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Probing the law on probation: Suggestions for reform

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LAW GAZETTE

THE LAW SOCIETY OF SINGAPORE

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HUMAN TRAFFICKING: NOT FOR SALE

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Justice for All: *Pro Bono Publico* and the Rule of Law

This is Singapore's Jubilee year, and for us lawyers, 2015 signals another milestone, the 800th anniversary of the signing of the Magna Carta at Runnymede. Over the centuries, the Magna Carta has come to be seen as the symbolic beginning of the Rule of Law.

I attended the Hong Kong Opening of the Legal Year last month, where I witnessed, with fascination, a debate on the Rule of Law unfurl with every speech made. No doubt impelled by the "Umbrella Movement", their Chief Justice, Secretary of Justice, Bar Association Chairman, and the Law Society President, all contemplated the Rule of Law, its meaning and scope.

The debate, while not framed in these terms, considered the competing notions of whether a "thin" or "thick" conception of the Rule of Law applied. The former focuses on strict adherence to the law, due process according to law, and respecting the orders and decision of the Courts. The "thick" conception found its champion in the Bar Association Chairman, Paul Shieh SC, who in an excoriating rejoinder to the Secretary Of Justice said:

> First, as we all know, Rule of Law means far more than just blind adherence to laws - respect of an independent judiciary, the need to ensure minimum contents in laws in terms of human rights protection, respect for the rights and liberty of the individual when law enforcers exercise their discretionary powers are examples of requirements of Rule of Law which go beyond just obeying the law. In fact it can be said that over-emphasis on the 'obey the law' aspect of 'Rule of Law' is a hallmark of a regime which is keen on using the law as a tool to constrain the governed, rather than as a means to constrain the way it governs.

Singapore too, is a nation that views the Rule of Law as foundational to both its past and future success. We too, grapple with how thin or thick the Rule of Law is, or ought to be. These are important doctrines, for theory finds its way into practice, and any discussion of this, while essential, is inherently controversial (and perhaps best left for another *Gazette* piece!). These are still live issues in Singapore, as they should be for any civilised society; but for now, the debate is sporadic (though no less intense!), and certainly less widespread and urgent when compared to Hong Kong. Perhaps that is a reflection of our long cultivated pragmatism.

Many consider the Rule of Law to be multi-faceted. Lord Neuberger, President of the UK Supreme Court, said in the 2013 Tom Sargant Memorial Lecture, that the Rule of Law "can mean different things", of which "affordable justice" is one aspect.

At our own OLY this year, all three speeches contained this common thread – access to justice, and more importantly, the idea that access to justice is an integral component, or practical manifestation of the Rule of Law. This is where life is breathed into theory, where the rubber meets the road.

It also resonates with the views adopted in the United Nations Sixth (Legal) Committee deliberations last year, where it was almost universally accepted that access to justice must be ensured if a society was to be truly based on the Rule of Law. A just society must allow each member in that community to enjoy or be protected by his or her legal rights. It is one where even the most marginalised is not deprived of their legal rights. In our system of laws, and in the context of a free market economy, access to justice means affordable justice, which means affordable private lawyers to defend or fight for a client's rights. However, it is inescapable that there will be some, even many, who simply cannot afford us. If that is the case, then we admit two concurrent systems of justice in our nation, one system for those who can afford lawyers, and no real justice for those that cannot. Therein lies the gap.

This gap is ameliorated in part by the provision of free legal services. But who stands in the gap? It is us, the practising Bar. Some will ask, why should we undertake this? Why not call for the Government to provide even more legal aid, or set up a public defender's office? Or both?

Without wading into a policy or political debate, permit me to offer a more existential reason from *Ethics and the Legal Profession* by Davis and Elliston (editors), which was cited with approval by our Court of Appeal in *Lim Mey Lee Susan* v *Singapore Medical Council* [2013]SGHC122:

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The Law Society's Mission Statement
To serve our members and the communitty by sustaining a competent and independent Bar which upholds the rule of law and ensures access to justice.

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L0115 -2370 - Senior Legal Counsel - Funds/ Financing - >10 PQE -> A world's leading property and investment company is in search of a senior counsel to oversee their investment portfolio. Ideally, you will have strong experience in funds management and familiarity with property-related work. Litigation and in-house experience will be desirable. *Contact* ***Claire*** for a private discussion.

