

MUSLIM FAMILY LAW PROCEDURE IN SINGAPORE

Legal Aid Bureau

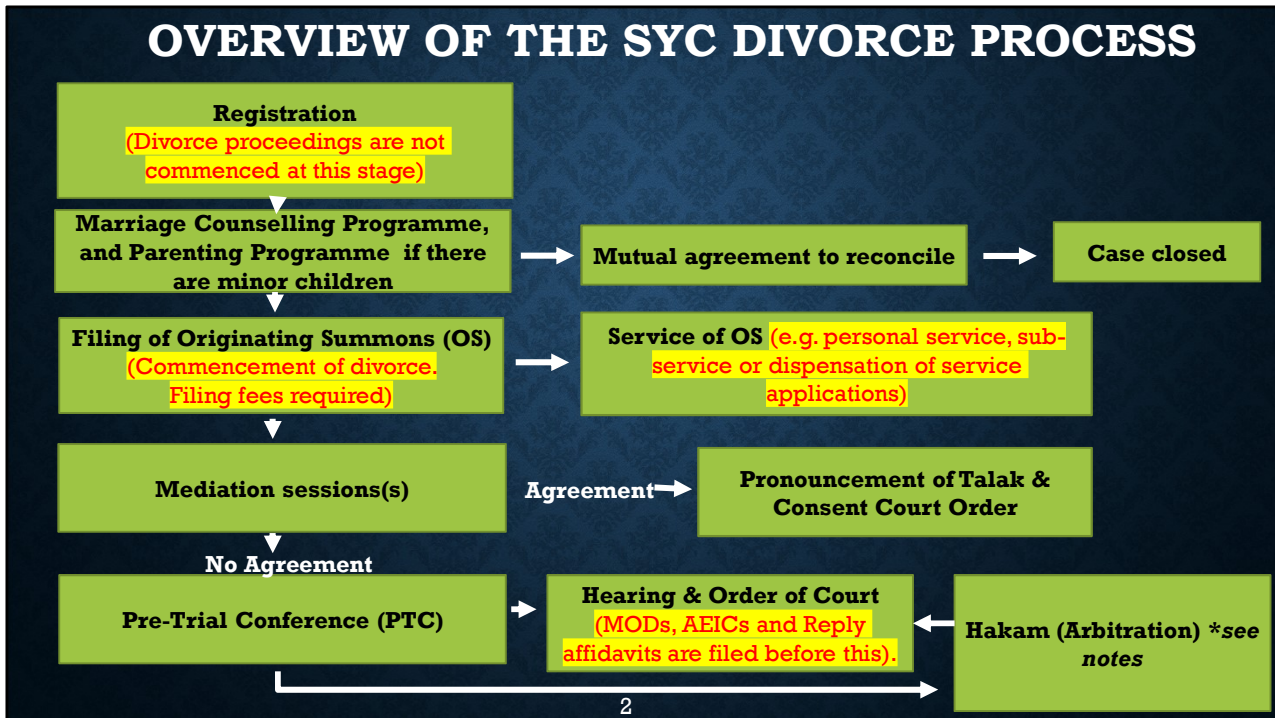
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These slides were prepared by the LAB Syariah Court Practice Group (SCPG) and the information contained herein is accurate as of 27 July 2020.

We wish to thank the Syariah Court (Singapore) for reviewing the earlier drafts of these slides.

Any and all errors and any views expressed within are entirely those of the LAB SCPG.

OVERVIEW OF THE SYC DIVORCE PROCESS



- Please refer to the document titled “Annex” in the reading materials for information on the relevant forms that parties may have filed prior to the PTC stage.

*Hakam (Arbitration)

- **If the husband still refuses to consent to divorce or wife cannot discharge her burden of proof**, the Court may direct parties to appoint arbitrators (hakam) to act for the husband and wife respectively (“1st hakam”): s50(1)-(2), AMLA. If Hakam is able to obtain divorce between parties, the hakam shall report the same to the Court for registration (s50(6), AMLA). The Hakam cannot determine the ancillary matters.
- An order for the appointment of Hakam may also be made by consent at the PTC stage. A fee of \$150 is also payable per party for their respective hakam.
- Although it was the tradition for close relatives with knowledge of parties/parties’ case to be appointed as the Hakam, a Hakam these days may be appointed based on the Hakam’s suitability and experience. The Hakam is certified under the Asatizah Recognition Scheme, which is a scheme that accredits Islamic and

Quaranic Teachers.

- If husband still refuses to consent to divorce after the 1st hakam (and he does not delegate his authority to pronounce talak to the hakam), the court can appoint another hakam ("2nd hakam) under s50(7) of AMLA and confer authority on the 2nd hakam to effect the divorce without the husband's consent. If the 2nd hakam does so, they shall report the same to the Court for registration. Again, the 2nd hakam cannot determine the ancillary matters.
- Lawyers are not present during hakam proceedings. The President of the SYC gives directions to the hakam as to the conduct of the hakam proceedings.

RELEVANT SOURCES

- Administration of Muslim Law Act (AMLA)
- Muslim Law Marriage and Divorce Rules (MMDR)
- Syariah Court Website (Relevant Forms)
- Syariah Court Practice Directions No.1 of 2018 (Relevant Forms)
- Registrar's Circulars (Found in SYC Website)

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The SYC PD sets out the relevant forms that are required to be filed in the divorce proceedings. These forms can also be downloaded via the SYC website at <https://www.syariahcourt.gov.sg>. Please also refer to document titled "Annex" for a description of the forms in the reading materials.

The Registrar's Circulars set out guidance on court applications and procedural matters in the SYC. The Circulars can be downloaded via the SYC website.

