

Supreme Court of Judicature (Amendment) Bill

Bill No. 38/2014.

Read the first time on 7 October 2014.

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 2007 Revised Edition) to establish the Singapore International Commercial Court, and for other purposes, and to make consequential and related 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 Supreme Court of Judicature (Amendment) Act 2014 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 2

2. Section 2 of the Supreme Court of Judicature Act (referred to in this Act as the principal Act) is amended by deleting the definitions of “Judge”, “Judge of Appeal” and “Public Prosecutor” and substituting the following definitions:

10 “ “Judge” means a Judge of the High Court and includes the Chief Justice and any person sitting in the High Court in accordance with section 9;

15 “Judge of Appeal” includes the Chief Justice and any person sitting in the Court of Appeal in accordance with section 29;”.

Amendment of section 4

3. Section 4 of the principal Act is amended by deleting the word “vice-presidents” wherever it appears in paragraphs (b) and (c) and substituting in each case the word “Vice-Presidents”.

20 New section 5A

4. The principal Act is amended by inserting, immediately after section 5, the following section:

“International Judges

25 **5A.** An International Judge of the Supreme Court may only sit in the Singapore International Commercial Court and in appeals from that Court in accordance with sections 9(4)(b) and 29(4), respectively.”.

Repeal and re-enactment of section 9

30 5. Section 9 of the principal Act is repealed and the following section substituted therefor:

“Constitution of High Court

9.—(1) The High Court shall consist of —

- (a) the Chief Justice; and
- (b) the Judges of the High Court.

(2) A Judge of Appeal may, if the Chief Justice so requires, sit in the High Court. 5

(3) A Judicial Commissioner of the Supreme Court appointed for a specified period may sit in the High Court to hear and determine any case or such classes of cases as the Chief Justice may specify. 10

(4) The Chief Justice may, from time to time —

- (a) require a Senior Judge of the Supreme Court appointed for a specified period to sit in the High Court to hear and determine any case or such classes of cases as the Chief Justice may specify; and 15

- (b) require an International Judge of the Supreme Court appointed for a specified period to sit in the Singapore International Commercial Court to hear and determine any case in that Court or such classes of cases in that Court as the Chief Justice may specify. 20

(5) A person sitting in the High Court in accordance with subsection (2), (3) or (4), or to hear and determine a case that he was specifically appointed to hear and determine, shall have all the jurisdiction, powers and privileges of a Judge of the High Court sitting in the High Court or in the Singapore International Commercial Court, as the case may be.”. 25

Amendment of section 10

6. Section 10 of the principal Act is amended by deleting subsection (3).

New sub-heading to Part III and new sections 18A to 18M 30

7. Part III of the principal Act is amended by inserting, immediately after section 18, the following sub-heading and sections:

“Singapore International Commercial Court

Singapore International Commercial Court

18A. There shall be a division of the High Court known as the Singapore International Commercial Court.

5 **President of Singapore International Commercial Court**

18B.—(1) The Chief Justice may appoint a Judge of Appeal, a Judge of the High Court, a Senior Judge of the Supreme Court or an International Judge of the Supreme Court to be the President of the Singapore International Commercial Court for such period as the Chief Justice may specify.

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(2) If no appointment is made under subsection (1), the Chief Justice shall be the President of the Singapore International Commercial Court.

Act to apply with modifications

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18C. Subject to sections 18D to 18M and 80(2A), the provisions of this Act shall apply to proceedings in the Singapore International Commercial Court as they apply to proceedings in the High Court exercising its original civil jurisdiction.

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Jurisdiction of Singapore International Commercial Court

18D. The Singapore International Commercial Court shall have jurisdiction to hear and try any action that satisfies all of the following conditions:

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- (a) the action is international and commercial in nature;
- (b) the action is one that the High Court may hear and try in its original civil jurisdiction;
- (c) the action satisfies such other conditions as the Rules of Court may prescribe.

Pre-action certificate

18E.—(1) A party intending to bring an action in the Singapore International Commercial Court may apply for a certificate stating all or any of the following matters:

- (a) that the intended action is international and commercial in nature for the purposes of section 18D(a); 5
- (b) such other matters as the Rules of Court may prescribe.