L0115 - 2371 - Associate General Counsel - Technology - >10 PQE – A big name U.S. MNC is looking for an Associate General Counsel to lead the Asia Pacific team. Candidates with a background in IT, corporate, and compliance would be attractive. *Contact* ***Michelle***.

L1214 - 2326 – Company Secretary -> 10+ years -> A SGX listed company is looking for a senior corporate secretariat personnel with strong listed experience to lead the team and be the named Company Secretary. Suitable candidates would have in house and boardroom experience. *Contact* ***Helmi***

L0115 - 2355 - Head of Corp Sec – Listed Co ->10 - 15 years A Singapore listed company is looking for a Head of Corp Sec to lead the corporate secretariat team. Reporting to the CEO, you should have had at least 10 to 15 years of listed experience in-house. Interested candidates please *contact* ***Eileen.***

L0115 - 2373 - Legal Counsel - Electronics - >8 PQE – An established U.S. MNC is looking for a Legal Counsel to join their team. Candidates with commercial experience necessary. Regional experience and proficiency in Mandarin Chinese or Bahasa Indonesia/Malaysia would be advantageous due to the markets covered. *Contact* ***Michelle***.

L1114-2309-Head of Legal and Compliance - Trust - > 8PQE . My client, a specialist in the incorporation of international and local companies and a provider of trust services , is looking for a Head of Legal and Compliance to lead a team. You should have an LLB and be familiar with fiduciary services and trust products, with experience drafting trust documents and reviewing vendor contracts. You should also be conversant with AML/KYC compliance requirements. *Contact* ***Yasmeen***.

L0914 - 2276 – VP Legal – Construction & Infrastructure - > 8 + PQE An established multinational company is in search of a senior counsel to provide effective and efficient legal advisory services and ensuring effective management of legal and contractual risks for the group globally. The ideal candidate will be commercially savvy, with strong interpersonal skills and confidence in dealing with senior management. *Contact* ***Claire*** for a private discussion.

L0914-2278 - Legal Counsel – Engineering & Infrastructure – 6-12 PQE A leading environmental solutions company, headquartered in Singapore, is seeking a competent construction lawyer to join their team. Being part of their aggressively expanding business, exposure to international work is guaranteed. *Contact* ***Claire*** if interested.

L1214 - 2325 - Counsel - Technology - > 6-10 PQE A regional IT company with strong market presence in the solutions domain is looking to have a IT counsel join their experienced team. Lawyers from both private practice and in house with IT experience can apply. *Contact* ***Helmi***.

L0115 - 2372 - Legal Counsel - Commodities - >6 PQE – A Singapore based MNC is looking for a legal counsel to join their team. Candidates who have a strong litigation background or language abilities in Bahasa Indonesia/Malaysia would be advantageous due to the markets covered. *Contact* ***Michelle***.

L0115 - 2350 - Legal Counsel - IT - >6PQE - My client, an American IT company is looking for a Legal Counsel with at least 5 PQE, with prior experience in drafting and negotiation of software licenses, services agreements and other technology-related agreement, responsible for providing legal advice in the Asia Pacific region. Interested candidates please *contact* ***Kate***.

L0115 - 2364 - Legal Counsel - Aviation - >5 PQE - My client, a global player in the aviation industry is looking for mid-senior level lawyers to join their expanding team. An exciting opportunity to work in a dynamic and challenging environment, exposure to international work is guaranteed. Candidates with exposure in the aviation industry will be considered favourably. Please *contact* ***Kate*** for a confidential discussion.

L0115 - 2363 - Senior Legal Counsel - Construction - > 5PQE A company spearheading the construction of large infrastructure projects in Singapore is looking for a Senior Legal Counsel to join its team. Prior in house experience in related industries is essential for the role. *Contact* ***Helmi***.

L0115 - 2360 - Legal Counsel - Financial Institution - > 5PQE A renowned investment firm is seeking a lawyer to join their expanding team. Candidates with strong mergers & acquisitions experience will be considered favourably. *Contact* ***Adeline*** if interested.

L0115 - 2361 - Legal Counsel - Financial Institution - > 5PQE A renowned investment firm is seeking a lawyer to join their expanding team. Candidates with strong investment (funds) experience will be considered favourably. *Contact* ***Adeline*** if interested.

L0015-2359 – Legal and Compliance Counsel – Pharmaceutical – > 5 PQE. My client, a renowned MNC in the pharmaceutical space, is looking for a Legal and Compliance counsel with relevant industry experience. The candidate will be responsible for all legal activities in the country, including litigation and general legal services and will ensure compliance with laws and regulations. The ideal candidate is an independent worker who is capable of balancing risks with business needs and processes. *Contact* ***Yasmeen***.

