REPORT OF THE LAW REFORM COMMITTEE

ON

PRE – AND POST – JUDGMENT INTEREST

SINGAPORE ACADEMY OF LAW

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About the Law Reform Committee

The Law Reform Committee 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

At the request of The Honourable the Chief Justice Yong Pung How, a law reform sub-committee was set up to review the law on pre- and post-judgment interest. Following its appointment, the sub-committee reviewed the current practice of the courts in awarding interest and concluded that the present situation could be improved by reforming the statutory scheme for awarding interest.

The sub-committee's recommendations, which have since been accepted by the Law Reform Committee, are consolidated in this publication.

The report reflects the authors' current thinking on the researched area of law and does not represent the official position of Singapore Academy of Law or any governmental agency. The report has no regulatory effect and does not confer any rights or remedies.

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INTRODUCTION

[Ex.1] Pursuant to a request from The Honourable the Chief Justice Yong Pung How to The Honourable Justice Judith Prakash, Chairperson of the Law Reform Committee, a sub-committee was formed to look into the question of pre-judgment interest which had been the subject of a recent report of the Law Commission of England and Wales. A preliminary study conducted by Deputy Registrar Foo Chee Hock and Assistant Registrar Vincent Leow (and approved by Registrar Koh Juat Jong) was presented to the Law Reform Committee for its consideration. In summary, the paper concluded after its review that the current practice of the courts in awarding interest was generally in accordance with the prevailing economic situation, and that there was no urgent need for action for change, but that the matter should be considered more comprehensively by the Law Reform Committee. With the approval of the Law Reform Committee, the sub-committee decided to take a comprehensive view of the question of interest awarded by the courts, in particular, issues of pre-judgment interest, post-judgment interest generally, post-judgment interest in respect of foreign currency, and interest running on foreign judgments and arbitral awards.

[Ex.2] In a number of meetings, the sub-committee reviewed the aforesaid matters, and considered the various law reform proposals from several jurisdictions, including a very recent discussion paper from the Scottish Law Reform Commission. The sub-committee focused on the general cases that come before the courts (and arbitrators), rather than specific statutory provisions which could attract particular policy considerations peculiar to the specific legislation. The sub-committee reached the following conclusions and made the consequential recommendations, which were submitted for the consideration of the Law Reform Committee. Bills were drafted pursuant to these recommendations, and they appear in **Annex A**.

SUMMARY OF RECOMMENDATIONS

[Ex.3] Party Autonomy. The sub-committee endorsed the current law which respects the agreement of parties made in respect of interest, including compound interest. Thus, provided the agreement is valid and enforceable, and subject to the law of penalties, under the law of Singapore, including its choice of law rules, such agreements should be enforced. The other recommendations of the sub-committee are not intended to affect this principle.

[Ex.4] Recommendation 1:

It is recommended that no change be made to the principle of awarding pre-judgment interest in accordance with the agreement of the parties provided the agreement is valid and enforceable under the law.

[Ex.5] No General Entitlement to Interest. In respect of pre-judgment interest, the sub-committee reviewed the existing law on entitlement to interest. It considered the pros and cons of a system where recovery of interest is generally a matter of right as compared to the current situation where, apart from a limited number of exceptions, interest is a matter of judicial discretion. It is of the view that in the interest of the expeditious administration of justice, the discretionary structure should be retained. The sub-committee recommends leaving situations where interest is a matter of right to incremental judicial development.

[Ex.6] Recommendation 2:

It is recommended that there is no need for legislative intervention in respect of entitlement to (simple or compound) interest. Entitlement to interest under common law, equitable and admiralty jurisdiction should be left to judicial development.

[Ex.7] Clarification of Statutory Sources. The sub-committee reviewed the two primary legislative sources of the power to award interest, in the Civil Law Act and the Supreme Court of Judicature Act respectively, and concluded that the relationship between the statutory provisions leaves a number of questions outstanding. It recommends the legislative clarification of this position.

[Ex.8] Recommendation 3:

It is recommended that the statutory position in Singapore be clarified and the existing provisions on the general power of the courts to award interest for late payment or non-payment of debts, damages, or other sums found due upon the taking of an account, be consolidated into a single statutory provision.

[Ex.9] System for Setting Default Rate. The sub-committee noted that while there is no serious problem with the current practice, the *ad hoc* method of determining a general default rate of interest by judicial decision may not be ideal in changing economic conditions, and should be replaced by a more systematic method of determining the default interest rate.

[Ex.10] Recommendation 4:

It is recommended that a system should be implemented for setting the general rate of interest, from which the court may in its discretion depart where circumstances so justify.

[Ex.11] Removal of Legislative Limit. The sub-committee also considered that the legislative limit of 8% per annum, imposed in cases where the Rules Committee regulates an interest rate payable on debts, does not apply evenly in the cases requiring judicial award of interest, and may cause difficulties in the future should the interest rate in the economy rise beyond that level. It noted that the limit was imposed in 1934 when rules of procedure were transferred to the courts. The sub-committee thought that it was not necessary to have such a limitation in a mature judiciary.

[Ex.12] Recommendation 5:

It is recommended that the statutory limit of 8% per annum, in the Supreme Court of Judicature Act, s 80(2)(j) that is imposed on the Rules Committee in regulating the appropriate interest rates to be payable on debts, be removed.

[Ex.13] Compound Interest as General Rule. The sub-committee considered the issue of whether the current practice of awarding simple interest should be replaced by one where compound interest is awarded. The sub-committee is persuaded by the argument that compound interest is, in current economic circumstances, the best measure of the loss of the plaintiff (or the gain of the defendant) created by the defendant's failure to pay what is due to the plaintiff in time. Such a system would bring the judicial system in line with the arbitration system in Singapore.

[Ex.14] Recommendation 6:

It is recommended that the courts should have the power to award interest at a compound rate for pre-judgment interest.

[Ex.15] Implementation. The sub-committee is of the view that, in order to maintain flexibility in the system, the implementation should be done through the Rules of Court under a broad legislative structure. The sub-committee also made several provisional recommendations regarding the details of implementation of a system for awarding compound interest. It was thought that the Rules Committee, with its vast knowledge and experience of court procedure, would in a better position to decide finally on the details of implementing the Rules of Court.

[Ex.16] Recommendation 7:

It is recommended that the method for the determination of the applicable interest rate of compound interest should be made through the Rules of Court supported by Practice Directions.

[Ex.17] Recommendation 7A:

It is provisionally recommended that the court should generally award compound interest by default, but the court should have the power to award simple interest if, in its discretion, it considers that award to be more appropriate in the circumstances.

[Ex.18] Recommendation 7B:

It is provisionally recommended that, *prima facie,* it would be more appropriate to award simple interest instead of compound interest if the relevant loss or gain is proven to be measured in simple interest; or if the sum claimed (not including costs) does not exceed S$60,000; or if the period upon which the calculation of interest is to be based does not exceed 6 months.

[Ex.19] Recommendation 7C:

It is provisionally recommended that the default compound interest rate be pegged on par with the Prime Lending Rate, such default rate to be reviewed every six months to be applicable for the following six months.

[Ex.20] Recommendation 7D:

It is provisionally recommended that an application software be developed and made available to enable easy calculation of the appropriate interest to be awarded on a compound basis in each case, and that an institution should publish the interest rate table from time to time.

[Ex.21] Recommendation 7E:

It is provisionally recommended that, in the absence of other considerations, monthly rests should be used as the best reflection of commercial reality.

[Ex.22] Recommendation 7F:

It is provisionally recommended that the interest calculations should be made by the parties, but that the parties be able to refer the matter to the court in the event of a dispute regarding the calculation.

[Ex.23] Recommendation 7G:

It is provisionally recommended that the transition be based on the date of filing of the claim for the award of compound interest, and an immediate transition for the change to a variable default interest rate.

[Ex.24] Same Principles for Default Judgments. The sub-committee took the view that the same principles in foregoing recommendations should apply to default judgments, whether for liquidated or unliquidated sums.

[Ex.25] Recommendation 8:

It is recommended that the award of interest for default judgments, in the cases of liquidated and unliquidated demands, follows the same proposed system in the earlier recommendations.

[Ex.26] Post-Judgment Interest. The sub-committee endorsed the current law which respects the agreement of parties made in respect of interest. In principle, there is nothing in the statutes or rules that prohibit the upholding of a contractual agreement to post-judgment compound interest if it is not penal in nature. Thus, provided the agreement is valid and enforceable, and subject to the law of penalties, under the law of Singapore, including its choice of law rules, such agreements should be enforced. The other recommendations of the sub-committee on post-judgment interest are not intended to affect this principle.

[Ex.27] Recommendation 9:

It is recommended that no change be made to the principle of awarding post-judgment interest in accordance with the agreement of the parties provided the agreement is valid and enforceable under the law.

[Ex.28] Apart from the contractual cases, the sub-committee recommends that the post-judgment rate should continue to reflect the basis of the award of pre-judgment interest. The incentive to pay on a judgment debt should come from the use of the available enforcement mechanisms of the court. The post-judgment rate should therefore, as a general rule, be pegged to the pre-judgment rate and compounded in the same way.

[Ex.29] Recommendation 10:

It is recommended that the post-judgment interest rate, and whether it is simple or compound interest, should, as a general rule, follow the pre-judgment interest rate awarded in the case.

[Ex.30] Costs Orders. The sub-committee took the view that the same principle in the foregoing recommendation should also apply to costs orders, as it is a sum rightly due to the party entitled to the costs order from the date of the order.

[Ex.31] Recommendation 11:

It is recommended that the rate of interest for costs orders should follow the pre-judgment rate awarded on the underlying claim, at least as a general rule, and should be simple or compound according to the post-judgment rate in that particular case.

[Ex.32] Discretion. In the interest of flexibility to deal with exceptional cases, the sub-committee recommended the retention of the existing discretion to award post-judgment interest at a rate lower than the prescribed default rate, and recommended further that this discretion should extend to going above the default rate in an appropriate case. This discretion should generally be sparingly exercised.

[Ex.33] Recommendation 12:

It is recommended that the court should have the discretion to direct a post-judgment rate different from that determined under the formula proposed above.

[Ex.34] Reversal of Judgments. When a judgment is reversed and the appellate court orders the repayment of money paid under the judgment that has been reversed, the appellate court generally orders interest to be paid from the date of the receipt of the payment to the date of repayment to prevent unjust enrichment arising from the use of the money. The power to award interest derives from the power of an appellate court to make such orders as are necessary to ensure that justice is done following the reversal of the judgment. No rate is prescribed for such awards by statute or under the Rules of Court. The sub-committee is of the view that the proposals in respect of pre-judgment interest should apply equally in such cases. Although there is an established practice of following these principles, there may be uncertainty about the applicability of the proposed system of compound interest if the Rules of Court remain silent. It is thus recommended provisionally that the Rules of Court be amended to deal with this situation.

[Ex.35] Recommendation 13:

It is provisionally recommended that the Rules of Court be amended to clarify that the appellate court should consider the award of compound interest by analogy with the principles proposed for pre-judgment interest in this report, in ordering the respondent to repay money to the appellant pursuant to the reversal of the trial judgment.

[Ex.36] Foreign Currency Obligations. The sub-committee is of the opinion that the current law and practice of awarding *pre-judgment* interest at a rate appropriate to the currency of the loss (or gain) is correct, but that the law should be amended to enable the courts to award *post-judgment* interest at a rate that is consonant with the prevailing economic realities of the currency of the loss (or gain). This may require the rate to be higher than the default rate which is computed on the basis of the local economy. No further changes to the law will be necessary if Recommendation 10 above is implemented.

[Ex.37] Recommendation 14:

It is recommended that the proposed principle above of following the pre-judgment interest rate as a general rule should apply in the case of judgments given in foreign currency.

[Ex.38] Powers of Arbitrators. The sub-committee's view is that arbitrators operating under Singapore law should have similar powers to order interest to run on the awards at rates consistent with the economic realities of the currency of the loss. In the case of arbitrators, the sub-committee takes the further step to recommend that the arbitrator should be given a general discretion to fix the rate of interest to run on awards, whether made in local or foreign currency, to maximise flexibility within the arbitration context.

[Ex.39] Recommendation 15:

It is recommended that, under Singapore law, arbitrators should have the general power to determine the appropriate rate of interest to run on awards (whether made in Singapore or foreign currency).

[Ex.40] Interest Rates in Foreign Judgments and Arbitral Awards. The sub-committee is of the view that as a matter of principle and in the interest of international comity, when a foreign judgment (or an applicable foreign arbitral award that is enforceable as a judgment in the foreign country) is enforced in Singapore by registration, it should continue to carry interest at the rate, if any, applicable to the judgment by the law of

the country where it was given, unless it is an exceptional case. Different policy considerations apply in the case of arbitration awards. Because the arbitral award is always the result of the parties' agreement, and the local judicial system plays a supportive role in an international network for enforcement, the sub-committee recommends that the post-award rate should be followed upon enforcement unless the award itself is challenged. In this context, there is also no reason to distinguish between local and foreign arbitral awards.

[Ex.41] Recommendation 16:

It is recommended that the Rules of Court be amended so that, unless it is an exceptional case, when a foreign judgment is registered for enforcement in Singapore, it should carry interest at the rate, if any, applicable to the judgment by the law of the place where it was given. It is also recommended that the law be amended so that the court should give effect to the post-award interest rate in a local or foreign arbitral award being enforced in Singapore.

[Ex.42] The sub-committee noted that there are provisions in statutes and subsidiary legislation that refer to the default judgment debt interest rate. The current system already allows the default rate to be adjusted (subject to the statutory limit of 8%), and for the court to give a lower rate in individual cases. The proposed system is not different, except for the way the default rate is determined, the absence of a statutory limitation in the default rate, and the court's discretion to give a higher rate. Thus, the sub-committee is of the view that no consequential amendment is needed in these referencing provisions. It is also noted that some provisions make references to specific rates of interest. The different agencies responsible for the administration of these statutes may wish to consider whether they want to review these references to interest rates in the light of the specific objectives of the specific statutory provisions.

Part I. INTRODUCTION

[01] This Report reviews three aspects of the general question of interest under Singapore law and practice in cases coming before the Singapore courts: pre-judgment interest, post-judgment interest, and interest in respect of foreign currency obligations.

Part II. PRE-JUDGMENT INTEREST

A. Introduction

[02] An award of interest may be compensatory or restitutionary in its objective. Lord Herschell emphasized the function of an interest award to prevent the unjust enrichment of the defendant:

> … I think that when money is owing from one party to another and that other is driven to have recourse to legal proceedings in order to recover the amount due to him, the party who is wrongfully withholding the money from the other ought not in justice to benefit by having that money in his possession and enjoying the use of it, when the money ought to be in the possession of the other party who is entitled to its use.[1]

[03] The use of the interest award to compensate the loss of the plaintiff was emphasized by the English Court of Appeal:[2]

> … the basis of an award of interest is that the defendant has kept the plaintiff out of his money; and the defendant had the use of it himself. So he ought to compensate the plaintiff accordingly.

[04] In general, a party may be entitled to interest on the compensatory or restitutionary principle. Generally, where there is a statutory discretionary power to award to consider, both compensatory and restitutionary principles have relevant bearings on the judicial discretion involved in the decision of whether and how much interest is to be awarded. Which principle is the more significant in the circumstances may depend on whether the basis of the underlying claim is seen to be compensatory or restitutionary.

[05] Interest may form part of the plaintiff's case in two ways. The plaintiff may have a claim to the interest itself; he is claiming a right or entitlement to interest. In the alternative, the plaintiff may be seeking to invoke the power of the court to award interest. In this case there is no entitlement to interest apart from the right to ask the court to exercise its discretion to award interest. Interest may be claimed under substantive rules developed by the courts, or by invoking the statutory provisions either giving the parties an entitlement to interest or the courts the power to award interest. In this report, the focus is on the general cases that come before the courts (and arbitrators), and not specific statutory provisions which attract particular policy considerations peculiar to the legislation.

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1 *London, Chatham and Dover Railway Co v South Eastern Railway Co* [1893] AC 429 at 437. Adopted in *Lee Soon Beng v Wee Tiam Sing* [1986] SLR 94 at 95–96 (CA) and *Sheriffa Taibah bte Abdul Rahman v Lim Kim Som* [1992] 2 SLR 516 at 567.

2 *Harbutt's Plasticine v Wayne Tank and Pump Co* [1970] 1 QB 447 at 468 (CA), adopted in *Lee Soon Beng v Wee Tiam Sing* [1986] SLR 94 at 96 (CA).

[06] It is clear that interest is the measure of the time-value of money. The historical hostility of many religions to interest as evidence of usury need not detain us. Indeed, at least by the nineteenth century, the common law objection to the award of interest stemmed not from any moral high ground, but a practical one. Thus, Lord Tenterden CJ said:[3]

> If we were to adopt as a general rule that which some of the expressions attributed to the Lord Chief Justice of the Common Pleas in *Arnott v. Redfern* [(1826) 3 Bing. 353] would seem to warrant, *viz*. that interest is due wherever the debt has been wrongfully withheld after the plaintiff has endeavoured to obtain payment of it, it might frequently be made a question at Nisi Prius whether proper means had been used to obtain payment of the debt, and such as the party ought to have used. That would be productive of great inconvenience. I think that we ought not to depart from the long-established rule, that interest is not due on money secured by a written instrument, unless it appears on the face of the instrument that interest was intended to be paid, or unless it be implied from the usage of trade, as in the case of mercantile instruments.

[07] This, however, was not the attitude of the admiralty court or the court of chancery, and statute subsequently gave the courts the general power to award (simple) interest.

B. The Non-Statutory Position

1. Common Law

[08] In general, there is no claim for damages for the late payment of a debt or damages under the common law of England[4] and Singapore.[5]

[09] A party is entitled to claim interest by way of compensation for late payment in only two limited situations. First, a party may claim interest if he has a primary contractual right to interest.[6] This may be an express or implied term to pay interest in the contract. Such terms will be enforceable, whether the interest is simple or compound.[7] The respect of party autonomy goes so far as to allow the parties to specify a post-judgment rate of interest, even if it exceeds the statutory rate,[8] and probably even if it provides for compound interest.[9] The sub-committee sees no justification for departing from these rules giving effect to the contractually stipulated rates of interest, where the contractual term is valid and legal under the law of Singapore, including its

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3 *Page v Newman* (1829) 9 B & C 378 at 380–381; 109 ER 140 at 141.

4 *London, Chatham and Dover Railway Co v South Eastern Railway Co* [1893] AC 429; *President of India v La Pintada Compania Navigacia SA* (*The La Pintada*) [1985] AC 104; *President of India v Lips Maritime* [1988] AC 395.

5 *Ahong Construction (S) Pte Ltd v United Boulevard Pte Ltd (No 3)* [1995] 1 SLR 548 at 554; *TKM (Singapore) Pte Ltd v Export Credit Insurance Corp of Singapore Ltd* [1993] 1 SLR 1041 at 1074, affirmed: [1994] 2 SLR 137 (CA).

6 There is no restitutionary entitlement to interest for the late payment of a sum (debt) due by reason of the unjust enrichment of the defendant at the plaintiff's expense: *Westdeutsche Landesbank Gironzentrale v Islington London Borough Council* [1996] AC 669. But there is no doubt that the court has *statutory* power to award interest for delayed payments in restitutionary claims: see, *eg*, *Management Corporation Strata Title No 473 v De Beers Jewellery Pte Ltd* [2002] 2 SLR 1 (CA).

7 See, *eg*, *National Bank of Greece SA v Pinios Shipping Co* [1990] 1 AC 637.

8 Supreme Court of Judicature Act (SCJA) (Cap 322, 1999 Rev Ed) s 80(2)(j), Rules of Court, O 42 r 12.

9 *Director-General of Fair Trading v First National Bank Plc* [2002] 1 AC 481.

rules of private international law. Naturally, the contractual rate of interest is subject to the law of penalties.[10]

[10] Recommendation 1:

> **It is recommended that no change be made to the principle of awarding pre-judgment interest in accordance with the agreement of the parties provided the agreement is valid and enforceable under the law.**

[11] The second situation where interest is awarded at common law is where the plaintiff has actually suffered the interest loss and can establish foreseeability of that loss in a breach of contract action on the basis of the second limb of *Hadley v Baxendale*,[11] *ie*, that the defendant had knowledge of the special circumstances of the plaintiff leading to the interest loss.[12] The plaintiff may recover simple or compound interest in this way. Such a claim needs to be specifically pleaded.[13]

[12] At common law, there also appears to be no entitlement to interest on a restitutionary basis. Thus, a claim that the defendant has been unjustly enriched, without more,[14] does not give the plaintiff a right to claim interest,[15] even though it could be said that the defendant had been unjustly enriched at the expense of the plaintiff in respect of the principal sum received *and* the interest earned as a result of the receipt of the principal sum.

[13] An important exception to the common law rule, the recovery of interest as damages on the dishonour of a bill of exchange,[16] has been codified.[17] Because the statute makes the award of interest damages discretionary, it overlaps with the general statutory power to award interest,[18] and it appears that in practice there is no difference which statutory interest provision is invoked.[19]

2. Equity

[14] On the other hand, the court in its equitable jurisdiction awards interest as a matter of routine. However, compound interest is awarded only in limited circumstances: where there has been fraud, or liability to account for profits for breach of trust or breach of fiduciary duty.[20] The extent of the "fraud" jurisdiction is unclear, but it appears that the jurisdiction does not extend to a common law claim for damages for deceit,[21] even though equity has traditionally exercised concurrent jurisdiction. While the claim to interest in equity is rightly seen as an entitlement in the sense that it is an aspect of the

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10 *Hong Leong Finance Ltd v Tan Gin Huay* [1999] 2 SLR 153 (CA).

11 (1854) 9 Exch 341; 156 ER 145.

12 *Wadsworth v Lydall* [1981] 1 WLR 598 (CA); *TKM (Singapore) Pte Ltd v Export Credit Insurance Corp of Singapore Ltd* [1993] 1 SLR 1041 at 1075–1076, affirmed: [1994] 2 SLR 137 (CA).

13 *TKM (Singapore) Pte Ltd v Export Credit Insurance Corp of Singapore Ltd* [1993] 1 SLR 1041 at 1076, affirmed: [1994] 2 SLR 137 (CA).

14 That is, no proprietary basis for the claim, and no basis for the invocation of the equitable jurisdiction to award interest.

15 *Westdeutsche Landesbank Gironzentrale v Islington London Borough Council* [1996] AC 669.

16 *De Havilland v Bowerbank* (1807) 1 Camp 50; 170 ER 872.

17 Bills of Exchange Act (Cap 23, 2004 Rev Ed) s 57.

18 See Part II.C below.

19 Elliott QC, Odgers and Phillips, *Byles on Bills of Exchange and Cheques* (27th Ed, 2002) at para 28-07.

20 *Wallersteiner v Moir (No 2)* [1975] QB 373; *Westdeutsche Landesbank Gironzentrale v Islington London Borough Council* [1996] AC 669.

21 *Herbert Black, American Iron & Metal Co Inc v Davies* [2004] EWHC 1464 (QB).

defendant's duty to account for his gains to the plaintiff and that it is delimited by substantive principles of law, this remedy of equity is, like any other equitable remedy, ultimately discretionary in a limited sense.

3. Admiralty

[15] The court in its admiralty jurisdiction, in cases of damages arising from collisions involving ships and for salvage, did not apply the common law rule, and awarded at least simple interest. It is said that the court did not award compound interest,[22] although it would appear that the practice of capitalising simple interest to award further interest on the total sum (to avoid the label of compound interest) is allowed.[23]

4. Conclusion

[16] The three main problems in the non-statutory law are: (1) the failure to compensate the plaintiff in many cases losses in the form of interest; (2) the inconsistency of results depending on which historical jurisdiction of the court is being invoked; and (3) the general failure to recognise that sometimes losses or gains (as the case may be) may be best measured by the use of a compound interest rate.

[17] The non-statutory position is, however, not seen to give rise to grave cause for concern because of the statutory powers to grant interest, which closes most of the gaps in the common law. One gap that is outstanding[24] is the issue of compound interest.

