

State Immunity Act 1979

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STATE IMMUNITY ACT 1979

2020 REVISED EDITION

This revised edition incorporates all amendments up to and including 1 December 2021 and comes into operation on 31 December 2021

An Act to make provision with respect to proceedings in Singapore by or against other States, and for purposes connected therewith.

[26 October 1979]

PART 1

PRELIMINARY

Short title and application

1.—(1) This Act is the State Immunity Act 1979.

(2) Subject to subsection (3), Part 2 does not apply to proceedings in respect of matters that occurred before 26 October 1979 and, in particular —

- (a) sections 4(2) and 15(3) do not apply to any prior agreement; and
- (b) sections 5, 6 and 11 do not apply to any transaction, contract or arbitration agreement,

entered into before that date.

(3) Section 14 applies to any proceedings instituted after 26 October 1979.

Interpretation

2.—(1) In this Act —

“commercial purposes” means purposes of any transactions or activities that are mentioned in section 5(3);

“court” includes any tribunal or body exercising judicial functions;

“ship” includes a hovercraft.

(2) In this Act —

- (a) references to an agreement in sections 4(2) and 15(3) include references to a treaty, convention or other international agreement; and
- (b) references to filing and service of a notice of intention to contest or not contest (formerly known as entry of appearance) and judgments in default of a notice of intention to contest or not contest (formerly known as judgments in default of appearance) include references to any corresponding procedures.

[Act 25 of 2021 wef 01/04/2022]

PART 2

PROCEEDINGS IN SINGAPORE BY OR AGAINST OTHER STATES

Immunity from jurisdiction

General immunity from jurisdiction

3.—(1) A State is immune from the jurisdiction of the courts of Singapore except as provided in the following provisions of this Part.

(2) A court is to give effect to the immunity conferred by this section even though the State does not file and serve a notice of intention to contest or not contest in the proceedings in question.

[Act 25 of 2021 wef 01/04/2022]

Exceptions from immunity

Submission to jurisdiction

4.—(1) A State is not immune as respects proceedings in respect of which it has submitted to the jurisdiction of the courts of Singapore.

(2) A State may submit after the dispute giving rise to the proceedings has arisen or by a prior written agreement; but a provision in any agreement that it is to be governed by the law of Singapore is not to be regarded as a submission.

(3) A State is deemed to have submitted —

(a) if it has instituted the proceedings; or

(b) subject to subsections (4) and (5), if it has intervened or taken any step in the proceedings.

(4) Subsection (3)(b) does not apply to intervention or any step taken for the purpose only of —

(a) claiming immunity; or

(b) asserting an interest in property in circumstances such that the State would have been entitled to immunity if the proceedings had been brought against it.

(5) Subsection (3)(b) does not apply to any step taken by the State in ignorance of facts entitling it to immunity if those facts could not reasonably have been ascertained and immunity is claimed as soon as reasonably practicable.

(6) A submission in respect of any proceedings extends to any appeal but not to any counterclaim unless it arises out of the same legal relationship or facts as the claim.

(7) The head of a State’s diplomatic mission in Singapore, or the person for the time being performing his or her functions, is deemed to have authority to submit on behalf of the State in respect of any proceedings; and any person who has entered into a contract on behalf of and with the authority of a State is deemed to have authority to submit on its behalf in respect of proceedings arising out of the contract.

Commercial transactions and contracts to be performed in Singapore

5.—(1) A State is not immune as respects proceedings relating to —

- (a) a commercial transaction entered into by the State; or
- (b) an obligation of the State which by virtue of a contract (whether a commercial transaction or not) falls to be performed wholly or partly in Singapore,

but this subsection does not apply to a contract of employment between a State and an individual.

(2) This section does not apply if the parties to the dispute are States or have otherwise agreed in writing; and subsection (1)(b) does not apply if the contract (not being a commercial transaction) was made in the territory of the State concerned and the obligation in question is governed by its administrative law.

(3) In this section, “commercial transaction” means —

- (a) any contract for the supply of goods or services;
- (b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation; and
- (c) any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character) into which a State enters or in which it engages otherwise than in the exercise of sovereign authority.

Contracts of employment

6.—(1) A State is not immune as respects proceedings relating to a contract of employment between the State and an individual where the contract was made in Singapore or the work is to be wholly or partly performed in Singapore.