L0115 - 2362 - Legal Counsel - Shipping - > 3PQE A major player in the energy and marine sector is seeking a Legal Counsel to join their growing team. Candidates who are interested in the sector and is proficient in Mandarin will be considered favourably. *Contact* ***Adeline*** if interested.

L1214-2317 - Legal Counsel - Bank -> 3 PQE. My client, a European Bank, is looking for a Legal Counsel for its Commodity Derivatives business. Responsibilities include the provision of structuring, documentation, execution management and legal support in respect of all commodity derivative products. The ability to review documents written in Mandarin will be an advantage. The ideal candidate should have a minimum of 3 years of relevant experience in a leading financial institution or international firm. *Contact* ***Yasmeen***.

L0115 - 2366 - Legal Counsel, AM - Insurance - 3-5PQE - A leading insurance company is looking for a Legal Counsel to attend to all legal matters of the Companies. You will be advising, vetting and drafting of all legal agreements as well as working on regulatory changes or legal issues with MAS. Candidates with general corporate experience, preferably in insurance industry or have any kind of corporate finance background in practice or in house will be highly considered. *Contact* ***Kate*** if interested.

L0115 - 2369 - Corporate Trust Lawyer - Trust - 3-5 years -> An established Trust company is going through a growth phase and is looking for a Corporate Trust lawyer to join their team. Prior knowledge of corporate trust structuring, funds, custody, escrow agreements and the like would be ideal. *Contact* ***Daniel***.

L0115 - 2354 - Legal Counsel - FI -> 3-5 years An established Financial Institution is looking for a Legal Counsel to join its legal team. Reporting to the Senior Management, you should have about 3-5 years of legal experience in the financial services and be familiar with financial industry regulations and good knowledge in banking corporate and commercial matters. Interested candidates please *contact* ***Eileen***.

L1214 - 2328 - Junior Lawyer - Asset Management -> 2-4 PQE A Funds & Asset Management financial institution is hiring a Legal Counsel well-versed in ISDA documentation. You will be required to handle confidentiality agreements, MCA, Equity Derivatives and ISDA work. You should possess a degree a Law and be a qualified lawyer. *Contact* ***Jane***.

Interested? Please contact ***Claire Lin Xiuxin (R1103711)*** at ***claire@recruit-legal.com***, ***Muhammad Helmi Ali (R1113285)*** at ***helmi@recruit-legal.com***, ***Eileen Low Yi Lin (R1330643)*** at ***eileen@recruit-legal.com***, ***Yasmeen Fatmah Hussain (R1327217)*** at ***yasmeen@recruit-legal.com***, ***Daniel Yoong Jiarong (R1332481)*** at ***daniel@recruit-legal.com***, ***Adeline Lim Chan Yin (R1324939)*** at ***adeline@recruit-legal.com***, ***Michelle Lee Wenyan (R1436938)*** at ***margaret@recruit-legal.com***, or ***Kate Chang Chu Yan (R1332479)*** at ***kate@recruit-legal.com***, or ***Jane See Si Hui (R1332480)*** at ***jane@recruit-legal.com*** or **(65) 6535 8255 for more information**

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> To practice a profession is, it is often said, not to pursue a 'mere money-making calling'. To organise as a profession is to undertake more than serving oneself. There must, in addition (or instead), be a commitment to the good of others - clients, patients, parishioners, or the like - even when carrying out that commitment does not benefit those who practice the art. The members of some professions must, for example, be ready to help those who cannot afford to pay ... **To be a member of a profession is to declare oneself to be someone of whom more than ordinary good conduct may properly be expected**" (emphasis added).

To act *pro bono* publico is at the core of our status as professionals. *Pro bono* transcends lawyers and the legal sphere. The Rule of Law is foundational to our community. Access to justice is critical to the Rule of Law. An effective *pro bono* regime is civil society at work, and can ensure adequate access to justice. It is a positive externality, a common good, which nourishes our larger community. And like every common good, it can only survive and flourish if someone takes ownership of it. That "someone" is, and has to be us, the profession. Here, both duty and privilege converge to engage the "better angels of our nature".

Take it one step further. We live in a meritocracy. The way our social and economic system is structured, if you are a lawyer, you have a *fortiori*, ascended near the peak of the meritocratic pile. But meritocracy, as an organising system, is only moral and legitimate if those that benefit the most from it, make it better for those who have not.

