English Court of Appeal had been inclined to follow the Canadian and Australian authorities on the modern approach to characterisation, which takes a narrow view of the scope of "procedure" under private international law, in *Hardings v Wealands*.[17] This was a case dealing with a statutory cap on damages rather than time limitation, but the reasoning of the majority suggested that if necessary (*ex hypothesi* it was not necessary not since the FLPA applied) they would have been inclined to characterise time limitation as substantive in the common law. However, the decision was reversed on appeal to the House of Lords[18] on the technical ground that the court was interpreting a statute (Private International Law (Miscellaneous Provisions) Act 1995 (c 42) (UK)) which referred to the applicable principles of private international law *as at 1995*, and the characterisation approach to be adopted was that found in the common law as understood in 1995. The state of English law in 1995 was that the limitation in question (cap on damages) would be regarded as procedural. The House of Lords thereby skirted the question of what the modern approach of English common law was or should be in 2006.

B. The position under Singapore law

21 The characterisation of limitation laws that bar actions as procedural was clearly part of the statutory law of Singapore from 1896 to 1959. The Limitation Ordinance (Ordinance VI of 1896) introduced this provision:

	Section 11
Suits on foreign contracts.	(1) – Suits instituted in the Colony on contracts entered into in a foreign country are subject to the rules prescribed by this Ordinance.
Foreign limitation law.	(2) – No foreign rule of limitation shall be a defence to a suit instituted in the Colony on a contract entered into in a foreign country unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

22 It actually went beyond characterisation, because even a substantive foreign limitation law (which extinguishes a right rather than bar its enforcement) would not apply as *lex loci contractus* (thought to be synonymous with proper law of the contract at the time of drafting) unless the parties were also *domiciled* in that country. However, when the Limitation Ordinance (Ordinance 57 of 1959) was passed to modernise the law of limitation of actions in Singapore, this provision was repealed with the rest of the old limitation statute. The position then reverted to the common law. The question

17 [2004] EWCA Civ 1735; [2005] 1 WLR 1539 (CA).

18 [2006] UKHL 32; [2006] 3 WLR 83 (HL).

of classification of time limitation laws for choice of law purposes has not arisen directly for consideration in a Singapore court of law.

23 In *Ralli v Anguilla*,[19] the Supreme Court and Court of Appeal of the Straits Settlements had assumed that limitation statutes are procedural for conflict of laws purposes.[20] The leading common law authority is the 1835 case of *Huber v Steiner*,[21] but antecedents[22] applying the purported analytical distinction between the right and its enforcement date before the Second Charter of Justice (1826), at which point at least, the common law of England had formed part of the law of Singapore.[23]

24 The substance-procedure issue arose for consideration, in a different context, before the Singapore Court of Appeal in *Star City Pty Ltd v Tan Hong Woon* ("*Star City*"), which stated:[24]

> … in every case, to determine whether a provision is substantive or procedural, one must look at the effect and purpose of that provision. If the provision regulates proceedings rather than affects the existence of a legal right, it is a procedural provision. A distinction is drawn between essential validity of a right and its enforceability.

25 Although the first two sentences appear to contain elements both of the modern purposive approach (regulation of proceedings) and the traditional distinction (affecting existence of rights), the third sentence clearly refers to the traditional divide between right and remedy that has been disparaged by the highest courts in Australia and Canada. In the previous paragraph,[25] the court cited with approval older English cases which emphasised enforceability of a right as a test for the procedural classification. *Star City* itself dealt with the question whether the s 5(2)[26] of the Civil Law Act (Cap 43, 1999 Rev Ed) was substantive or procedural for conflicts purposes; the court held it to be procedural because of the "crucial words"[27] of "no action shall be brought" in the statute as well as cases and textbook supporting that interpretation. The supporting cases and textbook passages cited could be criticised for putting too much

---

19 (1917) 15 SSLR 33.

20 *Ralli v Anguilla* (1917) 15 SSLR 33 at 37 (Bucknill CJ), 71, 77 and 79 (Woodward J), and 98 (Edmonds J).

21 *Huber v Steiner* (1835) 2 Bing NC 202, 210; 132 ER 89.

22 See, *eg*, *Melan v Fitzjames* (1797) 1 Bos & Pul 138; 126 ER 822.

23 Application of s 3(1) of the English Law Act (Cap 7A, 1994 Rev Ed); Walter Woon, "The Applicability of English Law in Singapore" in *The Singapore Legal System* (Kevin Y L Tan ed) (Singapore University Press, 2nd Ed, 1999) at pp 237–238.

24 [2002] 1 SLR(R) 306 at [12].

25 *Star City Pty Ltd v Tan Hong Woon* [2002] 1 SLR(R) 306 at [11].

26 "No action shall be brought or maintained in the court for recovering any sum of money or valuable thing alleged to be won upon any wager or which has been deposited in the hands of any person to abide the event on which any wager has been made."

27 *Star City Pty Ltd v Tan Hong Woon* [2002] 1 SLR(R) 306 at [12].

emphasis on the language of enforceability, but the court's actual decision on the characterisation could be justified on the basis that the provision was in intended to protect the forum's machinery of justice from being congested with frivolous cases, thus wasting judicial resources.[28] On the whole, this case endorses the traditional common law classification.

26 More recently, however, the Court of Appeal in *Goh Suan Hee v Teo Cher Teck*[29] noted by way of observation the developments elsewhere and that it should not be assumed that the Singapore courts will continue to adopt the narrow common law test. This was a *forum non conveniens* case, and the question was whether the quantification of damages is a question of substance or procedure for conflict of laws purposes. Without deciding the question, the court signalled a preference for a narrower test that procedural matters are "matters governing or regulating the mode or conduct of court proceedings",[30] after reviewing the position in England and Australia.[31] The court went on to observe that it was "untenable in principle to separate remedy from rights".[32] In *Shanghai Electric Group Co Ltd v PT Merak Energi Indonesia*,[33] the High Court held that whether a party could enforce a right by an injunction was a question of substance. Though neither case had to do with limitation periods where the common law position is more strongly entrenched in the common law, they do signal a changing attitude in the Singapore courts.

C. Arguments for legislative reform

27 The common law position was examined by the English Law Commission, which in its report of 1982 recommended the replacement of the common law characterisation rules in so far as they apply to laws relating to limitation periods with a statutory framework under which all limitation laws are applicable as part of the substantive law governing the claim.[34] This has the same result as characterising the *issue* of time limitation as substantive, or alternatively, characterising the time limitation *rules* of any country as substantive, irrespective of the actual phraseology adopted in the limitation laws. However, the Commission thought that it was more straightforward to direct the application of such laws, rather than to give a statutory direction to characterise them as substantive to be then applied under common law

---

28 See especially, *Star City Pty Ltd v Tan Hong Woon* [2002] 1 SLR(R) 306 at [31].

29 [2010] 1 SLR 367 (CA).

30 *Goh Suan Hee v Teo Cher Teck* [2010] 1 SLR 367 (CA) at [21].

31 In *Poh Soon Kiat v Desert Palace Inc* [2009] 1 SLR(R) 71 (CA), the court in discussing the conflictual scope of application of the s 5(2) of the Civil Law Act (Cap 43, 1999 Rev Ed) made no reference to the possibility that it may apply as the procedural law of the forum.

32 *Goh Suan Hee v Teo Cher Teck* [2010] 1 SLR 367 (CA) at [21].

33 [2010] 2 SLR 329 (HC).