PRE-FILING REGISTRATION FORM

- An applicant who intends to file for divorce in the SYC must first submit a Registration Form
 - Applicant can do it on his or her own at SYC
 - Need copies of marriage certificate (or an attested and translated foreign marriage certificate), minor child's/children's birth certificates, applicant's NRIC/valid passport and evidence of habitual residence for 3 years immediately preceding the filing of the Registration Form in the event both parties are non Singapore citizens or Permanent Residents.
 - Drop completed form at the drop box outside main entrance of SYC or may be mailed to the SYC.
 - Registration form **does not** mark the commencement of divorce proceedings

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The Pre-filing Registration Form is found on the SYC's website at www.syariahcourt.gov.sg. The purpose of the registration form is to allow the SYC to refer parties for the prescribed activities under section 46A(4) of the AMLA (i.e. the marriage counselling programme and the parenting programme (if parties have a minor child)).

The Registration form does not have a validity period.

QUESTION

- A client approaches you for legal advice. The client says that he has just pronounced *talak* outside court, and intends to register for divorce. What would you advise the client to do?

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Answer: Under section 102(5) of the AMLA, both the client and his spouse must attend personally at the SYC within 7 days of the pronouncement of talak and furnish particulars of the pronouncement.

The client must submit the Registration Form at the Syariah Court. The completed registration form and the accompanying documents can also be mailed to the Syariah Court.

The client must then attend the marriage counselling programme and parenting programme (if there is a minor child). On completing the relevant programmes, the client can then initiate divorce proceedings.

If the client's spouse does not attend the SYC, the client can still proceed with furnishing the particulars on his own. A summons will then be served on the client's spouse (i.e. the Defendant) either via registered post or by means of sub-service.

Please note that pursuant to section 46B (1) and (3) of the AMLA, if a married man pronounces a divorce, and the court is satisfied that the divorce is valid in accordance with the Muslim law, the Court must, on payment of the prescribed fees, cause the

divorce to be registered.

MANDATORY MARRIAGE COUNSELLING PROGRAMME

- All applicants for divorce must attend a marriage counselling programme (MCP) pursuant to section 46A and (3) of the AMLA read with rule 8B(2)(a) of the MMDR
- An applicant must do so no earlier than 6 months before the date on which the application for divorce is filed (i.e. filing of Originating Summons (“OS”)); there is a 6 month “validity period” from the completion of the MCP, during which time the applicant must file the OS. Otherwise, the applicant needs to attend another MCP before he can file the OS. A
- A Defendant must also attend the marriage counselling programme if he/or she wishes to file a cross-application*
 - He/she must do so no earlier than 6 months before the date the OS is filed; or
 - no later than 21 days after the date the OS is served on the Defendant (if the Defendant had failed to attend the MCP once the Plaintiff had filed the registration).

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The purpose of the MCP is to help parties reconcile. The MCP was launched in 2004 but was made compulsory in 2018 for parties seeking to file an OS in the SYC for divorce, in light of the increasing divorce rates amongst Muslim couples. The MCP gives parties a neutral avenue to discuss marital concerns, and ensures that parties are fully aware of the impact of their decision to divorce. The MCP (as the name suggests) is like a counselling session, rather than a course/workshop attended by a few people.

As of June 2019, the MCP has helped save the marriages of 48 per cent of couples who have been counselled. Since 2019, the MCP has also been extended to Muslim inmates who wish to commence divorce proceedings/whose spouses have registered for a divorce in the SYC (See Straits Times Article, “Mandatory marriage counselling now extended to Muslims in Prison dated 22 June 2019).

After submission of the registration form by divorce by either party, both parties will be notified by post to attend the MCP. Parties are required to attend the MCP together because the purpose of the MCP is for parties to explore the possibility of reconciliation. If one party refuses to attend the MCP, then the other party must still attend the MCP. Once parties complete the MCP, they are given a form certifying

their attendance. If parties do not attend the MCP, the case may be closed. This means that a party will need to file another Registration form and attend the MCP again if the party wishes to commence divorce proceedings in the SYC.

If parties can resolve their differences and continue their marriage, their case will be closed and referred to an appropriate agency for assistance or further advice.

*Cross applications (similar to Counter claims filed in civil divorce cases) are discussed in Slide 18.

PARENTING PROGRAMME

- If there are minor children involved, parties (in addition to attending the mandatory marriage counselling programme), will also have to attend the parenting programme pursuant to section 46A of the AMLA read with rule 8B(2)(b) of the MMDR
- The Applicant must attend the parenting programme no earlier than 6 months before the date on which the OS is filed.

The counsellor who sees parties at the MCP will help facilitate the Parenting Programme. Both parties are required to attend the Programme together. The Programme focusses on co-parenting skills and the children's care arrangements after divorce. It is done in the manner of a counselling session rather than a course/workshop attended by a few people.

APPLICATION FOR DIVORCE: FILING ORIGINATING SUMMONS (OS)

- Under Rules 9, 9B & 9C of the MMDR, an application for divorce must contain the following:
 - (a) an OS;
 - (b) Case Statement [Form 7 (Husband); Form 8 (Wife); Form 9 (Nullity proceedings)];
 - (c) Plaintiff's relevant CPF statement/CPF information;
 - (d) Agreed (Form 11)/Proposed (Form 12) Parenting Plan (if there are minor children);
 - (e) Agreed (Form 13)/Proposed (Form 15) Matrimonial Property Plan (if there is a HDB flat) & Form 14 (Particulars of Housing Arrangement)
- Before filing the Agreed/Proposed Matrimonial Property Plan, the Plaintiff must submit an HDB standard query to HDB and HDB must give the Plaintiff a written reply
- **The filing of the OS marks the commencement of divorce proceedings in the SYC.**

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The Case Statement sets out the particulars of the parties, the marriage etc. and the reasons for divorce. The Parenting and Matrimonial Property Plans also form part of the pleadings (i.e. they therefore need to be amended if parties' subsequently change their minds).