[18] The problem of compound interest has been addressed judicially in other jurisdictions. The House of Lords addressed the issue in *Westdeutsche Landesbank Girozentrale v Islington LBC*.[25] There was a claim in restitution for the recovery of money paid under contracts which had turned out to be void. The issue before the House of Lords was whether the plaintiffs were entitled to simple or compound interest. The transaction was a commercial one, and the majority thought that on the merits the interest awarded ought to be compound interest. However, the majority also thought that the courts could not award compound interest. The statutory power is limited to the award of simple interest, and the equitable jurisdiction to award compound interest should not be extended because Parliament had on a number of occasions put its mind to the statutory power to award interest and had not seen fit to remove the limitation to award compound interest. Thus, in England, the only practical route for plaintiffs to get compound interest outside the limited equitable jurisdiction is through legislative reform.

[19] The Australian courts have not been so inclined to follow English law (identical with Singapore law in this respect[26]) on the issue of availability of interest damages. In the important decision of *Hungerfords v Walker*,[27] the High Court of Australia decided that compound interest could be awarded for breach of contract, not only in cases of special circumstances known to the defendant, but also on normal rules of

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22 *President of India v La Pintada Compania Navigation SA* [1985] 1 AC 104 at 119, 120–121.

23 *The Dundee* (1827) 2 Hagg Adm 137; 166 ER 194. *cf TKM (Singapore) Pte Ltd v Export Credit Insurance Corp of Singapore Ltd* [1993] 1 SLR 1041 at 1074, where Selvam JC characterized it as an award of compound interest.

24 See the discussion below on the question whether the Singapore courts have the power under existing legislation to award compound interest.

25 [1996] AC 669.

26 *TKM (Singapore) Pte Ltd v Export Credit Insurance Corp of Singapore Ltd* [1993] 1 SLR 1041.

27 (1989) 171 CLR 125.

contemplation under the first limb of *Hadley v Baxendale*.[28] This reasoning applies to simple interest as well. The same judicial step has been taken in Canada.[29]

[20] Another possible route to the recovery of compound interest is by way of restitution for wrongs analysis, on the basis that the compound interest constituted the unjust gains. Under English and Singapore law, restitutionary awards to disgorge the gains of the defendant may be possible in exceptional cases of breach of contract,[30] and this jurisdiction extends beyond the situation of breaches of contract.[31] This, however, represents too narrow a potential path for development, because claims for compound interest would not be available except where (1) the type of case falls within this jurisdiction; (2) the case is an exceptional one; and (3) it is proven that the defendant had in fact made a gain measured by the compound interest. There is grave uncertainty regarding how far the jurisdiction extends beyond breaches of contract, and what is "exceptional" enough to attract the restitutionary remedy. It is also unsatisfactory that compound interest should only be available if the claim is based on (certain types of) restitution but not on compensation.[32] This does not provide a secure route of recovery where the plaintiff has suffered losses measured by compound interest, but the facts are not such as to fall within the second limb of *Hadley v Baxendale*.

[21] The specific equitable jurisdiction to award compound interest is based on the restitution[33] of actual or deemed gains by defendants in a special relationship with the plaintiff or who otherwise have a duty to account for profits to the plaintiff. It is not a jurisdiction that is readily extended for general application without changing radically the basis of the jurisdiction,[34] and an exercise of this nature is more appropriately done through a review of the statutory power to award interest. The general restitutionary route to the recovery of interest evidenced in Canadian law[35] appears to be fraught with uncertainty and difficulty, stemming partly from the uncertainty within the law of restitution itself.

[22] The compensation route by way of foreseeability analysis is a more feasible path of development. While it remains possible for the Singapore courts to develop in the direction of Australia or Canada, it is also possible for statutory intervention to remove the common law bar to the recovery of normally foreseeable interest. Such a right could co-exist with a wide discretionary statutory power of the court to award interest, so that plaintiffs could elect between relying on their common law rights, and could choose to leave the matter in the court's discretionary power if they wish to avoid getting into questions of the actual quantification of interest losses. However, while this may allow justice to be done in the specific circumstances of individual

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28 (1854) 9 Exch 341; 156 ER 145.

29 *Bank of America Canada v Clarica Trust Co* [2002] 2 SCR 601; 2002 SCC 43.

30 *A-G v Blake* [2001] 1 AC 268; *Friis v Casetech Trading Pte Ltd* [2000] 3 SLR 590; *Teh Guek Ngor Engelin v Chia Ee Lin Evelyn* [2005] SGCA 19.

31 *Ng Bok Eng Holdings Pte Ltd v Wong Ser Wan* [2005] SGCA 23.

32 Thus, where account of profits has been allowed for deceit (*Murad v Al –Saraj* [2004] EWHC 1235 (Ch)), it is arguable that compound interest is recoverable, but not when only compensatory damages are being sought: *Black v Davies* [2004] EWHC 1464 (QB).

33 *Burdick v Garrick* (1870) LR 5 Ch App 233 at 241 (CA); *Wallersteiner v Moir (No 2)* [1975] QB 373 at 398 at 406 (CA); *Westdeutsche Landesbank Gironzentrale v Islington London Borough Council* [1996] AC 669 at 702. *Contra* Lord Denning in *Wallersteiner v Moir (No 2)* at 388 who opined that there was also a compensatory role for the compound interest in equity.

34 See, *eg*, *Black v Davies* [2004] EWHC 1464 (QB).

35 See n 29 above.

cases, if it is a general right, it may encourage more litigation, increase the time and cost of litigation, and create an impediment to the settlement of disputes.

[23] For the same reasons, the sub-committee is of the view that any reform to the law of compound interest would be better done through statutory power. A statutory discretionary power scheme is generally contingent upon the existence of legal proceedings. In such a scheme there is no independent claim to interest that can be started as a cause of action. Under an entitlement scheme,[36] if a debt is paid late but before legal proceedings are commenced, the plaintiff is able to start an action to claim whatever interest he is *entitled* to. But in a power scheme tied to the existence of legal proceedings, there is no basis to invoke the discretionary power of the court in such a case. A power scheme contingent upon the existence of legal proceedings may act as an incentive for creditors to commence legal proceedings early, for it is the only way of securing the claim to interest; in this sense it may thereby be regarded as encouraging litigation. On the other hand, a power scheme will provide an incentive to debtors to pay before creditors commence legal proceedings. The incentives work in both directions, but an important consideration is that in a power scheme the acceptance of a late payment puts an end to the dispute between the parties, while in an entitlement scheme, there will always be a question of accrued interest to argue about. On balance, the sub-committee is of the view that the policies favour a power approach. This was also the conclusion of the New Zealand Law Commission, although it went a step further and recommended the mandatory exercise of this power at the point of judgment.[37] In practice, this is not very different from the current practice in Singapore law where litigants almost invariably claim interest.

[24] The practical aspects of the implementation of proposed law reform on the general awards of interest should also be taken into consideration. It will be seen below that the sub-committee is recommending the general award of compound interest. It is of the view that the substantial justice embedded in the concept of compound interest can be achieved within the framework of the Singapore legal system at least cost and inconvenience to the administration of justice without radical alteration to the law and practice of the Singapore courts by retaining the current structure of judicial power to award interest, and that it is not necessary that the courts should abandon all the vast judicial experience acquired in dealing with matters of award of interest under a new system of rights. Inconvenience to practitioners can likewise be minimised.

[25] The sub-committee notes that the Hong Kong Law Reform Commission[38] had recommended mandatory statutory interest, at least in respect of contract debts. The proposal has not been implemented. Various other law reform bodies in other countries have also recommended statutory rights to interest.[39] In the United Kingdom, the Late Payment of Commercial Debts Act 1998 (UK) implies a term in a specific

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[36] This is represented by the Late Payment of Commercial Debts Act 1998 (UK). This is to be distinguished from the mandatory power scheme where strictly speaking there is no entitlement to interest but the exercise of the power to award interest is mandatory in the context of legal proceedings, as proposed in the New Zealand Law Reform Commission, *Aspects of Damages: The Award of Interest on Money Claims* (Report No 28, 1994).

[37] New Zealand Law Commission, *Aspects of Damages: The Award of Interest on Money Claims* (Report No 28, 1994).

[38] Hong Kong Law Reform Commission, *Interest on Debt and Damages* (1990).

[39] The Scottish Law Commission, *Discussion Paper on Interest on Debt and Damages* (Discussion Paper No 127, 2005) has taken the same provisional view in at paras 4.3–4.9, for consistency with the "rights-based" approach in Scots law.

class of business contracts for the payment of interest, thus conferring (in the absence of contractual exclusion of such a term) on the creditor an entitlement to interest. The sub-committee also notes that it appears that the statute had not been used much in practice, most parties choosing instead to rely on the statutory power to award interest. One reason may be the high interest rate imposed by the legislation,[40] which parties may be reluctant to invoke for the sake of protecting long-term business relationships. Two further points may be noted about this legislation. First, it was enacted partially to cover a lacuna in English law (the lack of power to award interest for debts paid before or after the commencement of proceedings but before judgment), which does not exist in Singapore law. Second, it is causing some complications in the way it is supposed to interact with the present UK proposals to confer a general power on the courts to award compound interest.

[26] Recommendation 2:

> **It is recommended that there is no need for legislative intervention in respect of entitlement to (simple or compound) interest. Entitlement to interest under common law, equitable and admiralty jurisdiction should be left to judicial development.**

C. The Statutory Position in Singapore

[27] There are various statutory provisions on interest in Singapore law, some dealing with entitlement to interest, and others dealing with the power to award interest. A number can be found in specific statutes, but the most important power is the general power of the courts to award interest in respect of claims brought before it.

1. General Power of the Singapore Courts

[28] The general power of the Singapore courts to award interest can be found in two statutory sources. The powers are conferred on the High Court, but the same powers may be exercised by the Court of Appeal[41] or the Subordinate Courts.[42] Under the Supreme Court of Judicature Act (SCJA),[43] s 18(2) provides that the High Court shall have such powers set out in the First Schedule. Paragraph 6 of the Schedule states:

> **Interest**
> **6.** Power to direct interest to be paid on damages, or debts (whether the debts are paid before or after commencement of proceedings) or judgment debts, or on sums found due on taking accounts between parties, or on sums found due and unpaid by receivers or other persons liable to account to the court.

[29] This provision can be traced back to the Courts Ordinance of 1934,[44] s 11(2)(h), which has substantially the same wording. In 1993,[45] significant changes were made

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40 The rather unfavourable rate at which small businesses can obtain unsecured loans from banks.

41 Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) s 37(2).

42 Subordinates Courts Act (SCA) (Cap 321, 1999 Rev Ed) s 31(1) (District Court), and s 52 (Magistrates' Courts).

43 Cap 322, 1999 Rev Ed.

44 Order 17 of 1934 (Straits Settlements). The initial restriction to debts suggests that this was partially based on the UK statute, 3 & 4 Will 4, c 42 (An Act for the further Amendment of the Law, and the better Advancement of Justice, 1833) (Lord Tenterden's Act), which opened the door slightly in the face of the old common law to allow the jury to award interest, but only in respect of "Debts or Sums certain".

45 Supreme Court of Judicature (Amendment) Act 1993 (Act 16 of 1993).

to the provision in the inclusion of the words in parenthesis, and the further inclusion of "damages" within its ambit.

[30] The courts also have the power to regulate the rate of interest payable on debts and sums owed upon the taking of an account, but such regulations cannot prescribe a rate exceeding 8% per annum, unless otherwise agreed between the parties. Under s 80 of the Supreme Court of Judicature Act:

> **Rules of Court**
> **80.** —(1) The Rules Committee constituted under subsection (3) may make Rules of Court regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the High Court and the Court of Appeal respectively in all causes and matters whatsoever in or with respect to which those courts respectively have for the time being jurisdiction (including the procedure and practice to be followed in the Registry of the Supreme Court) and any matters incidental to or relating to any such procedure or practice.
>
> *[16/93]*
>
> (2) Without prejudice to the generality of subsection (1), Rules of Court may be made for the following purposes:
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> …
>
> (j) regulating the rate of interest payable on all debts, including judgment debts, or on the sums found due on taking accounts between parties, or on sums found due and unpaid by receivers or other persons liable to account to the court, except that in no case shall any rate of interest exceed 8% per annum, unless it has been otherwise agreed between the parties;

[31] It is not clear whether the statutory limit imposes a simple interest rate. A literal interpretation would suggest that it is, but it is arguable that compound interest could come within the terms of power, either on the basis of a yearly rest (capitalising the interest at the end of each year), or on the basis that compound rates may be ordered so long as it does not in the result exceed the outcome of 8% simple interest.[46] The statutory limit does not apply to the regulation of interest on *damages*. In any event, no regulation has been made in respect of pre-judgment debts or damages. Thus, courts have been free to award interest at rates exceeding 8% per annum even in the absence of the agreement of the parties.[47]

[32] The second source of the court's general power to award interest is derived from the Civil Law Act (CLA),[48] s 12, which provides:

> **Power of courts of record to award interest on debts and damages**
> **12.** —(1) In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

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46 See KB Soh, "Interest on Judgment Debts in Singapore" (1988) 30 Mal LR 285 at 291.

47 See, *eg*, *TKM (Singapore) Pte Ltd v Export Credit Insurance Corp of Singapore Ltd* [1993] 1 SLR 1041 (affirmed: [1994] 2 SLR 137 (CA)) where interest of 11% per annum was awarded, and *Tatung Electronics (S) Pte Ltd v Binatone International Ltd* [1991] SLR 204 (CA) where interest was awarded at the rate of 17% per annum. Both were cases involving losses in foreign currency.

48 Cap 43, 1994 Rev Ed.

(2) Nothing in this section —

(a) shall authorise the giving of interest upon interest;

(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or

(c) shall affect the damages recoverable for the dishonour of a bill of exchange.

[33] This provision was introduced into the Civil Law Act in 1940,[49] and is the equivalent of the power conferred on the English courts in 1934.[50] Thus, the power in the SCJA predates the power in the CLA. The CLA power is more frequently invoked by the parties, probably because it spells the power out more specifically, and because cases interpreting the provision are readily available from the law reports from England and elsewhere.

2. Analysis of the Provisions

[34] There are difficulties in both the SCJA and the CLA powers, as well as a related difficulty in the relationship between the two powers.

i. Power under the Civil Law Act

[35] The difficulties inherent in the CLA power are well-known.

[36] First, it is limited to situations where the court is adding interest to a judgment award. This means that if a debt is paid anytime before judgment, the situation will be taken out of the statute. Thus, CLA only provides for the award of interest for non-payment of debts, but not for late payment of debts, whether before or after commencement of proceedings.[51] In the case of damages, payment before judgment may still lead to a judgment on liability, since unlike in the case of a liquidated claim, it does not extinguish the claim if the plaintiff does not accept it in full settlement, and this can provide a peg on which to hang an award of interest.[52] The English legislation was amended in 1982 so that the court would still be empowered to award interest in the case of late payment of debt or damages after commencement of proceedings,[53] but it did not go so far as to address the situation of late payment before the commencement of proceedings. In Singapore law, the CLA power is still tied to the award of the judgment sum.

[37] The second limitation of the CLA power is the requirement for "proceedings tried" in a court. This has led to the question of whether the provision could be invoked in a case of summary judgment or a default judgment. In the case of a summary judgment, it is easy to answer the question in the affirmative;[54] there are legal proceedings even if the trial is a summary one. The position is less clear in the case of default judgment. Proceedings may have commenced, but it may be difficult to see anything being "tried" in the proceedings. Thus, the UK Law Reform Commission had assumed that

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49 Civil Law (Amendment) Ordinance (No 30 of 1940).

50 Law Reform (Miscellaneous Provisions) Act 1934, now (in an enlarged form): Supreme Court Act 1981, s 35A.

51 *The Medina Princess* [1962] 2 Lloyd's Rep 17, accepted as representing Singapore law (in respect of the CLA power) in *People's Park Development Pte Ltd v Tru-Mix Concrete (Pte) Ltd* [1980–1981] SLR 223 at 224–225 (CA).

52 *Edmunds v Lloyd Italico e L'Ancora Cia di Assicurazioni e Riassicurazioni SpA* [1986] 2 All ER 249 (CA).

53 Administration of Justice Act 1982, s 15, now in Supreme Court Act 1981, s 35A (3).

54 See *Gardner Steel v Sheffield Bros* [1978] 1 WLR 916.

it did not apply to default judgments.[55] On the other hand, a wide construction could be placed on "tried" such that as long as evidence and arguments are brought before the court (at least if not solely on the question of interest), the court could have the power to award interest.[56]

[38] A third feature of the CLA power is its express limitation to the award of simple interest.

ii. Power under the Supreme Court of Judicature Act

[39] The SCJA power is framed in broader terms than the CLA power. The court has power to award interest whether the debt or damages is paid before[57] or after commencement of proceedings. Unlike the CLA power, this power is not limited to "proceedings tried" in the court. Nor is the power limited to the adding of pre-judgment interest to a judgment sum awarded by the court. Nor is there any restriction on the type of interest the court has the power to award; on the face of the provision, the court has the power to award compound interest.

iii. Relationship between the Powers under the Civil Law Act and the Supreme Court of Judicature Act

[40] The relationship between the two provisions is obscure. What is clear at least is that the two powers are distinct. Two Court of Appeal decisions have reasoned that what cannot be done under the CLA power can be done under the SCJA power: *People's Park Development Pte Ltd v Tru-Mix Concrete (Pte) Ltd*;[58] and *Chuang Uming (Pte) Ltd v Setron Ltd*.[59]

[41] On one view, the two provisions are *complementary*.[60] The SCJA power applies to cases of late payment, whether before or after the commencement of proceedings, while the CLA power only applies to cases of non-payment, where the court finally awards the sum as a judgment debt. This interpretation turns upon the words "whether the debts are paid before or after commencement of proceedings" limiting the power in the SCJA to cases where the debt is paid, and therefore leaving out cases of non-payment. However, this may be reading too much into the statutory intention behind the 1993 amendments which had inserted those words. It may be that the intention was simply to clarify the ambit of the power in view of the Court of Appeal decision's interpretation of the provision.[61]

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55 The Law Commission, *Pre-Judgment Interest on Debts and Damages* (Law Com No 287, 2004) at para 2.6. See also The Law Commission, *Law of Contract: Report on Interest* (Law Com No 88, 1978) at paras 13 and 31.

56 *Wallersteiner v Moir (No 2)* [1975] QB 373 at 387–388 (CA).

57 The power must necessarily be exercised in the course of legal proceedings. The situation here envisaged is probably one where a debt has been partially paid before the commencement of legal proceedings: see, *eg*, *Foo Sey Koh v Chua Seng Seng* [1986] 1 MLJ 501 (High Court, JB). It appears that the power to award interest under this provision can only be exercised in respect of a *pleaded* claim or part thereof (*Chuang Uming (Pte) Ltd v Setrong Ltd* [2000] 1 SLR 166 at [77]–[78]).

58 [1980–1981] SLR 223 (CA).

59 [2000] 1 SLR 166 (CA).

60 This is suggested in KB Soh, "The Powers of the Supreme Court of Singapore in Awarding Damages and Interest" [1994] Sing JLS 91.

61 *People's Park Development Pte Ltd v Tru-Mix Concrete (Pte) Ltd* [1980–1981] SLR 223 (CA). And also to amplify it to include interest on "damages", beyond "debts": (note the observation of Selvam JC in *TKM (Singapore) Pte Ltd v Export Credit Insurance Corp of Singapore Ltd* [1993] 1 SLR 1041 at 1075).

[42] Another view is that the two are *distinct* sources of power and are overlapping.[62] On this view, the SCJA power is not confined only to cases of late payment, but also includes cases of non-payment. But this would mean that, subject to the point of compound interest discussed below, that the CLA power is practically otiose and it is not clear whether the guidelines on the award of interest developed under the CLA power are applicable when exercising the SCJA power.

[43] A third view is that the SCJA power merely declares the *existence* of the power, but its *exercise* is to be in accordance with the principles established in the common law and the CLA.[63] However, this view may be dismissed as being inconsistent with the reasoning of the Court of Appeal in *People's Park Development Pte Ltd v Tru-Mix Concrete (Pte) Ltd*.[64]

[44] A fourth view is that both the CLA and SCJA provisions must be construed together to determine the true nature of the power of the court to award interest. Thus, the two provisions must be construed in parallel in view of their statutory history. The SCJA provision was first in time, but was qualified by the CLA. Thus, the powers in the SCJA must be read subject to the limitations in the CLA (non-payment cases only, and no power to award compound interest). Then the SCJA was amended to include cases of late payment, so the CLA limitations on late payments must be read subject to the SCJA's enlargement of the power. On this view, it could be argued that the limitation to simple interest in CLA still applies to restrict the general power in the SCJA. However, it could also be argued that Parliament, in reviewing the SCJA power in 1993, was content to leave the general power to award interest unfettered, and so this was a restriction to the limitation to simple interest in the CLA, and thus the court has power to award compound interest after all. As would be evident by now, this view of the relationship between the two sources of power can be productive of confusion.

[45] It is clear that the Singapore court has the power to award interest on debts or damages whether paid before commencement of proceedings, after the commencement of proceedings but before judgment, or only after it is merged into the judgment debt. It is also clear that the court also has the power to award interest on damages in a judgment award. Thus, in practice, the issue of the relationship between the two sources of power has not caused difficulty. Moreover, there is a broad discretion in the power to award interest in terms of both the rate of interest[65] as well as the period for which interest should run, subject only to the caveat that the discretion must be applied judicially.[66] The sub-committee sees no reason to change this aspect of the law.

[46] However, in view of the present issue before the Law Reform Committee, specifically on the desirability of the award of compound interest, the present provisions require

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62 This is also suggested in KB Soh, "The Powers of the Supreme Court of Singapore in Awarding Damages and Interest" [1994] Sing JLS 91.

63 This is also suggested in KB Soh, "The Powers of the Supreme Court of Singapore in Awarding Damages and Interest" [1994] Sing JLS 91.

64 [1980–1981] SLR 223 (CA).

65 Except to the extent that it is regulated under the SCJA, s 80(2)(j), in which case the regulation and the statutory limit of 8% both apply.

66 *ECICS Holdings Ltd (formerly known as Export Credit Insurance Corp of Singapore Ltd) v TKM (Singapore) Pte Ltd* [1994] 2 SLR 137 (CA).

clarification because it is not clear whether the Singapore courts already have the power to award compound interest.

[47] Another difficulty arising from the duality of the source of power to award interest is that it is not clear whether, should any regulation be made under the Supreme Court of Judicature Act, s 80(2)(j)[67] to regulate the interest rate for pre-judgment interest, this would have the effect of restricting (to the statutory limit of 8%) the discretion of the court to set the interest rate if it is exercising the power to award interest under the Civil Law Act, s 12.

[48] Recommendation 3:

> **It is recommended that the statutory position in Singapore be clarified and the existing provisions on the general power of the courts to award interest for late payment or non-payment of debts, damages, or other sums found due upon the taking of an account, be consolidated into a single statutory provision.**

[49] One possible model for reform is the proposed new s 35A of the Supreme Court Act 1981 proposed by the Law Commission of England and Wales, extracted in **Annex B**.

[50] The issue of compound interest will be discussed below.

D. Existing Practice in Singapore

[51] The existing practice in Singapore is detailed in **Annex C** in a paper prepared by Deputy Registrar Foo Chee Hock and Assistant Registrar Vincent Leow. In summary, the rate of pre-judgment interest is not regulated by statute or subsidiary legislation, and there is no general practice of awarding compound interest under the statutory power. The legal position on the statutory power to award compound interest has not been tested. The rate of interest is, as a general rule, 6% simple interest in accordance with the practice established after the decision of the Court of Appeal in *Lee Soon Beng v Wee Tiam Sing*.[68] The findings of the paper, which the sub-committee accepts, are that this rate appears to be congruent with the present market situation. More significantly, the paper makes the points that (1) this is a fairly uniform and consistent practice in Singapore, unlike the situation in England where divergences have been noted; and (2) in view of the generally short period of time in which cases go through the legal system in Singapore, in most cases, it would not make a significant impact in many cases whether or not the award of compound interest or simple interest is made.

1. Proposal for a System for Fixing the Interest Rate

[52] Putting aside the question of compound interest for discussion below, it is noted that, while the present practice no doubt does not give rise to cause for concern, there is no systematic method for setting the general rate of interest. The present system depends on *ad hoc* guidance from the High Court or Court of Appeal, which in turn depends on appropriate cases raising the specific question of the appropriate pre-judgment interest rate coming before the court and getting decided there. Any rate of interest is bound to be arbitrary in the sense that it will not be able to take into account all the circumstances of the individual cases. It is important that there is certainty and simplicity in the calculation of interest in the majority of cases. There should also be stability in a rate of interest that is known to or predictable by litigants. On the other

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[67] See [30] above.

