



PILOT DISCOVERY PROJECT

A. Purpose of the Pilot Discovery Project

1. The Pilot Discovery Project (“the Project”) has been designed in anticipation of the amendments to the Criminal Procedure Code 2010 (CPC) which introduce disclosure requirements in criminal proceedings. This Project aims to discern the practical effects these changes will have on the Court, the Prosecution and the Criminal Bar.
2. The Project is the result of the joint efforts of the Subordinate Courts, the Attorney-General’s Chambers, the Law Society and the Association of Criminal Lawyers of Singapore. Representatives from the various agencies had met to work out the details of the Project, which is scheduled to commence on 10 August 2010.

B. Overview of the Amendments

3. A short summary of the discovery rules in the CPC is provided below in chronological order.
4. When an accused person is first charged and where his case is subject to the Criminal Case Disclosure Conference (CDC), the court must ask him how he intends to plead. The court has the discretion not to record the accused person’s plea if an application is made by either the Prosecution or the Defence to adjourn the case (Section 158(b), CPC). If the accused is asked by the court how he pleads and he refuses to plead, does not plead or claims trial, the court must, unless there are good reasons, fix a First CDC not earlier than 8 weeks from that date.

i. Case for the Prosecution

5. If the accused refuses to plead, does not plead or claims trial at the CDC, the Prosecution will have to file the Case for the Prosecution in court and serve it on the Defence, not later than 2 weeks from the date of this CDC. In accordance with Section 162, CPC the Case for the Prosecution will contain:

- a. the charge(s) which the prosecution intends to proceed with at the trial;
 - b. a summary of the facts in support of the charge(s);
 - c. a list of the names of the witnesses for the prosecution;
 - d. a list of the exhibits that are intended by the prosecution to be admitted at trial; and
 - e. any statement made by the accused at any time and recorded by an officer of a law enforcement agency under any law, which the prosecution intends to adduce in evidence as part of the case for the prosecution.
6. The court will also fix a Further CDC not earlier than 7 days from the date the Case for the Prosecution is filed. Either the Prosecution or the Defence may ask for the matter to be adjourned pursuant to Section 238(1), CPC so that another CDC may be fixed. If the Prosecution is unable to file/serve the Case for the Prosecution/Further Documents within the stipulated timeframe, an extension of time pursuant to Section 223(1), CPC may be sought. The Defence may also seek an extension of time to file/serve the Case for the Defence. Such applications for an extension of time to file/serve documents must be heard in the presence of all parties to the CDC.

ii. Case for the Defence

7. If the accused claims trial or does not plead guilty at the further CDC after having received the Case for the Prosecution, the Defence will have to file the Case for the Defence in court and serve it on the Prosecution not later than 2 weeks from the date of the further CDC. Pursuant to Section 165(1), CPC, the Case for the Defence must contain:
- a. a summary of the defence to the charge and the facts in support of the defence;
 - b. a list of the names of the witnesses for the defence;
 - c. a list of the exhibits that are intended by the defence to be admitted at trial; and
 - d. if objection is made to any issue of fact or law in relation to any matter contained in the Case for the Prosecution –
 - i. a statement of the nature of the objection;
 - ii. the issue of fact on which evidence will be produced; and
 - iii. the points of law in support of such objection.

iii. Service of further documents

8. The Prosecution will have to serve other statements/exhibits not later than 2 weeks from service of the Case for the Defence pursuant to Section 166(1), CPC. In accordance with Section 166(2), CPC the Prosecution is not required to serve

other statements/exhibits if the Case for the Defence has not been served. Service of further documents must be effected on only the Defence and not the court as there is no requirement in Section 166(1), CPC to do so.

9. The further documents that the Prosecution has to serve contain:
 - a. all other statements given by the accused and recorded by an officer of a law enforcement agency under any law in relation to the charge(s) which the prosecution intends to proceed with at the trial;
 - b. the documentary exhibits referred to in Section 162(d); and
 - c. criminal records, if any, of the accused, upon payment of the prescribed fee.

C. Parties involved in the Project

10. Each stage of the proceedings will involve different parties.

(a) The identification stage

11. Identification of suitable cases for the Project will be done by either DPPs or enforcement agencies. Generally, these will be cases where accused persons are represented by counsel and where the accused agrees to participate in the Project.