(2) An application under subsection (1) —

- (a) shall be made by an originating process or such other process as the Rules of Court may prescribe; 10
- (b) shall be determined by a Judge or the Registrar; and
- (c) may be determined summarily or otherwise in accordance with such procedure as the Rules of Court may prescribe.

(3) A certificate issued under this section is conclusive as to the matters certified in such circumstances as the Rules of Court may prescribe. 15

Effect of jurisdiction agreement

18F.—(1) Subject to subsection (2), the parties to an agreement to submit to the jurisdiction of the Singapore International Commercial Court shall be considered to have agreed — 20

- (a) to submit to the exclusive jurisdiction of the Singapore International Commercial Court;
- (b) to carry out any judgment or order of the Singapore International Commercial Court without undue delay; and 25
- (c) to waive any recourse to any court or tribunal outside Singapore against any judgment or order of the Singapore International Commercial Court, and against the enforcement of such judgment or order, insofar as such recourse can be validly waived. 30

(2) Subsection (1)(a), (b) and (c) applies only if there is no express provision to the contrary in the agreement.

Composition of Singapore International Commercial Court

5 **18G.** Every proceeding in the Singapore International Commercial Court shall be heard and disposed of before a single Judge or 3 Judges.

Provisions where Singapore International Commercial Court comprises 3 Judges

10 **18H.**—(1) This section applies where a case in the Singapore International Commercial Court is heard before 3 Judges.

(2) The Chief Justice shall appoint one of the Judges to preside.

(3) The case shall be decided in accordance with the opinion of the majority of the Judges hearing the case.

15 (4) Subject to subsection (5), a case shall be reheard if one or more of the Judges are unable to continue hearing the case for any reason.

(5) Where one Judge is unable to continue hearing a case for any reason, the remaining 2 Judges may continue to hear and determine the case if the parties consent.

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(6) Where a case is heard by 2 Judges under subsection (5) —

(a) if the 2 Judges have the same opinion, the case shall be determined according to their opinion; or

(b) if the 2 Judges have different opinions on any claim, counterclaim or application, the claim, counterclaim or application, as the case may be, shall be dismissed.

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Powers of Singapore International Commercial Court, generally

30 **18I.**—(1) The Singapore International Commercial Court may exercise such powers as the High Court may exercise in its original civil jurisdiction, except —

- (a) the power under paragraph 1 of the First Schedule; and
- (b) any power that must be exercised through the Family Division of the High Court.

(2) The Singapore International Commercial Court shall exercise its powers in accordance with the Rules of Court, and any other written law, relating to that Court or those powers.

Transfer of cases

18J.—(1) The Singapore International Commercial Court may transfer a case commenced in that Court to the High Court in accordance with the Rules of Court.

(2) The High Court may transfer a case commenced in that Court to the Singapore International Commercial Court in accordance with the Rules of Court.

(3) Where a case is transferred under subsection (1) or (2) —

- (a) the court to which the case is transferred may permit any matter that has been adduced to remain in evidence, notwithstanding that different rules of evidence may apply in the court to which the case is transferred; and
- (b) the court transferring the case and the court to which the case is transferred may make any consequential order in accordance with the Rules of Court.

(4) In this section, “High Court” does not include the Singapore International Commercial Court.

Rules of evidence in certain cases

18K.—(1) The Singapore International Commercial Court —

- (a) shall not be bound to apply any rule of evidence under Singapore law in such cases and to such extent as the Rules of Court may provide; and
- (b) may, in those cases, apply other rules of evidence (whether such rules are found under any foreign law or otherwise) in accordance with the Rules of Court.

(2) In subsection (1), “rule of evidence” includes any rule of law relating to privilege, or to the taking of evidence.

Determination of foreign law on submissions

5 **18L.**—(1) The Singapore International Commercial Court may, in such cases as the Rules of Court may prescribe, order that any question of foreign law be determined on the basis of submissions instead of proof.