[68] [1986] 2 MLJ 340 (CA).

hand, there is a case for a system of setting a general rate of interest (which the courts will be, as they are now, free to depart in their discretion where justified in the circumstances) that reflects the interest rates prevailing in the Singapore economy.

[53] Under the existing regime for the judicial award of interest, although 6% is accepted as the default rate of interest, the courts do allow the plaintiff the liberty to argue for another rate if the latter is a more accurate reflection of the plaintiff's actual losses in the circumstances. This is routine in losses suffered in foreign currency but less common for local currency cases. The sub-committee does not see any reason to fetter the discretion of the court in this respect under a proposed system where the rate of interest is determined more systematically. Neither does the sub-committee see any reason to fetter the current practice of the courts in exercising discretion in respect of the dates from which interest is to run.

[54] **Recommendation 4**:

> **It is recommended that a system should be implemented for setting the general rate of interest, from which the court may in its discretion depart where circumstances so justify.**

[55] Whether this should be simple or compound interest will be considered after the next section.

2. Statutory Limit on Interest Rate

[56] Implementing a system for setting an applicable rate of interest is likely to involve the use of the power of the Rules Committee in the SCJA, s 80. There is an initial potential problem: the statutory maximum rate of 8% per annum in s 80(2)(j), while not causing any difficulty in these times of low interest rates, could cause difficulty if interest rates should climb. Moreover, there is no consistent application of the statutory limit. The statutory limit applies where subsidiary legislation is used to regulate interest on debts, but it does not apply if subsidiary legislation is used to regulate interest on damages under the general power in s 80(1) itself, and it does not apply when the rate of interest is not regulated (as in the general case of pre-judgment interest presently).

[57] While legislative control over the rates that the courts could charge by way of interest may have been justifiable for a new and developing judiciary,[69] it is not necessary to impose this kind of control over an established one. It is suggested that the statutory position should be uniform in respect of both debts and damages, and that no limit needs to be set by primary legislation. The sub-committee noted that there is no statutory maximum rate for pre-judgment interest in a number of jurisdictions studied, even though the default rate is usually prescribed by subsidiary legislation.[70]

[58] There is a separate question whether the Rules Committee itself may wish to impose a cap (which may be adjusted from time to time) in order to put a limit on the discretion of the court in its award of interest. The sub-committee is of the view that judicial

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[69] The statutory limit was introduced in the Straits Settlement in 1934 in the Courts Ordinance (No 17 of 1934) s 87(1)(g) when the Civil Procedure Code was repealed, and the power to make rules of civil procedure was delegated to the courts.

[70] England and Wales; Scotland (There was a historical maximum "legal rate" of interest under the law of Scotland that is no longer relevant today: n 39 above, at para 3.19); New South Wales; Queensland; Western Australia; New Zealand; and Hong Kong.

restraint is a sufficient check, and does not think that it is necessary to impose such a cap, and thus makes no recommendation in this respect.

[59] Recommendation 5:

It is recommended that the statutory limit of 8% per annum, in the Supreme Court of Judicature Act, s 80(2)(j) that is imposed on the Rules Committee in regulating the appropriate interest rates to be payable on debts, be removed.

E. Compound Interest

[60] The strongest case for the award of compound interest is that it reflects the current economic reality: it is the most accurate and effective way to measure the time-value of money. This argument is most obvious in the case of liquidated claims where the defendant ought to have paid the principal sum at the outset, failing which interest ought to be paid at rates that reflect the economic realities. The same argument also applies to unliquidated claims; even though the defendant may not be actually aware of the wrong occasioning the liability at the time it was incurred, the principle of compensation requires that the plaintiff be put in a position as if the wrong had not occurred, and this requires the compensation to take all losses occurring since the wrong. Any possible injustice arising from this retrospective application of interest can be corrected, within a structured discretionary power to award interest, by the judicious selection of appropriate periods for the interest to run, and/or adjustments to the default rate of interest. That there is no objection in principle to the award of compound interest is evident in the law. Claims for compound interest are allowed in limited situations either as compensation or as restitution.

[61] The commercial reality of compound interest rates is recognised in arbitration law and practice. Both the Arbitration Act[71] and the International Arbitration Act[72] provide that the arbitral tribunal shall have the power to award interest at a compound rate, on sums awarded by the tribunal, or on sums in issue paid before the date of the award. The wide range of powers conferred on an arbitration tribunal is obviously one of the potential attractions to encourage arbitration under Singapore law. Conversely, the limitation of judicial power to the award of simple interest could be seen by international litigants as a disincentive to select Singapore as the forum for litigation, and the availability of compound interest in another jurisdiction could be seen as a legitimate juridical advantage for the plaintiff to have the trial in that foreign forum in any exercise in the consideration of natural forum to try a cross-border dispute.

[62] The Law Commission of England and Wales also considered the argument that the award of compound interest could encourage early payment or at least early resolution of the dispute between the parties.[73] While this is an incidental effect that is probably beneficial to the administration of justice, it is not necessarily an argument in favour of *compound* interest, as penal but simple interest, for example, might also provide that same incentive.

[63] It is difficult to object in principle to compound interest without objecting to interest itself.[74] The main objection to the award of compound interest stems principally from

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71 Cap 10, 2002 Rev Ed, s 35(1).

72 Cap 143A, 2002 Rev Ed, s 12(5).

73 The Law Commission, *Compound Interest: A Consultation Paper* (Consultation Paper No 167, 2002) at para 4.5.

74 There is a historical objection based on the prohibition of usury, but this need not detain us as it was an argument against *simple* interest also, and is no longer a valid objection today. Another

the same ground of convenience that in earlier times discouraged the courts from developing the common law to award simple interest. Thus, the English Law Reform Commission in 1978 noted that while compound interest might be fairer than simple interest, "a system for compounding statutory interest is bound to be either too crude to be fair in all cases or too intricate to be practicable."[75] Thus, it was said that annual compounding would lead to arbitrary increases, while the complexities involved in more frequent compounding would not be justified in most cases. Today, technology exists to aid the courts in this exercise, and complexity is hardly the justification that it used to be.

[64] The sub-committee is mindful that if the amounts claimed are small, the benefits reaped from imposing a regime of compound interest may not be significant, and may even be outweighed by the increased efforts required to make compound interest calculations, especially if the rest periods are not small and there have been no significant delays between the accrual of the cause of action and the commencement of the claim. The sub-committee considered that this problem can be dealt with within a structured discretionary system (see below, [73]–[77]).

[65] The sub-committee is persuaded that the compound interest should be awarded generally as a matter of principle. Compound interest remains a live question in Singapore today not because of the question of whether it is desirable in principle, but because of the question of whether the general use of a compound interest rate as the basis of an interest award justifies the additional expense and complexity in the interest calculations.

[66] The sub-committee recognised that the acceptance as a general rule of the award of compound interest may increase the burden on litigators in requiring calculations based on compounding of interest. However, the sub-committee took the view that this is not a difficult exercise, and in any event, the marginal increase in burden is justified by the principle of compensation within the award of compound interest itself.

[67] On balance, the sub-committee recommends that compound interest should replace simple interest as the general measure for late payment of debts or damages. The sub-committee is mindful that law reform bodies in other countries have, for substantially similar reasons, recommended the award of compound interest. This has been done in British Columbia,[76] New Zealand,[77] Hong Kong[78] and England and Wales.[79] However, for the reasons discussed above (at [21]–[25]), the sub-committee does not agree insofar as they recommend a general *substantive right* to compound interest.

[68] This recommendation will affect the judgments and orders of the High Court, District Court and Magistrates' Court. It will not directly affect the practice of the Small Claims Tribunal, although it is likely that the awards of the Tribunal will take into consideration such a change in the law and procedure.

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objection that the ability of the plaintiff to make the defendant worse off by waiting longer to make his claim, is also an argument against interest generally. See *ibid* at para 4.11.

75 The Law Commission, *Law of Contract: Report on Interest* (Law Com No 88, 1978) at para 85.

76 British Columbia Law Reform Commission, *Report on the Court Order Interest Act*, LRC 90 (1987).

77 New Zealand Law Reform Commission, *Aspect of Damages: The Award of Interest on Money Claims* (Report No 28, 1994).

78 Hong Kong Law Reform Commission, *Interest on Debt and Damages* (1990).

79 The Law Commission, *Pre-Judgment Interest on Debts and Damages* (Law Com No 287, 2004).

[69] Recommendation 6:

It is recommended that the courts should have the power to award interest at a compound rate for pre-judgment interest.

[70] If this recommendation is accepted, it will be necessary to determine the details of how compound interest is to be applied in practice. The sub-committee is of the view that the details in the implementation should be determined finally by the Rules Committee, but the sub-committee considered it appropriate to make several broad provisional recommendations on a few specific aspects of the procedure below, to highlight specific problems that need to be addressed in the implementation, as well as to show how the general recommendation in favour of awarding compounding could work in practice. The recommendations are only provisional as the sub-committee feels that the Rules Committee, with its vast experience in matters of court procedure, will be in a better position to make judgments on the points of detail.

1. Statute or Subsidiary Legislation

[71] To maintain flexibility, the method for determining the applicable interest rate(s) should, in accordance with the current practice, be made through subsidiary legislation (Rules of Court), which could make reference to further guidance to be set out in Practice Directions.

[72] Recommendation 7:

It is recommended that the method for the determination of the applicable interest rate of compound interest should be made through the Rules of Court supported by Practice Directions.

2. General Rule or Exception

[73] The sub-committee discussed whether it would be useful to limit the power to award compound interest to large and long running cases, to limit it to debts rather than damages and to exclude personal injury claims. All these limitations were however rejected. In relation to large and long running cases, it was felt that the point of awarding compound interest was to do justice in all cases; hence this was best served by not differentiating between cases on the basis of the quantum involved. As for the distinction between debts and damages, it was felt that such a distinction would prove arbitrary and difficult to apply. Finally, as to whether personal injury claims should be excluded for the purposes of awarding compound interest, the sub-committee felt that there was no reason why compound rates should not be awarded for interest on past pecuniary losses in personal injury cases. Victims who have suffered a pre-trial loss of income or incurred medical costs would have either increased their borrowing or lost the opportunity to invest those amounts. As all these losses would have been incurred at compound rates, the courts should not deny the benefit of compound interest rates to such victims.

[74] The sub-committee is therefore of the view that the power to award compound interest should be available in the generality of cases. Furthermore, having separate interest regimes for distinct categories of cases would create undue confusion and could lead to additional litigation as to whether a particular case fell into one category or not.

[75] The next issue before the sub-committee was how to frame the court's power to award compound interest. The options were –

(a) to have a presumption in favour of simple interest, with a power to award compound interest if parties so desired and there were good reasons for doing so; or

(b) to have a presumption in favour of compound interest, with a power to award simple interest where there was little difference between the two.

[76] Some members preferred Option (a) as they felt that calculation of compound interest might be complicated and unnecessary as compared to the ease of calculating simple interest. They also felt that that cost of calculating compound interest should be avoided in cases where the difference between simple and compound interest was minimal. Other members favoured Option (b) on the ground that compound interest could be easily calculated using computer programs. They however felt that the discretion to award simple interest should nonetheless be retained where the parties felt that because of the particular circumstances of the case (*ie* small sum or short period of time), it was not worth the trouble to calculate compound interest.

[77] The sub-committee's provisional approach is in favour of Option (b) *ie* to have a presumption in favour of compound interest but to have an option to award simple interest. There are two reasons for this. First, if the proposed conversion to compound interest as a more accurate reflection of the losses of the party put out of the use of the money (or alternatively, a more accurate reflection of the gains made or could have been made by the judgment debtor), then compound interest must be the starting point in principle. Second, between a system of presumption of compound interest to be rebutted by evidence of actual losses or gains in simple interest and a system of presumption of simple interest to be rebutted by evidence of actual losses or gains in compound interest, it is thought that the former system will be more efficient in practice, because in most cases losses or gains are expected to be computed more realistically with compound interest. This is the reason for the proposal in principle in the first place.

[78] At the same time, the sub-committee recognised that there may be cases where the advantages of using compound interest may in some cases be outweighed by the additional effort of computing compound interest. These are particularly in cases where the amount involved is not large, or where the time period for the computation of interest is quite short. The sub-committee also noted concerns that the existence of the discretion to use simple interest may encourage more arguments on the interest award, and that spelling out of specific categories of cases for exemption from compound interest may encourage a lot of argument on whether simple or compound interest should be awarded in any particular case. The sub-committee therefore recommends a compromise position: the court would award interest on a compound basis generally, but it has the discretion to use simple interest in appropriate cases. *Prima facie* (and without being exhaustive), the discretion to use simple interest would be exercised where the actual loss or gain (as the case may be) was proven to be measured in simple interest; or where the sum upon which interest is to be computed (not including costs) is not in excess of S$60,000,[80] or if the period upon which the calculation is to be made does not exceed 6 months. The *prima facie* reasons to justify departure from the general rule of compound interest could be implemented either through Rules of Court or through Practice Directions.

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[80] This marks the limit of the pecuniary jurisdiction of the Magistrate's Court.

[79] An issue that was raised was whether the courts should have the discretion to mix simple and compound interest awards in a single judgment. The sub-committee was of the view that this discretion should be available to a court to award compound interest on some heads of damages while awarding simple interest on others. For example, in a personal injury case, the court could award compound interest on past pecuniary losses while awarding simple interest on other losses that had been outstanding for less than six months. The sub-committee is of the view that this should be a matter within the proposed discretion of the court and makes no specific recommendation on this point.

[80] The more difficult issue before the sub-committee was whether the court should be allowed the discretion to award different interest for different periods *ie* to award compound interest for part of the period and simple interest for the rest of the periods. While the sub-committee is of the view that such a mechanism is theoretically feasible, in practice it will only complicate the arrangements without making significant difference to the total sums awarded. As such, the sub-committee felt that this issue should be left to the courts to decide based on the individual circumstances of each case, although the *status quo* should be to use the same method of interest calculation for each head of damage. The sub-committee is of the view that this should be a matter within the proposed discretion of the court and makes no specific recommendation on this point.

[81] Recommendation 7A:

> **It is provisionally recommended that the court should generally award compound interest by default, but the court should have the power to award simple interest if, in its discretion, it considers that award to be more appropriate in the circumstances.**

[82] Recommendation 7B:

> **It is provisionally recommended that, *prima facie*, it would be more appropriate to award simple interest instead of compound interest if the relevant loss or gain is proven to be measured in simple interest; or if the sum claimed (not including costs) does not exceed S$60,000; or if the period upon which the calculation of interest is to be based does not exceed 6 months.**

3. Fixing the Default Interest Rate

[83] The sub-committee proposes a system of awarding interest which is designed to compensate the plaintiff in a fair and realistic way in the majority of cases. The most effective method is to adopt an interest rate which fluctuates according to current financial indicators and compounds over time. It is now necessary to look at this in more detail and in particular, to review which indicator interest rate should be the basis for the determination of the default interest rate.

(a) The appropriate indicator rate

[84] Two points should be made first. The first point is that the system proposed by the sub-committee will only be effective if a single interest rate is adopted as the default rate which will automatically be applied in the majority of cases. Any other form of calculation would be too complex as the court and parties would have to look at the individual circumstances of each case, or else would have to categorise each plaintiff or defendant according to some predetermined personal criteria (for example, as a

potential lender or borrower), or each type of case (for example, whether it is commercial in nature or not). That is expensive and uncertain, for only marginal gain.

[85] The sub-committee is aware, however, that the adoption of a default rate, as is the current practice, will mean that the compensation offered by that rate will not exactly correspond to the actual gain or loss. Some defendants will pay more than they gained, and more than their plaintiff suffered, as a result of the delay. Some will pay less. But that, in our opinion, is not unjust because the costs to litigants, as a class, of making any more precise calculation would outweigh whatever these litigants could gain as a result. In any event, we are merely seeking to determine a default rate and where the actual loss suffered by the judgment creditor is significantly higher or lower, the parties are always at liberty to persuade the court that their case is an appropriate one to award another rate.

[86] The second point is that no commercially available indicator rate will ever perfectly correlate to the "true cost" of delay in payment even to the average plaintiff. It will always be arguable that some factor is important to the market when it sets an indicator rate which is irrelevant for our purposes. No degree of skill in selecting or adjusting a rate will determine a "perfect" result. There is a range of rates of interest which are reasonably serviceable for our purposes. The task is to select from these a rate which, in the public mind, is likely to be generally acceptable as a fair rate. As such, it must not be clearly inferior to one of the others, and if, by reason of later movements in the economy, it should become so, it should be possible to change it.

[87] With these reservations in mind, we considered, first, what to look for in a rate, and second, what are the relevant rates and how they match our proposed criteria.

(b) Choosing an appropriate rate

[88] The search for locating an acceptable rate was based on the following criteria. The rate should be:

- regularly published and easily ascertainable;
- reasonably stable;
- reflective of the loss suffered by the judgment creditor for being kept out of funds; and
- based on a term which corresponds roughly to the average period that money which is sued for is likely to be outstanding.

[89] Each is considered briefly below:

[90] Regularly published. A familiar rate is more likely to be accepted by the general public because people know where it comes from. The more knowledgeable will appreciate why it goes up or down, as the case may be. Further, there is no need for lobbying to change the rate. Litigants and potential litigants can also, if need be, calculate the amount of interest payable for themselves. They can understand in advance how their liabilities will be affected, in relation to any claim which is likely to be unsettled for a substantial period of time.

[91] Reasonably stable. Every interest rate is susceptible to a number of influences, some economic, and some the consequence of market reaction to world or local events. In particular, short-term loan interest rates are likely to respond rapidly to local influences such as the policies of the Monetary Authority of Singapore ("MAS"), the government's fiscal policies, and the perceived need for administrative controls or

other means to implement those policies. In contrast, longer term interest rates tend to reflect the market's assessment of money supply and demand in the future, expectations about the rate of inflation, and the government's performance generally. But all of these events will contribute in some way to every interest rate. Short-term interest rates are sometimes higher than long-term interest rates, sometimes lower, depending upon the general mix of factors operating in the economy at the time.

[92] Thus, a rate which does not fluctuate unduly, or which does not react in an unbalanced way to one or two particular economic factors only, is preferable to one which does. A rate which fluctuates too much invites invidious comparisons among defendants who have incurred liabilities over similar but not exactly parallel periods. A rate which is unduly affected by one factor will not be seen to reflect the true cost of money.

[93] Reflective of the loss suffered by the judgment creditor for being kept out of funds. Generally, the basis for the award of interest is to compensate a judgment creditor for money which ought to have been paid to him. Such compensation can be measured in one of two ways:

(a) the interest which the creditor would have been likely to earn on the money ("the investment rate"); or

(b) the cost to the creditor of borrowing money to make up any shortfall ("the borrowing rate").

[94] It is accepted at the outset that these two measures of interest are quite different, not just in principle, but also in application to each individual case. For starters, investment returns depend on several factors such as the risk appetite of the investor, the length of commitment, the investment opportunities available to the investor and the amount sought to be invested. Hence, the potential investment returns available to a well-off individual would differ from a working class individual, just as it would differ between companies of different sizes. Similarly, the borrowing rate differs from party to party and would depend on the past financial history of the individual, his existing assets base and the quantum sought to be borrowed.

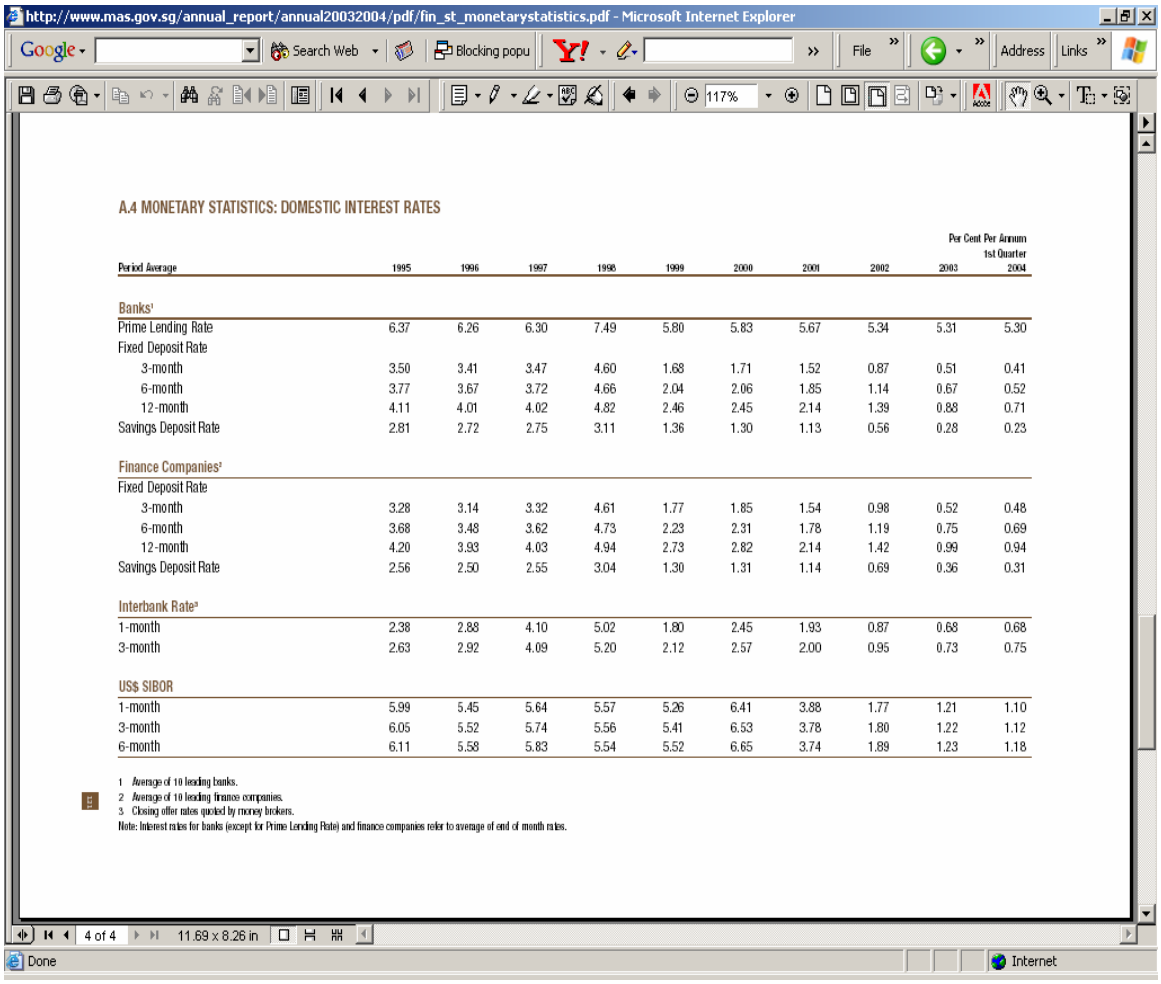
[95] As such, these rates differ not just between different individuals, but each individual would probably obtain different investment and borrowing rates. Thus any default rate chosen would have to reflect the compromise between not only the possible rates available to different parties but also the difference in rates available to the same party.

[96] The rate of interest corresponds with the period for which the money is outstanding. The sub-committee envisages that the most seriously contested cases over substantial money claims will take at least two years or more from the date the debt was incurred, to the date when final judgment is given. Where there is no serious contest, the time taken to reach resolution may depend upon the time the defendants take to resolve their financial position. Many cases will be settled sooner. However, it would probably be true to say that people contemplating litigation are likely to be looking at least one year ahead for a result, perhaps longer.

[97] Given that the period during which the plaintiff will not be able to recover the money is likely to be a substantial one, it is reasonable to choose a rate which applies to debts which are outstanding for a similar length of time. At least the rate will be seen to reflect the inconvenience factor in being kept out of one's money for that period. Moreover, the longer period of the loan will tend to give the rate somewhat more stability, another desirable feature.