34 Law Commission Report, "Classification of Limitation in Private International Law" (Law Com No 114, 1982) (UK).

conflict of laws rules. The principal recommendations[35] of the Law Commission were implemented in the Foreign Limitation Periods Act 1984 (c 16) (UK).[36]

28 The main reasons for the position adopted by the English Law Commission (which apply equally in Singapore's context) are:

(a) the illusory distinction between rights and remedies in domestic law;

(b) the encouragement of forum shopping by potential plaintiffs; and

(c) the intrusive effect of the forum law's modification of foreign substantive laws, contrary to the avowed objective of private international law to give effect to foreign law.[37]

29 Reform will also bring the law of Singapore in line with the position in major jurisdictions. Choice of Law instruments in the European Union generally apply the limitation periods of the law governing the substantive claim.[38] Judicial reforms in Australia and Canada have brought the laws in these countries to the same position as the United Kingdom. In 1988, the *Restatement on the Conflict of Laws (2d)* was revised to take into account the practice of courts in the United States looking to the law governing the substantive claim for the relevant limitation period law to apply.[39] Generally, civil law jurisdictions consider limitation period laws to be substantive and apply the limitation laws of the law applicable to the claim.[40] In this respect, it is worth noting that, in the latest codification of private international law in the People's Republic of China, it is specifically provided that the issue of limitation of actions by effluxion of time shall be governed by the law applicable to the foreign civil relation (*ie*, the law governing the underlying claim).[41]

---

35 See Annex A.

36 See Annex A.

37 Law Commission Report, "Classification of Limitation in Private International Law" (Law Com No 114, 1982) (UK) at para 3.2.

38 See para 35 below.

39 Section 142 of *Restatement (2d) Conflict of Laws*, comment (*e*).

40 MW Bühler and TH Webster, *Handbook of ICC Arbitration: Commentary, Precedents, Materials* (London: Thomson, 2005) at paras 4-13–4.14; American Bar Association of International Law and Practice, "Reports to the House of Delegates – Convention on the Limitation Period in the International Sale of Goods" (1990) 24 *International Lawyer* 583.

41 The Law of the People's Republic of China on Application of Laws on Foreign-related Civil Relations (中华人民共和国涉外民事关系法律适用法), adopted at the 17th session of the Eleventh Standing Committee of the National People's Congress of the People's Republic of China, which comes into effect on 1 April 2011, General Rules, Art 7. See <http://hk.lexiscn.com/law/law-of-the-peoples-republic-of-china-on-application-of-law-in-foreign-related-civil-relations.html?eng=0> (accessed 3 January 2011).

D. Arguments against legislative reform

30 In opposition, it might be argued that the traditional approach leading, in most cases, to the application of the law of the forum contain the advantages of simplicity and convenience of application, and also gives effect to the public policy of the forum in shutting out stale claims from the courts. The first argument is not convincing, because judges have to apply foreign law anyway if the claim is governed by foreign law. Moreover the argument belies the complexity of the current law.[42] The second argument raises a valid issue, but the current method is too blunt an instrument, and public policy considerations need to be addressed as such. Any reform in this area will not lead to the forum surrendering its fundamental values and public policies to foreign ones. All issues potentially subject to resolution by foreign law are subject to the public policy exception; limitations laws are no exception.[43]

31 The main argument against legislative reform is probably that this is a matter that can be dealt with by the court. It is arguable that it is open to Singapore Court of Appeal to follow the example of the Canadian and Australian courts. Indeed, there are signs that this may be occurring. However, the common law approach is an entrenched one, and it remains to be seen whether the Singapore courts are prepared to depart from long-established authority on the classification of limitation period laws. Furthermore, time limitation is a very important aspect of international commercial litigation, and it is undesirable for the position to be left uncertain. It is thus suggested that it should be clarified by legislation that limitation period laws should apply as part of the substantive law governing the claim.

32 It is suggested that there is a case for legislative reform in spite of the signs of common law developments because:

(a) legislation can put the matter beyond doubt quickly;

(b) legislative reform (if the FLPA model in the UK is followed) can be more targeted in the sense that it does not commit the common law courts to any classification methodology as such; and

(c) legislative reform can be made clearly prospective in order not to disturb choice of arbitration and choice of court agreements entered into by parties on the understanding of the applicability of Limitation Act as the procedural law of the forum; and

---

42 See paras 8–11 above.

43 Just as many jurisdictions have come to recognise that the inflexible application of the law of the forum to tort claims is too blunt an instrument to deal with the public policy considerations inherent in the rule: Private International Law (Miscellaneous Provisions) Act 1995 (c 42), Part III (UK); *Regie National des Usines Renault SA v Zhang* [2002] HCA 10; (2002) 210 CLR 491 (Australia); *Tolofson v Jensen* [1994] 3 SCR 1022 (Canada).

(d) legislative reform can create a more permissive public policy regime (including the concept of undue hardship) within the law of limitation periods, which can be hard to replicate in the common law without adversely affecting the general law.

E. Reform alternatives

33 The statutory reform in the UK has been considered above and suggested as the model for Singapore to follow. Some other alternatives for reform may be briefly considered. The Law Reform Commission of New South Wales recommended in 1967[44] that forum limitation statutes be both substantive *and* procedural for choice of law purposes. Thus, if a foreign court were to apply New South Wales law as the law governing the claim, its limitation will be regarded as substantive.[45] But if the court of the New South Wales forum were to hear an action governed by foreign law, the forum's limitation statutes would nevertheless apply as part of the procedure of the forum. It is suggested that there is nothing in this approach to recommend itself. In the first place, it seems futile, and wrong in principle, to try to tell foreign courts how to characterise the forum's laws.[46] Secondly, to have the forum's limitation laws applying as the procedural law of the forum brings with it the kinds of objection that led to reform in England and Canada.

34 The Ontario Law Reform Commission in 1969[47] proposed legislation to mandate the characterisation of all limitation period provisions as substantive for choice of law purposes. The proposal, similar in effect to the recommendations of the English Law Commission later in 1982, was never implemented, and is now superseded by the developments in the Supreme Court of Canada.[48] The Law Reform Commission of British Columbia, on the other hand, recommended in 1974[49] that its limitation period statute should extinguish the plaintiff's title to sue, thus forcing a substantive characterisation under the traditional common law approach. This was implemented in s 9 of the Limitation Act.[50] Section 13 of the Act, implementing another of the Commission's recommendations, provides that if the limitation period provision in the foreign substantive law applicable to the claim is characterised as procedural for choice of law purposes, the "court may apply British Columbia limitation law or may apply the limitation law of the other jurisdiction if a more just result is produced". This

---

44 *First Report on the Limitation of Actions* (1967) at para 321.

45 Section 78(2) of Limitation Act 1969 (NSW). This assumes, of course, that the foreign court would regard New South Wales' own characterisation of its law as conclusive.

46 This can work, however, within an inter-state context.

47 *Report on Limitation of Actions* (1969).

48 See paras 14–15 above.

49 *Report on Limitations* (1974).

50 Limitation Act, RSBC 1996, c 266 (British Columbia). Section 28C of the Limitation Act 1950 (New Zealand), introduced by the Limitation Amendment Act 1996 (1996 No 131), has a similar effect but only applies to prescribed foreign countries.

pattern of reform lacks the simplicity of the Ontario and English proposals. Moreover, no guidance is provided on how the discretion to decide which limitation law is to be applied under s 13.

35 Yet another model is that adopted in the UK as a result of its membership of the European Union, in the Rome I Regulation on the Law Applicable to Contractual Obligations[51] and the Rome II Regulation on the Law Applicable to Non-Contractual Obligations.[52] The Rome I Regulation provides that:[53]

> [t]he law applicable to a contract by virtue of this Regulation shall govern in particular … the various ways of extinguishing obligations, and prescription and limitation of actions; …

36 The Rome II Regulation provides that:[54]

> [t]he law applicable to non-contractual obligations under this Regulation shall govern in particular … (*h*) the manner in which an obligation may be extinguished and rules of prescription and limitation, including rules relating to the commencement, interruption and suspension of a period of prescription or limitation.

37 The provisions in these instruments possess simplicity and elegance. However, they have to be understood against the legal framework set up by the respective Regulations and against the backdrop of European harmonisation. It should also be noted that they apply only in specific cases where the obligation sued upon falls within the instruments. The FLPA still provides the legal framework in the UK in other cases.

F. Some specific issues

38 It remains to examine some specific issues raised by the English model of reform for limitation periods.

(1) Arbitration

39 The position in arbitration (both international and domestic) requires some consideration. In principle, the same approach should be taken to limitation periods in

---

51 Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations ("Rome I"), OJC L177/6 of 4.7.2008.