(2) Subject to subsections (3) and (4), this section does not apply if —

- (a) at the time when the proceedings are brought the individual is a national of

the State concerned;

- (b) at the time when the contract was made the individual was neither a citizen of Singapore nor habitually resident in Singapore; or
- (c) the parties to the contract have otherwise agreed in writing.

(3) Where the work is for an office, agency or establishment maintained by the State in Singapore for commercial purposes, subsection (2)(a) and (b) does not exclude the application of this section unless the individual was, at the time when the contract was made, habitually resident in that State.

(4) Subsection (2)(c) does not exclude the application of this section where the law of Singapore requires the proceedings to be brought before a court in Singapore.

(5) In this section, “proceedings relating to a contract of employment” includes proceedings between the parties to such a contract in respect of any statutory rights or duties to which they are entitled or subject as employer or employee.

Personal injuries and damage to property

7. A State is not immune as respects proceedings in respect of —

- (a) death or personal injury; or
- (b) damage to or loss of tangible property,

caused by an act or omission in Singapore.

Ownership, possession and use of property

8.—(1) A State is not immune as respects proceedings relating to —

- (a) any interest of the State in, or its possession or use of, immovable property in Singapore; or
- (b) any obligation of the State arising out of its interest in, or its possession or use of, any such property.

(2) A State is not immune as respects proceedings relating to any interest of the State in movable or immovable property, being an interest arising by way of succession, gift or bona vacantia.

(3) The fact that a State has or claims an interest in any property does not preclude any court from exercising in respect of it any jurisdiction relating to the estates of deceased persons or mentally disordered persons or to insolvency, the winding up of

companies or the administration of trusts.

(4) A court may entertain proceedings against a person other than a State even though the proceedings relate to property —

- (a) which is in the possession or control of a State; or
- (b) in which a State claims an interest,

if the State would not have been immune had the proceedings been brought against it or, in a case within paragraph (b), if the claim is neither admitted nor supported by prima facie evidence.

Patents, trade marks, etc.

9. A State is not immune as respects proceedings relating to —

- (a) any patent, trade mark or design belonging to the State and registered or protected in Singapore or for which the State has applied in Singapore;
- (b) an alleged infringement by the State in Singapore of any patent, trade mark, design or copyright; or
- (c) the right to use a trade or business name in Singapore.

Membership of bodies corporate, etc.

10.—(1) A State is not immune as respects proceedings relating to its membership of a body corporate, an unincorporated body or a partnership which —

- (a) has members other than States; and
- (b) is incorporated or constituted under the law of Singapore or is controlled from or has its principal place of business in Singapore,

being proceedings arising between the State and the body or its other members or (as the case may be) between the State and the other partners.

(2) This section does not apply if provision to the contrary has been made by an agreement in writing between the parties to the dispute or by the constitution or other instrument establishing or regulating the body or partnership in question.

Arbitrations

11.—(1) Where a State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, the State is not immune as respects proceedings in the courts in Singapore which relate to the arbitration.

(2) This section has effect subject to any contrary provision in the arbitration agreement and does not apply to any arbitration agreement between States.

Ships used for commercial purposes

12.—(1) This section applies to —

- (a) Admiralty proceedings; and
- (b) proceedings on any claim which could be made the subject of Admiralty proceedings.

(2) A State is not immune as respects —

- (a) an action in rem against a ship belonging to that State; or
- (b) an action in personam for enforcing a claim in connection with such a ship,

if, at the time when the cause of action arose, the ship was in use or intended for use for commercial purposes.

(3) Where an action in rem is brought against a ship belonging to a State for enforcing a claim in connection with another ship belonging to that State, subsection (2)(a) does not apply as respects the firstmentioned ship unless, at the time when the cause of action relating to the other ship arose, both ships were in use or intended for use for commercial purposes.

(4) A State is not immune as respects —

- (a) an action in rem against a cargo belonging to that State if both the cargo and the ship carrying it were, at the time when the cause of action arose, in use or intended for use for commercial purposes; or
- (b) an action in personam for enforcing a claim in connection with such a cargo if the ship carrying it was then in use or intended for use for commercial purposes.

(5) In subsections (2), (3) and (4), references to a ship or cargo belonging to a State include references to a ship or cargo in its possession or control or in which it claims an interest; and, subject to subsection (4), subsection (2) applies to property other than a ship as it applies to a ship.