We have many *pro bono* heroes. Exceptional they may be, but there are human limits to their reach. Their role must be to inspire us, to make the exceptional, commonplace. As a profession, let us collectively aspire to make a difference that will shape the heart of our community. There are over 6,000 lawyers practising in domestic and foreign firms. If 5,000 lawyers each did 25 hours of *pro bono* work a year, that totals 125,000 hours of free legal service. If we take an average charge out rate of $400 per hour, that is an annual $50 million contribution to the community. And that doesn't count committee or other charitable work outside the law. We can make a difference.

Lawyers not only contribute time, we contribute cash. The recent Just Walk on 10 January 2015 raised over $2 million, the bulk of the donations coming from the legal sector. This event was a game changer, as it exponentially raised the level of awareness and engagement in respect of our *pro bono* services. It was incredible to see the different parts of the legal community come together in support of a common cause. Practitioners, the judiciary, the legal service, students and academia; they all took part. They as stakeholders truly walked the walk. The participation by members of the Attorney-General's Chambers was remarkable in its symbolic value. In their day jobs, prosecutors are adversaries to defence counsel. They are the opponents that the criminal Bar try to outwit, outplay and outlast. Not so on 10 January, where we walked in solidarity to raise funds for *pro bono* services. This was a visible and tangible reminder of our common goal, that we are all ultimately servants of the Rule of Law, that our aims are ultimately the same, that justice be done in all cases. It is an express recognition – justice is only truly authentic when accused persons are responsibly and competently represented by effective and robust defence lawyers.

Our response to engaging in *pro bono* work must be individual, and collective. It is the profession's corporate social responsibility. We all have to pull our weight but the prognosis is good; we are all gradually leaning in the same direction. For many years, the *pro bono* burden has fallen disproportionately on small firms, sole proprietors, and our individual outliers. That is changing. For example, this year, the CLAS fellowship scheme kicks off. This is only possible because of significant contributions from the five largest domestic firms. Other medium and large firms have also pledged to undertake a minimum number of *pro bono* cases. This is a great start, and a catalyst for change. Our challenge is to create a sustainable *pro bono* eco-system and embed this into every individual lawyer's DNA. The sum of our individual contributions, albeit small, translates into the collective response of the profession. If we dare to aspire, and do this right, we can say to our community – "you can count on us, we are here for you", and contribute to the development of a gracious and compassionate society, where there is truly, Justice for All.

► **Thio Shen Yi, Senior Counsel**
President
The Law Society of Singapore

Diary

10 January 2015
Just Walk

30 January 2015
Seminar on Arbitration in Islamic Finance
9.30am -11.30am
55 Market Street

Upcoming Events

5 March 2015
Lunar New Year Luncheon

13 March 2015
Small Law Firms Committee Luncheon

16 &17 March 2015
Litigation Conference 2015

30 April to 2 May 2015
Bench & Bar Games 2015

Ongoing till August 2015
CLAS Criminal Law Training Programme

Council and Committee Update

Proposed SG50 Activities

The Society is planning to organise several activities in the areas of continuing professional development, law awareness and possibly a lecture to mark Singapore's 50th anniversary this year. Details will be released in due course.

CLAS Criminal Law Training Programme

The Criminal Legal Aid Scheme ("CLAS") launched its inaugural Criminal Law Training Programme on 8 January 2015. The Programme consists of 31 modules on various criminal law topics delivered by senior practitioners and academics. The Programme includes lessons at varying levels of complexity to cater to practitioners at all levels of seniority and with a view to substantially progressing a junior practitioner's competence in criminal practice at an accelerated rate. Details of the various modules are available at the Society's website.

Foreign Practitioners Committee

Council resolved to form a Foreign Practitioners Committee to address issues concerning foreign lawyers in Singapore.

Members of Standing Committees 2015

Council approved the members of the majority of the standing committees for 2015.

Luncheon for Small Law Firm Practitioners

The Small Law Firms Committee and the State Courts Committee jointly organised a luncheon for members from small law firms on 14 January 2015 to discuss latest practice developments.

From the Desk of the CEO

The Committees of the Law Society have been busy in January formulating their work plans and budgets for 2015. The work plans set out the proposed initiatives and projects of each Committee for the year, supported by the Secretariat.