52 Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ("Rome II"), OJC L199/40 of 31.7.2007.

53 Article 12(1)(*d*) of the Rome I Regulation. The Rome I Regulation was promulgated after the Rome II Regulation, but this provision is identical to that found in the Rome Convention on the Law Applicable to Contractual Obligations, which preceded both Regulations.

54 Article 15(*h*) of the Rome II Regulation.

both litigation and arbitration. As a result of an amendment in 2001,[55] the International Arbitration Act[56] provides (to the same effect is the s 11 of the Arbitration Act[57]):

> Application of Limitation Act
>
> 8A. —(1) The Limitation Act (Cap. 163) shall apply to arbitration proceedings as it applies to proceedings before any court and a reference in that Act to the commencement of any action shall be construed as a reference to the commencement of arbitration proceedings.
>
> (2) The High Court may order that in computing the time prescribed by the Limitation Act for the commencement of proceedings (including arbitration proceedings) in respect of a dispute which was the subject-matter of —
>
> (*a*) an award which the High Court orders to be set aside or declares to be of no effect; or
>
> (*b*) the affected part of an award which the High Court orders to be set aside in part or declares to be in part of no effect,
>
> the period between the commencement of the arbitration and the date of the order referred to in paragraph (a) or (b) shall be excluded.
>
> (3) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall, for the purpose of the Limitation Act (Cap. 163), be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

40 Two issues arise in respect of s 8A(1). First, is the reference to the court's approach to the Limitation Act (Cap 163, 1996 Rev Ed) at the time the question arises in the arbitration proceedings, or at the time of the statutory provision was enacted? In *Harding v Wealands*,[58] the House of Lords took the view that Parliament had frozen the meaning of "procedure" in the Private International Law (Miscellaneous Provisions) Act 1995 (c 42) (UK) to its meaning as understood by the English courts in 1995. However, the statutory language in *Harding v Wealands* was: "Nothing in this Part … authorises questions of procedure in any proceedings to be determined otherwise than in accordance with the law of the forum."

41 On the other hand, the wording of s 8A(1) explicitly refers in the present tense to the approach of the court of law in Singapore. Thus, on a literal interpretation, an arbitration tribunal operating under Singapore *lex arbitri* will be obliged to apply the

---

55 Section 6 of International Arbitration (Amendment) Act 2001 (No 38 of 2001).

56 Cap 143A, 2002 Rev Ed.

57 Section 11 of Cap 10, 2002 Rev Ed, introduced in the revamped Arbitration Act 2001 (No 37 of 2001).

58 [2006] UKHL 32; [2006] 3 WLR 83 (HL).

same approach that the Singapore court takes to the application of the provisions of the Limitation Act at the time of the arbitration proceedings in question. If the Singapore court treats a provision in the Act as procedural, the arbitration tribunal will apply that provision irrespective of the law governing the claim. If, however, the Singapore court would not have applied the Limitation Act because it characterises the relevant provision in the Act as substantive and the substantive claim in question is governed by foreign law, then the arbitration tribunal is not obliged to apply the Limitation Act.

42 The Explanatory Statement in the International Arbitration (Amendment) Bill[59] merely stated that the amendment was to provide for the application of the Limitation Act. No mention was made of limitation periods in the Second Reading.[60] It is useful to note that the same provision appears in the Arbitration Act (Cap 10, 2002 Rev Ed) that was passed almost at the same time. This Arbitration Act repealed the previous version, and was intended to bring domestic arbitration more into line with the position on international arbitrations. During the Second Reading, no reference was made to the provision on limitations, but the Minister of State for Law (Assoc Prof Ho Peng Kee) moving the Bill[61] said that the Bill incorporated useful provisions from the Arbitration Act 1996 (c 23) (UK) ("Arbitration Act 1996 (UK)"). It would appear that the provision is an adaptation of s 13 of the Arbitration Act 1996 (UK). Section 13(1) provided that "The Limitation Acts apply to arbitral proceedings as they apply to legal proceedings" with the qualification that the reference to the "Limitation Acts" included a reference to the Foreign Limitation Periods Act 1984 (c 16) (UK).[62] This rider was obviously not adopted in the Singapore legislation. The UK Parliament clearly intended the domestic limitation laws (read with the Foreign Limitation Periods Act 1984) to apply in the same way to both court and arbitration proceedings, and the statutory technique used was that the arbitral tribunal should follow how these statutes applied in a court of law. The language as followed in the Singapore provisions thus suggests that the Singapore Parliament intended that the arbitration tribunals should follow the approach of the Singapore courts in respect of the application (or otherwise) of the Limitation Act. Although this may suggest that there is no need to amend the arbitration legislation, in the interest of certainty, statutory reform for Singapore law should also clarify the position for arbitration.

43 The second and practical issue relates to the expectations of parties. A competent Singapore lawyer in 2008 could reasonably have advised contracting parties that the Singapore court would apply the Limitation Act as part of the procedural law of the forum in accordance with the traditional common law private international law approach. The same may be said about parties who have incorporated a choice of Singapore court clause in their contracts. A change in the common law is

59 No 38 of 2001.

60 *Hansard*, Vol 73, Col 2221–2225.

61 Arbitration Bill (No 37 of 2001).

62 Section 13(4) of the Arbitration Act 1996 (UK).

retrospective[63] and may adversely affect parties who have chosen to arbitrate (or litigate) under Singapore law. In this respect, legislation with a clear cut-off date for transactions would have a clear advantage over common law reform.

44 Section 8A(2) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) empowers the court to extend the time prescribed under the Limitation Act (Cap 10, 2002 Rev Ed) in cases where the arbitration award turns out to be ineffective. This provision presupposes that Singapore law governs the issue of limitation periods. If limitation period is governed by foreign law, then foreign law will govern the question whether time can be extended for the court action because of the arbitration proceedings. This position appears to be correct in principle once it is accepted that time limitation raises a substantive issue for the purpose of conflict of laws. If the arguments below are accepted, the court should have the power to disapply foreign law (and consequently revert to the Limitation Act of Singapore) if undue hardship arises from the application of foreign law.

45 The same comments and arguments apply to s 8A(3).

(2) Public policy

46 The English Law Commission made no specific recommendation in its report as to the application of public policy,[64] preferring to leave the matter to the principles operating in the common law.[65] Public policy as an exception to the application of foreign law is generally invoked only in highly exceptional circumstances in the common law. The majority in the Law Commission was concerned that the notion of public policy should not be stretched.

47 In considering the applicability of public policy in this context, it is relevant to consider the fundamental principles behind the idea of limitation itself: the protection of defendants from stale claims and the encouragement of plaintiffs to proceed with expedition, the preservation of evidence and finality of closure a specific period after potential liability incidents.[66] The application of a foreign limitation period law that has

---

63 The Singapore courts have not yet adopted prospective overruling for the common law, though it has done so for the criminal law: *PP v Manogaran s/o R Ramu* [1996] 3 SLR(R) 390 (CA). The Judicial Committee of the House of Lords has accepted a limited power of prospective overruling in *National Westminster Bank v Spectrum Plus* [2005] 2 AC 680.

64 An example of forum public policy preventing the application of a foreign limitation period under the substantive governing law is where the foreign law conflicted with the forum's rule of public policy that time should not run in favour of a thief in an action for conversion: *City of Gotha v Sotheby's* (QBD) (9 September 1998) (unreported).

65 Law Commission Report, "Classification of Limitation in Private International Law" (Law Com No 114, 1982) (UK) at para 4.50.

66 Law Commission Report, "Classification of Limitation in Private International Law" (Law Com No 114, 1982) (UK) at para 4.44.

struck a different balance from the law of the forum cannot by itself be against public policy.