(c) The appropriate rate

[98] Having explored the criteria for selecting a rate, the sub-committee then considered the available indicator rates. These are mostly derived from the domestic interest rates supplied by the Monetary Authority of Singapore (see table below).



http://www.mas.gov.sg/annual_report/annual20032004/pdf/fin_st_monetarystatistics.pdf - Microsoft Internet Explorer

A.4 MONETARY STATISTICS: DOMESTIC INTEREST RATES

Per Cent Per Annum

Period Average	1995	1996	1997	1998	1999	2000	2001	2002	2003	1st Quarter 2004
Banks[1]										
Prime Lending Rate	6.37	6.26	6.30	7.49	5.80	5.83	5.67	5.34	5.31	5.30
Fixed Deposit Rate										
3-month	3.50	3.41	3.47	4.60	1.68	1.71	1.52	0.87	0.51	0.41
6-month	3.77	3.67	3.72	4.66	2.04	2.06	1.85	1.14	0.67	0.52
12-month	4.11	4.01	4.02	4.82	2.46	2.45	2.14	1.39	0.88	0.71
Savings Deposit Rate	2.81	2.72	2.75	3.11	1.36	1.30	1.13	0.56	0.28	0.23
Finance Companies[2]										
Fixed Deposit Rate										
3-month	3.28	3.14	3.32	4.61	1.77	1.85	1.54	0.98	0.52	0.48
6-month	3.68	3.48	3.62	4.73	2.23	2.31	1.78	1.19	0.75	0.69
12-month	4.20	3.93	4.03	4.94	2.73	2.82	2.14	1.42	0.99	0.94
Savings Deposit Rate	2.56	2.50	2.55	3.04	1.30	1.31	1.14	0.69	0.36	0.31
Interbank Rate[3]										
1-month	2.38	2.88	4.10	5.02	1.80	2.45	1.93	0.87	0.68	0.68
3-month	2.63	2.92	4.09	5.20	2.12	2.57	2.00	0.95	0.73	0.75
US$ SIBOR										
1-month	5.99	5.45	5.64	5.57	5.26	6.41	3.88	1.77	1.21	1.10
3-month	6.05	5.52	5.74	5.56	5.41	6.53	3.78	1.80	1.22	1.12
6-month	6.11	5.58	5.83	5.54	5.52	6.65	3.74	1.89	1.23	1.18

1 Average of 10 leading banks.
2 Average of 10 leading finance companies.
3 Closing offer rates quoted by money brokers.
Note: Interest rates for banks (except for Prime Lending Rate) and finance companies refer to average of end of month rates.

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- the savings deposit rate: 0.23 percent
- the 12-month fixed deposit rate: 0.71 percent
- the 12-month fixed deposit rates (finance companies): 0.94 percent
- the 3-month interbank rate: 0.75 percent
- the prime lending rate: 5.30 percent.

[99] To this list, we would add one more alternative – An *ad hoc* rate based on the average of the savings bank rate and the prime lending rate.

[100] Any one of these rates would appear, by most of the criteria we have listed, to be reasonably acceptable. The general movement in the rates from 1995 to 2004 is also outlined in the above table, from which the reader may assess whether they have proved over time to be on the high or the low side of the true cost of money and how volatile they have been. Within this group of relatively conservative borrowing or lending rates, however, three rates stand out as possible choices.

[101] <u>The banks fixed deposit rate.</u> The fixed deposit rate is the average rate offered by banks for money invested with them. It is highly stable and is not normally affected

by seasonal and short-term economic or other considerations. Further, the investor receiving the savings deposit rate has the assurance that the principal can be obtained from the bank at any time (although some penalty may be paid in terms of the interest obtained in the event of an early withdrawal).

[102] However, this rate is based on loan conditions quite different from those which confront the judgment creditor seeking to recover an unpaid debt. After all, if the investor was content to leave the money with the bank for a longer period (say two years), a higher rate of interest would be obtained.

[103] There is a further consideration, which applies to bank rates generally. This is the general administration and convenience factor associated with the terms that banks offer. A bank maintains a very extensive local network, which allows it to receive money from individual investing customers, on terms convenient to them. It then lends quite different sums of money to borrowing customers, on terms which meet borrower needs. It absorbs the risk of debtor default, and the administrative cost of servicing, borrowing and lending requirements. All of this has a cost, which (along with profit margins on the resources necessary to provide the network) will normally be passed on to the investing or borrowing customer, or both.

[104] It should be noted that the fixed deposit rates reflect the investments returns for a party with low risk appetite and who does not have access (or the desire) to more sophisticated investment options. As such, it literally reflects the returns available to an investor who is content to leave the money in the bank for the period in question. Such a situation does not occur often as most judgment creditors (especially for individuals) do not have the luxury of available funds to be invested.

[105] The prime lending rate. The prime lending rate is the rate at which the major trading banks lend to their best customers. The prime lending rate is established having regard to:

- the cost of funds (weighted according to their origin in bank deposits and market borrowing);
- the margin for prudential liquidity reserve;
- operating and delivery costs associated with loan assets;
- overall balance sheet structure and profitability objectives; and
- market competition factors.

[106] It is then applied as a starting point for determining the appropriate rate of interest in individual cases. The rate is increased or decreased having regard to such factors as the extent of the security (if any) offered to the bank.

[107] The prime lending rate, however, has a bias towards commercial borrowers, and takes into account their special needs as clients of the bank. From this perspective, it may not seem to be the most conservative borrowing rate that a plaintiff or defendant might achieve (for example, loans secured on property tend to carry much lower interest rates in view of the strength of the security offered), so that choosing this rate increases the possibilities for overcompensation.

[108] While, therefore, it is realistic (and if anything may be too low) for commercial disputes, it is too high to govern the entire range of cases which may come before the courts.

[109] We would also mention that the use of the prime interest rates is not novel. Legislations such as the Housing and Development (Interest and Penalties for late payment of improvement contribution) Rules[81] and the Road Traffic (Taxi Service Operator Licence) Rules[82] also envision the rate of interest to be calculated based on the prime lending rate (at 2% above the average of the prevailing annual prime lending rate of such bank in Singapore).

[110] An *ad hoc* rate. Given the significant difference of opinions that might emerge between choosing either the savings deposit rates or the prime lending rate – savings deposit rate viewed as too low and prime lending rate viewed as too high – the sub-committee is of the view that a possible solution may well lie in adopting an *ad hoc* rate which is an average of the fixed deposit rate and the prime lending rate. An example of such an *ad-hoc* rate is shown below:

> Prime lending rate: 5.30%
>
> Fixed deposit rate: 0.71%
>
> *Ad-hoc* (Average) rate: (5.33+0.71)/2 = 2.66%

[111] However, the adoption of such an *ad hoc* rate would, in the majority of cases, not reflect the "true cost" of money to the parties. After all, it would neither reflect the actual investment returns nor the actual borrowing rate. As such, this rate does not compensate accurately in the majority of the cases before the court.

(d) Approach taken in other jurisdictions

[112] The sub-committee had initially recommended using the Prime Lending Rate ("the PLR") as the basis for pegging the default rate. This approach, similar to that adopted in other jurisdictions, is to fix the interest rate by pegging the rate to an amount close to the commercial borrowing rate.

[113] The sub-committee noted that the English Law Commission has recommended setting the interest rate by pegging it at 1% above the Bank of England Base Rate (the borrowing rate).[83] In Hong Kong, the prevailing practice is for courts to award 1% above the prime rate for pre-judgment interest.[84] The sub-committee has also taken note of the recommendations made, in this respect, by the Scottish law Commission in its recently released comprehensive discussion paper on "interest on debts and damages". [85] The Scottish Law Commission, after having considered various rates, proposed that "there should be a prescribed rate of interest which would fluctuate according to the Bank of England base rate".[86] It has further proposed that "the rate of interest prescribed by statute should be a specified percentage, such as 1% or 1.5%, above the official dealing rate of the Bank of England".[87] As stated in the discussion paper –

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81 Cap 129, Section 65K, 1996 Rev Ed, R8.
82 Cap 276, Section 111J, 2004 Rev Ed, R41.
83 UK Law Commission, *Pre-Judgement Interest on Debts and Damages* (Law Com No 287) at para 3.43.
84 See *Mok Associates Limited and Au Wai Yip & Anor* (DCCJ000354 of 2003). The Hong Kong Law Commission report of 1990 suggested Best Lending Rate + 3%, though.
85 Scottish law Commission, *Discussion Paper on Interest on Debts and Damages*, Discussion Paper No 127.
86 *Ibid* at para 31.
87 *Ibid*.

"Having considered the various rates, we are of the view that the Bank of England rate is the best available base rate. The bank lending rates and the SVR [weighted Standard Variable mortgage] rate are good measures of the cost of money because they reflect interest rates which are available in the market, but the reason they appear to be similar is that both are related to the Bank of England rate. The rate of inflation, however measured, reflects only one element of the pursuer's loss. The ECB [European Central Bank] rate would not reflect the pursuer's loss unless the euro were to become the UK's currency in which case it would replace the Bank of England rate. The three-month LIBOR [London Inter Bank Offer Rate] is generally very close to the Bank of England rate but can change on a minute-by-minute basis as market purchasing and selling activity affect the rate. Although monthly averages and end-month figures for the three-month LIBOR can be found on the Bank of England's website, the Bank's own rate is publicised more widely and is easily accessible by businesses and by households. The Bank of England rate is more stable than LIBOR, being agreed once a month at a pre-arranged meeting of the Monetary Policy Committee.

On top of this base rate is to be added a figure so that the total reflects the cost of prudent borrowing. A rate of 1.5% above the Bank of England base rate reflects the rate at which larger businesses are able to borrow money. It has been suggested that the rate at which smaller businesses can borrow money is closer to 3% above base. However, individuals are more likely to borrow money by means of a loan secured by standard security and 1% above base would represent a good rate (from the borrower's point of view) in the secured loan market. The rate which an average company is paying on its borrowing is usually similar to the rate which a prudent individual might be able to obtain on a secured loan. There is a close relationship between the SVR rate and the rate at which banks will lend to their corporate customers, because both rates are influenced by the Bank of England rate."[88]

[114] As has been noted by the Scottish and other Law Commissions, the use of the PLR is preferable over other rates such as the inter-bank rate and the credit-line rate. The PLR is regarded as closely reflecting the actual cost of borrowing among commercial parties as against the other two rates which do not reflect the rates generally available to the borrowing public.

[115] However, it should also be noted that the New Zealand Law Commission ("NZLC")[89] proposed that the interest rates should be linked to the two year Government stock yield rate instead. The Government stock is a security denominated in New Zealand dollars, offered by the government on the security of its ability to tax its citizens to repay the money. It is conventionally rated at a default risk factor of zero. The Government stock yield rate is established by trading in the market, although the initial stock yield rate is obtained by tender which in effect incorporates the yield that tenderers hope to achieve in the secondary market when they trade the stock. The NZLC proposed this rate on three main reasons. First, they felt that as this stock was bid for in large amounts, it excluded the convenience factor for small customers, and reduced to a minimum the factor of administrative cost. Second, the rate was

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88 *Ibid* at paras 7.19–7.20.

89 New Zealand Law Commission, *Aspects of Damages: The award of interest on money claims* (Report No 28, May 1994).

established by a strong market which was free to defer purchasing if the rate was too high, and third, that it was exposed to the relevant risk factors but not default.

[116] However, a number of considerations deterred the NZLC from adopting this choice. First, it is not in itself a regular published rate (though it can readily be deduced from other published rates). Second, the NZLC was of the view that the rate is more likely to be affected by short-term political and economic factors than are the longer term rates. Third, the rate did not reflect a rate based on an investment for the period from when a debt or damages (or some other money claim) is incurred to the date a judgment debt is paid in full.

[117] The sub-committee did not consider adopting this rate as there is no local equivalent. Instead, the Singapore Government offers either short term treasury bills (3 months or 12 months) or long term Government bonds (2 – 15 years).

(e) Our provisional recommendation

[118] Based on the above observations, the sub-committee had initially recommended pegging the rate of interest at 1% above the Prime Lending Rate ("the PLR") (*ie,* PLR+1%). However, at the discussion before the Law Reform Committee, some members were of the view that setting a default rate of PLR+1% may be viewed as too high and would result in over-rewarding the winning party. In the alternative, it was suggested that the default rate should be pegged at a lower rate *eg,* savings rate plus a little premium to take into account possible investments. Another view offered by a Committee member was that the default rate should be pegged to the base lending rate of the Monetary Authority of Singapore ("MAS"), which would be lower than the PLR.

[119] The sub-committee accepts the suggestion that setting the default rate above the existing Prime Lending Rate (PLR+1%) may be viewed as overly excessive. In response, the sub-committee is now of the view that pegging the default rate at par with the Prime lending rate may meet this objection. The provisional recommendation has thus been modified to reflect this change.

[120] However, the sub-committee is not convinced by arguments to look at rates other than the PLR such as the fixed deposit rate or the inter-bank rate. As has already been explained, the use of the PLR is preferable over other rates such as the inter-bank rate and the fixed deposit rate. In particular, the fixed deposit rate does not accurately reflect the investment returns available to most commercial parties (who would normally be the ones without the need to borrow money). Neither does it reflect the losses suffered by individuals as they normally have to borrow money to meet their expenses until the judgment debt is satisfied. As for the inter-bank rate, it is not a rate generally available to the borrowing public. Furthermore, information on the PLR is easily available to all parties. The rate is published in the Straits Times newspaper every Monday and the same can also be obtained and downloaded from the MAS website at http://www.mas.gov.sg. An extract of the PLR rates as obtained from the Straits Times newspaper and from the MAS website is attached in **Annex D**.

[121] The sub-committee considered that it would be impractical to track the PLR on a daily basis. It is provisionally recommended that the default rate be reviewed every six

months, the rate so fixed upon each review to be applicable as the default rate for the following six months.[90]

Recommendation 7C:

It is provisionally recommended that the default compound interest rate be pegged on par with the Prime Lending Rate, such default rate to be reviewed every six months to be applicable for the following six months.

4. Computer Programs for Rate Tables

[122] Some sub-committee members expressed the view that the calculation of compound interest may be complex and could lead to disputes over the calculated numbers.

[123] The majority of the sub-committee felt that while these concerns were serious, they could be easily mitigated. With regards to the complexity of calculating compound interest, it is submitted that lawyers in Singapore have widespread access to computers which can easily be used to calculate compound interest. The sub-committee sees substantial advantages in the courts or the Law Society of Singapore or the Singapore Academy of Law providing a simple, readily accessible computer program to the legal fraternity. The program should be available on the Internet on a public service basis and also be available for download by lawyers, if they so desire.

[124] In addition to the availability of a computer program for calculations, the sub-committee further recommends the publication of rate tables which will set out the default interest rates over time. Publication of such tables provides two advantages. First, they are portable and can be used by parties and lawyers in court for last minute calculations. Second, they are transparent and parties could refer to them if disputes arise over the calculated numbers. Further, the sub-committee would recommend that for the avoidance of disputes, it would be appropriate if the courts, the Law Society of Singapore or the Singapore Academy of Law be responsible for the publication of these tables.

[125] Recommendation 7D:

It is provisionally recommended that an application software be developed and made available to enable easy calculation of the appropriate interest to be awarded on a compound basis in each case, and that an institution should publish the interest rate table from time to time.

5. Monthly or other Rests

[126] The sub-committee considered whether compound interest should be computed over monthly or some other periodic rests. If annual rest is used, then the effect is the same as charging simple interest. The advantage of using six monthly rests is that it will automatically exclude short cases from the compound interest calculations. However, most cases take longer than six months to resolve, so this practical advantage is not a very strong one.

[127] The sub-committee provisionally preferred monthly rest as the best reflection of commercial reality. The argument for monthly rests is that this is the approach typically taken by banks and financial lenders and therefore this approach is more in tune with commercial reality and better expresses the cost of borrowing. Furthermore, the complexity in calculating compound interest using monthly rests or six-monthly

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[90] For an example of such an approach, see the British Columbia rules in **Annex F**.

rests is the same once interest on debts or damages must be calculated for periods exceeding six months.

[128] Recommendation 7E:

It is provisionally recommended that, in the absence of other considerations, monthly rests should be used as the best reflection of commercial reality.

6. Calculations by Parties or Courts

[129] The sub-committee is of the view that in line with the adversarial approach inherent in our litigation process, all interest calculations should be made by the parties. In the event of any dispute of calculation between the parties, the matter would then be referred to the courts for assessment on the appropriate amount to award.

[130] Recommendation 7F:

It is provisionally recommended that the interest calculations should be made by the parties, but that the parties be able to refer the matter to the court in the event of a dispute regarding the calculation.

7. Pleadings

[131] Under Singapore law and practice, where the party is relying on the court's discretionary power to award interest, interest need not be pleaded.[91] In contrast, a claim for an entitlement to interest payable under a contractual term,[92] or as damages under the second limb of *Hadley v Baxendale*[93] must be specifically pleaded,[94] to give the defendant proper notice of the interest claim. It is noted that the present English practice requires the party seeking[95] interest to specify within the particulars of the main claim: the basis of the interest claim, and if it is for a specific sum of money, the duration and percentage of interest claimed, and other data showing how the sum claimed is calculated.[96] Particularisation of such details in the claim is especially important if the interest claimed is a matter of entitlement and there are strict rules on the calculation thereof, as would be the case in England for claims made under the Late Payment of Commercial Debts Act 1998. From the practical point of view, particularisation in the pleadings is not so pressing a need if the basis for seeking interest is the discretionary statutory power of the court. The English Court of Appeal had previously noted that it was important even for a claim for such discretionary interest to be specifically pleaded in order to give notice to the defendant so that he would be able to know the case that he has to meet, and to make appropriate calculations as to the sum to be paid into court[97] or so as to make an offer to settle (which sum has to include interest up to date of service of the offer to settle[98]), and

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91 *Ng Swee Kin v Ng Tian Hock* [1992] 1 SLR 701 (CA).

92 *Kiaw Aik Hang Finance Co Ltd v Mahtani Lakhmichand Gobindram* [1994] SGHC 236.

93 (1854) 9 Exch 341; 156 ER 145.

94 *TKM (Singapore) Pte Ltd v Export Credit Insurance Corp of Singapore Ltd* [1993] 1 SLR 1041 at 1076, affirmed: [1994] 2 SLR 137 (CA).

95 The term "seeking" is broader than "claiming", and would include cases where the party is making no claim as such but is asking the court to award interest in its discretionary power.

96 CPR 16.4(2).

97 Rules of Court, O 22 r 1(7) requires such interest that might be included in the judgment, up to the date of payment, to be included in the payment into court.

98 Rules of Court, O 22A r 9(4) requires the court to take interest on the award up to that date into consideration in determining whether the judgment award is more favourable than the terms of the offer to settle.

who would otherwise not know whether the plaintiff intends to claim interest.[99] It is understood that as a matter of practice in Singapore, interest is almost invariably pleaded anyway, and in any event, defendants should not, in view of the present practice, be surprised by an unpleaded claim for statutory interest. The sub-committee is of the view that the change to compound interest as the method of calculation does not by itself necessitate a change to the existing rule of practice. The sub-committee therefore makes no recommendation in respect of any procedural requirement to plead interest in the claim.

8. Statutory Limitation on Compound Interest

[132] On the basis of the recommendation for the award of compound interest, an issue arising from the Supreme Court of Judicature Act, s 80(2)(j), needs to be addressed: it is not clear whether the section independently imposes a restriction on the power of the court to award compound interest where the interest rate is regulated. However, if the recommendation above in respect of the removal of this statutory limitation is accepted, then this problem will resolve itself. If the recommendation above is not accepted, then this issue requires separate clarification. As the sub-committee is recommending the removal of the statutory limitation in this provision, it is not making any specific recommendation in this respect.

9. Transition

[133] There are two transitional issues: the award of compound interest and the quantum of interest to be awarded (regardless of whether it is compounded or not).

[134] As to the date from which the power to award compound interest should take effect, the sub-committee considered whether the transition should be effected by a cut-off date based on the accrual of the cause of action, or on the filing of the claim. Although it is arguably more consistent with principle to implement a cut-off based on the accrual of cause of action, as the proposed reform addresses a question of compensation (or restitution), two points were noted. First, the proposed scheme of compound interest is ultimately a procedural one. Second, a transition based on the date of the institution of claims would be easier to implement from a practical point of view. The sub-committee therefore favours the latter approach preferably with a changeover date at the beginning of the year as it would be easier, in practice, to track such cases.

[135] As to the changeover to the proposed system of adjustable interest rates, under the existing regime, the applicable rate of interest has always been subject to change by The Chief Justice under the Rules of Court (see for example, O 13 r 1(2) or O 42 r 12). Hence, there would not be significant prejudice to the parties in terms of entitlement and rights if the interest rates were changed. However, it is recognised that it may prejudice existing parties if the same rate is used for all actions when compound interest is only available for some cases (as it would be lower since parties only receive it on a simple interest basis). However, the sub-committee considers that any such prejudice to the parties would be outweighed by the practical difficulties to all parties of having to monitor two sets of default interest rates (one for simple interest cases and one for compound interest cases). Furthermore, it would, as a matter of practical convenience, be easier to implement the changeover to a variable default interest rate if such an interest rate is applicable to all cases. In any event, any change

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[99] *Ward v Chief Constable of Avon & Somerset* (1985) 129 SJ 606 (CA).

in interest rates is anticipated to be minimal if the sub-committee's recommendations as to the appropriate indicator for the variable default interest rates are accepted (the difference currently is approximately 0.7%). As such, the sub-committee recommends that the same change-over date as the award of compound interest should be used for the variable default rate of interest and that this should apply to all cases irrespective of the date of filing or accrual of cause of action.

[136] Recommendation 7G:

It is provisionally recommended that the transition be based on the date of filing of the claim for the award of compound interest, and an immediate transition for the change to a variable default interest rate.

F. Interest in Default Judgment Cases

[137] It has been noted above that it is not clear whether the power to award pre-judgment interest arises from the CLA or the SCJA or both.[100] In contrast, power to award interest in cases of default judgment is clearly regulated under the Rules of Court, and so it is clearly a manifestation of the power under the SCJA.

> **Claim for liquidated demand (O. 13, r. 1)**
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> **1.** —(1) Where a writ is endorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.
>
> (2) A claim shall not be prevented from being treated for the purposes of this Rule as a claim for a liquidated demand by reason only that part of the claim is for interest accruing after the date of the writ at an unspecified rate, but any such interest shall be computed from the date of the writ to the date of entering judgment at the rate of 6% per annum or at such other rate as the Chief Justice may from time to time direct.
>
> …
>
> **Default of defence: Claim for liquidated demand (O. 19, r. 2)**
>
> **2.** —(1) Where the plaintiff's claim against a defendant is for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed under these Rules for service of the defence, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.
>
> (2) Order 13, Rule 1 (2), shall apply for the purposes of this Rule as it applies for the purposes of that Rule.

[138] Two observations may be made of O 13 r 1 (default of appearance) and O 19 r 2 (default of defence). First, the interest in respect of liquidated sums in default judgment cases is awarded *strictly* for the duration of the period between the filing of the writ and the date of judgment: there is no scope for the court to award interest on a

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[100] See [37] above.

longer[101] or shorter period of time.[102] Second, unlike the case of the general power under the SCJA or the CLA, there is no discretion to award a rate different from the rate of 6% or such rate as is directed by The Chief Justice. Since the defendant is not contesting the case and therefore the interest claim as well, there may be justification for a simple but rough rule, to prevent the plaintiff from trying to seek rates which may be regarded as oppressive to the defendant, and for the rapid disposition of such cases. For consistency, the computation of interest in such cases should follow the principles for the award for pre-judgment interest generally as recommended in this report. Thus, there is a presumption of simple interest in certain cases, and compound interest in others.

[139] In addition, an argument can be made for some scope for departure from the default rate where the claim is denominated in foreign currency. There is a potential moral hazard in a case where the relevant foreign interest rate is much higher, if the defendant prefers to let the plaintiff's sure-win case go by default in order to confine the plaintiff to the local rate of interest. The same moral hazard also applies where the plaintiff has a strong case for arguing a rate significantly higher than the default rate in a domestic currency case, although, practically, this is probably much less of a risk. Although there is a countervailing risk of the plaintiff asking for too high a rate, this could be controlled by the court. Thus, for example, in English practice in the case of dishonour of bills of exchange, it may be difficult to enter default judgment if the plaintiff asks for too much interest.[103]

[140] Under the existing rules, no provision is made for interest for default judgments in respect of unliquidated demands.[104] There is, however, general power to award interest under the SCJA power if not also under the CLA[105] power. Under the proposed system, the court will continue to have the general power to award interest in such cases. As such claims are much more likely to raise considerations specific to the facts of the cases than claims for liquidated sums, the sub-committee sees even less reason to fetter the general discretionary power of the court to award interest in such cases. Without any further action, the award of interest in cases of unliquidated demands would follow the system proposed in this report for the award of interest generally.