This month, I will be highlighting the work of our Committees in the Continuing Professional Development ("CPD") space. The Society's CPD programmes are shaped primarily by our CPD Committee and the respective practice committees.

Based on the CPD work plan for 2015, I am pleased to report that a full suite of CPD events has been planned, covering a wide breadth of practice areas and deep diving into certain selected topics. A few of our key programmes for 2015 are highlighted below. We look forward to welcoming you at our CPD events.

The Law Society continues to be a key provider of continuing professional development programmes for legal professionals in Singapore. We provide practice-oriented programmes which are aimed at helping legal professionals acquire and maintain professional competence in core areas of practice and to keep up with the latest legal developments and emerging areas of practice.

Litigation Conference (16-17 March 2015)

The Litigation Conference 2015 is proudly presented by the Society's Civil Practice Committee. The two-day Conference aims to bring together the judiciary, senior practitioners and industry experts across various jurisdictions to provide fresh insight on the latest developments in this area of practice.

The theme for the Conference in 2015 is International Commercial Litigation, leveraging on the much anticipated launch of the Singapore International Commercial Court ("SICC"). International speakers have been invited to speak and take part in an exchange of ideas which would benefit international commercial litigation and, by extension, the SICC. The Conference is accredited with 12 Public CPD points for the full Conference with six Public CPD points for each day of the Conference.

The CLAS Criminal Law Training Programme (January-August 2015)

In line with the Enhanced CLAS framework in 2015, the Criminal Law Training Programme (the "Programme") will serve CLAS Fellows, active CLAS volunteers and other practitioners wishing to develop or improve their criminal practice knowledge and skills. Free or subsidised access to the various lessons will be made available to active CLAS volunteers.

The Programme will include modules at varying levels of complexity to cater to practitioners at all levels of seniority and with a view to substantially progressing a junior practitioner's competence in criminal practice at an accelerated rate. Practitioners will be able to sign up for the entire Programme as a stand-alone package at a discounted rate. The Programme is CPD accredited and the Programme's total CPD value is 46.5 public CPD points.

e-Learning Seminars (On-going)

The Law Society's online training courses provide flexibility in allowing you to learn where and when your busy schedule allows. Registration is on-going for our Online Learning Programmes. Access streaming video content compatible with your computer (PC or Mac), iPhone, iPad, Android and other devices.

Our popular online courses include Demystifying Financial Statements, Continuous Probate Procedures, Drafting of Wills, Trust Litigation, and Insurance Fraud in Motor Accident Claims. Private CPD points are claimable by lawyers for registering and viewing of online courses.

More details are available at http://www.lawsoc.org.sg/en-gb/elearning.aspx.

► **Tan Su-Yin**
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Sentencing Conference 2014
9 October 2014
*Opening Address by Chief Justice Sundaresh Menon**

Distinguished Guests
Ladies and Gentlemen

I. Introduction

1. It gives me great pleasure to welcome our foreign visitors to Singapore and all of you to this year's Sentencing Conference. The idea for this conference was mooted in 2011 and what began as a discussion essentially amongst the various domestic stakeholders has since grown to feature the participation of eminent speakers from various parts of the Commonwealth. I am delighted to welcome the Honourable Wayne Stewart Martin, Chief Justice of the Supreme Court of the Western Australia as well as Sir Anthony Hooper, who while still practising at the Bar led me in a case more than 20 years ago and who until quite recently served on the Court of Appeal of England and Wales. Chief Justice Martin and Sir Anthony are but two of the distinguished speakers who have graciously agreed to participate in this Conference.

2. This year's conference is themed "Trends, Tools and Technology". On the issue of technology, there are exciting developments in the State Courts pertaining to the Sentencing Information and Research Repository. This is a sentencing database of the results of cases prosecuted in the State Courts and selected sentencing factors associated with each case will also be captured in this database.[2] This development will help the Courts, the Prosecution and the Defence Bar access the precedents that may have a bearing on each case. I am sure we will hear and perhaps see more of this in the course of the next two days.

3. I have been invited to deliver the Opening Address this morning and I thought I would begin by speaking about the function and importance of sentencing in the criminal justice system. I then suggest some ways in which we could improve and enhance our sentencing practices so as to better ensure that the punishment imposed fits the offence and the offender. I close with a reminder of the need for us to look beyond sentencing to eventually reintegrating ex-offenders into our society.