48 While the majority view in the report was that the common law public policy defence was adequate to the task, the minority view in the report was that this may not be enough to do justice in cases where, for example, the limitation period of the applicable foreign substantive law is unduly long. The UK statute in the final form supported the minority view, in not only expressly spelling out the public policy exception,[67] but also *extending* the concept of public policy to cases where "undue hardship" will be caused by the application of the foreign limitation law to parties who are or may be parties to the proceedings.[68]

49 There is now substantial English case law interpreting the "undue hardship" provision. It does not apply simply because the limitation period under foreign law is shorter than the forum's own limitation period.[69] The undue hardship provision was applied in one case where the court thought it was unfair to apply the limitation law of the proper law of the contract because it would have caught the plaintiff by surprise as it was not evident on the face of the contract what its governing law was, and the defendants had agreed to an extension of time which turned out to have no legal effect under the applicable law.[70] In another case it was applied where the foreign limitation period was 12 months and the plaintiff, who was hospitalised for some time, had been led to believe that the claim would be met.[71] The English court had also disallowed a thief from relying on a foreign limitation period as a matter of public policy.[72] On the other hand, one cannot argue that the application of the limitation period of the law of the forum is against forum public policy.[73] The effect of the English cases is helpfully summarised by Foskett J in *Harley v Smith*:[74]

> (i) That it is not sufficient to cross the 'undue hardship' threshold by reason only of the fact that the foreign limitation period is less generous than that of the English jurisdiction.
>
> (ii) That the claimant must satisfy the court that he or she will suffer greater hardship in the particular circumstances than would normally be the case.

---

67 Section 2(1).

68 Section 2(2).

69 *Durham v T & N Noble Plc* (CA) (1 May 1996) (unreported).

70 *The Komninos S* [1991] 1 Lloyd's Rep 370 (CA).

71 *Jones v Trollope Colls Cementation Overseas Ltd The Times*, 26 January 1990 (CA).

72 *City of Gotha v Sotheby's (No 2) The Times*, 8 October 1998 (QB).

73 *Chagos Islanders v AG* [2002] EWHC 2222 (QB). However, the failure to apply the law of the forum could in exceptional cases amount to contravention of public policy.

74 [2009] EWHC 546 (QB); [2009] 1 Lloyd's Rep 359 at [94].

(iii) That in considering (ii) the focus is on the interests of the individual claimant or claimants and is not upon a balancing exercise between the interests of the claimants on one hand and the defendant on the other.

50 It is to be noted that, generally, hardship is not a defence to the application of foreign law in common law conflicts methodology.[75] This statutory provision is a departure from the general principle in the common law that foreign law applicable through the forum's choice of law rules is denied application only where it would be inconsistent with some fundamental forum interest or public policy of the forum. It would be dangerous for the common law to develop a "hardship" extension to the concept of public policy generally. In so far as it is thought desirable that there should be provision for hardship cases in the application of foreign limitation periods, it is better that it is done through statutory rather than judicial reform.

51 Another issue relates to the consequence of rejecting the foreign limitation period law on the basis of public policy. The approach favoured by the English Law Reform Commission is that the statutory changes are not to be applied to the extent of inconsistency with public policy in each case. Suppose a claim before the Singapore court is for a debt (where the forum's limitation period is six years) governed by the law of Ruritania. Under the proposed reform, the limitation period of the law of Ruritania applies to the exclusion of the limitation period under Singapore law. Suppose that under the law of Ruritania, the limitation period is five weeks, and the claim is brought seven years after the accrual of the cause of action. *Prima facie*, the claim is time-barred under Ruritanian law. In order to succeed on the public policy ground, the plaintiff has to show that it is against public policy that he cannot pursue his claim after seven years (and not merely that it is against public policy that he cannot pursue his claim after five weeks), failing which his claim is time-barred under Ruritanian law. To this extent, the statutory direction to apply the foreign limitation period is ignored. There is no need to refer to the limitation law of the forum in this example. On the other hand, suppose instead that Ruritanian law allows a limitation period of 20 years. If a claim is brought after 15 years, the court of the forum may take the view that the claim should not proceed. To this extent, the direction to disapply the forum limitation period (which is procedural at common law) is ignored. In the English Law Commission's view, the public policy question is not simply one to decide whether the foreign or forum limitation law should apply, but to decide whether, on the facts of each case, it would be contrary to public policy to apply the *lex causae* to allow or disallow the claim as the case may be.[76]

52 The approach is consistent with doctrine; the rejection of foreign applicable law in the private international law leads to the residual application of the law of the forum

---

75 The concept of public policy developed for family law issues is wide enough to encompass the concept of undue hardship, but its extension to other areas, especially commercial areas, has been generally resisted by both judges and academic writers.

76 Law Commission Report, "Classification of Limitation in Private International Law" (Law Com No 114, 1982) (UK) at paras 4.40 and 4.47.

to the extent of the inconsistency. Although it has been said in a leading text that under the English legislation the effect of the triggering of public policy is that the court reverts to the common law approach,[77] in truth the common law is not referred to unless the operative provision[78] cannot be applied at all. In most cases, the court will (as seen in the examples above) decide whether to apply the limitation period of the foreign law or disapply that of the law of the forum within the operative provision, according to the dictates of public policy.

53 Finally, one other alternative may be briefly considered. It is possible that no limitation periods apply should the foreign limitation law be rejected. This is, however, not a desirable outcome,[79] and should not be adopted.

(3) Foreign judgments

54 Limitation periods may be applied by a foreign court in the course of rendering a judgment which is sought to be recognised under Singapore private international law. Under the traditional common law approach, a judgment decided on a point of procedure in the private international law sense is not a judgment on the merits and therefore not entitled to recognition. Thus, foreign judgments which turned on limitation statutes classified as procedural under the common law (*ie*, the limitation law had not extinguished the right) would not be on the merits, and therefore not entitled to recognition.[80]

55 If it is recognised as a matter of choice of law that limitation periods of the *lex causae* should generally apply whether they extinguish a right or bar a remedy, then it should follow as a matter of principle that a foreign judgment which turns on the limitation law of what the foreign court regarded as the applicable law should be regarded as being on the merits. A more difficult question arises if the foreign court takes a different approach from that proposed in this paper (*eg*, it continues to follow the common law approach and applies its own limitation period instead of that of the *lex causae*). Here, the advocated choice of law position potentially conflicts with the position in foreign judgments where they can be recognised as long as they are on the merits of the case even if they apply different choice of law rules from the Singapore court.

---

77 *Dicey, Morris and Collins: The Conflict of Laws* (London: Thomson, 14th Ed, 2006) at para 7-050.

78 Section 1 of the Foreign Limitation Periods Act 1984 (UK) in Annex A; cl 2 in the proposed draft Foreign Limitation periods Bill in Annex B.

79 It may be argued that laches would still apply in such cases (*MCST No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 (CA)), but this merely restates the application of the law of the forum, and begs the question why the equitable and not statutory law is being applied.

80 *Harris v Quine* (1869) LR 4 QB 653; *Black-Clawson International Ltd v PapierwerkeWaldhof-Aschaffenburg AG* [1975] AC 591.

56 It is suggested that a foreign judgment on a time limitation point be regarded as being on the merits whether the foreign court had applied its own law or foreign law in accordance with its own private international law. This avoids the re-introduction of the substance-procedure distinction for limitation laws which has been obviated in the advocated approach. Distinguishing between different types of foreign judgments depending on how it came to apply limitation laws increases the complexity of the law.[81] Further, fundamental public policy in the context of foreign judgments should not be engaged merely because a foreign court applies a different approach to the classification or application of limitation laws.

(4) Laches

57 The English Law Reform Commission considered that the defence of laches in the forum should be unaffected by their recommendations, and this defence was preserved under the Foreign Limitation Periods Act 1984 (c 16) (UK) in s 4(3). The exception appears to cover both laches and the application of limitation statutes by analogy.[82] This "insular"[83] approach elevates the domestic law, where the equitable discretion is similarly unfettered by statute, to private international law. There is much to commend the view that limitations in equity should be treated as substantive issues for choice of law,[84] subject to public policy considerations.[85] For example, in one case where the English court had applied laches to a foreign claim, the 81-year delay would have been so unconscionably long as to be against public policy anyway.[86] Similarly, where foreign limitation law protects a fraudulent or dishonest party against the true owner of property, it may be disregarded as against public policy.[87]

58 Strangely, in the implemented recommendations of the English Law Reform Commission, laches in foreign law is applicable as part of the substantive law under the statute.[88] The express reservation for forum's version of laches confirms this, and, moreover, it is impractical to distinguish laches from other limitation laws in countries that do not have the common law heritage. If the foreign limitation period has expired, the right is lost and there is no further role for the law of the forum.[89] A curious result

---

81 Law Commission Report, "Classification of Limitation in Private International Law" (Law Com No 114, 1982) (UK) at para 4.69.