[141] Recommendation 8:

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101 *Eg*, from the date of accrual of the cause of action: *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669.

102 *Eg*, in the case of an indemnity obligation where it may be reasonable for the judgment debtor to withhold payment for a reasonable period of time pending investigations into the claim.

103 The interest is claimed as *damages* in such cases under the Bills of Exchange Act (Cap 23, 2004 Rev Ed) s 57. See Elliott QC, Odgers and Phillips, *Byles on Bills of Exchange and Cheques* (27th Ed, 2002) at para 28-10: "There is no prescribed rate of interest. It is common for interest to be claimed and awarded at a rate equivalent to that under the Judgments Act 1838, but in a commercial case it may be more appropriate to seek a reasonable rate at or just above base rate. If a high rate is asked there may be difficulty in entering a default judgment." But the historical legal distinction between interest proper (*ie*, due under a contract or statute) and interest as damages (regarded by the old common law as usurious) is meaningless in the modern commercial world: *Riches v Westminster Bank Ltd* [1947] AC 390 at 400–401.

104 See O 13 r 2 (default of appearance) and O 19 r 3 (default of defence). There is no power to regulate interest for unliquidated claims under the Supreme Court Act, s 80(2)(j), although there is general power to do so under s 80(1).

105 See [37] above.

It is recommended that the award of interest for default judgments, in the cases of liquidated and unliquidated demands, follows the same proposed system in the earlier recommendations.

G. Interest on Payment into Court

[142] Pre-judgment interest is taken into consideration in payments into court. Order 22 r 1(7) provides that in any action for debt or damages the defendant may, after entering an appearance, pay into the court a sum of money in satisfaction of the plaintiff's cause(s) or action. It further provides that:

> (7) For the purposes of this Rule, the plaintiff's cause of action in respect of a debt or damages shall be construed as a cause of action in respect, also, of such interest as might be included in the judgment, if judgment were given at the date of the payment into Court.

[143] This provision appears to cause no difficulty in respect of the current practice of the discretionary award of interest. It is not expected to cause any difficulty if there is a switch to a system where the award of (compound) interest is based on a pre-determined default rate from which departure may be made in appropriate circumstances. The sub-committee therefore makes no specific recommendations on this issue.

H. Interest on Interim Payments

[144] Since 1993, the courts have been empowered to order interim payments. These are payments on account of any damages, debt or other sum (excluding costs) which the defendant may be held liable to pay to or for the benefit of the plaintiff.[106] The subject of the payment includes damages,[107] sums due on an account, sums due in respect of the use and occupation of land, and any substantial sum of money apart from damages.[108] No specific provision is made for the award of interest at the time of the order of the interim payments. Whether there is any power to award interest under the CLA depends on whether at the relevant time there is a judgment to which an interest award can be added. Thus, the CLA power is applicable if there is a judgment on liability but assessment has not been done,[109] but not if the defendant has admitted liability but no judgment has been given,[110] or if there had been no trial as yet.[111] Reliance may be placed on the general power under the SCJA if a debt is found due upon taking an account,[112] but not if the damages or other sums are only potentially due to the plaintiff.[113]

[145] Interim payments are intended to be a temporary measure only, and in general the interest question would be addressed upon final assessment of the amount due, taking

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[106] Order 29 r 1.

[107] Order 29 r 11.

[108] Order 29 r 12.

[109] Order 29 r 11(1)(b): "the plaintiff has obtained judgment against the respondent for damages to be assessed".

[110] Order 29 r 11(1)(a): "the defendant against whom the order is sought … has admitted liability for the plaintiff's damages".

[111] Order 29 r 11(1)(c): "if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent".

[112] Order 29 r 12(a): "the plaintiff has obtained an order for an account to be taken as between himself and the defendant and for any amount certified due on taking the account to be paid".

[113] *Eg*, O 29 r 12(c): "if the action proceeded to trial, the plaintiff would obtain judgment against the defendant for a substantial sum of money apart from any damages or costs".

into consideration what has already been paid to the plaintiff. The sub-committee does not see the practice on interim payments being affected by the proposed system of a fixed default compound rate of interest. It therefore makes no specific recommendation on this issue.

I. Monetary Claims other than Debt, Damages, or Account

[146] The CLA power is confined to liability in debt or for damages. The power does not extend to situations where the court is ordering the defendant to pay sums of money which are neither debts nor damages. Thus, the power does not extend to the award of interest on the payment of sums that the court may order under the Companies Act in oppression actions.[114] Another example may be maintenance payments ordered under the Women's Charter.[115] The SCJA power is slightly wider, extending to judgment debts and sums found due on the taking of accounts between parties, or sums due and unpaid by receivers or other persons liable to account to the court. This would not cover the cases of monetary awards under the minority oppression provisions in the example given as there is no accounting between the parties involved, and there is no monetary liability owed to the court. Generally, if such sums are ordered, they are owed only upon the judgment itself, [116] so the only issue of interest for delayed payment that arises is that of interest on a judgment debt. Whether the award itself is to take into consideration losses in the form of interest is a matter best left to the statutory interpretation of the power itself in the light of the particular policies underlying the specific provisions. The sub-committee therefore make no specific recommendation on this issue.

Part III. POST-JUDGMENT INTEREST

A. Existing Law in Singapore

[147] The power of the courts to award post-judgment interest is found in the Supreme Court of Judicature Act, s 18(2) and Sched 1, [6] (reproduced at [28] above).[117] The position in respect of post-judgment is far more straightforward than for pre-judgment interest because there is only one source of power. Moreover, regulation has been made in respect of such power in the Rules of Court pursuant to the Supreme Court of Judicature Act, s 80(2)(j):[118]

> **Interest on judgment debts (O. 42, r. 12)**
> **12.** Except when it has been otherwise agreed between the parties, every judgment debt shall carry interest at the rate of 6% per annum or at such other rate as the Chief Justice may from time to time direct or at such other rate not exceeding the rate aforesaid as the Court directs, such interest to be calculated from the date of judgment until the judgment is satisfied:
>
> Provided that this rule shall not apply when an order has been made under section 43 (1) or (2) of the Subordinate Courts Act (Chapter 321).

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114 *Yeo Hung Khiang v Dickson Investment (Singapore) Pte Ltd* [1999] 2 SLR 129 (CA).

115 Cap 353, 1997 Rev Ed.

116 As was the case in *Yeo Hung Khiang v Dickson Investment (Singapore) Pte Ltd* [1999] 2 SLR 129 (CA).

117 In respect of the District Court and Magistrate's Court, see Subordinate Courts Act (Cap 321, 1999 Rev Ed) ss 31 and 69(3)(d). An order to pay money made by the Small Claims Tribunal is enforceable as an order of a Magistrate's Court (Small Claims Tribunal Act (Cap 308, 1998 Rev Ed) s 36(1)), and will accordingly attract post-order interest as an order of a Magistrate's Court.

118 See [30] above.

[148] The proviso refers to situations where the Subordinate Court has ordered payment within a specific period or in instalments, or has suspended or stayed the enforcement of the judgment.

[149] The rules for post-judgment interest affirm the principle of party autonomy.[119] As in the case of pre-judgment interest,[120] the sub-committee is of the view that, provided the agreement between the parties is valid and enforceable according to the domestic (in particular the rules against penalties) and choice of law rules of Singapore, the agreement should be upheld. In principle, parties' agreement as to post-judgment *compound* interest should also be upheld, provided the agreement is valid and enforceable under its proper law.[121] There is nothing in legislation or the Rules of Court to prevent the courts from upholding such a bargain.

[150] Recommendation 9:

It is recommended that no change be made to the principle of awarding post-judgment interest in accordance with the agreement of the parties provided the agreement is valid and enforceable under the law.

[151] Currently, the default rate is fixed at 6%. Thus the current practice in the Singapore courts generally is to award pre-judgment interest at 6% and at a regulated 6% for post-judgment interest.

[152] Although there is no specific prohibition against compound interest in the rule, there is no known practice of awarding interest at a compounded rate for judgment debts. As noted above, it is not clear whether the parent legislation prohibits compound interest.[122] However, it is to be noted that the interest rate for judgment debts is based on a sum which already capitalises any pre-judgment interest ordered by the court. Thus, the interest on the judgment debt is necessarily compounded in this limited sense.

[153] The absolute statutory limit of 8% (subject to parties' agreement) discussed in respect of pre-judgment interest also applies to post-judgment interest so long as the rate is regulated under the Rules of Court.[123] A statutory rate of 8% had been fixed in 1907.[124] When the power to determine the interest rate was delegated to the courts in 1934, the parent legislation[125] provided for a limit of 8%.[126] For the same reasons above,[127] the sub-committee thinks that there is no need to set a statutory maximum on the interest rate applicable to judgment debts. Many jurisdictions do not have such a limit, *eg*, Hong Kong, Western Australia, Queensland, New South Wales and New Zealand. In English law, however, post-judgment interest for sterling currency judgments is fixed at 8% simple interest by the Judgments Act 1838, subject to the

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[119] The present wording of Rules of Court, O 42 r 12 (see main text at [172] above) confirms the decision in *Tengku Aishah v Wardley* [1993] 1 SLR 337 that the rule did not preclude the recovery of post-judgment pursuant to a contractual agreement, where it is clear that the parties intended the rate to apply after judgment.

[120] See [09]–[10].

[121] See *Wardley Ltd v Tengku Aishah* [1991] SLR 605 at 614. See also *Director General of Fair Trading v First National Bank Plc* [2002] 1 AC 481.

[122] See [31] above.

[123] See [56] above.

[124] Civil Procedure Code 1907, s 568.

[125] Courts Ordinance (No 17 of 1934) s 87(1)(g).

[126] The rate was then fixed at 6%: Rules of Court, O 39 r 13 (1934).

[127] See [56] above.

court's discretion to remit the whole or part of the interest payable;[128] effectively, this means that there is a statutory limit of 8%.[129] As will be seen below, the sub-committee is recommending that the post-judgment rate should be pegged to the pre-judgment rate. For this reason, the recommendation made in respect of the removal of the statutory cap for prejudgment interest will apply equally to post-judgment interest.

B. The Relationship between Pre-Judgment and Post-Judgment Interest

[154] The main objective of awarding post-judgment interest is to compensate the judgment creditor for being put out of the use of the money owed. If the compensatory principle is taken to its logical conclusion, any distinction between pre- and post-judgment interest in the rate of interest and the way it is calculated requires justification. Although technically the obligation has merged into the judgment and the court is ordering interest on a different legal creature, the reality is that the creditor who is put of the use of the money continues to suffer the same loss. Thus, the Law Reform Commission of British Columbia recommended that pre-judgment and post-judgment interest should be levied at the same rate.[130] The New Zealand Law Commission also recommended the abolition of the distinction between pre-judgment and post-judgment interest.[131] It is to be noted, however, that neither jurisdiction has actually taken the step to abolish the distinction altogether.

[155] It can be argued that the distinction should continue to be maintained, because while it may be appropriate for the courts to have greater leeway in determining the appropriate rate in pre-judgment cases, there are practical reasons for having a simpler and more certain formula for post-judgment interest for the ease and efficiency of execution, and to reduce the possibility of challenges to the computation of interest at the execution stage. Another important consideration is that there may be a legitimate policy of providing an incentive for prompt payment of a judgment debt that is not present in the case of debts or damages yet to be established to be valid claims in law.[132] While the interest awarded should not be punitive, there is a legitimate role for rules in the civil law to provide an incentive for compliance.

[156] The starting point is that there should be a logical connection between the interest rate for pre-judgment debts and post-judgment debts. Thus, if the court thinks that the plaintiff should be compensated at 10% pre-judgment interest, it would incongruous to award 6% post-judgment interest. On the policy stated in the previous paragraph, the post-judgment interest rate should be slightly higher than the pre-judgment interest rate. However, it has also been noted that post-judgment interest is awarded on the basis of the capitalisation of pre-judgment interest, so that if pre-judgment interest is awarded on a simple interest basis, then post-judgment interest is already inherently at a higher rate of interest. Thus, the current practice in Singapore reflects to some extent to an adherence to the policy considerations discussed above.

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128 C 110, s 17.

129 An exception has, however, been made for foreign currency obligations: see [187] below.

130 British Columbia Law Reform Commission, *Report on the Court Order Interest Act*, LRC 90 (1987).

131 New Zealand Law Commission, *Aspects of Damages: The Award of Interest on Money Claims* (Report No 28, 1994) at paras 28–31. This report can be found at: http://www.lawcom.govt.nz/R28.htm. See also The Law Commission, *Law of Contract: Report on Interest* (Law Com No 88, 1978) at para 180, recommending alignment between pre-judgment and post-judgment interest at least in respect of contract debts.

132 Soh Kee Bun, "Interest on Judgment Debts in Singapore" (1988) 30 Mal L Rev 285 at 293–294.

[157] On the other hand, it could also be argued that the mere existence of an award of interest should be sufficient incentive for payment, and that this is as far as the function of the interest award on the judgment debt should go. On this view, incentives for payment should come in the form of the enforcement machinery, including seizures and garnishees, already available to the judgment creditor. Concerns were also expressed about cases where judgment debtors were acting in good faith but were unable to pay the judgment debt, and the harsh consequences that could result from a penal element in the judgment interest rate. After some deliberation, and after consultations with members of the main LRC committee, the sub-committee recommends that the post-judgment rate should by default be the same as the pre-judgment interest rate awarded,[133] and compounded (or not) in the same way.

[158] This is recommended as a general rule, as there may be good reason to depart from it. For example, interest may not have been claimed in the proceedings, and it is not fair that it should follow from this that no judgment debt interest should be awarded. Circumstances may have changed shortly after the judgment so that simply following the pre-judgment rate may not be an accurate reflection of the likely loss or gains arising from the delay in the execution of the judgment.

[159] Recommendation 10:

It is recommended that the post-judgment interest rate, and whether it is simple or compound interest, should, as a general rule, follow the pre-judgment interest rate awarded in the case.

C. Interest on Costs

[160] Award of interest on costs is regulated by the Rules of Court. Generally, under O 59 r 37, costs carry interest at 6% per annum or at such other rate as may be directed by The Chief Justice from time to time. There is no discretion to depart from this regulated rate under the current system. As costs orders are enforceable as judgments, it appears that the same principles ought to be applied to costs orders. However, there is no "pre-judgment" interest rate for costs because there is no entitlement to costs until the court order is made.[134] However, there is justification for using the pre-judgment interest rate (which is also the default post-judgment interest rate under the recommendations above) at least as the general rule. If it is reasonable to presume that the plaintiff has had to borrow money because the defendant failed to pay him, then it would also be reasonable to presume that the plaintiff would also have to borrow money at the same rate of interest to finance the action. Alternatively, if it is reasonable to presume that the plaintiff who has been deprived by the defendant of money to which the plaintiff was entitled would have been able to invest the sum at a particular interest rate, then it would also be reasonable to presume that the plaintiff who has to spend money on legal fees would otherwise have been able to invest the money at the same rate. Thus, it is recommended that the Rules of Court be amended so that the rate of interest to be awarded on costs should follow the post-judgment interest for the underlying claim, at least as a general rule.

[161] However, costs orders given at the interlocutory stage would not have any pre- or post-judgment rate to be linked to as such as the underlying claim has not been

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[133] This was the position in the Straits Settlements in 1878: Civil Procedure Ordinance (No 5 of 1878) s 363.

[134] Rules of Court, O 59 r 1.

adjudged. In such cases, the relevant rule should provide that, unless otherwise ordered by the court, such costs orders would carry simple interest at the default rate. Simple interest is chosen as the default here because the amount in such orders is unlikely to exceed S$60,000.

[162] Recommendation 11:

It is recommended that the rate of interest for costs orders should follow the pre-judgment rate awarded on the underlying claim, at least as a general rule, and should be simple or compound according to the post-judgment rate in that particular case.

D. Variations

[163] The current rule (O 42 r 12) allows for the courts to direct a post-judgment interest rate lower than the 6% fixed by The Chief Justice. It is understood that this discretion is seldom exercised in practice. The sub-committee sees no reason to depart from this limited discretion under the proposed scheme. In fact, in pegging the interest rate to the pre-judgment rate, it is desirable that the court should have the discretion to award a *higher* rate if it is necessitated by the circumstances of the case, although that discretion should be sparingly exercised.

[164] Recommendation 12:

It is recommended that the court should have the discretion to direct a post-judgment rate different from that determined under the formula proposed above.

E. A Special Situation: Reversal of Judgment

[165] Where money has been paid by the judgment debtor to the judgment creditor to satisfy a judgment, and the judgment is subsequently reversed upon appeal,[135] the money must be returned.[136] Although the appellate court invariably orders the return of the sum, the successful appellant in theory has a claim in restitution against the respondent upon the reversal of the judgment in reliance upon which the money had been paid.[137] The judicial power to award interest in cases of reversal of judgments pre-dated the English statutory reform of 1934 (followed in Singapore as discussed in Part II.C above) which conferred a general discretion on the courts to award interest on debts and damages, and is based upon the power of the court to make any consequential order to carry out justly the reversal of the judgment.[138]

[166] In Singapore law, there is no doubt that the court can order the money paid to be returned with interest.[139] The Court of Appeal has noted that there is no provision in

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[135] There is no automatic stay of the judgment upon appeal: SCJA, s 41; Subordinate Courts Act (Cap 321, 1999 Rev Ed) s 49.

[136] This principle only applies to the reversal of the judgment (under which the payment was made) itself upon appeal or review. It does not apply to the overruling of the decision by a subsequent judicial decision: *Henderson v The Folkestone Waterworks Co Ltd* (1885) 1 TLR 329. Such cases would be subject to the rules governing recovery of payments made under a mistake of law and the applicability of the defences of *res judicata* and settled law.

[137] *Caird v Moss* (1886) 33 Ch D 22 (CA); *Moore v Vestry of Fulham* (1894) 1 QB 399 (CA); SJ Stoljar, *The Law of Quasi-Contract* (1989) 84. See further, at [167]–[168].

[138] *Rodger v Comptoir D'Escompte de Paris* (1871) LR 3 PC 465 at 474–475.

[139] *Singapore Airlines Ltd v Fujitsu Microelectronics (Malaysia) Sdn Bhd (No 2)* [2001] 1 SLR 532 (CA); *Credit Agricole Indosuez v Banque Nationale de Paris (No 2)* [2001] 2 SLR 301 (CA). See also *Samwoh Asphalt Premix Pte Ltd v Sum Cheong Piling Pte Ltd* [2002] 1 SLR 1 (CA).

the Rules of Court dealing with such a situation, but has held that it has the power to award interest in such a case, and that the rate of interest must depend on the circumstances of each case.[140] This power is presumably derived from the SCJA, s 37(5) where the Court of Appeal is empowered to make "such further or other orders as the case requires" upon the reversal of a judgment upon appeal.[141] The High Court has the same powers when hearing appeals from the subordinate courts.[142] Under SCJA, s 37(2), the Court of Appeal in a civil appeal may exercise all the powers of the High Court, and this must include such powers that are conferred under the CLA and the SCJA. However, the High Court could *not* have exercised those powers in respect of a claim arising from the overturning of the judgment, since this issue cannot, as a matter of hypothesis, have been before the High Court. However, the High Court's power to award interest on such a restitutionary debt under the SCJA is not limited to its original jurisdiction, though the CLA power is confined to its trial jurisdiction. Thus, neither the Court of Appeal nor the High Court in its appellate jurisdiction can rely on the CLA power in reversal cases, while the High Court in its appellate jurisdiction can, but the Court of Appeal cannot, rely on the SCJA power in such cases. However, both courts can rely on the more general words in the SCJA, s 37(5), which, in the light of the history of the practice, is the more secure foundation of this power.

[167] The basis upon which the successful appellant is entitled to the return of the principal sum has been held to rest upon the principle against unjust enrichment.[143] Thus, the Court of Appeal has decided that the money should be returned together with interest earned upon it from the time of the receipt of the payment and not the time of the reversal of the judgment,[144] and if there is evidence of actual interest earnings that sum should be ordered to be repaid,[145] and in the absence of any evidence a respondent who was a commercial bank operating in Singapore was presumed to have been able to earn interest at the default post-judgment rate of 6% per annum.[146] On the other hand, the respondent who was a commercial party was ordered to return a sum of money and to pay interest at 4.5% per annum upon the reversal of the trial judgment on the basis that it was the lowest of the prime lending rates prescribed by the local banks;[147] on an unjust enrichment analysis, this could have been based on a rough and ready assessment of the benefit to a commercial party in the form of saved expense of borrowing.

[168] The reasoning of the Court of Appeal[148] suggests that the successful appellant could have instituted an action against the respondent in the law of restitution for the return of the sum paid. Such a claim could be founded on total failure of consideration (the money being paid on an assumption known to both parties that it was to be returned if the judgment is reversed on appeal), or mistake,[149] or legal compulsion.[150] The court

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140 *Credit Agricole Indosuez v Banque Nationale de Paris (No 2)*, *ibid* at [9].
141 See also Rules of Court, O 57 r 13(3).
142 SCJA, s 22(2). See also Rules of Court, O 55 r 6(5).
143 See n 139 above.
144 See n 139 above.
145 *Singapore Airlines Ltd v Fujitsu Microelectronics (Malaysia) Sdn Bhd (No 2)*, n 139 above.
146 *Credit Agricole Indosuez v Banque Nationale de Paris (No 2)*, n 139 above.
147 *Samwoh Asphalt Premix Pte Ltd v Sum Cheong Piling Pte Ltd*, n 139 above.
148 Particularly in *Credit Agricole Indosuez v Banque Nationale de Paris (No 2)*, n 139 above.
149 See n 138 above, at 475.
150 See *Moore v Vestry of Fulham*, n 137 above, at 403.

would have had power to award interest on a successful[151] claim (under the CLA),[152] or even if the money is paid before the pronouncement of the (appellate) judgment (under the SCJA).[153] In many cases, however, no action is actually instituted for the return of the principal sum.[154] The problem cases are more likely to arise where the respondent returns the principal sum, but without interest, or with interest which does not satisfy the appellant. Thus, the statutory powers in the CLA and SCJA cannot be relied upon directly in any event. Nevertheless, the Court of Appeal did consider the position as analogous to a successful restitutionary claim.[155] Thus far, the principles for awarding interest in such cases appear to be consistent with the principles underlying the statutory powers in the CLA and SCJA.

[169] The proposed system of determining interest rates at fixed intervals and the award of compound interest that is recommended in this report does not directly affect this power of the appellate court to order interest to be paid with the return of the principal sum upon the reversal of the judgment. Nevertheless, the sub-committee considered that it is desirable that the proposed system should also apply in such cases. It considered whether explicit clarification was required. On the one hand, there is the practice of following the analogy of the CLA/SCJA cases. On the other hand, a change in the current practice in respect of the CLA/SCJA powers might cause some uncertainty as whether the analogy still held true, particularly in respect of the availability of compound interest. As the sub-committee thought that the analogy should and would continue to be applied as a matter of principle, it is of the view that it is not critical to introduce a new rule of procedure to cater for these cases. Moreover, the limitation to simple interest in the CLA, s 12 (and to the extent that such limitation was assumed in the SCJA, Sched 1, para 6) never applied to this power in cases of reversal of judgments. However, for the avoidance of doubt, it may be better to have a rule specified within the Rules of Court to clarify the position.

[170] Recommendation 13:

It is provisionally recommended that the Rules of Court be amended to clarify that the appellate court should consider the award of compound interest by analogy with the principles proposed for pre-judgment interest in this report, in ordering the respondent to repay money to the appellant pursuant to the reversal of the trial judgment.

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[151] No change of position defence has ever been successful in such a claim for failure of consideration, probably because the basis of the payment is clearly known by the recipient.

[152] CLA, s 12.

[153] SCJA, Sched, para 6.

[154] As in the cases in n 139 above.

[155] See also *Rodger v Comptoir D'Escompte de Paris*, n 138 above, at 477–478.

Part IV. PRE- AND POST- JUDGMENT INTEREST: FOREIGN CURRENCY OBLIGATIONS, FOREIGN JUDGMENTS, AND ARBITRAL AWARDS[156]

A. The Existing Law

1. Judgments of the Court

[171] The Singapore court may give judgment in foreign currency[157] (the *Miliangos* rule)[158] for the payment of a debt or damages,[159] to be converted to local currency at the time of payment.[160] In such a case, the court may order interest to be paid in respect of the debt or damages, up the date of the judgment, at rates different from those that would have been applicable to judgments given in Singapore currency.