II. The Function of Crime and Punishment

4. In the criminal justice system, the law usually provides that an offender must be punished. The main strands of thought that explain the basis or the underlying reason for punishment are retribution, deterrence, prevention and rehabilitation. The retributivist believes that free-willed individuals must be held morally responsible for their actions; and that this is best done by ensuring that they are proportionately sanctioned for offending behaviour. The utilitarian considers that punishment is justified because it ought to have a salutary deterrent effect: the pain of punishment and the costs of imposing that pain upon the offender are thought to be outweighed by the social benefits that may consequently be enjoyed. Furthermore, punishment might also have a specific deterrent effect in deterring *that* offender from repeating the offending behaviour having regard to his character, history and circumstances.

5. Then there is rehabilitation. Discarding the notions of criminal responsibility and proportionate punishment, proponents scrutinise the moral, mental and physical characteristics of offenders with the aim of setting right aspects of the offender's character and propensities that have disposed him to crime, so that he may be speedily reintegrated into mainstream society.

6. Lastly, punishment may also be justified on the ground of incapacitation, or prevention. Unlike reformation or deterrence, incapacitation is directed simply at restricting the offender's liberty, movements or capacity to do wrong because it is in the public interest that further harm does not occur at the hands of this offender.

7. The interplay of these theories or justifications will differ according to the circumstances of the offenders as well as of the offences.[3] The rationale behind a probation order directed at a young offender will plainly be very different from that behind a long period of preventive detention for a recalcitrant one even where the two may have engaged in offending behaviour that might, at least on the surface, appear to be identical. Punishment is, therefore, very much a social construct that cannot exist in a vacuum. Theories of punishment can inform the

Court's decision on an appropriate punitive response to the offender in the precise circumstances of his offence. The sentencing Court should generally be concerned with two questions when deciding on the appropriate sentence: what is it seeking to achieve by punishing this offender; and secondly, how should it punish the offender so as to best achieve that goal? The first question attempts to identify a general justifying aim; while the second question seeks to calibrate the form and the severity of punishment with this justifying aim in mind.[4] There are of course other considerations such as consistency with the precedents which aims for overall fairness and parity in the treatment of offenders across the penal system as a whole. The two questions I have outlined are aimed directly at ensuring that the punishment fits the crime, in the sense that it is appropriate to the offence and the offender.

III. Principles of Sentencing

8. To aid sentencing Judges in responding appropriately to these questions, a number of sentencing principles can be distilled from our precedents. I propose this morning to recount some of the more important of these. First, our criminal law, for practical purposes, is entirely the product of legislation. Hence, the punishment imposed by the Courts should generally be informed by the relevant legislative purpose. For example, a driving disqualification order seeks to punish and deter certain types of offensive driving behaviour and also to protect the public from the risk of harm occasioned by the bad or antisocial driving of others. In the context of disqualification orders for driving under the influence of alcohol, it would seem to follow that the greater the margin by which the driver's blood alcohol limit exceeds the prescribed or permitted limit, the longer should be the period of time for which he is disqualified; likewise, if by reason of these circumstances, damage or injury was caused to others.

9 What might well *not* be a factor that affects the length of the disqualification order could be the belligerent conduct of the offender upon apprehension, although that would likely be a factor that warrants substantially increasing the fine imposed or imposing a term of imprisonment. This is how I put it in *Edwin s/o Suse Nathen v Public Prosecutor ("Suse Nathen")* [5] at [32]:

> I accept that belligerent ... conduct upon apprehension is yet another type of aggravating factor that may justify an increased fine or – in exceptional cases – imprisonment. But such conduct would not ordinarily affect the length of the disqualification order as it bears only a minimal relation to the rationale behind the imposition of a disqualification order. To put it another way, such conduct has no bearing in itself on the dangers to road users which is what the offence and in particular the disqualification order is generally meant to address.

The point ultimately is that the sentencing Judge, by paying close attention to the object of the statute, which creates the offence and prescribes the punishment, will often be guided as to how best the offender should be punished in order to further that object; and by so doing, the Judge will less likely be coloured by factors, which might in fact be tangential to what ought really to be the primary sentencing considerations.

10. Additionally, the legislation will also reveal Parliament's views as to the gravity of the offence as reflected in the range of sentences that will have been legislated and in particular, in the maximum or minimum sentences that may be imposed. The Court's role is to ensure that the full spectrum of sentences enacted by Parliament is carefully explored in determining the appropriate sentence in the case at hand.[6] In *Poh Boon Kiat v Public Prosecutor* ("*Poh Boon Kiat*"),[7] it was noted that in relation to individual vice-related offences, the full range of sentences prescribed by Parliament had not commonly been used as reflected in the precedents, and that it was incumbent on the sentencing Judge to note the available range and apply his mind to precisely where the offender's conduct fell within that range.[8] This is important if the Courts are in fact going to give effect to Parliament's intention.

