

**Civil Law (Amendment) Act 1998
(No. 45 of 1998)**

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The following Act was passed by Parliament on 26th November 1998 and assented to by the President on 11th December 1998:—

CIVIL LAW (AMENDMENT) ACT 1998

(No. 45 of 1998)

I assent.

ONG TENG CHEONG,
President.
11th December 1998.

Date of Commencement: 1st January 1999

An Act to amend the Civil Law Act (Chapter 43 of the 1994 Revised Edition) and to make consequential amendments to certain other Acts.

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 Civil Law (Amendment) Act 1998 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 6

2. Section 6 of the Civil Law Act (referred to in this Act as the principal Act) is amended by deleting subsection (4) and substituting the following subsections:

“(4) For the avoidance of doubt, this section shall not affect the validity or enforceability of any contract or agreement entered into by either or each party by way of business and the making or performance of which by any party constitutes an investment activity.

(4A) For the purposes of subsection (4), "investment activity" means any of the following activities:

- (a) a transaction in relation to a contract or an option for the future delivery of any securities, commodity, currency or financial

instrument, whether or not there is any intention of actual delivery of such securities, commodity, currency or instrument;

- (b) a transaction in relation to a contract or an option which is entered into with the intention of settlement of differences in the prices or values of any securities, commodity, currency or financial instrument, whether or not there is any intention of actual delivery of such securities, commodity, currency or instrument;
- (c) a transaction involving the exchange or grant of an option for the exchange of any securities, commodity, currency or financial instrument;
- (d) a transaction in securities, commodity, currency or financial instrument;
- (e) a transaction involving the grant of a right or an option relating to an obligation to pay interest or the exchange or grant of an option for the exchange of obligations to pay interest;
- (f) a transaction in relation to a contract or an option to pay the difference between a pre-agreed interest rate and the rate prevailing as at specified intervals;
- (g) a transaction in relation to any securities, futures contract or derivative which is listed or traded on any stock exchange, futures exchange or commodities exchange in any country outside Singapore;
- (h) a transaction in relation to any other derivative including but not limited to any swap, cap, collar, floor and any combination thereof; or
- (i) such other activity as the Minister may by notification prescribe.”.

New sections 6C and 6D

3. The principal Act is amended by inserting, immediately after section 6B, the following sections:

“Abolition of rule in *Bain v Fothergill*

6C. The rule of law known as the rule in *Bain v Fothergill* is abolished in relation to contracts made on or after the commencement of the Civil Law (Amendment) Act 1998.

Continuity of contracts on European Economic and Monetary Union

6D.—(1) It is declared for the avoidance of doubt that —

- (a) if a subject or medium of payment of a contract, agreement, deed, security or other instrument is a currency that has been substituted or replaced by the euro, the euro shall be a commercially reasonable substitute and substantial equivalent that may be —
 - (i) used in determining the value of such currency; or
 - (ii) tendered, in each case at the conversion rate specified in, and otherwise calculated in accordance with, the applicable regulations adopted by the Council of the EU;
- (b) if a subject or medium of payment of a contract, agreement, deed, security or instrument is the Ecu, the euro shall be a commercially reasonable substitute and substantial equivalent that may be —
 - (i) used in determining the value of the Ecu; or
 - (ii) tendered, in each case at the conversion rate specified in, and otherwise calculated in accordance with, the applicable regulations adopted by the Council of the EU.

(2) It is declared for the avoidance of doubt that to the extent the performance of any of the obligations set out in subsection (1) may, apart from the introduction of the euro, be made in the currency or currencies originally designated in such contract, agreement, deed, security or other instrument, such performance may be made in such currency or currencies (so long as such currency or currencies remain legal tender) or in euro, but not in any other currency, whether or not such other currency —

- (a) has been substituted or replaced by the euro; or
- (b) is a currency that is considered a denomination of the euro and has a fixed conversion rate with respect to the euro.

(3) It is declared for the avoidance of doubt that none of the following events shall have the effect of discharging or excusing performance under any contract, agreement, deed, security or instrument, or give a party the right to unilaterally alter or terminate any contract, agreement, deed, security or instrument:

- (a) the introduction of the euro;
- (b) the tendering of euros in connection with any obligation in compliance with paragraph (a) or (b) of subsection (1);

- (c) the determining of the value of any obligation in compliance with paragraph (a) or (b) of subsection (1); or
- (d) the calculating or determining of the subject or medium of payment of a contract, agreement, deed, security or instrument with reference to interest rate or other basis that has been substituted or replaced due to the introduction of the euro and that is a reasonable substitute and substantial equivalent.

(4) The provisions of this section shall be subject to any agreement between parties with specific reference to or agreement regarding the introduction of the euro.

(5) Nothing in this section shall be construed so as to affect the validity or enforceability of any contract, agreement, deed, security or other instrument denominated in whole or in part in a currency affected by alteration in circumstances other than the introduction of the euro.

(6) For the purposes of this section —

- (a) "euro" means the currency of participating member states of the EU that adopt a single currency in accordance with the treaty on EU signed on 7th February 1992;
- (b) "introduction of the euro" means the implementation from time to time of economic and monetary union in member states of the EU in accordance with the treaty on EU signed on 7th February 1992;
- (c) "EU" means the European Union;
- (d) "Ecu" or "European Currency Unit" means the currency basket that is from time to time used as the unit of account of the European Community as defined in European Council Regulation No. 3320/94;
- (e) when the euro first becomes the monetary unit of participating member states of the EU, references to the Ecu in a contract, agreement, deed, security or other instrument that also refers to such definition of the Ecu shall be replaced by references to the euro at a rate of one euro to one Ecu;
- (f) references to the Ecu in a contract, agreement, deed, security or other instrument without such a definition of the Ecu shall be presumed, unless it is shown that the parties intended otherwise, to be references to the currency basket that is from time to time used as the unit of account of the European Community.”.