[172] However, the interest on the judgment debt is fixed at the same rate whether the judgment is given in local or foreign currency. Order 42 r 12 of the Rules of Court (see [147] above), which provides for interest on judgment debts, applies irrespective of the currency of the judgment:[161] Although court has a discretion to order a rate of interest different from that fixed under O 42 r 12 or as directed by The Chief justice from time to time, the discretion is limited to ordering a rate *lower* than the rate as fixed or directed.

2. Arbitrators Acting under Singapore Law

[173] The same position applies to arbitral awards made in Singapore. Under both the Arbitration Act[162] and the International Arbitration Act,[163] the arbitrator may award interest to reflect the actual loss in the currency of the debt or the damage suffered. In respect of the post-award interest, the Arbitration Act, s 35(2) provides:

> A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

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156 This part of the report is adapted from work done for the Law Reform and Revision Division, Attorney-General's Chambers. We gratefully acknowledge the permission of the Attorney-General's Chambers to incorporate it into this report.

157 No doubt this rule extends to giving judgment in *multiple* foreign currencies where appropriate: *Norsemeter Holding AS v Pieter Boele (No 3)* [2002] NSWSC 390.

158 *Miliangos v George Frank (Textiles) Ltd* [1976] AC 443, reversing the old law in *Re United Railways of Havana* [1961] AC 1007 that judgments could only be given in the local currency, and that this sum was determined by converting from the relevant foreign currency using the exchange rate at the date the obligation became due and payable. The *Miliangos* rule has been followed in Singapore in *The Vishva Pratibha* [1980] 2 MLJ 265; *Ooi Han Sun v Bee Hua Meng* [1991] 3 MLJ 219; *Tatung Electronics (S) Pte Ltd v Binatone International Ltd* [1991] 3 MLJ 212; *Wardley Ltd v Tunku Adnan* [1991] 3 MLJ 366; *Indo Commercial Society (Pte) Ltd v Ebrahim* [1992] 2 SLR 1041.

159 This includes damages for breach of contract (*Federal Commerce and Navigation Co Ltd v Tradax Export SA* [1977] QB 324), for torts involving personal injuries (*Hoffman v Sofaer* [1982] 1 WLR 1350) or damage to property (*The Despina R* [1979] AC 685), and to claims in restitution (*BP Exploration v Hunt (No 2)* [1979] 1 WLR 783 at 840–841; affirmed [1981] 1 WLR 232; [1982] 2 AC 253).

160 *Indo Commercial Society (Pte) Ltd v Ebrahim*, n 157 above.

161 The same position is prescribed for default judgments: *Supreme Court Practice Directions*, 2002, at [16].

162 Cap 10, 2002 Rev Ed, s 35(1).

163 Cap 143A, 1995 Rev Ed, s 12(4)(b).

[174] Similarly, the International Arbitration Act, s 20 provides:

> Where an award directs a sum to be paid, that sum shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

[175] The House of Lords, interpreting the English provision that is word for word the same as s 35(2) of the Arbitration Act,[164] had held that the arbitrator's power is limited to directing that no interest be paid; there is no power to direct any other rate of interest than the rate fixed for judgment debts.[165] Although the Singapore position is slightly different from that in the English law considered by the House of Lords, because the Singapore rule (O 42 r 12) allows some discretion to the court to vary the otherwise fixed rate of interest, the reasoning of the majority in the House of Lords is nevertheless applicable. Lord Morris, with whom Lord Guest and Lord Donovan agreed, reasoned that: first, the mandatory language equating the interest on the award to that fixed for judgment debts is inconsistent with a general discretion to award interest; and second, the word "otherwise" suggests that the arbitrator's decision is only in respect of negating the interest totally. In any event, where judgment is entered on the terms of the award,[166] the rule on interest for judgment debts applies from that point.

[176] Thus, it appears that both the courts and (maybe) arbitrators acting under Singapore law have their hands tied as far as foreign currency awards are concerned, because of the historical assumption made in the law that all awards are made in local currency.

3. Enforcement of Foreign Judgments

[177] Foreign judgments, when enforced in Singapore, are subject to the same rule on interest rates that applies to local judgment debts. A foreign judgment may be in foreign currency, or it may be in Singapore currency. Enforcement may be by common law action,[167] or by registration under the Reciprocal Enforcement of Foreign Judgments Act[168] or the Reciprocal Enforcement of Commonwealth Judgments Act.[169] In all cases, there are two periods to consider. From the date of the foreign judgment to the date it becomes enforceable as a local judgment by action or registration, the rate of interest ordered by the foreign court[170] to run on the judgment applies as an integral part of the foreign judgment.[171] Thereafter, the local default interest rate applies, as the court would be enforcing a local judgment (in a common law action) or enforcing a registered foreign judgment as if it were a local judgment.[172]

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164 Arbitration Act 1950, s 20. Since then it has been repealed and superseded by the Arbitration Act 1996.

165 *Timber Shipping Co SA v London & Overseas Freighters Ltd* [1972] AC 1.

166 Arbitration Act, n 162 above, s 20; International Arbitration Act, n 163 above, s 19.

167 Under the common law, the foreign judgment creates a debt which is enforced in Singapore by a *local* judgment.

168 Cap 265, 1985 Rev Ed, s 4(2)(a).

169 Cap 264, 1985 Rev Ed, s 3(3)(a).

170 Or, presumably, applicable in default of an explicit order by the law of the country where the judgment was given.

171 *Hawksford v Giffard* (1866) 12 App Cas 122 at 127; *Arnott v Redfern* (1826) 3 Bing 353; 130 ER 549; *Douglas v Forrest* (1828) 4 Bing 686; 130 ER 933; *Livesley v Horst* [1924] SCR 605 at 610.

172 *Hawksford v Giffard* (1866) 12 App Cas 122 at 127.

4. Enforcement of Foreign Arbitral Awards

[178] The same position applies to the enforcement of foreign arbitral awards in Singapore. Where provided for by statute,[173] a foreign arbitral award may be enforced by direct action, or (as if it were a local arbitral award[174]) by way of judgment entered on the terms of the award with the leave of court. Where the foreign arbitral award, from a country to which the Reciprocal Enforcement of Commonwealth Judgments Act applies, has the same force of law as a court judgment in the place where it was made, it may be registered to be enforced as if it were a local judgment.[175] Awards made under the Arbitration (International Investment Disputes) Act[176] are enforced as judgments of the court of Singapore once they are registered under the Act. A foreign arbitral award may also be enforced in Singapore by way of common law action, provided it is made pursuant to a valid arbitration agreement and the award is final and binding between the parties under the law governing the arbitration, resulting in a judgment of the Singapore court,[177] although this course of action is rare given the prevalence of statutory enforcement regimes.[178] In all these instances, the Singapore rules on post-judgment interest apply from the point of enforcement.

B. Problems with the Existing Law

[179] It is a matter of controversy whether, apart from contractually agreed interest, the award of interest on a debt or damages up to the date of judgment is a matter of substance or procedure in the conflict of laws.[179] There are two distinct issues: whether the plaintiff is entitled to an award of interest at all; and if so, what the appropriate rate of interest should be. There is support for the view that the first is a substantive question governed by the law applicable to the main claim, while the second is a matter of procedure governed by the law of the forum.[180]

[180] The award of interest on a *judgment debt* can be seen as pertaining to the consequences of delayed compliance with the enforcement procedures in the

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173 International Arbitration Act, s 29.

174 An arbitration award made under Singapore law is enforceable as a judgment of the court with the leave of the court; judgment is entered on the terms of the award: Arbitration Act (Cap 10, 2002 Rev Ed) s 46, International Arbitration Act (Cap 143A, 2002 Rev Ed) s 19.

175 Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) s 2(1), and also the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) to the extent that it has been extended to countries to which the former statute applies (s 10(a)). See, *eg*, *Koninklijke Bunge NV v Sinitrada Co Ltd* [1972–1974] SLR 453; [1973] 1 MLJ 194.

176 Cap 11, 1985 Rev Ed, s 5.

177 *Norske Atlas Insurance Co Ltd v London General Insurance Co Ltd* (1927) 43 TLR 541.

178 See, however, *Minoutsi Shipping Corp v Trans Continental Shipping Services (Pte) Ltd* [1971] 2 MLJ 5; [1969–1971] SLR 461 (HC and CA).

179 The analogous power in respect of pre-judgment interest in the Supreme Court Act 1981, s 35A (the equivalent of Singapore's Civil Law Act, s 12) was characterised as procedural in *Midland International Trade Services Ltd v Al Sudairy* (1990) Financial Times, 2 May, followed in the High Court in *Kuwait Oil Tanker Co SAK v Al Bader* (16 November 1998), but the point was doubted but left open in the Court of Appeal: [2000] 2 All ER (Comm) 271 at [207]–[208]. Morison J declined to follow the *Al Sudairy* case in *Lesotho Highlands Development Authority* [2002] EWHC 2435 (Comm); [2002] All ER D 298 at [25(7)]. The point was left open on appeal: [2003] EWCA Civ 1159; [2003] 2 Lloyd's Rep 497 at [45]. On a substantive characterisation, the statutory powers merely *enable* the courts to fashion an award to give the most appropriate remedy to rights established under the law governing the claim.

180 Dicey and Morris: *The Conflict of Laws* (13th Ed, 2000), Rule 196; English Law Commission, *Private International Law: Foreign Money Liabilities*, Law Comm No 124, (1983) at paras 2.27–2.33; *Miliangos v George Frank (Textiles) Ltd (No 2)* [1977] QB 489. See also the previous note.

enforcement of a court order, so there is a stronger case here than in pre-judgment interest that this is a matter of procedure governed exclusively by the law of the forum. However, if one regards the function of interest award for judgment debts as compensation for being kept out of the money due, then its function is no different from that of pre-judgment interest,[181] and the procedural characterisation may be challenged in the same way that the latter's procedural characterisation has been challenged, *ie*, that it is really a substantive claim to compensation.[182] On the other hand, whether interest should reflect a punitive element or not is a matter that the enforcing forum should decide for itself. Even on the view that the matter is procedural, it does not mean that the forum should determine the matter as if no foreign elements are involved.[183] The involvement of foreign currency in the computation of the creditor's loss is an inescapable event.

[181] It should be stated at the outset that there is no problem with giving effect to the parties' agreement on interest, whether pre- or post-judgment, where such agreement exists and is valid (and not prohibited by the law against penalties) in accordance with the relevant rules of private international law applied by the Singapore court. The problem arises where there is no agreement on the rate of interest.

[182] The rationale of the *Miliangos* rule[184] is that the value of the currency in which the loss is suffered has to be taken into consideration in assessing the real commercial loss to the plaintiff. So it has been accepted that where it would be more appropriate to award interest on the overdue debt based on what the currency could have earned as interest rather than on the interest rate relevant to the forum's own currency, the pre-judgment interest rate should be pegged to that prevailing for the currency of the loss.[185] The ultimate aim is to compensate while preventing a windfall.[186] As Lord Wilberforce said, the creditor has no concern with the currency of the forum.[187] Indeed the currency of the loss need not even coincide with the currency of the transaction,[188] *eg*, where the plaintiff, being put out of money by the defendant's late payment, has to borrow money from his home country, where the home country currency is different from the currency of the debt, at least where it is reasonably foreseeable that the plaintiff would resort to loans from his home country, and it is reasonable for the plaintiff to take that step.

[183] The *Miliangos* rule, and its corollary in pre-judgment interest where foreign interest rates are taken into consideration, make eminent sense, and are particularly important to a court sitting in a major financial centre, where it is not uncommon for it to hear disputes relating to transactions involving foreign currencies. However, the law on the rate of interest for judgment debts did not keep pace with this development. As a matter of principle, if the *Miliangos* rule stated in the preceding paragraph is accepted

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181 *London, Chatham and Dover Rlwy Co v South Eastern Rlwy Co* [1893] AC 429 at 437; *Black Sea & Baltic General Insurance Co Ltd v Baker* [1996] LRLR 353; *Batchelor v Burke* (1981) 148 CLR 448 at 455.

182 *Kuwait Oil Tanker Co SAK v Al Bader* (CA), n 179 above.

183 Note 180 above, at [2.32].

184 See main text at [171] above.

185 See *eg*, *ECICS Holdings Ltd* v *TCK (Singapore) Pte Ltd* [1994] 2 SLR 137 (CA).

186 *RBG Resources plc (in liquidation) v Banque Cantonale Vaudoise* [2004] SGHC 167 at [41]–[47].

187 [1976] AC 443 at 465.

188 For example, *The Folias* [1979] AC 685, although the currency of the transaction was US dollars, the court awarded damages measured in French Francs because that was the business currency of the plaintiffs and most closely represented their loss.

for pre-judgment interest rates, it is difficult to see why it should not also apply to post-judgment interest rates. The matter is of significance to the Singapore legal system as its economy moves forward in its globalisation drive, and as it opens its doors to more transactions involving foreign currencies. It is to be expected the number of situations will increase where the courts and arbitrators need to decide that foreign currency is the appropriate measure of the relevant losses (or gains).

[184] Two arguments against extending the *Miliangos* rule to post-judgment interest may be considered. First, it may be argued that once the obligation has merged into the judgment, what is being enforced is a local judgment, and the currency of the obligation is no longer relevant. The defendant is being made to compensate for failure to obey a local obligation in the form of the judgment debt. Second, it may cause practical difficulties to officers responsible for the execution of the judgments.

[185] The first argument is a technical one, and does not detract from the strength of the argument that the judgment creditor's real loss is in foreign currency, whether before or after the judgment. The second argument may be addressed by either ordering a fixed rate of interest even if the date of final payment is unknown, or, as suggested by the English Law Commission,[189] by fixing a variable rate of interest (where applicable) at the point where enforcement procedure is initiated.

[186] It may further be argued that the present position provides greater certainty. On the other hand, allowing the courts to deal with the particular losses in individual cases is not likely to cause undue uncertainty. The court is well-equipped to deal with the kind of issues that are raised in assessing interest losses; the exercise is similar to that undertaken in pre-judgment interest. For example, in an analogous case, the Singapore Court of Appeal had no difficulty in assessing the appropriate rate of interest when ordering the repayment of money paid pursuant to a High Court judgment in US dollars, when the judgment was reversed on appeal – a matter not governed by the Rules of Court.[190] Techniques may be employed to reduce uncertainty, for example, by placing the onus on the plaintiff to prove that a rate different from the default rate is more appropriate in the circumstances.[191]

C. Reform in England

[187] Prior to 1995, the English law in respect of post-judgment interest was the same as the present Singapore law. The interest rate on judgments given in a foreign currency was pegged to the domestic English rate for judgment debts in local currency.[192] It had been noted that the rule could cause injustice because the domestic rate is fixed in relation to the strength of the sterling, which may have no bearing on the strength of the currency of the judgment.[193] The English Law Commission recommended[194] that the rate of interest for judgments given in foreign currency should not follow the statutory rate fixed for sterling judgments, but that it should be in the discretion of the court instead. The same recommendation was made in respect of arbitral awards

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189 Note 180 above, at [4.13].

190 *Credit Agricole Indosuez v Banque Nationale de Paris (No 2)* [2001] 2 SLR 301.

191 See, *eg*, British Columbia's Court Order Interest Act, ss 7 and 8, extracted in **Annex F**.

192 Judgments Act 1838, s 17 directed all judgment debts to carry interest at 8% or such rate as prescribed by the Rules of Court. *Practice Direction* [1976] 1 WLR 83 (amended by *Practice Direction* [1977] 1 WLR 197) directed that judgments given in foreign currency should carry post-judgment interest at the statutory rate applicable to judgments in domestic currency.

193 Cheshire and North: *Private International Law* (12th Ed, 1992) at 100.

194 Note 180 above, at [4.15].

expressed in foreign currency. These recommendations were given legislative effect in Part I of the Private International Law (Miscellaneous Provisions) Act 1995 (UK).[195] The main objects of this reform are extracted in **Annex E**. The respective Law Reform Commissions of New Zealand[196] and British Columbia[197] made similar recommendations for substantially the same reasons, but in the larger context of the question of interest generally.

D. Exploiting the Powers under O 42 r 12

[188] It is arguable that the Singapore court already has the power to award a different rate of interest for judgment debts in foreign currency under O 42 r 12 in the power to order a rate of interest different from that fixed under the rule or directed by The Chief Justice from to time, to take into consideration the interest rate of the currency of the judgment. There are however, a number of limitations that can prevent it from being an effective tool. First, the rule draws no distinction between awards in foreign or local currency; the perception that the discretion is to be sparingly exercised in the case of orders in domestic currency is likely to colour the treatment of awards in foreign currency. Second, it is still subject to the statutory maximum of 8% (in the absence of parties' agreement)[198] which was deemed to be the maximum rate in any event, even if the legislature probably did not have foreign interest rates in mind at the time the rate was fixed. Third, the discretion itself is limited to fixing a rate *lower* than that fixed by the rule or as directed by The Chief Justice from time to time.[199] Fourth, the discretion does not extend to varying the time period to which the interest rate applies.[200]

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[195] The legislation inserted a new provision in the Administration of Justice Act 1970, s 44, to give the courts the discretion to order an interest rate as it thinks fit, inserted a new sub-s 5A to the County Courts Act 1984, s 74 to replicate the power for the county courts. It also amended Arbitration Act 1950, s 20 so that arbitral awards in foreign currency can carry interest at a rate different from the statutory rate fixed generally for arbitral awards. The last has since been repealed: Arbitration Act 1996, s 107(2), Sched 4. Its present functional equivalent is the arbitrator's power to award any rate of interest, even compounded interest, to meet the justice of the case, on the outstanding amount of the award, from the date of the award, or later, until the date of the payment: same reference, s 49(4). The relevant provisions of the amendments made by the Private International Law (Miscellaneous Provisions) Act 1995 are extracted in **Annex E**. The relevant provision of the Arbitration Act 1996 is extracted in **Annex F**.

[196] New Zealand Law Commission, *Aspects of Damages: The Award of Interest on Money Claims* (Report No 28, 1994) at para 210. This report can be found at: http://www.lawcom.govt.nz/R28.htm (last accessed on 10 December 2002).

[197] British Columbia Law Reform Commission, *Report on the Court Order Interest Act*, LRC 90 (1987).

[198] See n 117 above.

[199] See main text above at [172].

[200] Compare CPR 40.8 of the UK:

> **Time from which interest begins to run**
>
> 40.8 (1) Where interest is payable on a judgment pursuant to section 17 of the Judgments Act 1838 or section 74 of the County Courts Act 1984, the interest shall begin to run from the date that judgment is given unless -
>
> (a) a rule in another Part or a practice direction makes different provision; or
>
> (b) the court orders otherwise.
>
> (2) The court may order that interest shall begin to run from a date before the date that judgment is given.

E. Judgments in Foreign Currency

[189] The sub-committee prefers not to rely on O 42 r 12, but recommends a direct approach to the question of foreign currency in judgments and awards. This problem is in fact addressed substantially in the general reform proposed in this report for post-judgment interest. Where the Singapore court is awarding judgment measured in foreign currency, and where a foreign judgment or award in respect of a claim measured in foreign currency is sued upon in an action commenced in Singapore, the recommendation made above for pegging post-judgment interest to pre-judgment interest as a general rule would mean that the post-judgment rate would be generally be measured in accordance with the foreign currency in question, even if the rate is higher than the default post-judgment rate.

[190] In the case of local suits, the principle of following pre-judgment interest as a general rule should, without more, bring into play the principle of awarding of post-judgment interest in accordance with the rate appropriate to the currency of the loss or gain. In the case of actions on foreign judgments or arbitral awards, if the post-order rate in the foreign order fails to reflect the true losses in the relevant foreign currency, the principle of comity should nevertheless prevail as the foreign post-order rate is effectively the "pre-judgment" interest on the debt being enforced in Singapore. No additional reform steps are necessary if the general proposals are accepted.

[191] The sub-committee also noted that in the case of judgment going by default where the foreign judgment is enforced by action, there is a potential problem of abuse if the party seeking enforcement is asking for an unrealistically high post-judgment interest rate. This problem is not confined to the enforcement of judgments denominated in foreign currency, as there is potential for abuse in undefended cases as long as there is scope for variation in interest rates. However, the court can control such excesses. The sub-committee is of the view that the onus should be on the party seeking enforcement of a foreign judgment to claim and justify a different rate from the default rate.

[192] Recommendation 14:

It is recommended that the proposed principle above of following the pre-judgment interest rate as a general rule should apply in the case of judgments given in foreign currency.

F. Arbitrators

[193] The same arguments apply to an arbitrator acting under Singapore law granting an award in foreign currency. The sub-committee is of the view that such an arbitrator should have the power to set an appropriate interest rate to run on the award. Indeed, in this context, a case can be made that the arbitrator, especially in the context of an international arbitration, should be allowed to order interest on an award unfettered by the rules of court whether the award is made in a Singapore or foreign currency. This proposal will reinforce the pro-arbitration stand of Singapore.

[194] Recommendation 15:

It is recommended that, under Singapore law, arbitrators should have the general power to determine the appropriate rate of interest to run on awards (whether made in Singapore or foreign currency).

G. Interest Rates in Foreign Judgments and Arbitral Awards.

[195] In the case of foreign judgments[201] and foreign arbitral awards[202] that are registered for enforcement, the existing legislative framework attaches the default judgment debt interest rate irrespective of the currency of the judgment, and there are no provisions in statute or the Rules of Court for the applicant to ask for a different interest rate. Consistently with Recommendation 14 above made in respect of the enforcement of foreign judgments or awards at common law, the Rules of Court should be amended to provide for the applicant to seek a different rate of interest in appropriate cases.[203]

[196] However, another fundamental issue arises with respect to the enforcement of foreign judgments (in whatever currency), whether the forum should adopt the interest rate on the judgment debt imposed by the law under which the judgment was given, or impose its own interest rate, once the foreign judgment is enforced as a local judgment.[204] The latter is the current position under Singapore law.[205] In contrast, foreign judgments (irrespective of the currency of the judgment) enforced in the United Kingdom under the Brussels Regulation and the Brussels and Lugano Conventions carry judgment interest at the rate prevailing by the law of the country where the judgment was given.[206] The position in the United Kingdom may be justified by the mutuality within the European Union, as its position for judgments enforceable otherwise is similar to that in Singapore.[207] In contrast, Ontario law gives effect to the interest awarded on the foreign judgment in accordance the law under which the judgment was obtained, in respect of all foreign judgments filed in Ontario for enforcement.[208]

[197] One possible argument for adopting something like the Ontario position is that the interest on the judgment sum owing is an integral part of the debt that is sought to be enforced in the forum, analogous to the case where a contractually agreed rate of interest is given effect to. This has the same effect as characterising the issue of interest on judgment debts as a *substantive* one going to the merits of the case,[209] so that the foreign law's determination whether interest is available, and if so, its

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201 See [177] above.

202 See [178] above.

203 As the the application for registration of foreign judgments is made *ex parte* (Rules of Court, O 67 r 2), the discussion in [191] above applies will apply to this context as well.

204 This refers to the second time period discussed in [177] above.

205 Above, main text at Part IV.A.3.

206 Civil Jurisdiction and Judgments Act 1982, s 7(1):

> **Interest on registered judgments** (1) Subject to subsection (4), where in connection with an application for registration of a judgment under section 4 or 5 the applicant shows--
>
> (a) that the judgment provides for the payment of a sum of money; and (b) that in accordance with the law of the Contracting State in which the judgment was given interest on that sum is recoverable under the judgment from a particular date or time, the rate of interest and the date or time from which it is so recoverable shall be registered with the judgment and, subject to any provision made under subsection (2), the debt resulting, apart from section 4(2), from the registration of the judgment shall carry interest in accordance with the registered particulars.

207 Above, main text at Part IV.A.3.

208 RSO 1990, CC43, s 129(3): "Where an order is based on an order given outside Ontario or an order of a court outside Ontario is filed with a court in Ontario for the purpose of enforcement, money owing under the order bears interest at the rate, if any, applicable to the order given outside Ontario by the law of the place where it was given."