Customs duties, etc.

13. A State is not immune as respects proceedings relating to its liability for —

- (a) any customs duty or excise duty;

- (b) any goods and services tax; or
- (c) any tax in respect of premises occupied by it for commercial purposes.

Procedure

Service of process and judgments in default of notice of intention to contest or not contest

14.—(1) Any writ or other document required to be served for instituting proceedings against a State must be served by being transmitted through the Ministry of Foreign Affairs, Singapore, to the ministry of foreign affairs of that State, and service is deemed to have been effected when the writ or document is received at that ministry.

(2) Any time for filing and serving a notice of intention to contest or not contest (whether prescribed by Rules of Court or otherwise) begins to run 2 months after the date on which the writ or document is so received.

[Act 25 of 2021 wef 01/04/2022]

(3) A State which files and serves a notice of intention to contest or not contest in proceedings cannot thereafter object that subsection (1) has not been complied with in the case of those proceedings.

[Act 25 of 2021 wef 01/04/2022]

(4) No judgment in default of a notice of intention to contest or not contest may be given against a State except on proof that subsection (1) has been complied with and that the time for filing and serving a notice of intention to contest or not contest as extended by subsection (2) has expired.

[Act 25 of 2021 wef 01/04/2022]

(5) A copy of any judgment given against a State in default of a notice of intention to contest or not contest must be transmitted through the Ministry of Foreign Affairs, Singapore, to the ministry of foreign affairs of that State and any time for applying to have the judgment set aside (whether prescribed by Rules of Court or otherwise) begins to run 2 months after the date on which the copy of the judgment is received at that ministry.

[Act 25 of 2021 wef 01/04/2022]

(6) Subsection (1) does not prevent the service of a writ or other document in any manner to which the State has agreed and subsections (2) and (4) do not apply where service is effected in that manner.

(7) This section is not to be construed as applying to proceedings against a State by way of counterclaim or to an action in rem; and subsection (1) is not to be construed as affecting any Rules of Court whereby permission is required for the service of process

outside the jurisdiction.

[Act 25 of 2021 wef 01/04/2022]

Other procedural privileges

15.—(1) No penalty by way of committal or fine shall be imposed in respect of any failure or refusal by or on behalf of a State to disclose or produce any document or other information for the purposes of proceedings to which it is a party.

(2) Subject to subsections (3) and (4) —

- (a) relief must not be given against a State by way of injunction or order for specific performance or for the recovery of land or other property; and
- (b) the property of a State must not be subject to any process for the enforcement of a judgment or an arbitration award or, in an action in rem, for its arrest, detention or sale.

(3) Subsection (2) does not prevent the giving of any relief or the issue of any process with the written consent of the State concerned; and that consent (which may be contained in a prior agreement) may be expressed so as to apply to a limited extent or generally; but a provision merely submitting to the jurisdiction of the courts is not to be regarded as a consent for the purposes of this subsection.

(4) Subsection (2)(b) does not prevent the issue of any process in respect of property which is for the time being in use or intended for use for commercial purposes.

(5) The head of a State's diplomatic mission in Singapore, or the person for the time being performing his or her functions, is deemed to have authority to give on behalf of the State the consent mentioned in subsection (3) and, for the purposes of subsection (4), his or her certificate to the effect that any property is not in use or intended for use by or on behalf of the State for commercial purposes must be accepted as sufficient evidence of that fact unless the contrary is proved.

PART 3

SUPPLEMENTARY PROVISIONS

States entitled to immunities and privileges

16.—(1) The immunities and privileges conferred by Part 2 apply to any foreign or Commonwealth State other than Singapore; and references to a State include references to —

- (a) the sovereign or other head of that State in his or her public capacity;

- (b) the government of that State; and
- (c) any department of that government,

but not to any entity (called in this section a separate entity) which is distinct from the executive organs of the government of the State and capable of suing or being sued.

(2) A separate entity is immune from the jurisdiction of the courts in Singapore if, and only if—

- (a) the proceedings relate to anything done by it in the exercise of sovereign authority; and
- (b) the circumstances are such that a State would have been so immune.

(3) If a separate entity (not being a State's central bank or other monetary authority) submits to the jurisdiction in respect of proceedings in the case of which it is entitled to immunity by virtue of subsection (2), section 15(1) to (4) applies to it in respect of those proceedings as if references to a State were references to the separate entity.