Do note that the applicant also needs to file copies of his/her NRIC (or valid passport), marriage certificate and birth certificates of minor children (if any) with the applicant's application for divorce.

For marriages registered outside of Singapore, the applicant will need to provide the original marriage certificate with **attestation**. A foreign marriage certificate without attestation will not be accepted. If the marriage certificate is not in English or Malay language, the applicant is required to provide a certified true translation of the certificate in the English language.

The Applicant will have to attend the Marriage Counselling Programme again if he or she files the divorce after 6 months from the date he or she completed the last counselling session.

Once the OS is filed, the matter will be fixed for mediation. If parties are able to come to an agreement on the divorce and the ancillary matters, then a consent order can be recorded during the mediation. If not, the matter will be fixed for a PTC.

A Defendant is also required to file a Memorandum of Defence (if the Defendant has not done so and wishes to enter into a consent order, unless the Defendant is in prison and is unrepresented) **[See slide 29 for information on who does the mediation, who records the consent order, etc.]**.

If parties wish to record a consent order without having filed affidavits, they must amend the Parenting and Matrimonial Plans if those plans are inconsistent with the terms of the consent order.

VALIDITY OF OS

- **Rule 9A of MMDR**

- OS is valid for 12 months from the date of issue;
- If OS is not served on the Defendant by then, the Court can extend the validity from time to time for such period(s), not exceeding 6 months at any one time;
- An application to extend the OS may be made retrospectively if the lapse is not more than 6 months, and the Plaintiff can show good cause as to why it should be extended. There is no case law supporting this as yet.
- If the OS has expired (and not extended), then the OS will be struck out. A Plaintiff will then have to re-register, and attend the counselling/parenting programmes again, unless the Plaintiff had attended the programmes within 6 months from the date the fresh OS is to be filed.

VALIDITY OF OS (CONTINUED...)

- Application to extend the validity of the OS may be made via summons in Form 28 supported by affidavit, pursuant to Rule 15(1)(e) and (2) of the MMDR.
- The Court may however, dispense with the requirement to file the summons in appropriate cases (See rule 15(3) of the MMDR).
 - Oral applications for the extensions of OS, particularly for legally-aided cases were previously allowed since applicants had difficulties locating the Defendants.
 - If a party needs to provide a detailed explanation on why an OS has to be extended, then the proper approach would be to file a summons with a supporting affidavit setting out the reasons.

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If you wish to extend the validity of the OS, you can first make an oral application to the Registrar during the PTC, and thereafter ask the Registrar if there is a need to file a Summons for this purpose.

See also slide 23 on rule 15 of the MMDR.

Do note that the OS can be withdrawn by filing the Notice of Withdrawal in Form 34.

SERVICE OF OS

- **Rule 33 of the MMDR**

- Must serve either personally or by Registered Post;
- Must personally serve on the Defendant the OS, Case Statement, together with copy of Acknowledgment of Service (Form 36); copy of Memorandum of Defence (Form 17, 18 or 19), copy of Parenting Plan and copy of Matrimonial Property Plan.
- Personal Service must be effected by -
 - (a) Process server of Court (arranged with SYC);
 - (b) Solicitor;
 - (c) Solicitor's clerk; or
 - (d) some other named person that the Court may allow.

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The solicitor's clerk's name and particulars must have been notified to the Court prior to effecting personal service.

SERVICE OF OS (CONTINUED...)

- If OS is served by Registered Post, it must enclose a Case Statement, together with a copy of the Acknowledgment of Service (Form 36) (AOS); a copy of the Memorandum of Defence (Form 17, 18 or 19); a copy of the Parenting Plan; and a copy of the Matrimonial Property Plan.
- OS is deemed to be served by Registered Post if the Defendant signs and returns the AOS to the Plaintiff's solicitors or the Plaintiff (if in person) at the Plaintiff's address for service.

Question: What happens if the Defendant signs and returns the Registered Post slip but not the AOS?

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Answer: Personal service has not been effected because the Defendant did not return the signed copy of the AOS. You will need to apply for sub-service of the OS on the Defendant via registered post. **This means that you would effect registered post twice. So in your cover letter for service, you may wish to expressly state that the Defendant has to sign and return the AOS.**

SERVICE OF OS (CONTINUED...)

Rule 34A of MMDR: Proof of service

34A: Unless the Court otherwise directs, an originating summons in respect of any proceedings for divorce or nullity of marriage must not proceed to trial or hearing unless —

- (a) the defendant has filed a memorandum of defence under rule 12; or
- (b) where the defendant has not filed a memorandum of defence —
 - (i) it is shown by affidavit in Form 35 that the defendant has been served with the originating summons and case statement;
 - (ii) the defendant has returned to the plaintiff's solicitor, or to the plaintiff (if the plaintiff is acting in person), an acknowledgment of service in Form 36, and that acknowledgment of service is filed in Court;

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Please note Rule 34A of the MMDR, which provides that an OS cannot proceed to trial or hearing unless there is proof that the OS has been served.

SERVICE OF OS (CONTINUED...)

Rule 34A of MMDR: Proof of service

(b)....

(iii) it is shown by the form titled "Form for Acknowledgment of Service (By Court Process Server)" that the defendant has been served with the originating summons and case statement by a process server of the Court; or

(iv) the defendant has appeared in Court at least once for the purposes of the proceedings.