209 Foreign judgments, when recognised or enforced in the forum, are conclusive (subject to limited defences) on issues of merits but not procedure: *Harris v Quine* (1868–1869) LR 4 QB 653.

computation of the rate of interest, are conclusive of the issue of compensation (until payment) to the creditor for the loss of the use of the money. However, this runs up against two objections. First, there is a distinction between the debt created by the foreign judgment, which is the basis for the enforcement of the foreign judgment in the forum, and the judgment debt itself which is created under the law of the forum. Second, at least the rate of interest is arguably a matter of procedure, since it involves quantification of the loss suffered.[210] However, the distinction drawn in the first point is a technical one, and *it is ultimately a question of policy whether the enforcing forum should give conclusive effect to the originating forum's determination of the rate of interest on the judgment, or whether the enforcing should determine its own interest rate*. The second point is convincing when the court is determining the applicable interest on a claim on a debt or damages in foreign currency, but it is less persuasive in the context of foreign judgments, since a debt or damages quantified[211] in (or ascertainable from) a foreign judgment is recoverable as a fixed sum in the forum.

[198] However, even though the view that the law of the forum governs the availability and rate of interest for judgment debts is relatively well entrenched (and the forum has a legitimate interest to enforce its own views on all matters of enforcement within its own jurisdiction), it is possible to address the policy issue highlighted in the previous paragraph without challenging the validity of this view. On the assumption that the issue is procedural, nevertheless, the rules of procedure must necessarily take into account whatever foreign factors that have an impact on the objectives of the rules. On one hand, it is merely an extension of the trust that the forum places in foreign courts whose judgments it enforces, that the forum should follow the foreign court's assessment of the judgment creditor's losses, including post-judgment losses. Indeed, that assessment is given effect to by the forum, until the point in time when the foreign judgment is enforceable as a local judgment.

[199] Although the court of the forum has to decide the appropriate interest rate for foreign judgments, in principle, the interest rate applicable to the judgment under the law of the court giving the judgment should be followed (this is normally the rate ordered by the foreign court, or a default rate where the judgment is silent) unless it is an exceptional case. One example of an exceptional case may be where the foreign court had awarded post-judgment interest that the forum regards as exorbitant. This will be consistent with the approach recommended above where a foreign judgment or arbitral is enforced by action in Singapore.[212]

[200] Foreign arbitral awards raise similar legal and policy considerations, but there is a stronger case to give effect to the arbitrator's decision on the post-award interest, because the award is the result of the agreement of the parties, and because the judicial system plays only a supervisory role in arbitration and a supportive role in lending its enforcement machinery to arbitral awards. Thus, the interest rate awarded by the arbitral tribunal to run from the date of the award should be followed at the enforcement stage, unless the award itself is challenged. Unlike the case of judgments, it does not make sense to distinguish between local and foreign arbitral awards where post-award interest is concerned. Our recommendation in this respect therefore

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[210] *Miliangos v George Frank (Textiles) Ltd (No 2)* [1977] QB 489 at 496–497.

[211] Even though quantification of damages is a question of procedure: *D'Almeida Araujo Lda v Sir Frederick Becker and Co Ltd* [1953] 1 QB 329.

[212] See [190] above.

includes both foreign and local arbitral awards. This position will reflect the strong pro-arbitration stance of Singapore.

[201] The sub-committee thus recommends that, unless it is an exceptional case, when a foreign judgment[213] is registered for enforcement in Singapore, it should carry interest at the rate, if any, applicable to the judgment by the law of the place where it was given.[214] It also recommends that the court should follow the post-award interest rate in the case of a local or foreign arbitral award entered as a judgment for enforcement. The interest rate discussed here should include whether it is compound or simple interest.

[202] Recommendation 16:

It is recommended that the Rules of Court be amended so that, unless it is an exceptional case, when a foreign judgment is registered for enforcement in Singapore, it should carry interest at the rate, if any, applicable to the judgment by the law of the place where it was given. It is also recommended that the law be amended so that the court should give effect to the post-award interest rate in a local or foreign arbitral award being enforced in Singapore.

H. Foreign Exchange Losses

[203] Should the interest award also be used to compensate for losses of the plaintiff due to devaluation of the currency in which the loss is suffered? It is not necessarily an answer that because the judgment will be awarded in the currency of the loss, the plaintiff takes the risks and benefits of the depreciation and appreciation of that currency respectively. The plaintiff may have a legitimate claim that if the sum denominated in foreign currency had been paid when due, he would not have had to take the risk of subsequent depreciation of that currency.

[204] While an order of interest compensates for the loss of the internal value of the money owing, generally reflecting the inflation rate of the currency in question, there may also be losses due to exchange rate fluctuations as a result of the delay in payment. The common law as to the recovery of losses due to falling foreign currency value as a result of the late payment of debt or damages is unclear. On the one hand, it is arguable that such losses are generally recoverable on ordinary remoteness principles.[215] On the other hand, there is high authority stating that, while claims to recover losses from falling foreign currency value due to late payment amounting to breach of contract are recoverable subject to remoteness principles in contract law,[216] there can be no claim in principle for damages for the late payment of damages.[217] The position in Singapore is also unclear. In one case, it was considered an open

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[213] This includes a foreign arbitral award enforceable as a judgment in a foreign country and is registrable as a judgment in Singapore: see n 175 above.

[214] See n 208 above.

[215] *Ozalid Group (Export) Ltd v African Continental Bank Ltd* [1979] 2 Lloyd's Rep 231; *Isaac Naylor & Sons Ltd v New Zealand Co-operative Wool Marketing Association Ltd* [1981] 1 NZLR 361.

[216] Such damages are however only recoverable where are special circumstances to the knowledge of the defendant which caused the loss, the presumption still being that in the ordinary course of events the only loss attributable to late payment is loss of interest: *International Minerals & Chemical Corp v Karl O Helm AG* [1986] 1 Lloyd's Rep 81.

[217] *Lips Maritime Corp v President of India* [1988] AC 395 at 424–425.

question whether such claims could succeed under Singapore law.[218] In another case, however, it was assumed that in any event a claim for damages for exchange losses was inconsistent with a general claim for interest.[219] The latter assumes that an interest award is an appropriate vehicle to deal with foreign exchange losses.

[205] In principle, the objective of an award of interest is to compensate the plaintiff for the loss of the *use* of the money within the economy where the currency operates, while that of damages for devaluation of currency compensates a different kind of loss – loss in the *value* of the currency caused by the downward movement of the currency in relation to other currencies.[220] So even if foreign interest rates are taken into account, under-compensation may still occur. This is the case for pre-judgment assessment of losses, and it is no different for post-judgment. Whether claims for exchange losses can be sustained at all appears to be a matter of substance,[221] so any reform in this area will only be limited to instances where the substantive claim is governed by Singapore law. It raises an important issue of the extent to which the *domestic* common law principle that a claim for damages for late payment of damages is not allowable should be adjusted to accommodate at least cases of foreign exchange losses. It is suggested that this is a matter that is better left to judicial development. The sub-committee therefore makes no specific recommendation on this issue.

I. References in other Legislation to the Judgment Debt Interest Rate

[206] The sub-committee noted that there are provisions in statutes and subsidiary legislation that refer to the default judgment debt interest rate. The sub-committee considered whether it was necessary to provide for the continuity of the reference for the avoidance of doubt, with the proposed move to compound interest and periodic determination of the rate of interest. It could be clarified in legislation that any reference in any written law to the rate applicable to judgment debts in Singapore should, unless a contrary statutory intention is shown, be construed to mean the default rate of interest that a court would apply in a case to a judgment debt if neither the appropriate pre-judgment rate in respect of the underlying claim nor the post-judgment rate of interest in that case has been argued. The relevant date for determining the default interest rate should be the date from which the interest is due to run under that written law.

[207] However, the sub-committee noted that there is still a default rate in the proposed system, and that within the existing legal framework there is already a system for changing the regulated rate (*albeit* subject to the maximum of 8%) and a judicial discretion for departing (*albeit* downwards only) from the regulated rate. There should therefore not be any difficulty in finding the default rate to which the interest rate in these provisions can be pegged. A more comprehensive review involving consideration of the specific policies underlying individual statutory provisions[222]

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218 *Indo Commercial Society (Pte) Ltd v Ebrahim* [1992] 2 SLR 1041 at 1055.

219 *Sintra Merchants Pte Ltd* v *Brown Noel Trading Pte Ltd* [1996] 2 SLR 444.

220 This distinction was very clearly drawn in Law Reform Commission of Manitoba, *Report of Pre-Judgment Compensation on Money Awards: Alternatives to Interest* (Report No 47, 1982).

221 This point has not been decided in any Singapore decision, but a passage from FA Mann, *The Legal Aspects of Money* (5th Ed, 1992) at 353, stating that the claim is substantive and subject to choice of law rules, was quoted with approval in *Indo Commercial Society (Pte) Ltd v Ebrahim* [1992] 2 SLR 1041 at 1055.

222 *Eg*, Building and Construction Industry Security of Payment Act 2004 (No 57 of 2004) s 8(5); Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) s 11(3); Land Acquisition Act (Cap 152, 1985 Rev Ed) s 36; Legal Profession

making references to the judgment debt rate as well as to any specific rate of interest should probably be undertaken, but this is beyond the purview of this sub-committee. Respective agencies responsible for the administration of such statutes may want to consider reviewing these interest rate provisions at a later date. It is the sub-committee's view that no consequential amendments to these statutes and subsidiary legislation are necessary as a consequence of the changes recommended in this report to the general power of the courts to award or pre- and post-judgment interest in litigation. The sub-committee therefore makes no specific recommendations on this issue.

(Solicitors' Remuneration) Order (Cap 161, Section 108, O 1, 2004 Rev Ed) r 5(1); Mutual Assistance in Criminal Matters Act (Cap 190A, 2001 Rev Ed), Sched 1, para 5; Partnership Act (Cap 391, 1994 Rev Ed) ss 23, 42.

ANNEX A: DRAFT LEGISLATION

Contents:

Supreme Court of Judicature (Amendment) Bill

Bill No. xx/2005.

Read the first time on *20xx.*

A BILL

i n t i t u l e d

An Act to amend the Supreme Court of Judicature Act (Chapter 322 of the 1999 Revised Edition) and to make consequential amendments to the Civil Law Act (Chapter 43 of the 1999 Revised Edition) and the Subordinate Courts Act (Chapter 321 of the 1999 Revised Edition).

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 Supreme Court of Judicature (Amendment) Act 2005 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 80

2. Section 80 of the Supreme Court of Judicature Act (referred to in this Act as the principal Act) is amended by deleting paragraph (*j*) of subsection (2) and substituting the following paragraph:

"(*j*) regulating the rate of interest which a court may direct to be paid;".

Amendment of First Schedule

3. The First Schedule to the principal Act is amended by deleting paragraph 6 and substituting the following paragraph:

"**6.** (1) Power to direct interest (including compound interest) to be paid on —

(*a*) damages;

(*b*) debts (including debts paid before or after commencement of proceedings);

(*c*) judgment debts;

(*d*) sums found due on taking accounts between parties; or

(*e*) sums found due and unpaid by receivers or other persons liable to account to the court.

(2) Nothing in this paragraph shall apply to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise.".

Consequential amendments to other written laws

4. 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 4

CONSEQUENTIAL AMENDMENTS TO OTHER WRITTEN LAWS

	First column	*Second column*
(1)	Civil Law Act (Chapter 43, 1999 Ed.)	
	Section 12	Repealed.
(2)	Subordinate Courts Act (Chapter 321, 1999 Ed.)	
	Section 69(3)	Delete paragraph (*d*) and substitute the following paragraph: "(*d*) regulating the rate of interest which a court may direct to be paid;".

Arbitration (Amendment) Bill

Bill No. xx/2005.

Read the first time on *20xx.*

A BILL

i n t i t u l e d

An Act to amend the Arbitration Act (Chapter 10 of the 2002 Revised Edition).

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 Arbitration (Amendment) Act 2005 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Repeal and re-enactment of section 35

2. Section 35 of the Arbitration Act is repealed and the following section substituted therefor:

"Interest

35.—(1) The parties are free to agree on the powers of the arbitral tribunal as regards the award of interest.

(2) Unless otherwise agreed by the parties the following provisions apply.

(3) The arbitral tribunal may award interest (including interest on a compound basis) on the whole or any part of any sum which —

(*a*) is awarded to any party, for the whole or any part of the period up to the date of the award; or

(*b*) is in issue in the arbitral proceedings but is paid before the date of the award, for the whole or any part of the period up to the date of payment.

(4) The arbitral tribunal may award further interest (including interest on a compound basis) from the date of the award (or any later date) until payment, on the outstanding amount of any award (including any award of interest under subsection (3) and any award as to costs).

(5) Interest may be awarded under subsections (3) or (4) by an arbitral tribunal at such rates and with such rests as the arbitral tribunal considers meets the justice of the case.

(6) References in this section to an amount awarded by the arbitral tribunal include an amount payable in consequence of a declaratory award by the tribunal.

(7) The above provisions do not affect any other power of the arbitral tribunal to award interest.

(8) Where an award directs a sum to be paid, that sum shall carry interest as from the date of the award and at such rate as the award directs or, in the absence of such direction, as if it were a judgment debt.

(9) A Court enforcing the award shall give effect to subsection (8).".

International Arbitration (Amendment) Bill

Bill No. xx/2005.

Read the first time on *20xx.*

A BILL

i n t i t u l e d

An Act to amend the International Arbitration Act (Chapter 143A of the 2002 Revised Edition).

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 International Arbitration (Amendment) Act 2005 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 12

2. Section 12 of the International Arbitration Act (referred to in this Act as the principal Act) is amended —

(*a*) by deleting the full-stop at the end of sub-paragraph (ii) of subsection (5)(*b*) and substituting a semi-colon, and by inserting immediately thereafter the following paragraph:

"(*c*) may award further interest (including interest on a compound basis) from the date of the award (or any later date) until payment, on the outstanding amount of any award (including any award of interest under paragraph (b) and any award as to costs).”; and

(*b*) by inserting, immediately after subsection (5), the following subsections:

"(5A) Interest may be awarded under subsection (5)(*b*) or (*c*) by an arbitral tribunal at such rates and with such rests as the arbitral tribunal considers meets the justice of the case.

(5B) References in this section to an amount awarded by the arbitral tribunal include an amount payable in consequence of a declaratory award by the tribunal.

(5C) The above provisions do not affect any other power of the arbitral tribunal to award interest.”.

Repeal and re-enactment of Section 20

3. Section 20 of the principal Act is repealed and the following section substituted therefor:

“Interest on awards

20.—(1) Where an award directs a sum to be paid, that sum shall carry interest as from the date of the award and at such rate as the award directs or, in the absence of such direction, as if it were a judgment debt.

(2) A Court enforcing an award shall give effect to subsection (1).”.

Amendment of section 29

4. Section 29 of the principal Act is amended by inserting, immediately after subsection (2), the following subsection:

"(3) Section 20 shall apply to a foreign award enforced under subsection (1) as it applies to an award of an arbitral tribunal made in Singapore.".

COMPARISON TABLES

Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)

Present Version	**Proposed Version**
80(2)(j) Without prejudice to the generality of subsection (1), Rules of Court may be made for the following purposes: … *regulating the rate of interest payable on all debts, including judgment debts, or on the sums found due on taking accounts between parties, or on sums found due and unpaid by receivers or other persons liable to account to the court, except that in no case shall any rate of interest exceed 8% per annum, unless it has been otherwise agreed between the parties;*	**80(2)(j)** Without prejudice to the generality of subsection (1), Rules of Court may be made for the following purposes: … *regulating the rate of interest which a court may direct to be paid*;
First Schedule, para 6 **Interest** **6.** Power to direct interest to be paid on damages, *or* debts (*whether* the debts are paid before or after commencement of proceedings) *or* judgment debts, *or on* sums found due on taking accounts between parties, *or on* sums found due and unpaid by receivers or other persons liable to account to the court.	**First Schedule, para 6** **Interest** **6***(1)***.** Power to direct interest *(including compound interest)* to be paid on – (a) damages; (b) debts (*including* debts paid before or after commencement of proceedings); (c) judgment debts; (d) sums found due on taking accounts between parties; or (e) sums found due and unpaid by receivers or other persons liable to account to the court. *(2) Nothing in this paragraph shall apply to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise.*

Civil Law Act (Cap 43, 1999 Rev Ed)

Present Version	**Proposed Version**
12 —*(1) In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.* *(2) Nothing in this section —* *(a) shall authorise the giving of interest upon interest;* *(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or* *(c) shall affect the damages recoverable for the dishonour of a bill of exchange.*	NA (repealed)

Subordinate Courts Act (Cap 321, 1999 Rev Ed)

Present Version	**Proposed Version**
69(3)(d) Without prejudice to the generality of subsections (1) and (2), the power to make Rules of Court shall extend to — … *directing interest to be paid on debts, including judgment debts, or on sums found due in an administration action, provided that in no case shall any rate of interest exceed 8% per annum unless it has been otherwise agreed between parties;*	**69(3)(d)** Without prejudice to the generality of subsections (1) and (2), the power to make Rules of Court shall extend to — … *regulating the rate of interest which a court may direct to be paid*;

Arbitration Act (Cap 10, 2002 Rev Ed)

Present Version	**Proposed Version**
35. —(1) *The arbitral tribunal may award interest, including interest on a compound basis, on the whole or any part of any sum that —* *(a) is awarded to any party; or* *(b) is in issue in the arbitral proceedings but is paid before the date of the award, for the whole or any part of the period up to the date of the award or payment, whichever is applicable.* *(2) A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.*	**Interest** **35.** —*(1) The parties are free to agree on the powers of the arbitral tribunal as regards the award of interest.* *(2) Unless otherwise agreed by the parties the following provisions apply.* *(3)The arbitral tribunal may award interest (including interest on a compound basis) on the whole or any part of any sum which —* *(a) is awarded to any party, for the whole or any part of the period up to the date of the award; or* *(b) is in issue in the arbitral proceedings but is paid before the date of the award, for the whole or any part of the period up to the date of payment.* *(4) The arbitral tribunal may award further interest (including interest on a compound basis) from the date of the award (or any later date) until payment, on the outstanding amount of any award (including any award of interest under subsection (3) and any award as to costs).* *(5) Interest may be awarded under subsections (3) or (4) by an arbitral tribunal at such rates and with such rests as the arbitral tribunal considers meets the justice of the case.* *(6) References in this section to an amount awarded by the arbitral tribunal include an amount payable in consequence of a declaratory award by the tribunal.* *(7) The above provisions do not affect any other power of the arbitral tribunal to award interest.* *(8) Where an award directs a sum to be paid, that sum shall carry interest as from the date of the award and at such rate as the award directs or, in the absence of such direction, as if it were a judgment debt.* *(9) A Court enforcing the award shall give effect to subsection (8).*

International Arbitration Act (Cap 143A, 2002 Rev Ed)

Present Version	Proposed Version
Powers of arbitral tribunal **12(5)** Without prejudice to the application of Article 28 of the Model Law, an arbitral tribunal, in deciding the dispute that is the subject of the arbitral proceedings — (a) may award any remedy or relief that could have been ordered by the High Court if the dispute had been the subject of civil proceedings in that Court; (b) may award interest (including interest on a compound basis) on the whole or any part of any sum which — (i) is awarded to any party, for the whole or any part of the period up to the date of the award; or (ii) is in issue in the arbitral proceedings but is paid before the date of the award, for the whole or any part of the period up to the date of payment.	**Powers of arbitral tribunal** **12(5)** Without prejudice to the application of Article 28 of the Model Law, an arbitral tribunal, in deciding the dispute that is the subject of the arbitral proceedings — (a) may award any remedy or relief that could have been ordered by the High Court if the dispute had been the subject of civil proceedings in that Court; (b) may award interest (including interest on a compound basis) on the whole or any part of any sum which — (i) is awarded to any party, for the whole or any part of the period up to the date of the award; or (ii) is in issue in the arbitral proceedings but is paid before the date of the award, for the whole or any part of the period up to the date of payment*;* *(c) may award further interest (including interest on a compound basis) from the date of the award (or any later date) until payment, on the outstanding amount of any award (including any award of interest under paragraph (b) and any award as to costs).* *(5A) Interest may be awarded under subsection (5)(b) or (c) by an arbitral tribunal at such rates and with such rests as the arbitral tribunal considers meets the justice of the case.* *(5B) References in this section to an amount awarded by the arbitral tribunal include an amount payable in consequence of a declaratory award by the tribunal.* *(5C) The above provisions do not affect any other power of the arbitral tribunal to award interest.*

Interest on awards **20.** *Where an award directs a sum to be paid, that sum shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.*	Interest on awards **20.** – *(1) Where an award directs a sum to be paid, that sum shall carry interest as from the date of the award and at such rate as the award directs or, in the absence of such direction, as if it were a judgment debt.* *(2) A Court enforcing an award shall give effect to subsection (1).*
Recognition and enforcement of foreign awards **29.** —(1) Subject to this Part, a foreign award may be enforced in a court either by action or in the same manner as an award of an arbitrator made in Singapore is enforceable under section 19. (2) Any foreign award which is enforceable under subsection (1) shall be recognised as binding for all purposes upon the persons between whom it was made and may accordingly be relied upon by any of those parties by way of defence, set-off or otherwise in any legal proceedings in Singapore.	**Recognition and enforcement of foreign awards** **29.** —(1) Subject to this Part, a foreign award may be enforced in a court either by action or in the same manner as an award of an arbitrator made in Singapore is enforceable under section 19. (2) Any foreign award which is enforceable under subsection (1) shall be recognised as binding for all purposes upon the persons between whom it was made and may accordingly be relied upon by any of those parties by way of defence, set-off or otherwise in any legal proceedings in Singapore. *(3) Section 20 shall apply to a foreign award enforced under subsection (1) as it applies to an award of an arbitral tribunal made in Singapore.*

ANNEX B: PAPER ON INTEREST RATE AWARDED

A. INTRODUCTION

1.The English Law Reform Commission produced a report on 'Pre-Judgment Interest on Debts and Damages' [2004] EWLC 287. This report arose out of *the* concern that the limits on the Court's power to award only simple interest fails to reflect commercial reality. This paper seeks to examine the implications of this report on our position locally – focusing in particular upon the questions of whether compound interest should be charged and the appropriate rate to set interest at.

B. PURPOSE OF INTEREST

2.The starting point in this inquiry is the recognition that interest should not be awarded as compensation for the damage done. Instead, it should only be awarded to a plaintiff for being kept out of money which ought to have been paid to him: *Jefford v Gee* [1970] 2 QB 130. Given this, the issue turns to how this loss should be measured. There are two sub-questions here. First, whether compound or simple interest should be awarded. Second, what is the appropriate rate at which to award interest. In our view, these two questions are obviously related and must be considered together for completeness.

C. COMPOUND VS SIMPLE INTEREST

3.In relation to the first question, the position today is that the Courts generally award simple interest. There are two reasons. First, this was a rough and ready approach towards computing interest that arose out of practical convenience. This approach underlies the Court's practice of awarding simple interest and is elaborated on at paragraph 9 below. Second, the Courts award simple interest simply because they do not have the power to award compound interest for **pre-judgment** debts and damages under sub-section (2) of section 12 of the Civil Law Act, which specifically provides that "nothing in this section shall authorise the giving of interest upon interest". The only clearly recognised exceptions[223] to this provision are: (1) pre-judgment damages or debts where the agreement between the parties specifically provides for compound interest (for example, credit card debts); and (2) where there is a breach of fiduciary duty, and even then, only if the award was made in lieu of an account of profits.

4.Given this position, the English Law Reform Commission has recommended that the Courts be given the power to award compound interest in the appropriate circumstances. The reason given is simple: in reality, compound interest better reflects the loss to the plaintiff as the award of simple interest would *overcompensate*

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[223] As stated by the House of Lords in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] 2 All ER 961 which examined the UK equivalent. This decision was cited without criticism by LP Thean JA in delivering the judgment of the Court of Appeal in *Ching Mun Fong (executrix of the estate of Tan Geok Tee, deceased) v Liu Cho Chit* [2001] 3 SLR 10.

in the short term and *under-compensate* in the long term[224]. As such, awarding compound interest would more accurately reflect economic reality.