82 For an example of the application of statutory limitation by analogy in domestic law, see *Imperio v Heath (REBX) Ltd* [2001] 1 WLR 112 (CA).

83 PB Carter, "The Foreign Limitation Periods Act 1984" (1985) 101 LQR 68 at 76.

84 It is to be noted that the French court had no difficulty applying the English doctrine of laches to a claim governed by English law: *Rowe v Walt Disney Productions* [1987] FSR 36 (*Cour D'Appel* Paris).

85 Section 2 of the Foreign Limitation Periods Act 1984. See also PA Stone, "Time Limitation in the English Conflict of Laws" [1985] LMCLQ 497 at 511.

86 *Doss v Secretary of State for India in Council* (1875) LR 19 Eq 509.

87 *City of Gotha v Sotheby's* (QB) (9 September 1998) (unreported).

88 Section 4(2) includes both substantive and procedural law of foreign countries within the meaning of limitation law for the statute.

89 *Arab Monetary Fund v Hashim (No 9) The Times*, 29 July 1994 (Ch).

follows: foreign laches is conclusive if it bars the claim, but only taken into account if it does not.

59 The modern trend in the thinking on limitation laws has been to minimise the differences between common law and equitable claims.[90] In *Imperio v Heath (REBX) Ltd*, Sir Christopher Staughton said:[91]

> It is not obvious to me why it is still necessary to have special rules for the limitation of claims for specific performance, or an injunction, or other equitable relief. And if it is still necessary to do so, I do not see any merit in continuing to define the circumstances where a particular claim will be time-barred by reference to what happened, or might have happened, more than 60 years ago. If a distinction still has to be drawn between common law and equitable claims for limitation purposes, I would hope that a revised statute will enact with some precision where that distinction should be drawn, rather than leave it to the product of researches into cases decided long ago.

60 It is to be noted that in the UK, the proviso for laches has been partially superseded by the Rome Convention. Under Art 10(1)(*d*), the applicable law applies to the "various ways of extinguishing obligations and prescription and limitation of actions". Article 1(2)(*h*), which excludes matters of evidence and procedure from the convention, is subject to Art 14,[92] but not to Art 10. The Convention does not depend on the Foreign Limitation Periods Act (c 16) (UK) for its substantive characterisation of limitation laws. Section 4(3) is thus irrelevant where the Rome Convention applies. The Convention manifests a strong policy in favour of uniformity of result in contract disputes,[93] thus resulting in a substantive characterisation. The same position prevails under the Rome I Regulation which superseded the Rome Convention for contractual obligations, and the Rome II Regulation for non-contractual obligations.[94] It is further noted that in the United States, the American *Restatement on the Conflict of Laws* had originally applied the law of the forum to the issue of laches, but the *Restatement* was revised in 1988 so that, like limitation laws in general, laches is regarded as an issue subject to the substantive law governing the claim.[95]

---

90 The English Law Commission, in considering reform to the domestic law of limitations, recommended that the same limitation laws be applied to both common law and equitable claims, subject to the qualification that laches continue to be applied in the court's discretion in determining the appropriateness of equitable remedies: Law Commission Report, "Limitation of Actions" (Law Com No 270, 2001) (UK) at paras 4.268–4.278. In a similar vein, the New Zealand Law Commission Report, "Tidying the Limitation Act" (NZLC R61, 2000) available at <http://www.lawcom.govt.nz/sites/default/files/publications/2000/07/Publication_69_137_R61.pdf> (accessed 3 January 2011) at paras 23–28 recommends putting an end to the division between common law and equitable claims for the purposes of the domestic law of limitations.

91 [2001] 1 WLR 112 (CA).

92 Dealing with presumptions, burden and mode of proof in foreign law.

93 Article 18.

94 See A Dickinson, *The Rome II Regulation* (OUP, 2008) at para 14.49.

95 Section 142 of the *Restatement (2d) Conflict of Laws*, comment (*d*).

61 One difference in the legislative context is that, unlike the domestic Singapore position where statutory bars to common law actions apply to claims for equitable remedies in respect of such claims,[96] the domestic English position is that these statutory provisions do not apply to many equitable remedies;[97] instead the court in its equitable jurisdiction applies the limitation statutes by analogy.[98] Thus, in Singapore but not English law, the limitation statute applies to all equitable remedies.

62 Further, behind the English Law Commission's reservation in respect of laches and related defences in equity lies the assumption that the law of the forum governs all aspects of a claim for equitable relief. That this is not necessarily the case has been confirmed by Singapore Court of Appeal.[99]

63 Additionally, the effect of the English proviso for the laches doctrine of the forum is that (where the foreign limitation period has not expired)[100] the English court would generally defer to the foreign limitation law, and exercise its discretion to apply its own laches doctrine only in exceptional situations. A leading English text has suggested that this discretion should be exercised consistently with the public policy rejection of foreign limitation laws.[101] Thus, it would be a more straightforward legislative approach to deal with forum laches under the general public policy exception rather than to carve a specific exception for it.

64 It is suggested that no exception needs to be made for time limitations in equitable defences. The applicability of forum or foreign equitable time bars would then simply follow the judicial characterisation of the claim and the resultant governing law. It is suggested it is a better solution to leave the nascent issue of characterisation of equitable claims (and thereby the determination of the applicable law to the claim) to judicial development than to enshrine statutorily that the forum's version of laches should apply irrespective of the international elements in the case.

65 This proposal does not alter the otherwise discretionary nature of equitable remedies.

---

96 Section 6(7) of the Limitation Act (Cap 163, 1996 Rev Ed).

97 Section 36(1) of the Limitation Act 1980 (c 58) (UK).

98 *Soar v Ashwell* [1893] 2 QB 390 (CA) at 393; *Paragon Finance plc v D B Thakerar & Co* [1999] 1 All ER 400 (CA).

99 *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377; *Murakami Takako v Wiryadi Louise Maria* [2009] 1 SLR(R) 508. See also *Base Metal Trading Ltd v Shamurin* [2003] EWHC 2419 (Comm); [2004] 1 All ER (Comm) 159, affirmed in [2004] EWCA Civ 1316; [2005] 1 WLR 1157 (CA); *A-G for England and Wales v R* [2002] 2 NZLR 91 (NZ CA), affirmed without reference to the point in [2003] UKPC 22. Even Australian courts are beginning to recognise the relevance of foreign law in a claim for equitable relief: *Murakami v Wiryadi* [2010] NSWCA 7.

100 See para 58 above.

101 A McGee, *Limitation Periods* (London, Sweet & Maxwell, 5th Ed, 2006) at para 25.023.

(5) Contractually agreed limitations

66 The proposal in this Report does not affect contractually agreed time limitations.[102] Such contractual provisions may take many forms, and are likely under the common law to be characterised as substantive and governed by the proper law of the contract and subject to the fundamental public policies of the forum. There is no need to deal with this issue by legislation.

(6) Torts

67 Choice of law for torts raises particular problems for limitation periods. The Singapore Court of Appeal in *Rickshaw Investments Ltd v Nicolai Baron von Uexkull*[103] confirmed the relevant choice of law rule in Singapore is double actionability subject to a flexible exception in appropriate circumstances in respect of specific issues. Recognising that the common law's forum bias needed mitigation,[104] the court further held – not following English authority to the contrary – that the exception could apply even if the tort occurred locally, and that the same standard applied to the exception whether the tort was local or foreign. The court stated: "a blanket and blatant predilection for the *lex fori* is no longer sustainable – especially during present times".[105]

68 Double actionability involves the application of two substantive laws: the law of the forum and the law of the place where the tort occurred. Based on the recommendation made in this paper, the Singapore court will be required to apply the limitation laws of two countries in the case of a foreign tort (with the inevitable result that the shorter one will prevail) unless it is appropriate to apply an exception in the specific circumstances of the case to the issue of time limitations. The Court of Appeal also made it clear that the exception should be a strict one to be invoked only when the connections to the legal system sought to be disapplied are purely fortuitous.[106] It is not clear how willing the courts in Singapore will be to depart from the *lex fori* limb of double actionability in cases of torts occurring abroad.[107]

---

102 This is a distinct issue from an agreement not to invoke the provisions of a limitation period statute of a particular country. Whether the agreement (assuming it is valid by it proper law) is effective to toll the limitation statute depends on the law governing the issue of limitation.