SUBSTITUTED, DISPENSATION OF, SERVICE OF OS

- **Rule 34 of the MMDR**

- Application for leave of court to file a sub-service application is made ex-parte by summons supported by an affidavit
- Affidavit should set out reasons, on preferred mode of service
- If leave is granted to serve by way of advertisement, the form of advertisement must be made in accordance with Form 44
- Court may in appropriate case, order that the service be dispensed with.

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The SYC website states that the 3 usual ways in which substituted service can be effected are (i) through Newspaper advertisement (in Singapore or at the Defendant's last known country of residence); (ii) Electronic mail (e-mail); or (iii) Registered Post by court order.

Do note that while Rule 33 of the MMDR allows for personal service of the OS to be effected by way of registered post at the Defendant's last known address, personal service would be deemed effected on the Defendant only if the Defendant returns a signed copy of the AOS. If the Defendant does not return the signed copy of the AOS and the Plaintiff knows that the Defendant can be contacted at the address, then the Plaintiff will have to obtain leave of court under rule 34 of the MMDR to serve the OS by way of registered post at the address.

If you are filing a sub-service application, please include a cover letter to the Registrar to seek for an Order-in-terms of the application before the next scheduled PTC date. This will enable you to serve the divorce papers via the proposed sub-service method before the next PTC so that the matter can be expedited.

SUBSTITUTED, DISPENSATION OF, SERVICE OF OS (CONTINUED...)

Matters to consider

- Order for Dispensation of service is rarely granted in the SYC. However, if the Plaintiff has indeed exhausted all means to contact the Defendant and is able to prove this to the court's satisfaction, then this option remains available.
- The SYC Registrar's Circular No. 11 of 2020 dated 13 February 2020 provides guidance on the relevant information and supporting documents the court may consider for a sub-service application.

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The Registrar's Circular No.11 of 2020 dated 13 February 2020 can be downloaded from the SYC website at www.syariahcourt.gov.sg. The website also provide a sample template for a summons for substituted service (and the supporting affidavit).

MEMORANDUM OF DEFENCE (MOD)

- **Rule 12 of MMDR**

- Defendant who wishes to defend OS must file MOD in Form 17 (Husband) or Form 18 (Wife)
- He/she must do so within *21 days after date of service of OS and Case Statement*
- Defendant must send a copy of the filed MOD with the seal of the Court, as soon as practicable, to the Plaintiff or the Plaintiff's solicitor
- He/she must also file and serve the relevant CPF statement/information; proposed parenting plan; and proposed matrimonial property plan

The Court may grant an extension of time for the Defendant to file the MOD. This usually happens in practice, especially in cases where the Defendant is in person.

FILING CROSS-APPLICATION

- Rule 12(5) of the MMDR
 - Akin to a counter-claim in a civil divorce;
 - Defendant can include a cross-application in his/her MOD;
 - Cross application must set out the nature, and the grounds, of the application and the relief sought.

AMENDING OS AND CASE STATEMENT, MOD ETC.

- **Amending OS and Case Statement**

- Rule 9(5) of the MMDR
- If OS and Case Statement not yet served on the Defendant, leave of Court NOT REQUIRED
- If OS and Case Statement served on the Defendant – leave of Court REQUIRED
- Amended OS and Case Statement (including all supporting documents) must be served on Defendant

- **Amending OS, MOD etc.**

- Court can also order the amendment of the OS, MOD or any other document filed in the proceedings at any stage of the proceedings under Rule 12 of the MMDR.

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If you are representing a Plaintiff only from the PTC stage of a SYC divorce proceeding, then you are likely to invoke rule 9(5) of the MMDR to amend the Plaintiff's case statement.

CONSEQUENCES FOR FAILING TO AMEND CASE STATEMENT BEFORE HEARING?

Question:

Your client is the Plaintiff wife. Her case statement does not set out any claim on the Defendant's assets. However, your client has always informed you that she wanted to claim 50% from the sale proceeds of the HDB flat that parties co-own. Your client's case statement was never amended to reflect this. Can you now seek leave from the court during the hearing to amend your client's case statement?

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Answer: The Court can order the amendment of the OS, MOD or any other document filed in the proceedings at *any stage of the proceedings* under Rule 12 of the MMDR. However, the court is unlikely to allow an oral application for the amendment of the case statement at the hearing stage, without giving the Other Party an opportunity to file an affidavit in reply regarding the proposed amendment.

See also *Appeal No. 11 of 2018* which is set out in the reading materials for this session.

APPLICATIONS FOR INTERIM ORDERS RELATING TO MINOR CHILDREN

- **Rule 14 of the MMDR**

- Court can make interim orders on custody, care and control of, or access to any child of the parties if it is in the interests of the child to do so;
- Application is made by summons in Form 27 with supporting affidavit;
- Summons and supporting affidavit to be served by way of Ordinary Service* pursuant to rule 35 of the MMDR within 7 days from filing or such other period as the Court may direct

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Before a divorce is commenced in the SYC, parties may have commenced custody proceedings in the Family Justice Courts. However, these proceedings are automatically stayed the moment proceedings for divorce are commenced in the SYC pursuant to section 35A(2) of the AMLA. Parties would then need to apply for leave in the SYC to continue the civil proceedings.

An application under rule 14 of the MMDR is made when there are ongoing divorce proceedings in the SYC.

It is more expeditious to make an application for interim access, custody care and control in respect of a child in the Family Courts instead. However, you will first need to obtain leave to commence proceedings in the Family Justice Courts pursuant to section 35A of the AMLA read with rule 17 of the MMDR since the SYC divorce proceedings have already commenced.

See Slides 24 and 25 on Ordinary Service/Rule 35 of MMDR.

Matters to consider

(a) Advise a client with care and control of a minor child/children to facilitate access

of the child/children to the non-custodial parent.