11. Second, the sentence must be proportionate. A basic tenet of a just punishment is that the sentence be proportionate to the severity of the offence committed as well as the moral and legal culpability of the offender. In *Mohamed Shouffee bin Adam v Public Prosecutor*[9] ("*Shouffee*"), this was elaborated on in the specific context of aggregating sentences. The facts of the case bear recounting. The accused was driving through the Woodlands Checkpoint in Singapore when he was stopped and searched. Packets of crystalline substance were found in various parts of his car. The accused was charged with the importation, possession and consumption of various drugs and he pleaded guilty. He had a string of previous convictions, all of which were for drug related offences. But one especially notable feature of this offender's criminal history that was not picked up at first instance was that he had remained crime- (and presumptively, drug-) free for a period of

nine years immediately prior to the latest charges. He was sentenced below to an aggregate term of 17 years' imprisonment as a consequence of the Judge choosing the two heaviest sentences out of the four possible ones to run consecutively.

12. Under the Criminal Procedure Code, the Court is obliged in certain circumstances to impose at least two consecutive sentences.[10] Sentencing Judges have felt from time to time that this statutory imposition can impede their ability to impose a justly proportionate sentence. If true, this would be a concern because justice is undermined when a Judge with a sentencing discretion is constrained despite this to impose an aggregate sentence that on the whole, is disproportionate, in his judgment, to the circumstances of the offence. Two main principles guide the Court in the specific context of dealing with aggregating multiple sentences: the one transaction rule and totality principle. There are also subsidiary rules. Thus, for instance when each sentence has already been calibrated to take account of the aggravating factors relevant to each charge, those factors should not feature again in directing the Court to select harsher individual sentences to run consecutively. But I wish to elaborate on the two primary rules.

13. The one-transaction rule is an *evaluative* rule directed at filtering out those sentences that should not usually be ordered to run consecutively because otherwise, the offender might end up being doubly punished for offences that have been committed simultaneously or so close together and that invade the same legally protected interest, that in truth, they constitute a single transaction. Even then, as I noted in *Shouffee*, there may be exceptions.[11]

14. The totality principle is a principle of limitation concerned with ensuring that the aggregate sentence is proportionate to the overall criminality of the case.[12] This is an important consideration because the overall sentence may be crushing in all the circumstances if the totality principle were not carefully considered. In *Shouffee*, I said as follows:[13]

> The totality principle is a consideration that is applied at the end of the sentencing process. … [It] requires the court to take a "last look" at all the facts and circumstances and assess whether the sentence looks wrong ...
>
> If so, consideration ought to be given to whether the aggregate sentence should be reduced. This may of course be done by re-assessing which of the appropriate sentences ought to run consecutively ... In addition ... it could also be done by re-calibrating the individual sentences so as to arrive at an appropriate aggregate sentence.
>
> …
>
> The power of the court to recalibrate the discrete sentences when these are ordered to run consecutively arises from the common law principle of proportionality, to which I have already referred. It is unquestionably true that a sentencing judge must exercise his sentencing discretion with due regard to considerations of proportionality when considering any given case. If this is valid and applicable when sentencing a single offender to a single sentence of imprisonment, then I cannot see how it can cease to be so when the sentencing judge is required in the exercise of his sentencing discretion to impose an aggregate sentence for a number of offences. …

15. I have recounted this at some length because there is a danger that proportionality can become a convenient expression that sounds good but is shorn of real meaning if Judges and counsel fail to exercise care in what may often seem to be a routine task of selecting which among several sentences should run consecutively. For this reason, in *Shouffee* I laid down a sentencing framework for first instance Judges to apply when aggregating sentence as follows:[14]

    a. As a general rule, the sentencing Judge should exclude any offences, which though distinct … nonetheless form part of a single transaction. As I have noted above, this yields a provisional exclusion because there may be circumstances where the sentencing Judge may feel that it is necessary to depart from this rule.

    b. ... the sentencing Judge should then consider which of the available sentences should run consecutively.

    c. The sentencing Judge should ensure that the cumulative sentence is longer than the longest individual sentence.

    d. Beyond this, the consideration of which sentences should run consecutively is likely to be a multi-factorial consideration in which the Court assesses what would be a proportionate and adequate aggregate sentence having regard to the totality of the criminal behaviour of the offender.