10 (2) In determining any question of foreign law on the basis of submissions, the Singapore International Commercial Court may have regard to such matters as the Rules of Court may prescribe.

Representation by foreign lawyers

15 **18M.** A party to a case in the Singapore International Commercial Court, or to an appeal from that Court, may in accordance with the Rules of Court be represented by a foreign lawyer who is registered in accordance with Part IVB of the Legal Profession Act (Cap. 161).”.

Amendment of section 29

8. Section 29 of the principal Act is amended —

20 (a) by inserting, immediately after the words “The Chief Justice” in subsection (2), the words “shall be the President of the Court of Appeal, and”;

(b) by deleting the word “vice-presidents” in subsection (2) and substituting the word “Vice-Presidents”; and

25 (c) by deleting subsections (3) and (4) and substituting the following subsections:

“(3) A Judge of the High Court, a Judicial Commissioner of the Supreme Court or a Senior Judge of the Supreme Court may, if the Chief Justice so requires, sit in the Court of Appeal.

30 (4) An International Judge of the Supreme Court may, if the Chief Justice so requires, sit in the Court of Appeal

in an appeal from any judgment or order of the Singapore International Commercial Court.

(5) A person sitting in the Court of Appeal in accordance with subsection (3) or (4) shall have all the jurisdiction, powers and privileges of a Judge of Appeal sitting in the Court of Appeal.

(6) The person who presides over a sitting of the Court of Appeal shall be determined as follows:

(a) where the Court of Appeal includes one or more Judges of the Supreme Court specified in section 4, the person shall be determined according to the order of precedence prescribed in that section;

(b) where the Court of Appeal does not include any Judge of the Supreme Court specified in section 4, the Chief Justice shall appoint a person to preside.”.

Amendment of section 30

9. Section 30(2) of the principal Act is amended by inserting, immediately after paragraph (b), the following paragraph:

“(ba) an application for leave to appeal to the Court of Appeal, whether under this Act or any other written law;”.

Amendment of section 31

10. Section 31 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) Where an appeal or application has been heard by the Court of Appeal consisting of 2 Judges of Appeal and the members of that Court are divided, the decision appealed against shall stand or the application shall be dismissed, as the case may be.”.

Amendment of section 34

11. Section 34 of the principal Act is amended —

(a) by deleting the words “a Judge” in subsection (2) and substituting the words “the High Court or the Court of Appeal”;

(b) by deleting subsection (2B); and

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

“(6) Subsections (1) and (2) shall not apply to any decision, judgment or order of the High Court in —

(a) any family proceedings (not being probate proceedings) commenced in the High Court before 1 October 2014;

(b) any contentious probate proceedings commenced in the High Court before the date specified under section 47(11) of the Family Justice Act 2014 (Act 27 of 2014) for the purposes of section 47(2) of that Act; and

(c) any appeal from any contentious probate proceedings commenced in a District Court, being an appeal commenced in the High Court before the date specified under section 47(11) of the Family Justice Act 2014 for the purposes of section 47(7) of that Act.

(7) Except with the leave of the High Court or the Court of Appeal, no appeal shall be brought to the Court of Appeal from any decision, judgment or order of the High Court involving the exercise of the appellate civil jurisdiction of the High Court in any of the following circumstances:

(a) the hearing of any appeal from a District Court or Magistrate’s Court when exercising jurisdiction of a quasi-criminal or civil nature in any family proceedings (not being probate

proceedings), being an appeal commenced in the High Court before 1 October 2014;

(b) the hearing of any appeal or special case from the Tribunal for the Maintenance of Parents, being an appeal or a special case commenced in the High Court before 1 October 2014;

(c) the hearing of any appeal from any contentious probate proceedings commenced in a District Court, being an appeal commenced in the High Court before the date specified under section 47(11) of the Family Justice Act 2014 for the purposes of section 47(7) of that Act.

(8) In this section —

“family proceedings” has the same meaning as in section 2(1) of the Family Justice Act 2014;

“probate proceedings” has the same meaning as in section 47(13) of the Family Justice Act 2014.”.