103 [2007] 1 SLR(R) 377 (CA) at [52]–[66].

104 *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 (CA) at [54] and [64].

105 *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 (CA) at [63].

106 *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 (CA) at [63].

107 The strong reluctance to depart from the general rule of double actionability in *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 (CA) must be understood in the context that the torts were found to have been committed in Singapore; thus Singapore law was both the *lex fori* and the *lex loci delicti*.

69 It may be argued that in the case of torts occurring abroad,[108] at least as far as the issue of limitation periods is concerned, it should not be too difficult in many cases to find that the relevant connections with the forum are fortuitous. However, even though double actionability remains the general rule in Singapore, it is arguable that, as a general rule, the limitation period of the *lex fori* should not apply unless Singapore law is also the *lex loci delicti* or the law exceptionally applicable. This position may well be attained by way of the exception mentioned above, but there is more uncertainty in this approach. If this position is desirable as a matter of principle and policy, the uncertainty can be removed by express statutory provision.

70 The *lex fori* requirement for civil wrongs is derived from the historical origin of torts in the criminal law (the forum can only apply its own criminal laws) and the need in historical civil procedure to lay a fictitious venue for the purpose of jury trial in England for foreign torts (which thus reduced the action to a purely local one in form).[109] The strongest modern justification for the application of the *lex fori* is that the court of the forum should only award compensation in cases where the civil wrong is one which is recognised – or at least recognisable – under its own law.[110] On this basis, there is little justification to apply the limitation period of the forum in the case of foreign torts. The English Law Reform Commission understandably did not deal with this issue in its report on foreign limitation periods in 1982 as this was nearly a decade before it reported on law reforms to choice of law for torts and delicts.[111] Legislative implementation of the latter report, as well as significant developments in major Commonwealth and other jurisdictions since then,[112] have minimised the role of the *lex fori* in choice of law for torts.

(7) Discretion in foreign limitation laws

71 It is not unusual for foreign limitation laws to give the court some discretion in its application. Although there has been earlier doubt about whether the court of the forum can exercise discretion conferred by foreign law, the better view is that it may do so provided the discretion is a bounded one, unless the discretion is one which is intended to be exercised by a specific foreign tribunal only or is so closely tied to the circumstances of the foreign country that the forum court is unable to exercise it. The Singapore Court of Appeal in *Westacre Investments Inc v The State-Owned Company*

---

108 Where the tort is committed in Singapore, and the flexible exception does not apply, the governing law is Singapore law and the proposed statutory amendments do not apply as no foreign law is applicable. The result is the application of the Singapore limitation period under the common law.

109 CGJ Morse, *Torts in Private International Law* (Cambridge: CUP, 1978), ch 2.

110 PB Carter, "Choice of Law in Tort: The Role of the *Lex Fori*" (1995) CLJ 38 at 40–41; Hancock, "Torts in the Conflict of Laws: The First Rule in *Phillips v Eyre*" (1940) U of Tor LJ 400.

111 Law Commission Report, "Private International Law: Choice of Law in Tort and Delict" (Law Com No 193, 1990) (UK).

112 *Red Sea Insurance Co Ltd v Bouygues SA* [1995] 1 AC 190 (PC HK); *Tolofson v Jensen* [1994] 3 SCR 1022 (Canada); *Regie Nationale des Usines Renault SA v Zhang* [2002] HCA 10, (2002) 210 CLR 491 (HC, Australia). See also Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ("Rome II"), OJC L199/40 of 31.7.2007.

Yugoimport SDPR[113] implicitly affirms this position. The exercise of discretion is in principle an adjudication exercise governed by the law of the forum. However, this case is further authority that the Singapore court can admit and consider evidence of how a foreign court would exercise its discretion.[114]

72 For the avoidance of doubt, the court of the forum should be empowered by the proposed Bill to exercise such discretion in foreign limitation laws in such manner as the foreign court would in a like case.

G. Conclusion

73 The traditional common law approach towards substance and procedure in the conflict of laws depending on whether a rule affects the existence or the enforceability of a right depends excessively on linguistic and technical distinctions and is slowly losing influence in major Commonwealth jurisdictions. There are also signs that similar developments may be taking place in the common law of Singapore.

74 The proposition that limitation statutes are procedural is long established in the common law and probably reflects the present state of the common law in Singapore. This position is becoming increasing out of line with norms in leading jurisdictions in both the common law and civil law world. On the other hand, it is also possible that contracting parties may have relied on this position in choosing Singapore as the venue for litigation or arbitration. The issue of reliance may be dealt with by a clean cut-off date and the potential application of the public policy defence.

75 There is a case for legislative reform in spite of the signs of common law development because:

(a) legislation can put the matter beyond doubt quickly while the court may move more slowly on a point that is so entrenched;

(b) legislative reform can be more targeted than the common law in the sense that it does not commit the common law courts to any classification methodology as such;

(c) legislative reform can be made clearly prospective in order not to disturb choice of arbitration and choice of court agreements entered into by

---

113 [2009] 2 SLR(R) 166 (CA).

114 See also *MCC Proceeds Inc v Bishopsgate Investment Trust plc* [1999] CLC 417 at [23] and *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR(R) 491 (CA) at [76]. The Australian position that such evidence is inadmissible has been criticised: M Davies, AS Bell and PLG Brereton, *Nygh's Conflict of Laws in Australia* (Sydney: LexisNexis, 8th Ed, 2010) at para 17.8.

contracting parties on the understanding of the applicability of Limitation Act as the procedural law of the forum; and

(d) legislative reform can create a more permissive public policy regime (including the concept of undue hardship) within the choice of law for limitation periods, which can be hard to replicate in the common law without adversely affecting the general law.

76 It is recommended that there should be legislative clarification that time limitation laws apply as part of the substantive law governing the claim, subject to public policy reservations of the forum (including undue hardship to the parties caused by the application of foreign limitation laws), but there is no need to make any special provision for equitable time limitation defences.

77 The draft Bill containing the proposed reforms is found in Annex B.[115]

115 The assistance of the Legislation and Law Reform Division of the Attorney-General's Chambers of Singapore in drafting the contents of the draft Bill is gratefully acknowledged.

ANNEX A:

FOREIGN MATERIALS

I. Summary of Recommendations in the Report of the Law Commission, Classification of Limitations in Private International Law (No 114) 1982 (para 5.2)

Our recommendations are as follows:

(1) Our principal recommendation. The English rule whereby statutes of limitation, as opposed to rules of prescription, are classed as procedural should be abandoned, and, where under our rules of private international law a foreign law falls to be applied in proceedings in this country, the rule of that foreign law relating to limitation should also be applied, to the exclusion of the law of limitation in force in England and Wales.

(paragraph 4.13 and clause 1(1))

(2) By way of qualification to our principal recommendation, the rules of limitation in force in England and Wales should not be excluded in cases where both a foreign law and the law of England and Wales fall to be taken into account under the rules of private international law in the determination of any issue by the court.

(paragraph 4.15 and clause 1(2))

(3) The domestic law of England and Wales should be applied for the purpose of determining the *terminus ad quem* of a limitation period prescribed by a foreign *lex causae*.

(paragraph 4.20 and clause 1(3))

(4) Section 34 of the Limitation Act 1980 should extend to arbitrations whose subject-matter involves the application of a period of limitation prescribed by a foreign *lex causae*, in accordance with our principal recommendation.