(b) Also, it is worth getting in touch with the social workers of the parties (if any) to facilitate access of children.

(c) Advise a client to make a police report if the whereabouts of the Other Party and the children are not known.

APPLICATIONS FOR INTERIM ORDERS RELATING TO MINOR CHILDREN (CONTINUED...)

- Application under rule 14 of MMDR can be made ex parte in cases of urgency
- See Paragraph 2 of SYC Registrar's Circular No. 11 of 2020 dated 13 February 2020 for the information required in the supporting affidavit for an application under Rule 14 of the MMDR.

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Registrar's Circular No.11 of 2020 can be downloaded from the SYC website at www.syariahcourt.gov.sg.

MISCELLANEOUS INTERIM ORDERS

- **Rule 15 of the MMDR**

- Application can be made in summons in Form 28, with a supporting affidavit to ask the Court to grant an interim order for the following matters:
 - To amend the MOD
 - To strike out or expunge any affidavit or part thereof;
 - To correct any clerical error in any document filed in the Court;
 - To extend the time required for the doing of anything under the MMDR/ or pursuant to any direction or order of Court (e.g. extending the validity of the OS)
 - To set aside any order made in the absence of any party to the proceedings (except an order relating to the marital status of the parties).

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You may make an oral application for an interim order (at least in respect of the first four items), and then seek the court's guidance on whether you need to file a summons/affidavit in support of your application.

An application under rule 15 is to be served by of Ordinary Service pursuant to rule 35 of the MMDR (see slides 24 and 25).

SERVICE OF SUMMONS AND OTHER DOCUMENTS

Rule 35 of MMDR

35.—(1) Subject to rules 33, 34 and 34A, unless the Court otherwise directs, any summons or other document must be served by ordinary service in accordance with paragraph (2)

(2) Ordinary service, of any document that is not required to be served personally, is effected —

- (a) by leaving the document at the address for service of the person to be served;
- (b) by sending the document by post to the address for service of the person to be served; or
- (c) in such other manner as the Court may direct.

SERVICE OF SUMMONS AND OTHER DOCUMENTS (CONTINUED...)

Rule 35 of MMDR

...

(3) For the purposes of paragraph (2), if at the time when service is effected, the person who is to be served has no address for service, his address for service is his usual or last known address.

(4) Unless otherwise provided or directed by the Court, a summons must be served within 7 days after the filing of the summons.

(5) The Court may, in an appropriate case, order that service on any person of a summons or document, and any subsequent or related documents filed in the proceedings, be dispensed with.

FILING OF AFFIDAVIT OF EVIDENCE-IN-CHIEF (AEIC)

- **Rule 24B of the MMDR**

- Parties are required to file and exchange AEICs in any proceedings for divorce or nullity of marriage.
- After exchange, parties may file and serve on each other a reply affidavit within such time as the Court may direct.
- No further affidavit can be filed without the leave of Court.
- Application for leave of Court must be made by way of summons unless the Court directs otherwise.

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The AEICs will set out parties' respective positions in respect of the divorce and the ancillary issues.

For service of application for leave of court – please refer to rule 35 of MMDR (see slides 24 and 25).

WITHDRAWAL OF APPLICATION FOR DIVORCE

- **Rule 18 of MMDR**

- OS for divorce can be withdrawn by Plaintiff (whether Wife or Husband) **without the leave of court if –**

- (a) the husband has yet to pronounce talak; and

- (b) at any time before the OS is served on the defendant, the Plaintiff files a Notice of Withdrawal (NOW) in Form 34; or

- (c) at any time before judgment, a NOW in Form 34 is signed by, and endorsed with consent of, all parties is filed.

- In all other cases, leave of court is required.

An application under rule 18 is generally done orally.

**MEDIATION, PTCS AND HEARINGS FOR
DIVORCE MATTERS IN THE SYC**

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MEDIATION FOR A DIVORCE MATTER IN THE SYC

- During a mediation session, the mediator will try to facilitate a settlement of all the issues between the parties (e.g. ground of divorce and the ancillary matters)
- If parties have lawyers, the lawyers must attend the mediation session (see rule 37 of MMDR).
- If there is a settlement, it will be recorded by the Mediator in a draft Decree of Court.
- Parties will then appear before the President of the SYC.
- The Husband will pronounce talak before the President if the Husband had not done so previously.
- The President may then confirm the divorce and the terms of the settlement with the parties. This will conclude the divorce proceedings.

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Even if parties are able to record a consent order without attending the mediation, unlike the civil courts, parties must still attend SYC to record the terms of settlement before the President of the SYC.

In general, the mediator will draft the consent order (whether or not the parties are legally represented). The President of the SYC will thereafter review the consent order before it is recorded. The President has the discretion not to accept the settlement.

Mediations in SYC may not be conducted if the Defendant does not submit his/her MOD/CPF statements. The mediator will decide on whether to proceed with the mediation in such a case. However, if there is a settlement between parties at the mediation, then the recording of a consent order will only take place after the Defendant files his or her MOD.

A solicitor whose law firm has filed a Notice of Appointment or a litigant in person can collect the Court Order on or after 2 June 2020 via email instead of attending the Court Registry. The Court Order may only be collected after payment for the Court order and after 7 working days as indicated in the payment receipt. The

solicitor/litigant in person must inform the SYC counter of his or her email account. The email containing the Court Order will not be password protected and the solicitor/litigant in person is deemed to have accepted this transmission (See Registrar's Circular No.15 of 2020 dated 29 May 2020)

SYC PTC IN RESPECT OF A DIVORCE MATTER

- If there is no settlement at mediation, parties (or their lawyers) will be required to attend PTCs.
- The purpose of the PTCs is for the Registrar of the SYC to facilitate the smooth progress of the matter (e.g. give instructions for the filing of affidavits, or directions to prepare the case for hearing)
- If you are attending the 1st PTC on behalf of the Plaintiff, take note of the following:
 - a. find out the date the OS was filed and served on the Defendant
 - b. if the OS has yet to be served, check the expiry date of the OS and see if any application needs to be made for the extension of the validity of the OS for service
 - c. if OS has yet to be served, consider if a sub-service/dispensation of service application needs to be made

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Please refer to **SYC's Registrar's Circular No.16 of 2020 dated 29 May 2020** on the use of Webex for PTC Video-Conferencing.