New section 34A

12. The principal Act is amended by inserting, immediately after section 34, the following section:

“Court of Appeal may decide application for leave to appeal without hearing oral arguments

34A. The Court of Appeal may, without hearing oral arguments, decide any application for leave to appeal to that Court, whether under this Act or any other written law.”.

Amendment of section 80

13. Section 80 of the principal Act is amended by inserting, immediately after subsection (2), the following subsection:

“(2A) Without prejudice to the generality of subsection (1), Rules of Court may be made in relation to the Singapore International Commercial Court for the following purposes:

- (a) to provide for different procedures and practices to be followed in respect of proceedings in that Court and in appeals from that Court;
- 5 (b) to prescribe, for the purposes of section 18D, what constitutes an action of an international and commercial nature, and any other conditions that an action must satisfy before that Court may hear and try the action;
- 10 (c) to prescribe, for the purposes of section 18E, the matters which can be certified under that section, the conditions to be satisfied before an application can be made under that section, the procedure to be followed in such an application, and the circumstances in which the certified matters are conclusive;
- 15 (d) to prescribe, for the purposes of section 18J, the conditions to be satisfied before an action can be transferred to or from that Court, and to provide for the making of, and other matters related to, any consequential order referred to in section 18J(3)(b);
- 20 (e) to prescribe, for the purposes of section 18K, the cases in which and the extent to which that Court is not bound to apply any rule of evidence under Singapore law, and the rules of evidence (if any) to be applied in those cases;
- 25 (f) to prescribe, for the purposes of section 18L, any conditions to be satisfied before an order can be made under section 18L(1), and the matters which that Court may have regard to in determining any question of foreign law on the basis of submissions;
- 30 (g) to prescribe, for the purposes of section 18M, any conditions to be satisfied before a party can be represented by a foreign lawyer in that Court or in an appeal from that Court;
- (h) to prescribe the circumstances where that Court may make a judgment or an order without hearing oral arguments;

- (i) to declare to be final, for the purposes of section 34(1)(e), any judgment or order of that Court (not being a judgment or an order that finally disposes of an action on its merits);
- (j) to prescribe the fees and deposits payable for proceedings in that Court and in appeals from that Court; 5
- (k) to provide for the Registrar to decline to administer, or decline to continue administering, a case in that Court or an appeal from that Court if any fee or deposit referred to in paragraph (j) is not paid.”. 10

Amendment of Fifth Schedule

14. The Fifth Schedule to the principal Act is amended by deleting the words “leave of a Judge” and substituting the words “leave of the High Court or the Court of Appeal”.

Transitional provision

15. Section 11(a) and (b) shall not apply to any judgment or order of the High Court made before the date of commencement of section 11(a) and (b), and section 34 of the principal Act as in force immediately before that date shall continue to apply to such judgment or order as if section 11(a) and (b) had not been enacted. 20

Consequential and related amendments to other written laws

16. 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 16

CONSEQUENTIAL AND RELATED AMENDMENTS
TO OTHER WRITTEN LAWS*First column**Second column*1. Interpretation Act
(Chapter 1, 2002 Ed.)

(a) Section 2(1)

Delete the definitions of “Judge” and “Judge of the Supreme Court” and substitute the following definitions:

““Judge” means a Judge of the High Court and includes the Chief Justice and any person sitting in the High Court in accordance with section 9 of the Supreme Court of Judicature Act (Cap. 322);

“Judge of the Supreme Court” means the Chief Justice, a Judge of Appeal or a Judge of the High Court;”.

(b) Section 41A(6)

Delete the word “thereof” in paragraph (b).

2. Criminal Procedure Code
(Chapter 68, 2012 Ed.)

Section 2(1)

(i) Delete the definitions of “Judge” and “Judge of Appeal” and substitute the following definitions:

““Judge” means a Judge of the High Court and includes the Chief Justice and any person sitting in the High Court in accordance with section 9 of the

THE SCHEDULE — *continued**First column**Second column*

Supreme Court of
Judicature Act
(Cap. 322);

“Judge of Appeal”
includes the Chief
Justice and any
person sitting in the
Court of Appeal in
accordance with
section 29 of the
Supreme Court of
Judicature Act;”.