(paragraph 4.23 and clause 5)

(5) In its application of a foreign rule as to limitation, the court or, as the case may be, an arbitrator should have regard to the whole body of the law of limitation of the *lex causae*, including (i) any provisions (other than those mentioned in subparagraph (6) below) which might operate to suspend the running of the appropriate period and (ii) any discretion conferred by that law, which shall so far as is practicable be exercised in the manner in which it is exercised in comparable cases by the courts of the relevant foreign country.

(paragraph 4.25 and clause 4(1)
(as to (i))
and clause 1(4)
(as to (ii))

(6) Where the period of limitation prescribed by a foreign *lex causae* may be extended or interrupted by reason of the absence of a party to the proceedings from any specified jurisdiction or country, such part of the *lex causae* as relates to such extension or interruption should be disregarded.

(paragraph 4.32 and clause 2(2))

(7) Where, in a particular case, the court or, as the case may be, an arbitrator determines that the application of the period of limitation prescribed under a foreign law would be contrary to public policy, the court (or an arbitrator) may refrain from applying it.

(paragraph 4.49 and clause 2(1))

(8) Our principal recommendation does not apply to a claim for equitable relief; but if a period of limitation prescribed under a foreign law would otherwise be applicable in accordance with that recommendation, and such period has not expired, the court shall take that fact into account in determining whether or not to grant the relief sought.

(paragraph 4.54 and clause 4(3))

(9) The Limitation (Enemies and War Prisoners) Act 1945 should extend to cases where the period of limitation prescribed by a foreign *lex causae* is applied in accordance with our principal recommendation.

(paragraph 4.57 and clause 2(3))

(10) Where a foreign court has given a judgment in any matter by reference to the law of limitation of its own or of any other country (including that of England and Wales), that judgment should be regarded as conclusive "on the merits" for the purposes of its recognition or enforcement in England and Wales.

(paragraph 4.71 and clause 3)

[Note: The references to paragraph numbers and clauses are to the main text in the Law Commission Report and the Bill attached thereto, respectively. These are not reproduced in this Annex.]

II. Foreign Limitation Periods Act 1984 (UK)

An Act to provide for any law relating to the limitation of actions to be treated, for the purposes of cases in which effect is given to foreign law or to determinations by foreign courts, as a matter of substance rather than as a matter of procedure.

[May 24, 1984]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

Application of foreign limitation law

1 (1) Subject to the following provisions of this Act, where in any action or proceedings in a court in England and Wales the law of any other country falls (in accordance with rules of private international law applicable by any such court) to be taken into account in the determination of any matter –

(*a*) the law of that other country relating to limitation shall apply in respect of that matter for the purposes of the action or proceedings; and

(*b*) except where that matter falls within subsection (2) below, the law of England and Wales relating to limitation shall not so apply.

(2) A matter falls within this subsection if it is a matter in the determination of which both the law of England and Wales and the law of some other country fall to be taken into account.

(3) The law of England and Wales shall determine for the purposes of any law applicable by virtue of subsection (1)(*a*) above whether, and the time at which, proceedings have been commenced in respect of any matter; and, accordingly, section 35 of the Limitation Act 1980 (new claims in pending proceedings) shall apply in relation to time limits applicable by virtue of subsection (1)(*a*) above as it applies in relation to time limits under that Act.

(4) A court in England and Wales, in exercising in pursuance of subsection (1)(*a*) above any discretion conferred by the law of any other country, shall so far as practicable exercise that discretion in the manner in which it is exercised in comparable cases by the courts of that other country.

(5) In this section "law", in relation to any country, shall not include rules of private international law applicable by the courts of that country or, in the case of England and Wales, this Act.

Exceptions to s. 1

2 (1) In any case in which the application of section 1 above would to any extent conflict (whether under subsection (2) below or otherwise) with public policy, that section shall not apply to the extent that its application would so conflict.

(2) The application of section 1 above in relation to any action or proceedings shall conflict with public policy to the extent that its application would cause undue hardship to a person who is, or might be made, a party to the action or proceedings.

(3) Where, under a law applicable by virtue of section 1(1)(*a*) above for the purposes of any action or proceedings, a limitation period is or may be extended or interrupted in respect of the absence of a party to the action or proceedings from any specified jurisdiction or country, so much of that law as provides for the extension or interruption shall be disregarded for those purposes.

[(4) omitted.]

Foreign judgments on limitation points

3 Where a court in any country outside England and Wales has determined any matter wholly or partly by reference to the law of that or any other country (including England and Wales) relating to limitation, then, for the purposes of the law relating to the effect to be given in England and Wales to that determination, that court shall, to the extent that it has so determined the matter, be deemed to have determined it on its merits.

Meaning of law relating to limitation

4 (1) Subject to subsection (3) below, references in this Act to the law of any country (including England and Wales) relating to limitation shall, in relation to any matter, be construed as references to so much of the relevant law of that country as (in any manner) makes provision with respect to a limitation period applicable to the bringing of proceedings in respect of that matter in the courts of that country and shall include –

(*a*) references to so much of that law as relates to, and to the effect of, the application, extension, reduction or interruption of that period; and

(*b*) a reference, where under that law there is no limitation period which is so applicable, to the rule that such proceedings may be brought within an indefinite period.

(2) In subsection (1) above "relevant law", in relation to any country, means the procedural and substantive law applicable, apart from any rules of private international law, by the courts of that country.

(3) References in this Act to the law of England and Wales relating to limitation shall not include the rules by virtue of which a court may, in the exercise of any discretion, refuse equitable relief on the grounds of acquiescence or otherwise; but, in applying those rules to a case in relation to which the law of any country outside England and Wales is applicable by virtue of section 1(1)(*a*) above (not being a law that provides for a limitation period that has expired), a court in England and Wales shall have regard, in particular, to the provisions of the law that is so applicable.

[rest omitted.]

III. Choice of Law (Limitation Periods) Act (New South Wales) 1993

Definitions

3. In this Act:

court includes arbitrator.

limitation law means a law that provides for the limitation or exclusion of any liability or the barring of a right of action in respect of a claim by reference to the time when a proceeding on, or the arbitration of, the claim is commenced.

Application

4. This Act extends to a cause of action that arose before the commencement of this Act, but does not apply to proceedings instituted before the commencement of this Act.

Characterisation of limitation laws

5. If the substantive law of a place, being another State, a Territory or New Zealand, is to govern a claim before a court of the State, a limitation law of that place is to be regarded as part of that substantive law and applied accordingly by the court.

Exercise of discretion under limitation law

6. If a court of the State exercises a discretion conferred under a limitation law of a place, being another State, a Territory or New Zealand, that discretion, as far as practicable, is to be exercised in the manner in which it is exercised in comparable cases by the courts of that place.

Application to New Zealand

7. (1) This Act does not apply in relation to New Zealand until it is declared by proclamation that it does so apply. The proclamation may be the proclamation commencing this Act or another proclamation.

(2) If the substantive law of New Zealand is to govern a claim before a court of the State and proceedings have been instituted on the claim before that declaration takes effect, this Act does not apply to those proceedings. This subsection has effect despite section 4.

Review of Act

8. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

IV. Limitation Act 1950 (New Zealand)

PART 2A – APPLICATION OF LIMITATION LAW OF OVERSEAS COUNTRIES

Interpretation

28A. In this Part of this Act,—

"Country" includes a State, territory, province, or other part of a country:

"Limitation law" in relation to any matter, means a law that limits or excludes liability or bars a right to bring proceedings or to have the matter determined by arbitration by reference to the time when proceedings or an arbitration in respect of the matter are commenced; and includes a law that provides that proceedings in respect of the matter may be commenced within an indefinite period.

[*Cf* Foreign Limitation Periods Act 1984 (UK), s 4; Choice of Law (Limitation Periods) Act 1993 (NSW), s 3]

Application of this Part of the Act

28B. (1) This Part of this Act applies to the Commonwealth of Australia or any State or Territory of Australia, the United Kingdom, and to any country to which this Part of this Act is declared to apply by an Order in Council made under subsection (2) of this section.

(2) The Governor-General may from time to time, by Order in Council, declare that this Part of this Act applies to a country specified in the order.

