**Research Memo: limitation in HHH dispute**

**I. Issue**

1. This memo will address the following issue:
   1. The applicable law in determining the issue of whether the counter-claims that may be brought by HHH (either the Singapore or Indian Entity) are time barred (the “**Limitation Issue**”);
2. The applicable law in determining the Limitation Issue is likely to be Singapore law.

**II. The Law**

1. At the outset, it is not disputed that, given that the seat of the arbitration is Singapore, the *lex arbitri* is Singapore law. In turn, lex arbitri has been defined in the following manner under Singapore law. See ***DermPro v PremPro Sdn Bhd and Another*** [2002] 2 SLR 164 (citing Redfern and Hunter):

*“It is sometimes said that the lex arbitri is a law of procedure. It is true that the lex arbitri may deal with* ***procedural matters*** *— such as the constitution of the arbitral tribunal where there is no relevant contractual provision — but the authors suggest that the lex arbitri is much more than a purely procedural law. It may stipulate, for instance, that a given type of dispute — over patent rights, for instance, or (as in some Arab states) over a local agency agreement — is not capable of settlement by arbitration under the local law. It is suggested that this is a matter of substance rather than of procedure.* ***Or again by way of example, an award may be set aside on the basis that it is contrary to the public policy of the lex arbitri****.”*

[emphasis added]

1. Thus, in deciding whether the defence of limitation is an issue that is to be determined by the law of the contract or the *lex arbitri*, one must first determine whether the issue of limitation is one that is described to be substantive or procedural under Singapore law.
2. The substance-procedure issue arose for consideration, in a different context, before the Singapore Court of Appeal in ***Star City Pty Ltd (formerly known as Sydney Harbour Casino Pty Ltd) v Tan Hong Woon*** [2002] 1 SLR(R) 306 (“***Star City Pty Ltd***”):

*“in every case, to determine whether a provision is substantive or procedural, one must look at the effect and purpose of that provision. If the provision regulates proceedings rather than affects the existence of a legal right, it is a procedural provision. A distinction is drawn between the essential validity of a right and its enforceability.”*

1. In ***Star City***, the Court of Appeal was considering the question of whether Section 5(2) of the Civil Law Act was substantive or procedural in nature. Section 5(2) of the Civil law Act provides that:

*“(2) No action shall be brought or maintained in the court for recovering any sum of money or valuable thing alleged to be won upon any wager or which has been deposited in the hands of any person to abide the event on which any wager has been made.”*

1. The Court held that the above provision to be procedural because of the “*crucial words*” of “*no action shall be brought*”. Applying the Court’s reasoning to the limitation act, it is submitted that the limitation act is likely to be seen as a procedural matter, instead of a substantive right. Section 6 of the Limitation Act provides that:

*“Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:”*

1. The phrasing of Section 6 of the Limitation Act is essentially the same as Section 5(2) of the Civil Law Act. Accordingly, it is likely that Section 6 of the Limitation Act is likely to be seen as part of the procedural law of Singapore, rather than a substantive law.
2. This reading is also supported by the local decision of ***Hong Alvin v Chia Quee Khee*** [2011] SGHC 249 where Quentin Loh J observed, (at [25]):-

*“However, under our Limitation Act (Cap 163 1996 Rev Ed) (“LimitationAct”), time bars are procedural in nature. The operative words under the statute – “…actions... shall not be brought…”–prohibitthe bringing of an action. They bar the remedy. As was aptly put by Donaldson LJ in Ronex Properties at 404: “…itis trite law that the English Limitation Acts bar the remedy and not the right; and furthermore they do not even have this effect unless and until pleaded.” The latter part of Donaldson LJ’s remark arises from the then equivalent English section to s 4 of the Limitation Act, which provides that nothing in the Limitation Act shall operate as a bar to an action unless the Limitation Act has been expressly pleaded as a defence thereto.”*

1. Finally, regard could also be paid to the statements made by the Report of the Law Reform Committee in its report on Limitation Periods in Private International Law dated January 2011. In its report, the Law Reform Committee noted that “*the question of classification of time limitation laws for choice of law purposes has not arisen directly for consideration in a Singapore court of la*”. Yet, it proceeded to make the following observations in the same report:

*“The proposition that limitation statues are procedural is long established in the common law and probably reflects the present state of the common law in Singapore.”*

1. Accordingly, whether HHH’s (be it Singapore or India) claim against the WWW Group is likely to be time barred would be determined by Singapore Law.