5.However, any reform to this area must deal with three additional questions. First, in what circumstances should the Courts award compound interest – in all cases or only cases where the parties can show that they had borrowed on compound interest (in which case the loss may be better dealt with as damages). Second, how the compound interest should be calculated – whether on an annual, quarterly or monthly rests. Third, the appropriate base to tie interest rates to – there are two relevant market rates: (1) the rate that the judgment creditor would have to pay to borrow an equivalent sum[225]; and (2) the rate that he would have received had he invested the money[226]. A choice has to be made between the two. In theory, the former should be used only when the creditor can be shown to be actually short of funds. In practice the position is not so clear-cut. In the UK, the former is generally used in commercial cases, whereas the latter is used in non-commercial cases: *Tate & Lyle Food and Distribution Ltd v Greater London Council* [1981] 3 All ER 716. However, the Courts do not appear to draw such a distinction in Singapore. This is thus an important question to address.

6.In our view, these questions can only be resolved after an in-depth consultation with the various stakeholders such as the Law Society, banks and litigants. There would also be a need to conduct a comprehensive study on any possible impact of such changes to the law on potential litigants as well as investigate whether our local conditions require any modifications to the recommendations made by the English Law Reform Commission. Our present review also revealed the merits of having a general formula to cater to a fluctuating rate of interest: see paragraph 12 following.

7.Further, as the power of the Courts to award compound interest is specifically excluded by statute, any reform in this area will necessarily be by way of amendment to primary legislation. Hence, it would be appropriate for a comprehensive study to be conducted by the Law Reform Committee of the Singapore Academy of Law headed by Justice Judith Prakash. However, such a study would take time. As such, this paper then turns to conduct a preliminary review of the Court's current practice, to determine whether any urgent action is required.[227]

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224 For example, a simple interest of 8% is the equivalent of a compound rate of 7% after 5 years, the equivalent of a compound rate of 6% after 11 years and the equivalent of 5% after 19 years.

225 As suggested by the English Law Reform Commission.

226 As suggested by Lord Denning in *Jefford v Gee* [1970] 2 QB 130.

227 As stated in [**Annex B**],paragraph 2, the question of whether simple or compound interest should be awarded cannot be divorced from the question of the appropriate rate of interest. That notwithstanding, the subsequent analysis has proceeded solely on the basis of the latter issue.

D. CHANGING THE SIMPLE INTEREST RATE

8.Today, the Courts normally award an interest rate of 6%[228] on **pre-judgment** debts and damages[229]. This rate of 6%[230] is not fixed by statute and is a matter of the Court's discretion as provided by s 12 of the Civil Law Act[231]. As for **post-judgment** interest, the amount awarded is fixed by the Rules of Court at 6%, although the Court has discretion to vary the amount downwards (this is rarely done in practice): see Order 42 Rule 12. The pre-judgment interest rate of 6% awarded is consistent with the post-judgment interest rate stated above[232]. Further, it is also consistent with the interest rate of 6% provided for by the Rules of Court for pre-judgment liquidated damages when judgment is entered on default of appearance or defence as well as the interest awarded on costs: see Order 13 Rule 1(2), Order 19 Rule 2(1) and Order 59 Rule 37 respectively.

9.Given this, it must however be noted that the determination of the amount of interest to award is not an exact science. All that the law can do is to work out, as best it can, in an approximate and practical way, the sum to be paid to the plaintiff as compensation for his loss of use of the funds. As such, the use of a fixed interest rate is an inescapably artificial method of determining compensation. However, it serves its purpose. The use of a 6% figure serves as a simple and easy method to apply[233] which takes away the need for arguments to be made at the end of each hearing on the existing and appropriate interest rates. It further takes away the need for a minute scrutiny of the prevailing interest rates at the time each expenditure is incurred. Also, adopting a simple interest rate adds finality by having a definite figure that can be calculated easily. The relevant question is thus whether this 6% is so far off commercial reality that some immediate action must be taken to rectify the situation.

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228 Additionally, the rate of 3% is also generally used. However, this is only used when special damages were incurred over an extended period of time until the date of trial. In such a situation, the Court would award half of the usual rate of 6% as a rough and ready method, rather than awarding interest from when *each individual expense was incurred*.

229 For illustration, refer to the Court of Appeal decision of *Teo Sing Keng & Anor v Sim Ban Kiat* [1994] 1 SLR 634 where an interest rate of 6% per annum was awarded in respect of the general damages for pain and suffering from the date of writ to the date of judgment.

230 The quantum of 6% can be traced to the decision of *Lee Soon Beng v Wee Tiam Sing* [1986] 2 MLJ 340 where Wee Chong Jin CJ stated that 'in line with the rate of 6% pa awarded by our courts over the years which we think is a realistic rate, we are of the opinion that the interest rate should be 6%.'

231 Which states 'the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.'

232 A distinction has been drawn here between pre-judgment and post-judgment interest rates although the rates are identical today. There are however good policy grounds justifying a higher than market interest rate when dealing with a post-judgment debt. In a pre-judgment situation, nothing has been crystalised. In a post-judgment situation, the plaintiff's case has been accepted by a court and it is the order of court that is not being met with reasonable speed. Thus, some punitive element can be justified on the grounds of upholding respect for the Courts and providing an incentive for the expeditious conclusion of the action. As such, it would be most optimal if the rate of interest rate awarded is slightly higher than the chosen market rate in order to provide some incentive to the judgment debtor to pay promptly. (Compare to McGregor on Damages at 15-088–15-091 where the author argues that there should be no such distinction.)

233 Although allowance can of course be made to cater to special circumstances of individual cases.

10.In answering this question, this paper examines how other jurisdictions have set their interest rate. First, the Australian position is reflected in the Victorian Consolidated Legislation in s 60 of their Supreme Court Act 1986. It provides that the interest rate is to be linked to the rate 'charged for loans or paid for borrowings by a public or commercial institution'[234]. The position is similar in Hong Kong. This can be seen in the decision of *Mok Associates Limited and Au Wai Yip & Anor* (DCCJ000354 of 2003) where pre-judgment interest was awarded at 1% above prime. Additionally, the English Law Reform Commission had also recommended that the appropriate method to set the interest rate would be to link the interest rate to the borrowing rate, by setting it at 1% over the Bank of England base rate. From this, it can be seen that the modern approach is to fix the interest rate to an amount slightly above the commercial borrowing rate as this is thought to reflect the actual cost of borrowing among commercial parties[235].

11.If this approach is adopted to test our current interest rate position, the equivalent rate to be used here would be the average prime rate of our three local big banks. As of 1 April 2004, the average prime rate of the three local big banks stands at 5%[236]. Thus, the current 6% rate awarded by the Courts is more or less suited to current commercial reality. Furthermore, given the efficiency of the judicial system, the cases before the Court are normally completed within 12 months. This is significant because the effect of an overtly high interest rate is only felt over time. Further, the difference between compound interest and simple interest is minimal in the short term of 12 months. In fact, it is still minimal even if 24 months is looked at for the purposes of this paper. There is therefore no such urgency for reform as in England where some of the cases analysed in the English Law Reform Commission Report took up to 15 years to be completed. Lastly, it is important to point out that the Court is free in the appropriate case to depart from this 6% interest rate when dealing with pre-judgment debts and damages[237].

12.This is not to say that the fact that the current amount of interest awarded gels with commercial reality today will necessarily continue given the fluctuating nature of interest rates. As such, while there is no immediate urgency to deal with the matter, this paper takes the position that the Law Reform Committee should also look into setting a formula for determining the appropriate interest rate (for both compound and

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234 Section 2 of the Penalty Interest Rates Act 1983 which fixes the interest rate to be given under s 60 of the Supreme Court Act.

235 Other relevant rates to be considered include (1) the inter-bank rate which for the past three months stands at 0.75% per annum; and (2) the credit-line rate which stands at 12-24% per annum depending on the banks. We would submit that the former is unsuitable as that rate is not available to the public and hence does not offer a fair assessment of loss. As for the latter, our position is that it too is unsuitable as it does not reflect the rates that commercial parties are able to obtain loans at. Rather it reflects the rate at which the completely unsecured ordinary borrower is able to obtain a loan at. As such, it is submitted that the prime rate is the fairest estimate of the cost of borrowing.

236 UOB – 5%, OCBC – 5%, DBS – 5%.

237 For example, in *Hong Fok Realty Pte Ltd v Bima Investment Pte Ltd and another appeal* [1993] 1 SLR 73, the Court of Appeal awarded interest at the rate of 2% over the prime rate of the four major banks (as there then was) rounded down to the nearest 1/8. Similarly, in *Tatung Electronics (S) Pte Ltd v Binatone International Ltd* [1991] SLR 204, the Court of Appeal awarded a 17% interest rate as that was the actual rate at which the plaintiff had borrowed at.

simple interest) that is linked with real interest rates, so that the interest rate awarded can adapt to commercial reality without the need for constant review by the Courts. Further, since interest is awarded to compensate the plaintiff for loss of use of money, the rate ought to bear some relationship to the current cost of funds in the market place[238].

E. CONCLUSION

13.In conclusion, the preliminary analysis of the current position shows that there is no need to take any immediate action to amend the 6% interest rate currently awarded, given the policy considerations at paragraph 9 above. However, it must be acknowledged that there is a need to review whether the Courts should, in appropriate cases, have the power to award compound interest as well as to develop a self-executing formula to ensure that the interest rates awarded are linked to commercial rates. Given the extensive ramifications of this review, it is submitted that the Law Reform Committee is the appropriate body to undertake this exercise.

(signed)
Prepared by:Foo Chee Hock
Deputy Registrar

(signed)
Vincent Leow
Assistant Registrar

(signed)
Approved by:Koh Juat Jong
Registrar

[238] The evaluation should focus on whether the borrowing or investment rate should be used (as discussed at paragraph 5) and should have regard to the different rates at footnote 13.

ANNEX C: EXTRACT FROM PROPOSED DRAFT BILL AND EXPLANATORY NOTES OF THE LAW COMMISSION OF ENGLAND AND WALES

Extract from the proposed Draft Bill of the Law Commission of England and Wales, *Pre-Judgment Interest on Debts and Damages* (Law Com No 287, 2004):

1 Award of interest by High Court

For section 35A of the Supreme Court Act 1981 (c. 54) (power of High Court to award interest on debts and damages) substitute:

"35A Power of High Court to award interest on debts and damages

(1) Subsection (2) applies where, during proceedings in the High Court for the recovery of a debt, the defendant pays the whole debt to the claimant.

(2) The court may award simple or compound interest on some or all of the debt for some or all of the period.

(a) beginning on the date when the cause of action arose, and

(b) ending on the date of the payment.

(3) Subsections (4) and (5) apply where, in proceedings for the recovery of a debt or damages, the High Court gives judgment to any extent in favour of the claimant.

(4) In relation to an action for damages for personal injuries or death in which the court gives judgment for damages exceeding £200, it must, unless it thinks there are special reasons why it should not, award simple or compound interest on.

(a) some or all of the damages for which it gives judgment, and

(b) if any sum is paid in respect of damages during the proceedings, some or all of that sum, for some or all of the relevant period.

(5) Otherwise, the court may award simple or compound interest on.

(a) some or all of the sum for which it gives judgment in respect of the debt or damages, and

(b) if any sum is paid in that respect during the proceedings, some or all of that sum, for some or all of the relevant period.

(6) "Relevant period" means the period beginning on the date when the cause of action arose and ending.

(a) in relation to any sum for which the court gives judgment, on the date of the judgment, and

(b) in relation to any sum paid during the proceedings, on the date of the payment.

(7) This section is subject to rules of court.

35B Section 35A: rate of interest, &c.

(1) In relation to an action for damages for personal injuries, interest awarded under section 35A on damages for non-pecuniary loss runs for the period for which it is awarded at such rate (or rates) as the court specifies.

(2) Otherwise, subject to rules of court, interest awarded under section 35A runs for the period for which it is awarded.

(a) at such rate (or rates) as the Secretary of State may by order specify, or

(b) if the court decides there are good reasons for awarding interest at some other rate (or rates), at such rate (or rates) as the court specifies.

(3) An order under subsection (2)(a) must be made by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Where interest is awarded under section 35A, rules of court may make provision as to:

(a) matters to which the court must have regard when deciding whether to award simple or compound interest;

(b) circumstances in which, or heads of damage on which, compound interest may not be awarded;

(c) the method of calculating any compound interest awarded (and, in particular, the rests to be used in the calculation);

(d) matters to which the court must have regard when making a decision under subsection (2)(b) above.

(5) The court may not award interest under section 35A on a debt for a period during which, for whatever reason, interest already runs on it.

(6) But where interest on a debt is statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998.

(a) the court may, on the application of the claimant, award interest under section 35A for the period during which the statutory interest runs, and

(b) if it does so, the claimant is not entitled to statutory interest under that Act for that period.

(7) Interest awarded under section 35A in respect of damages may be simple in respect of one head of damage and compound in respect of another.

(8) Interest under section 35A.

(a) may be calculated at different rates in respect of different parts of the period for which it runs, but

(b) may not be simple in respect of one part of that period and compound in respect of another.

(9) In section 35A and this section.

“claimant” means the person seeking the debt or damages,

“defendant” means the person from whom the claimant seeks the debt or damages, and “personal injuries”includes any disease and any impairment of a person’s physical or mental condition.

(10) Nothing in section 35A or this section affects the damages recoverable for the dishonour of a bill of exchange.

EXPLANATORY NOTES

CLAUSE 1

This clause replaces section 35A of the Supreme Court Act 1981.

New section 35A

In general, this section merely re-drafts and clarifies the current section. The only substantive change of policy between the old section 35A and the new section 35A is that the new section refers to "simple or compound interest" rather than only simple interest.

One of the more confusing aspects of section 35A, as currently drafted, is the way in which it applies to sums paid before judgment. Section 35A(3) states that where the whole of a debt is paid before judgment, the court has power to award interest on the sums already paid, at such rate and for such periods as it thinks fit. However, where damages are paid before judgment, interest may only be awarded as part of a court judgment (section 35A(1)).

In *Edmunds v Lloyds Italico*,[1] Sir John Donaldson MR explained the distinction as follows:

Payment in full of a debt extinguishes the cause of action and leaves the Court with no basis for giving any judgment, save as provided by sub-s. (3). Payment in full of the amount of the damages still leaves the Court with power to give judgment on liability and to assess the damages and interest taking account of the fact that there has been a payment and acceptance on account of an amount equal to the full amount of the damages.

This means that even where damages are paid in full before judgment, the court retains the power to award interest on all or any part of the damages paid.

The new section 35A retains the distinction, though it reverses the order. New sub-section (1) deals with cases in which the whole debt has been paid, and the cause of action has therefore been extinguished. New sub-section (3) deals with all other cases, including actions for damages and cases in which only part of the debt has been paid. Here the court may still give judgment. The sub-section makes it clear that the judgment does not have to be for the amount on which interest is awarded. A judgment that is to any extent in favour of the claimant will suffice, including one on liability alone.

New Section 35B

This section includes much new material. It introduces the concept of a specified rate; it allows rules of court to give guidance on when the courts should grant compound interest; it clarifies the interaction with the Late Payment of Commercial Debts (Interest) Act 1998; and it limits the power to grant "mixed orders".

The specified rate

New sub-section (2)(a) introduces the concept of a specified rate, to be set by the Secretary of State by order. This order-making power replaces the existing provision

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1 *Edmunds v Lloyds Italico & l'Ancora Compagnia di Assicurazioni & Riassicurazione SpA and another* [1986] 1 WLR 492.

in section 35A(5) to set the rate with reference to the Judgments Act 1838 or some other statute.

We anticipate that the order will contain a formula along the following lines:

For so much of the relevant period as falls in a period of 12 months ending with 31

March (a year), a percentage rate equivalent to one per cent above the base rate of the Bank of England in force at the beginning of 15 February in the preceding year.

However, in times of rapidly changing interest rates, it may be necessary to change the rate more frequently than once a year. Under new sub-section (3) the statutory instrument by which the formula may be changed is subject to the negative resolution procedure.

New sub-section (1) provides that the specified rate will not apply to damages for non-pecuniary loss for personal injuries. This preserves the current law, in which case law provides that such damages should carry interest at 2% from the date of service of the claim.

Under new sub-section (2)(b) the court will grant interest at the specified rate unless it decides that there are good reasons for awarding interest at some other rate. Note that there only need to be "good reasons", not special reasons or unusual reasons. We anticipate that in most cases the reason for using a different rate will be that the claimant has been forced to borrow money at a higher rate.

The Civil Procedure Rule Committee may give the courts further guidance on this issue through rules of court or practice directions: see new sub-section (4)(d).

Guidance on when the courts should grant compound interest

New sub-section (4) permits the Rule Committee to make three kinds of rules about how the power to award compound interest should be used.

· Under paragraph (a), the Committee may give general guidance on what matters the courts should take into account when deciding whether to award simple or compound interest. We anticipate that the Civil Procedure Rules will draw a distinction between cases of less than £15,000 and those of £15,000 or more. In the former case, there will be a rebuttable presumption that interest should be simple. In the latter case, the rebuttable presumption will be that interest should be compound.

· Under paragraph (b), the Committee will have the power to specify that compound interest should not be granted on some heads of damages, or in some types of case. We anticipate that this power will be used to exempt non-pecuniary damages for personal injury from compound interest, and to prevent compound interest from being granted on losses that have been outstanding for less than a year.

· Under paragraph (c), the rules will lay down how compound interest is to be calculated, setting out the rests and mathematical formula to be used. It is important that the parties only calculate compound interest according to computer programmes or tables that use the formula specified by the Rule Committee. If the parties were to calculate compound interest in their own way this could lead to different results, which may cause unnecessary disputes.

New sub-section (4)(d) allows for guidance on the use of the specified rate: see above.

Interaction with the Late Payment of Commercial Debts (Interest) Act 1998

This Bill will not affect creditors' right to increased interest under the 1998 Act. New sub-section (6) simply regularises the current situation in which creditors who could use the 1998 Act choose to apply for interest under section 35A instead. Claimants will be allowed to choose which interest regime to apply for.

"Mixed" orders

Under new sub-section (7), the court may award compound interest on some heads of damages (such as past pecuniary loss) but only simple interest on another head (such as non-pecuniary loss).

However, under new sub-section (8)(b), the court may not award simple interest for part of the period and compound interest for the other part. This would add an unnecessary layer of complexity.

Retained elements

The new section also retains some elements from the current section 35A. New sub-section (5) replicates the current sub-section 35A(4). It states that power to award interest is ousted where interest already runs under a contract or other statute.

The definitions are set out in sub-section (9). The Bill uses the modern term "claimant" rather than the archaic term "plaintiff" used in the present section 35A.

New sub-section 35B(10) replicates the current sub-section 35A(8).

ANNEX D: PRIME LENDING RATE FROM 1994 - 2004

Source: http://www.mas.gov.sg/frames/dataroom/msbhIntDom.html

Interest Rates of Banks and Finance Companies (Monthly)
Jan 1994 to Dec 2004
For full column names, please refer to the column legend at the end of this report.

End of Period	COL-01
1994 Jan	5.50
Feb	5.59
Mar	5.59
Apr	5.66
May	5.73
Jun	5.73
Jul	5.73
Aug	6.01
Sep	6.01
Oct	6.01
Nov	6.49
Dec	6.49
1995 Jan	6.49
Feb	6.49
Mar	6.49
Apr	6.49
May	6.49
Jun	6.34
Jul	6.34
Aug	6.26
Sep	6.26
Oct	6.26
Nov	6.26
Dec	6.26
1996 Jan	6.26
Feb	6.26
Mar	6.26
Apr	6.26
May	6.26
Jun	6.26
Jul	6.26
Aug	6.26
Sep	6.26
Oct	6.26
Nov	6.26
Dec	6.26
1997 Jan	6.26
Feb	6.26
Mar	6.26
Apr	6.26
May	6.26
Jun	6.26
Jul	6.26
Aug	6.26
Sep	6.26
Oct	6.26
Nov	6.31
Dec	6.96
1998 Jan	7.79
Feb	7.79
Mar	7.74
Apr	7.74
May	7.79
Jun	7.79
Jul	7.79
Aug	7.79
Sep	7.54
Oct	7.31
Nov	6.33
Dec	5.90
1999 Jan	5.80
Feb	5.80
Mar	5.80
Apr	5.80
May	5.80
Jun	5.80
Jul	5.80
Aug	5.80
Sep	5.80
Oct	5.80
Nov	5.80
Dec	5.80
2000 Jan	5.80
Feb	5.85
Mar	5.85
Apr	5.85
May	5.85
Jun	5.85
Jul	5.85
Aug	5.85
Sep	5.85
Oct	5.80
Nov	5.80
Dec	5.80
2001 Jan	5.80
Feb	5.80
Mar	5.80
Apr	5.80
May	5.80
Jun	5.80
Jul	5.80
Aug	5.80
Sep	5.48
Oct	5.30
Nov	5.30
Dec	5.30
2002 Jan	5.30
Feb	5.35
Mar	5.35
Apr	5.35
May	5.35
Jun	5.35

	Jul	5.35
	Aug	5.35
	Sep	5.35
	Oct	5.35
	Nov	5.35
	Dec	5.35
2003	Jan	5.35
	Feb	5.33
	Mar	5.30
	Apr	5.30
	May	5.30
	Jun	5.30
	Jul	5.30
	Aug	5.30
	Sep	5.30
	Oct	5.30
	Nov	5.30
	Dec	5.30
2004	Jan	5.30
	Feb	5.30
	Mar	5.30
	Apr	5.30
	May	5.30
	Jun	5.30
	Jul	5.30
	Aug	5.30
	Sep	5.30
	Oct	5.30

Column Legend:
COL-01: Prime Lending Rate

ANNEX E: REFORMS UNDER THE PRIVATE INTERNATIONAL LAW (MISCELLANEOUS PROVISIONS) ACT 1995 (UK)

United Kingdom: Administration of Justice Act 1970, as amended by the Private International Law (Miscellaneous Provisions) Act 1995:

Interest on judgment debts express in currencies other than sterling

44A - (1) Where a judgment is given for a sum expressed in a currency other than sterling and the judgment debt is one to which section 17 of the Judgments Act 1838 applies, the court may order that the interest rate applicable to the debt shall be such a rate as the court thinks fit.

(2) Where the court makes such an order, section 17 of the Judgments Act 1838 shall have effect in relation to the judgment debt as if the rate specified in the order were substituted for the rate specified in the section.

United Kingdom: Arbitration Act, 1950, as amended by the Private International Law (Miscellaneous Provisions) Act 1995 (Now repealed by the Arbitration Act 1996):

Interest on awards

20 - (1) A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award.

(2) The rate of interest shall be –

(a) the rate for judgment debts specified in section 17 of the Judgments Act 1838 at the date of the award; or

(b) if the power under subsection (3) below is exercised, the rate specified in the award.

(3) Where the sum is expressed in a currency other than sterling, the award may specify such rate as the arbitrator or umpire thinks fit instead of the rate mentioned in subsection (2)(a) above.

ANNEX F: OTHER LEGISLATION ON INTEREST ON FOREIGN CURRENCY OBLIGATIONS

United Kingdom: Arbitration Act, 1996

Interest

49 - (1) The parties are free to agree on the powers of the tribunal as regards the award of interest.

(2) Unless otherwise agreed by the parties the following provisions apply.

(3) The tribunal may award simple or compound interest from such dates, at such rates and with such rests as it considers meets the justice of the case –

(a) on the whole or part of any amount awarded by the tribunal, in respect of any period up to the date of the award;

(b) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment.

(4) The tribunal may award simple or compound interest from the date of the award (or any later date) until payment, at such rates and with such rests as it considers meets the justice of the case, on the outstanding amount of any award (including any award of interest under subsection (3) and any award as to costs).

(5) References in this section to an amount awarded by the tribunal include an amount payable in consequence of a declaratory award by the tribunal.

(6) The above provisions do not affect any other power of the tribunal to award interest.

British Columbia: Court Order Interest Act [RSBC 1996] Chapter 79

Part 2 – Postjudgment Interest

Interest rate

7(1) In this section, "interest rate" means an annual simple interest rate that is equal to the prime lending rate of the banker to the government.

(2) A pecuniary judgment bears simple interest from the later of the date the judgment is pronounced or the date money is payable under the judgment.

(3) During the first 6 months of a year interest must be calculated at the interest rate as at January 1.

(4) During the last 6 months of a year interest must be calculated as at July 1.

(5) Despite subsection (2), interest in respect of a judgment pronounced before April 1, 1992 must be calculated from the later of that date or the date the money is payable under the judgment.

Court may vary rate

8. If the court of original jurisdiction considers it appropriate, it may, on the application of a person affected by or interest in a judgment, vary the rate of interest applicable under section 7 or set a different date from which interest must be calculated.

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