- (ii) Delete the words “Judge of the Supreme Court” in the definition of “ “signed” or “signature” ” and substitute the word “Judge”.

3. Singapore Academy of Law Act
(Chapter 294A, 1997 Ed.)

Section 2

Delete the definition of “Judge of the Supreme Court” and substitute the following definition:

““Judge of the Supreme Court”
includes a Judicial
Commissioner;”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Supreme Court of Judicature Act (Cap. 322) mainly for the following purposes:

- (a) to establish the Singapore International Commercial Court as a division of the High Court;
- (b) to provide for the Senior Judges of the Supreme Court (Senior Judges) and the International Judges of the Supreme Court (International Judges); and

- (c) to make certain provisions relating to restrictions on appeals, and leave to appeal, to the Court of Appeal in civil proceedings.

The Bill also makes consequential and related amendments to certain other written laws.

Clause 1 relates to the short title and commencement.

SINGAPORE INTERNATIONAL COMMERCIAL COURT

Clauses 7 and 13 relate to the establishment of the Singapore International Commercial Court.

Clause 7 inserts new sections 18A to 18M relating to the Singapore International Commercial Court.

The new section 18A establishes the Singapore International Commercial Court as a division of the High Court. This means, among other things, that judgments of the Singapore International Commercial Court will be judgments of the High Court, and enforceable as such.

The new section 18B provides for a President of the Singapore International Commercial Court to be appointed by the Chief Justice.

The new section 18C provides for the Act to apply to proceedings in the Singapore International Commercial Court as it does to proceedings in the High Court exercising its original civil jurisdiction, subject to the new sections 18D to 18M and 80(2A).

The new section 18D enables the Singapore International Commercial Court to hear and try any action of an international and commercial nature that may be heard by the High Court in its original civil jurisdiction. The Rules of Court may prescribe additional conditions to be satisfied before the Singapore International Commercial Court can hear and try any action.

The new section 18E creates a pre-action certification process for the Singapore International Commercial Court. A pre-action certificate may state that an intended action is international and commercial in nature for jurisdictional purposes, and other matters that the Rules of Court may prescribe. The certificate will be conclusive in such circumstances as the Rules of Court may prescribe. An application for a pre-action certificate may be by way of an originating process or such other process as the Rules of Court may prescribe, and can be determined summarily.

The new section 18F provides for the effect of an agreement to submit to the jurisdiction of the Singapore International Commercial Court. The parties to such an agreement are considered, in the absence of any express provision to the contrary, to have agreed (a) to submit to the exclusive jurisdiction of the Singapore

International Commercial Court, (b) to carry out that Court's judgments and orders without undue delay, and (c) to waive any recourse to a foreign court or tribunal, whether against a judgment or an order of that Court or against the enforcement of that judgment or order, insofar as such recourse can be validly waived. Recourse to a Singapore court is not affected.

The new section 18G provides for proceedings in the Singapore International Commercial Court to be heard by one or 3 Judges.

The new section 18H provides for cases where the Singapore International Commercial Court consists of 3 Judges, including where one or more of the Judges are unable to continue hearing the case.

The new section 18I provides that the Singapore International Commercial Court may exercise all the powers that may be exercised by the High Court in its original civil jurisdiction, except for the power to make prerogative orders, and powers that must be exercised through the Family Division.

The new section 18J provides for the transfer of cases from the Singapore International Commercial Court to the High Court (excluding the Singapore International Commercial Court), and vice versa.

The new section 18K provides that the Singapore International Commercial Court is not to be bound by rules of evidence under Singapore law (including rules of law relating to privilege or the taking of evidence) in such cases and to such extent as the Rules of Court may provide. This could include rules of evidence under the Evidence Act (Cap. 97) or the common law. In such cases, other rules of evidence may be applied in accordance with the Rules of Court. Such other rules may be found in foreign law, or from other sources, e.g. the International Bar Association Rules on the Taking of Evidence in International Arbitration.

The new section 18L enables the Singapore International Commercial Court to determine, in such cases as the Rules of Court may prescribe, any question of foreign law on the basis of submissions instead of proof.