(4) Property of a State's central bank or other monetary authority is not to be regarded for the purposes of section 15(4) as in use or intended for use for commercial purposes; and where the bank or authority is a separate entity, section 15(1), (2) and (3) applies to it as if references to a State were references to the bank or authority.

(5) Section 14 applies to proceedings against the constituent territories of a federal State; and the President may by order provide for the other provisions of this Part to apply to any such constituent territory specified in the order as they apply to a State.

(6) Where the provisions of Part 2 do not apply to a constituent territory by virtue of any such order, subsections (2) and (3) apply to it as if it were a separate entity.

Restriction and extension of immunities and privileges

17. If it appears to the President that the immunities and privileges conferred by Part 2 in relation to any State—

- (a) exceed those accorded by the law of that State in relation to Singapore; or
- (b) are less than those required by any treaty, convention or other international agreement to which that State and Singapore are parties,

the President may, by order, provide for restricting or (as the case may be) extending those immunities and privileges to such extent as appears to the President to be appropriate.

Evidence by certificate

18. A certificate by or on behalf of the Minister for Foreign Affairs is conclusive evidence on any question —

- (a) whether any country is a State for the purposes of Part 2, whether any territory is a constituent territory of a federal State for those purposes or as to the person or persons to be regarded for those purposes as the head or government of a State; and
- (b) whether, and if so when, a document has been served or received as mentioned in section 14(1) or (5).

Excluded matters

19.—(1) Part 2 does not affect any immunity or privilege applicable in Singapore to diplomatic and consular agents, and section 8(1) does not apply to proceedings concerning a State's title to or its possession of property used for the purposes of a diplomatic mission.

(2) Part 2 does not apply to —

- (a) proceedings relating to anything done by or in relation to the armed forces of a State while present in Singapore and, in particular, has effect subject to the Visiting Forces Act 1960;
- (b) criminal proceedings; and
- (c) proceedings relating to taxation other than those mentioned in section 13.

LEGISLATIVE HISTORY

STATE IMMUNITY ACT 1979

This Legislative History is a service provided by the Law Revision Commission on a best-efforts basis. It is not part of the Act.

1. Act 19 of 1979—State Immunity Act, 1979

Bill	:	20/1979
First Reading	:	15 May 1979
Second and Third Readings	:	7 September 1979
Commencement	:	26 October 1979

2. 1985 Revised Edition—State Immunity Act (Chapter 313)

- Operation : 30 March 1987
- 3. Act 25 of 1996—Goods and Services Tax (Amendment) Act 1996**
(Amendments made by section 18 of the above Act)
- Bill : 15/1996
- First Reading : 21 May 1996
- Second and Third Readings : 12 July 1996
- Commencement : 16 August 1996 (section 18)
- 4. Act 21 of 2008—Mental Health (Care and Treatment) Act 2008**
(Amendments made by section 33 read with item 1(48) of the Second Schedule to the above Act)
- Bill : 11/2008
- First Reading : 21 July 2008
- Second and Third Readings : 15 September 2008
- Commencement : 1 March 2010 (section 33 read with item 1(48) of the Second Schedule)
- 5. 2014 Revised Edition—State Immunity Act (Chapter 313)**
- Operation : 31 December 2014
- 6. 2020 Revised Edition—State Immunity Act 1979**
- Operation : 31 December 2021
- 7. Act 25 of 2021—Courts (Civil and Criminal Justice) Reform Act 2021**
- Bill : 18/2021
- First Reading : 26 July 2021
- Second and Third Readings : 14 September 2021
- Commencement : 1 April 2022

Abbreviations

(updated on 29 August 2022)

G.N.	Gazette Notification
G.N. Sp.	Gazette Notification (Special Supplement)
L.A.	Legislative Assembly
L.N.	Legal Notification (Federal/Malaysian)
M.	Malaya/Malaysia (including Federated Malay States, Malayan Union, Federation of Malaya and Federation of Malaysia)
Parl.	Parliament
S	Subsidiary Legislation
S.I.	Statutory Instrument (United Kingdom)
S (N.S.)	Subsidiary Legislation (New Series)
S.S.G.G.	Straits Settlements Government Gazette
S.S.G.G. (E)	Straits Settlements Government Gazette (Extraordinary)