For PTC, no request needs to be made to the Court Registry in advance for the use of Webex. The SYC will email the solicitor on record, the Webex link ahead of the PTC.

SYC PTC IN RESPECT OF A DIVORCE MATTER (CONTINUED...)

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- d. find out if amendments need to be made to the Case Statement
- e. ascertain the Ground of Divorce, in particular whether Talak has been pronounced
- f. find out if the Defendant has filed his/her MOD within the stipulated timeline
- g. if the Defendant has been served with the OS (and has not filed his/her MOD within the stipulated timeline), ascertain whether an CPF Standard Order is required
- h. ascertain the Plaintiff's positions on the ancillary matters, and which issues are in dispute or likely to be disputed

SYC PTC IN RESPECT OF A DIVORCE MATTER (CONTINUED...)

- If you are attending the 1st PTC on behalf of the Defendant, take note of the following:
 - a. find out if the Defendant has filed his MOD (if yes, whether amendments need to be made to the MOD)
 - b. ascertain the Ground of Divorce
 - c. ascertain if Defendant wishes to file a cross application
 - d. ascertain the Defendant's positions on the ancillary matters and which issues are in dispute

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It is possible to request the Registrar to re-fix the matter for a mediation at the PTC stage. But the Registrar may be unwilling to do so due the constraints in resources (parties would have already gone through about 2 mediations prior to attending the PTC). You will need to therefore give good reasons as to why the matter should be re-fixed for mediation (e.g. parties are very close to reaching an agreement).

You may wish to prepare for a PTC using the SYC-PTC checklist prepared by the LAB SCPG team [Found in the reading materials].

HEARINGS IN RESPECT OF A DIVORCE MATTER IN THE SYC

- Adducing evidence

- In general, evidence in a hearing is to be given by way of affidavit pursuant to rule 24 of the MMDR
- Evidence in a divorce hearing is set out in a party's AEIC.
- However, rule 18A of MMDR provides that the Court can order evidence either orally or by way of an affidavit (or a combination of both), with or without cross examination of the deponent
- A party who wishes to summon a witness to give oral evidence during the hearing or wishes to produce before the Court a document in his possession, custody or control, must make an application under rule 20 of the MMDR in Form 37
- If a party admits to another party's claim in a hearing, the Court can make a judgment without hearing any evidence pursuant to rule 23(4) of the MMDR (e.g. If Wife does not dispute that talak has been validly pronounced).

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Registrar's Circular No 9 of 2020 (dated 13 February 2020)

A party or a solicitor acting on behalf of a party, who wishes to request for the Court to arrange for an interpreter for the party, must send a written request to the Registry at least 14 days before the day on which the interpreter's services are required. The request must be made in the Annex attached to the circular. The court interpreter's services do not extend to lawyers who require an interpreter for the conduct of proceedings.

Registrar's Circular No 6 of 2020 (dated 13 February 2020)

A physical exhibit such as thumbdrive or CD-ROM must not be included in an affidavit, unless leave from the Court has been obtained. Where leave has not been obtained, and if the party seeks to adduce evidence in such devices, the evidence or information captured must be transcribed before it is included as part of an affidavit.

After hearing is concluded do the following:

- a) Explain to your client the orders that were made;
- b) Remember to collect the collection slip at the SYC Counter for the collection of the SYC Decree.

QUESTION

What if there are no express provisions concerning a certain procedure in the AMLA and MMDR? What can you do?

Answer:

- You can seek guidance from civil law provisions/case law concerning procedure and practice.
- But note that section 42 of the AMLA provides that while the SYC is to have regard to the law of evidence for the time being in force in Singapore (and be guided by the principles), **it is not obliged to apply the same strictly.**
- Rule 44 of the MMDR also provides that the SYC or the Appeal Board may adopt practice and procedure adopted in relation to civil proceedings for matters not expressly provided in the MMDR and the SYC PD. However, do not that such practice and procedure must be consistent with the AMLA or MMDR.
- The Appeal Board has endorsed principles in civil law in a couple of its cases*.

HEARINGS IN RESPECT OF A DIVORCE MATTER IN THE SYC

- Examination of child
 - Rule 25 of the MMDR: The court may appoint a person trained in matters concerning child welfare to examine or assess a child, with a view of obtaining a report. The court will use this report in deciding issues relating to the custody, care and control of, and the access to, the child.
 - Section 43B of the AMLA/ rule 25A of the MMDR: In order to adduce evidence relating to the welfare of a child, from a registered medical practitioner, psychologist, counsellor, social worker or mental health professional, who is a not an officer of the Court, a party must first make an application for leave of court by way of summons and a supporting affidavit.

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Child Representatives

Under rule 25B of the MMDR, the SYC can appoint a Child Representative for the purposes of resolving any issue involving the custody or welfare of a child.

QUESTION

Can you include handwritten notes of minor children in your client's affidavit?

Answer:

It is possible under rule 18A of the MMDR. However, this is not encouraged because it raises credibility issues.