The new section 18M enables parties in the Singapore International Commercial Court to be represented by foreign lawyers.

Clause 13 inserts a new section 80(2A) to enable Rules of Court to prescribe different procedures and practices for proceedings in the Singapore International Commercial Court and appeals from that Court. Among other things, the Rules of Court may provide for the Singapore International Commercial Court to make judgments and orders without hearing oral arguments, for certain judgments and orders of that Court to be final, and for the Registrar of the Supreme Court to refuse to administer a case in the Singapore International Commercial Court (or an appeal from that Court) if fees or deposits are not paid.

SENIOR JUDGES AND INTERNATIONAL JUDGES OF THE SUPREME COURT

Clauses 4, 5, 6 and 8 make provision for the Senior Judges and International Judges whose offices will be created under the Constitution of the Republic of Singapore (Amendment) Bill 2014.

Clause 4 inserts a new section 5A to restrict International Judges to sitting in the Singapore International Commercial Court and in appeals from that Court to the Court of Appeal. This will include deciding whether the Singapore International Commercial Court has and should assume jurisdiction in a case, and whether a case should be transferred to the High Court (excluding the Singapore International Commercial Court).

Clause 5 repeals and re-enacts section 9 to restate the constitution of the High Court, in view of the 2 new judicial offices.

Clause 6 makes an amendment to section 10 that is consequential to clause 5.

Clause 8 amends section 29 mainly to provide for Senior Judges and International Judges to sit in the Court of Appeal if the Chief Justice so requires. International Judges will only sit in appeals from the Singapore International Commercial Court. Provision is also made for the Chief Justice to appoint the person who would preside over a sitting of the Court of Appeal where there are no Judges of the Supreme Court constituting that Court.

RESTRICTIONS ON APPEALS, AND LEAVE TO APPEAL, TO THE COURT OF APPEAL IN CIVIL PROCEEDINGS

Clauses 9, 11, 12, 14 and 15 relate to restrictions on appeals, and leave to appeal, to the Court of Appeal in civil proceedings.

Clause 9 amends section 30(2) to enable applications for such leave to be heard by 2 Judges of Appeal.

Clause 11(a) amends subsection (2) of section 34 to provide that leave for the purposes of that subsection can be granted by either the High Court or the Court of Appeal. Clause 11(b) deletes subsection (2B) of section 34 as a consequence.

Clause 11(c) inserts new subsections (6), (7) and (8) into section 34 to align the restrictions on an appeal to the Court of Appeal from any decision, judgment or order of the High Court in certain family proceedings commenced in the High Court with the restrictions on an appeal to the Court of Appeal from any decision, judgment or order of the Family Division of the High Court in family proceedings of the same types.

Clause 12 inserts a new section 34A to enable the Court of Appeal to decide applications for leave without hearing oral arguments.

Clause 14 makes an amendment to the Fifth Schedule that is consequential to clause 11(a) and (b).

Clause 15 is a transitional provision for clause 11(a) and (b).

MISCELLANEOUS

Clause 2 amends section 2 —

- (a) by replacing the definitions of “Judge” and “Judge of Appeal”, as a consequence of other amendments to the Act; and
- (b) by deleting the definition of “Public Prosecutor”, as that term is no longer used in the Act.

Clause 3 makes technical amendments to section 4.

Clause 10 amends section 31 to clarify how an application heard by the Court of Appeal consisting of 2 Judges of Appeal will be dealt with if the members of the Court are divided.

Clause 16 —

- (a) amends the definition of “Judge of the Supreme Court” in section 2(1) of the Interpretation Act (Cap. 1) to mirror the definition of that term in the Constitution of the Republic of Singapore, as amended by the Constitution of the Republic of Singapore (Amendment) Bill 2014;
- (b) amends the definition of “Judge” in section 2(1) of the Interpretation Act to mirror the definition of that term in the Supreme Court of Judicature Act, as amended by clause 2; and
- (c) makes related amendments to the Criminal Procedure Code (Cap. 68) and the Singapore Academy of Law Act (Cap. 294A).

EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.
