

Foreign Limitation Periods Bill

Bill No. 11/2012.

Read the first time on 8th March 2012.

FOREIGN LIMITATION PERIODS ACT 2012

(No. of 2012)

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A BILL

i n t i t u l e d

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

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

Short title and commencement

1. This Act may be cited as the Foreign Limitation Periods Act 2012 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 **Interpretation**

2. In this Act, “country” includes a State or territory.

Application of foreign limitation law

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

- 15 (a) the law of that other country relating to limitation shall apply in respect of that matter for the purposes of the action or proceedings; and
- (b) the law of Singapore relating to limitation shall not so apply.

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

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

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

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

Exceptions

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

5 (2) The application of section 3 in relation to any action or proceedings shall conflict with public policy to the extent that its application would cause undue hardship to a person who is, or might be made, a party to the action or proceedings.

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

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

Foreign judgments on limitation points

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

Meaning of law relating to limitation

30 6.—(1) References in this Act to the law of any country (including Singapore) relating to limitation shall, in relation to any matter, be construed as references to so much of the relevant law of that country as (in any manner) makes provision with respect to a limitation period applicable to the bringing of proceedings in respect of that matter in the courts of that country and shall include —

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

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

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

10 **Application to Government**

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

15 **Consequential amendments to other written laws**

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

Transitional provision

20 **9.** Nothing in this Act shall —

(a) affect any action, proceedings or arbitration commenced before the commencement of this Act; or

25 (b) apply in relation to any matter if the limitation period which, apart from this Act, would have been applied in respect of that matter in Singapore expired before the commencement of this Act.

THE SCHEDULE

Section 8

CONSEQUENTIAL AMENDMENTS TO OTHER WRITTEN LAWS

<i>First column</i>	<i>Second column</i>
<p>1. Arbitration Act (Chapter 10, 2002 Ed.)</p> <p>Section 11</p>	<p>(a) Delete subsection (1) and substitute the following subsection:</p> <p style="padding-left: 40px;">“(1) The Limitation Act (Cap. 163) and the Foreign Limitation Periods Act 2012 shall apply to arbitral proceedings as they apply to proceedings before any court and any reference in both Acts to the commencement of proceedings shall be construed as a reference to the commencement of arbitral proceedings.”.</p> <p>(b) Insert, immediately after the words “Limitation Act” in subsection (2), the words “or the Foreign Limitation Periods Act 2012”.</p> <p>(c) Delete the words “arbitration proceedings” in subsection (2) and substitute the words “arbitral proceedings”.</p> <p>(d) Delete the words “purpose of the Limitation Act” in subsection (3) and substitute the words “purposes of the Limitation Act and the Foreign Limitation Periods Act 2012”.</p> <p>(e) Insert, immediately after the word “Act” in the section heading, the words “and Foreign Limitation Periods Act 2012”.</p>

<i>First column</i>	<i>Second column</i>
2. International Arbitration Act (Chapter 143A, 2002 Ed.) Section 8A	<p>(a) Delete subsection (1) and substitute the following subsection:</p> <p style="padding-left: 40px;">“(1) The Limitation Act (Cap. 163) and the Foreign Limitation Periods Act 2012 shall apply to arbitral proceedings as they apply to proceedings before any court and any reference in both Acts to the commencement of proceedings shall be construed as a reference to the commencement of arbitral proceedings.”.</p> <p>(b) Insert, immediately after the words “Limitation Act” in subsection (2), the words “or the Foreign Limitation Periods Act 2012”.</p> <p>(c) Delete the words “arbitration proceedings” in subsection (2) and substitute the words “arbitral proceedings”.</p> <p>(d) Delete the words “purpose of the Limitation Act (Cap. 163)” in subsection (3) and substitute the words “purposes of the Limitation Act and the Foreign Limitation Periods Act 2012”.</p> <p>(e) Insert, immediately after the word “Act” in the section heading, the words “and Foreign Limitation Periods Act 2012”.</p>

EXPLANATORY STATEMENT

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

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

Clause 1 relates to the short title and commencement.

Clause 2 defines “country” to include a State and territory.

Clauses 3 and 6 implement the new approach, which makes foreign limitation periods applicable as a general rule, regardless of whether it is substantive or procedural. In particular, clause 3(1) provides the default rule that in any action or proceedings in a court in Singapore where the rules of private international law provide for the law of any other country to be applied in the determination of any matter, the limitation laws of that foreign country shall also apply in respect of that matter for the purposes of the action or proceedings, and the law of Singapore relating to limitation shall not apply. Clause 3(2) further clarifies that where choice of law rules require a foreign law to be considered to determine actionability (e.g. under the double actionability rule for tortious actions), the limitation laws of that foreign country shall also apply for the purposes of the action or proceedings even though the law of Singapore may also need, under the relevant choice of law rules, to be considered to determine actionability.

Clause 4 provides exceptions from the general rule.

Clause 5 provides for the decision of a foreign court of competent jurisdiction to be recognised as providing a good defence to proceedings in Singapore where the decision was based on a limitation point.

Clause 7 provides for the application of the Bill to actions or proceedings by or against the Government.

Clause 8 makes consequential amendments to apply the Bill to arbitral proceedings (in the same manner that the Limitation Act (Cap. 163) already applies).

Clause 9 provides that the Bill will not apply to —

- (a) any action, proceedings or arbitration commenced before the date that the Bill comes into operation; or
- (b) any matter in which the limitation period had, apart from the Bill, expired before the date that the Bill comes into operation.

EXPENDITURE OF PUBLIC MONEY

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