The Appeal Board in *AO v AP* (2012) 6 SSAR 228 found the procurement and submission of handwritten notes of children attacking a spouse as a serious matter and very troubling [23]. It was not sure who suggested writing the notes, and if the children were properly counselled when the notes were written. Further, the Appeal Board in that case gave little weight to the evidence since there was no examination or cross-examination of the child witnesses during the hearing.

It would be more prudent to obtain leave of court to admit a report on the child's welfare under section 43B of the AMLA/ rule 25A of the MMDR.

GENERAL TIMELINES IN SYC FOR A DIVORCE MATTER

Description	General timeline
PTC	PTCs in respect of a SYC divorce matter are spaced 1-2 months apart.
Filing of applications (e.g. applications for interim orders, substituted service, dispensation of service etc.)	2-3 weeks from the date the direction is given at the PTC
Filing of documents (e.g. amended case statements; MODs, AEIC etc.)	2-3 weeks from the date the direction is given at the PTC
Obtaining Standard CPF Order	3-4 weeks from the date Order is made
Hearing	Between 3-6 months from the 1 st date of the PTC, depending on the complexity of the matter (e.g. contested ancillary issues etc.)

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This slide sets the general timelines for matters in the SYC.

**ADDITIONAL SLIDES CONTAINING
INFORMATION ON:**

**(A) PROCEDURE RELATING TO ENFORCEMENT
OF REGISTRAR'S EMPOWERMENT CLAUSES;**

**(B) PROCEDURE RELATING TO APPEALS TO
PRESIDENT OF SYC/ APPEAL BOARD; AND**

(C) DUTIES OF SYC DUTY REGISTRAR

REGISTRAR EMPOWERMENT CLAUSES (REC) (FOR INFO ONLY)

- REC – a clause that allows the President/Registrar of the SYC to sign documents in relation to transfer/sale of a property on behalf of a party pursuant to s53A of the AMLA
- 2 types of REC in SYC : “CATEGORY A (“CAT A”)” & “CATEGORY B (“CAT B”)”
 - CAT A REC **does not** require a written notice to be served on the defaulting party before the President or Registrar exercises his/her power under s53A of the AMLA
 - CAT B REC **requires** a 14 day written notice to be served on the defaulting party before the President or Registrar exercises his/her power under s53A of the AMLA.

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It is good to know the different RECs so that you can ask for the appropriate REC to be included in the consent order during mediation/ court order during hearing.

Example of a CAT A REC:

“The Plaintiff/Defendant shall sign, execute and indorse his/her name on all necessary documents to effect the sale/transfer/surrender of the matrimonial flat at Blk....

The President or registrar of the Syariah Court shall exercise the powers under section 53A of the Administration of Muslim Law Act (Cap. 3) and execute, sign or endorse on behalf of the Plaintiff/Defendant and in his/her name on all documents to effect the sale, transfer, surrender of the matrimonial flat.

Example of a CAT B REC:

The Plaintiff/Defendant shall upon demand sign, execute and indorse his/her name on all necessary documents to effect the sale/transfer/surrender of the matrimonial

flat at Blk.....

The President or registrar of the Syariah Court is empowered under section 53A of the Administration of Muslim Law Act (Cap. 3) to execute, sign, or indorse all necessary documents relating to the sale/transfer/ surrender of the matrimonial flat on behalf of the defaulting party should the defaulting party fail to do so within 14 days of written request being made to him/her.

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REGISTRAR EMPOWERMENT CLAUSES (REC) (FOR INFO ONLY) (CONTINUED...)

- The enforcement procedure is different for CAT A REC and CAT B REC.
- The Court is likely to make a CAT A REC order in the proceedings if service of the divorce documents on the Defendant has been dispensed with, or if the Defendant is uncooperative, and/or has failed to take part in the proceedings.

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The documents required for the purposes of enforcing CAT A and CAT B clauses are different.

Documents needed for CAT A REC:

- (a) Certified True Copy of Order of Court empowering President/Registrar to sign relevant documents;
- (b) Original documents for signature (i.e. transfer or sale documents)
- (c) Filing request (praecipe); and
- (d) copy of search results on latest transacted resale HDB flat prices for last 6 months preceding the date of request, or a valid valuation report.

Documents needed for the enforcement of CAT B REC:

- (a) all documents stated for enforcement of CAT A Clause
- (b) an affidavit in support showing receipt of applicant's written demand to sign the relevant documents/ other party's receipt of written demand and refusal to sign the documents within specified timeline.

A copy of the Written Demand /sample affidavit is found in SYC website.

Do note that in a transfer situation, the Applicant must first submit the Transfer of HDB Flat Ownership Form to HDB first (without the defaulting party's signature). The President or Registrar of the SYC cannot sign this form on behalf of the defaulting party because it contains certain declarations that the defaulting party has to make.

HDB will first process the form, and then return the Applicant with a conveyancing transfer form. The Applicant will then need to submit this conveyancing transfer form to the SYC for the President or Registrar to exercise his/her powers under s53A of the AMLA.

Also see the SYC Registrar's Circular No 8 of 2020 dated 13 February 2020 regarding the request for execution of documents under section 53A of the AMLA.

An applicant may collect the documents after 3 working days from the date of the filing of the request so long as the documents are in order. A request will not be approved if the documents submitted are incomplete or the affidavit-in-support (for a Cat B REC request) is not adequate. In such cases, the Court will require an applicant to provide more information or take some further action, including filing a supplementary affidavit* (*filing fees would apply).