(b) The First Mention stage

12. The Court 26 PO will first check if the case has been identified for the Project. If a case has been found suitable for the Project, this would have been clearly stated on the court form.
13. For all those cases which have been identified for the Project but where the accused elects to plead guilty at the first mention, the Project will discontinue.
14. However in cases which have been identified for the Project and where an accused does not plead guilty and is represented, the PO will inform the court that the case has been identified for the Project. If both the accused and his counsel are prepared to participate in the Project, the court will fix a First CDC. The PO will then indicate on the court form clearly that a First CDC has been fixed.
15. In order to ensure that the Project is manageable, the PO will cap the number of cases where a First CDC is fixed to 10 per court mention. Hence, once 10 cases become subject to the Project during a mention (i.e. counsel for the accused agrees to participate) the PO need not highlight to the court any further cases for the Project even though he has more court forms that have been endorsed as being suitable for the Project.

(c) The First CDC stage

16. The DPP/APP attending the First CDC would have decided before attending the First CDC the number of charges to be proceeded with at the trial in the event the accused does not plead guilty.
17. If for some reasons the DPP/APP is of the view that the case is not suitable for the Project after having gone through the IP, he may inform the judge at the First CDC that the case is to be excluded. However, this is subject to the requirement in paragraph [42] that prior notice must be given in writing to the other party and to the court before the Project is discontinued for a particular case
18. If the accused pleads guilty to the charge(s) proceeded with against him at the First CDC, the Project discontinues.
19. However, if the accused:
 - only pleads guilty to some charges but claims trial to other charges; or
 - claims trial to all charges,

the DPP/APP will have to ensure that the Case for the Prosecution (see Paragraph [8]) is served no later than 2 weeks from the date of the first CDC. The Case for the Prosecution is only based on the charges to be proceeded with at trial.

20. The court will also fix a Further CDC not earlier than 7 days from service of the Case for the Prosecution.
21. If at the First CDC, the accused claims trial but the Prosecution is not in a position to file/serve the Case for the Prosecution within 2 weeks, a DPP/APP may seek an adjournment pursuant to Section 238, CPC or an extension of time pursuant to Section 223(1), CPC (whichever is appropriate).

(d) The Further CDC stage

22. The same DPP/APP who attended the First CDC (or someone from his Team) will attend the Further CDC.
23. At this stage, the Defence would have received the Case for the Prosecution. If the accused pleads guilty to the charges proceeded with against him, the Project discontinues.
24. However, if the accused does not plead guilty to the charges proceeded with against him, the Case for the Defence will then have to be filed in court and served on the Prosecution. Service of the Case for the Defence must be effected no later than 2 weeks from the date of the Further CDC. **For avoidance of any**

doubt, service of the Case for the Defence must be effected on the Attorney-General's Chambers.

25. A third CDC will be fixed at the Further CDC pursuant to Section 163(2), CPC. This third CDC will be fixed 4 weeks after the date of the Further CDC. It is at this CDC where trial dates will be given (Section 167, CPC)

(e) Service of further documents/exhibits

26. If service of the Case for the Defence has not been effected, the DPP/APP is not required to serve further documents/exhibits.
27. However, where the Case for the Defence has been served on the Prosecution, further documents and documentary exhibits (see Paragraph [12]) will be served only on the Defence. All documents (including statements given by the accused) and documentary exhibits will pertain to the charges proceeded with at trial.
28. Although the CPC requires service of the accused person's criminal record, this will not be served for the purposes of the Project. This is because the cost implications and the format of the criminal record have not been worked out yet.
29. Service of further documents/exhibits must be effected not later than 2 weeks from service of the Case for the Defence.

D. Other issues

(a) Representations & CCMS

30. Notwithstanding the Project, the Defence may send in representations to the Prosecution for our consideration. Criminal Case Management meetings (CCMS) between the Prosecution and Defence may continue to be held. **Representations are strongly encouraged to be sent to the Prosecution during the interval between the First Mention and First CDC. A CCMS may be held once before the First CDC and another before the Further CDC.**

(b) Sanctions

31. Any sanctions provided by the CPC for non-compliance with the discovery rules will not apply to the Project. No reference shall be drawn to the CDC during the trial. Parties shall not submit for any inference to be drawn based on documents served/not served pursuant to the CDC.

(c) Discontinuance

32. The Defence or the Prosecution may choose to discontinue with the Project at any point in time. Before parties choose to discontinue with the Project, prior notice in writing must be given to the opposing party and the courts.

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