(3) In the case of a country that is responsible for the international relations of a territory, an Order in Council under subsection (2) of this section may apply to the country and all or some of those territories.

Characterisation of limitation law

28C. (1) Where the substantive law of a country to which this Part of this Act applies is to be applied in proceedings before a New Zealand Court or in an arbitration, the limitation law of that country is part of the substantive law of that country and must be applied accordingly.

(2) If, in any case to which subsection (1) of this section applies, a New Zealand Court or an arbitrator exercises a discretion under the limitation law of another country, that discretion, so far as practicable, must be exercised in the manner in which it is exercised in that other country.

[*Cf* Foreign Limitation Periods Act 1984 (UK), s 1; Choice of Law (Limitation Periods) Act 1993 (NSW), ss 5 and 6.]

ANNEX B:

PROPOSED
FOREIGN LIMITATION PERIODS BILL

Foreign Limitation Periods Bill

Bill No. /2011.

Read the first time on 2011.

FOREIGN LIMITATION PERIODS BILL 20XX

(No. XX of 20XX)

ARRANGEMENT OF SECTIONS

Section

A BILL

intituled

An Act to provide for any law relating to the limitation of actions to be treated, for the purposes of cases in which effect is given to foreign law or to determinations by foreign courts, as a matter of substance rather than as a matter of procedure, and to make consequential amendments to certain other written laws.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Foreign Limitation Periods Act 20XX and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Application of foreign limitation law

2.—(1) Subject to the following provisions of this Act, where in any action or proceedings in a court in Singapore the law of any other country falls (in accordance with rules of private international law applicable by any such court) to be applied in the determination of any matter —

(*a*) the law of that other country relating to limitation shall apply in respect of that matter for the purposes of the action or proceedings; and

(*b*) the law of Singapore relating to limitation shall not so apply.

(2) Where a foreign law falls to be considered for the purpose of actionability under a choice of law rule, that foreign law shall be deemed to apply under subsection (1).

(3) The law of Singapore shall determine for the purposes of any law applicable by virtue of subsection (1)(*a*) whether, and the time at which, proceedings have been commenced in respect of any matter.

(4) A court in Singapore, in exercising in pursuance of subsection (1)(*a*) any discretion conferred by the law of any other country, shall so far as practicable exercise that discretion in the manner in which it is exercised in comparable cases by the courts of that other country.

(5) In this section, "law" in relation to any country, shall not include rules of private international law applicable by the courts of that country or, in the case of Singapore, this Act.

Exceptions

3.—(1) In any case in which the application of section 2 would to any extent conflict with public policy, that section shall not apply to the extent that its application would so conflict.

(2) The application of section 2 in relation to any action or proceedings shall conflict with public policy to the extent that its application would cause undue hardship to a person who is, or might be made, a party to the action or proceedings.

(3) Where, under a law applicable by virtue of section 2 for the purposes of any action or proceedings, a limitation period is or may be extended or interrupted in respect of the absence of a party to the action or proceedings from any specified jurisdiction or country, so much of that law as provides for the extension or interruption shall be disregarded for those purposes.

(4) Subsection (3) shall not apply to the extent that its application would conflict with public policy, or would cause undue hardship to a person who is, or might be made, a party to the action or proceedings.

Foreign judgments on limitation points

4. Where a court in any country outside Singapore has determined any matter wholly or partly by reference to the law of that or any other country (including Singapore) relating to limitation, then, for the purposes of the law relating to the effect to be given in Singapore to that determination, that court shall, to the extent that it has so determined the matter, be deemed to have determined it on its merits.

Meaning of law relating to limitation

5.—(1) Subject to subsection (3), references in this Act to the law of any country (including Singapore) relating to limitation shall, in relation to any matter, be construed as references to so much of the relevant law of that country as (in any manner) makes provision with respect to a limitation period applicable to the bringing of proceedings in respect of that matter in the courts of that country and shall include —

(*a*) references to so much of that law as relates to, and to the effect of, the application, extension, reduction or interruption of that period; and

(*b*) a reference, where under that law there is no limitation period which is so applicable, to the rule that such proceedings may be brought within an indefinite period.

(2) In subsection (1), "relevant law" in relation to any country, means the procedural and substantive law applicable, apart from any rules of private international law, by the courts of that country.

Application to Government

6. This Act shall bind the Government and apply in relation to any action or proceedings by or against the Government as it applies in relation to actions and proceedings to which the Government is not a party.

Transitional provision

7. Nothing in the Act shall —

(*a*) affect any action, proceedings or arbitration commenced before the date appointed under section 1; or

(*b*) apply in relation to any matter if the limitation period which, apart from this Act, would have been applied in respect of that matter in Singapore expired before the date appointed under section 1.

Consequential amendments to other written laws

8. The provisions of the Acts specified in the first column of the Schedule are amended in the manner set out in the second column thereof.

THE SCHEDULE

Section 8

CONSEQUENTIAL AMENDMENTS TO OTHER WRITTEN LAWS

First column	*Second column*
(1) Arbitration Act (Chapter 10, 2002 Ed.)	
Section 11	(i) Delete subsection (1) and substitute the following subsection: "(1) The Limitation Act (Cap. 163) and the Foreign Limitation Periods Act 20XX shall apply to arbitration proceedings as they apply to proceedings before any court and any reference in both Acts to the commencement of proceedings shall be construed as a reference to the commencement of arbitration proceedings.". (ii) Insert, immediately after the words "Limitation Act" in subsection (2), the words "or the Foreign Limitation Periods Act 20XX". (iii) Delete the words "purpose of the Limitation Act" in subsection (3) and substitute the words "purposes of the Limitation Act and the Foreign Limitation Periods Act 20XX".
(2) International Arbitration Act (Chapter 143A, 2002 Ed.)	
Section 8A	(i) Delete subsection (1) and substitute the following subsection: "(1) The Limitation Act (Cap. 163) and the Foreign Limitation Periods Act 20XX shall apply to arbitration proceedings as they apply to proceedings before any court and any reference in both Acts to the commencement of proceedings shall be construed as a reference to the

commencement of arbitration proceedings."

(ii) Insert, immediately after the words "Limitation Act" in subsection (2), the words "or the Foreign Limitation Periods Act 20XX".

(iii) Delete the words "purpose of the Limitation Act (Cap. 163)" in subsection (3) and substitute the words "purposes of the Limitation Act and the Foreign Limitation Periods Act 20XX".

EXPLANATORY STATEMENT

This Bill seeks to reform the law on the application of foreign limitation periods as recommended by the Law Reform Committee of the Singapore Academy of Law in its Report on Limitation Periods in Private International Law.

A foreign limitation period may extinguish a claim (as a matter of substantive) or bar a remedy (as a matter of procedure). When foreign claims are made in Singapore, the existing law is that a foreign limitation period that bars a remedy does not apply and the Singapore law on limitation will apply instead. The Bill provides for foreign limitation periods to apply as a general rule, without the need to determine whether it extinguishes a claim or bars a remedy (*i.e.* substantive or procedural).

Clause 1 relates to the short title and commencement.

Clauses 2 and 5 implement the new approach, which makes foreign limitation periods applicable as a general rule, regardless of whether it is substantive or procedural.

Clause 3 provides exceptions from the general rule, where —

(a) the application of foreign law would conflict with public policy;

(b) the application of foreign law would cause undue hardship to a person who is or might be made a party to the action or proceedings; and

(c) under the existing law, the limitation period is suspended.

Clause 4 provides for the decision of a foreign court of competent jurisdiction to be recognised as providing a good defence to proceedings in Singapore where the decision was based on a limitation point.

Clause 6 provides for the application of the Act to actions or proceedings by or against the Government.

Clause 7 provides that the Act will not apply to:

(a) any action, proceedings or arbitration commenced before the date that the Act comes into operation; and

(b) any matter in which the limitation period had, apart from the Act, expired before the date that the Act comes into operation.

Clause 8 makes consequential amendments to apply the Act to arbitration proceedings, in the same manner that the Limitation Act (Cap. 163, 1996 Ed.) already applies.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.