APPEALS AGAINST REGISTRAR'S DIRECTION OR ORDER (FOR INFO ONLY)

- An appeal against the Registrar's direction or order is made to the President of the SYC under rule 38(1) of the MMDR
- The Notice of Appeal (NOA) which must be in Form 52, is to be filed no later than 14 days from the date of the direction or order
- The NOA must be served on the Respondent within 3 days of filing
- A further appeal against the decision of the President under rule 38 can only be made if the appeal
 - (a) concerns an interim order made by the Registrar under rule 14(1) of the MMDR (i.e. interim order on custody and care and control of , or access to, a child); or
 - (b) a decree of divorce made by consent under rule 26(1) of the MMDR

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When a case is over, you should advise your client of the appeal timelines so that he/she is aware of this option should she wish to appeal. Ideally, the advice should be done in writing.

APPEALS TO APPEAL BOARD (FOR INFO ONLY)

- **Composition of Appeal Board**

- The President of Majlis will constitute an Appeal Board comprising 3 Muslims from the panel of 7 persons nominated by the President of Singapore (acting on the advice of the Majlis) (see s 55(3) & (4) of the AMLA read with R 41 of MMDR)

APPEALS TO APPEAL BOARD (FOR INFO ONLY) (CONTINUED...)

- **Decisions which can be appealed to the Appeal Board:** See Section 55 of the AMLA. Decisions which can be appealed and are of particular relevance are:
 - (a) cases concerning a decision where the amount in issue on appeal is not less than \$450;
 - (c) cases relating to maintenance;
 - (d) cases relating to custody of minor children;
 - (e) cases relating to disposition of division of property on divorce or nullification of marriage
 - (f) grant or refuse leave to commence civil proceedings under section 35(A) of AMLA

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An appeal under s50(1)((a),(c),(d) or (e) can only be made with the leave of the Appeal Board if the decisions were entered into by consent (see s55(2)) of the AMLA).

The Appeal Board may confirm, reverse, or vary the decision of the Court, or order a retrial, or award costs as it thinks fit (s 55(3) of the AMLA)

APPEALS TO APPEAL BOARD (FOR INFO ONLY) (CONTINUED...)

S/N	Rule 39 of MMDR	Rule 40 of MMDR
1	Procedure for appeals under s50 of AMLA other than the matters set out in the 2 nd Schedule to the MMDR	Procedure relating to appeals under section 50 of the AMLA in respect of matters set out in the 2 nd Schedule to the MMDR
2	Appellant must file a Notice of Appeal (NOA) in Form 33, addressed to the MUIS Appeal Board (Not SYC) within 30 days from date of Court's decision	Appellant needs to first file a Notice of Appeal (NOA) in Form 57, addressed to the MUIS Appeal Board (Not SYC) within 14 days from date of Court's decision.
3	NOA must be served by way of Ordinary Service pursuant to rule 35 of MMDR on the Respondent within 3 days of filing	NOA must be served by way of Ordinary Service pursuant to rule 35 of the MMDR on the Respondent within 3 days of filing.
4	Once Grounds of Decision is ready, Court will issue a Notice to Collect	Once Grounds of Decision is ready, Court will issue a Notice to Collect

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The Notice of Appeal can be downloaded from MUIS's website at www.muis.gov.sg

Matters set out in the 2nd Schedule to the MMDR are found in slide 47.

The differences between the rules are highlighted in yellow.

APPEALS TO APPEAL BOARD (FOR INFO ONLY) (CONTINUED...)

S/N	Rule 39 of MMDR	Rule 40 of MMDR
5	After perusing Grounds of Decision, if Appellant still wishes to proceed with the appeal, Appellant must file a petition of appeal within 21 days of being served with Notice to Collect, or appeal is deemed withdrawn	No petition of appeal is required.
6	Within 21 days after filing the petition of appeal, the Appellant must file a record of appeal (ROA). If the ROA is not filed within the stipulated timeline, the appeal will be deemed withdrawn	No record of appeal is required.

The differences between the rules are highlighted in yellow.

APPEALS TO APPEAL BOARD (FOR INFO ONLY) (CONTINUED...)

- Matters of appeal set out in the 2nd Schedule to the MMDR
 - (a) Orders made on applications to represent minor or person lacking capacity under rule 11 of the MMDR;
 - (b) Orders made on interim applications under rule 14 of the MMDR;
 - (c) Orders made on applications for leave to commence or continue civil proceedings in any court under rule 17 of the MMDR;
 - (d) Orders made on applications for presumption of death under rule 36 of the MMDR

ADDUCING EVIDENCE ON APPEAL (FOR INFO)

Further evidence

42.—(1) If a party to an appeal desires to —

- (a) adduce further evidence on any question of fact at the hearing of the appeal; or
- (b) rely on any ground other than that specified in the petition of appeal or the notice given by the respondent, as the case may be,

that party shall make an application for leave to do so by way of motion in Form 56.

ADDUCING EVIDENCE ON APPEAL (FOR INFO) (CONTINUED...)

Question: What if your client wanted to take over the matrimonial flat, but could only obtain verbal evidence from the bank as to the proposed loan at the time of the hearing? If the SYC ordered for the flat to be surrendered, would documentary evidence from the bank on your client's ability to get a loan, obtained after the SYC Decree, pass the *Ladd v Marshall* test? If not, what should you be advising your clients in future?

SYC DUTY REGISTRAR

- The duties of SYC Duty Registrar are set out in SYC Registrar's Circular No.5 of 2020 dated 13 February 2020
- The Duty Registrar will hear urgent applications made on ex parte basis or by consent, provided that the summons has been filed in the Court Registry and adequate time allowed for the matter to be brought to the Duty Registrar's attention
- The Duty Registrar's duty hours are from 2.00pm to 4.30pm every Monday to Wednesday, and between 9.00 am to 11.30 am on Thursdays and Fridays.
- A lawyer or individual who wishes to appear before the Duty Registrar must register at the SYC Counter and take a queue number, and complete a "Request to Attend Before Duty Registrar Form". The form is available at the SYC Counter.

THE END

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