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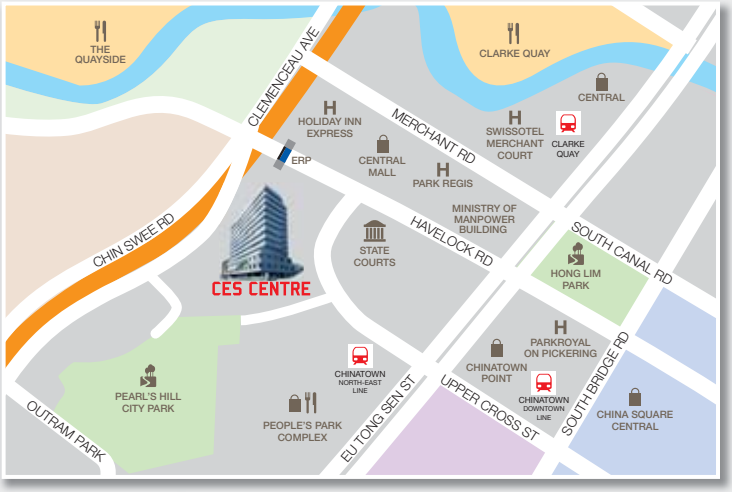

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e. ... It is important that while the sentencing Judge seeks to ensure that he has taken due regard of the overall criminality of the accused, he does not ... "re-input an aggravating consideration at [this] stage, if [that] has already been fully factored into the sentencing equation during the first stage".

f. ... the sentencing Judge must be careful not to have regard to any matters which are not the subject of a conviction or which the accused has not consented to being taken into consideration.

g. The sentencing Judge should then apply the totality principle ... by choosing different sentences or recalibrating sentences if this seems warranted.

h. In exceptional cases, the sentencing Judge may consider imposing more than two sentences consecutively. This may be appropriate in such circumstances as where the accused is shown to be a persistent or habitual offender, where there are extraordinary cumulative aggravating factors, or where there is a particular public interest.

16. For *Shouffee*, the application of this framework was the difference between a term of 17 years' imprisonment at first instance and a term of imprisonment of 12 years and 6 months on appeal.

17. A third principle is that like cases should be treated alike. Common factual situations provide a basis for a corresponding pattern of sentences, which can then be adjusted to accord with the detailed variations of particular cases.[15] Although sentencing is a matter of discretion, that discretion is never to be exercised arbitrarily. Broad consistency in sentencing also provides society with a clear understanding of what and how the law seeks to punish and allows for members of society to have regard to this in arranging their own affairs and making their own choices.

18. Fourth, the characteristics of the offender and circumstances of the offence will often have a bearing on sentencing. Given that the circumstances of two offences will not be identical, and therefore, due consideration and weight must be given to these matters so that the punishment can be tailored to the individual. This in turn ties in with the fifth principle, which is that alternative forms of punishment should be considered where applicable. A common example is when considerations of rehabilitation come to the fore as is often the case with youthful offenders. The idea is that the offender at this stage will stand a much better chance of reform and rehabilitation; and if punishment is selected with this end in mind, the chances of preventing a recurrence of offending behaviour is likely to be enhanced and maximised.

19. I suggest that, in any given case, the sentencing Judge would do well to bear in mind these guiding principles when selecting the appropriate punishment. Sentencing in our system is not mechanistic or formulaic. In the United States, pursuant to the Sentencing Reform Act of 1984, the Federal Sentencing Guidelines were devised to guide the federal sentencing Court within indicative ranges. These Guidelines operate largely as a grid of interconnected factors including in particular the conduct involved, the offence level with which the offender has been charged with, and the criminal history of the offender. Admittedly there is some, albeit modest, room to depart to take account of circumstances. The Guidelines emerged as a response to the sense that the Courts were exercising sentencing discretion in varying and even disparate ways and their aim was to reduce the unpredictability that was engendered as a result. But criticisms have been levelled at their rigidity and harshness towards certain offences and offenders, even while their effectiveness in reducing unpredictability remains debated.[16] The question whether the Federal Sentencing Guidelines have or have not met their intended purpose is much less important to the present discussion than is the fact that in our system, Judges have the opportunity and indeed the duty to take due account of all the circumstances in selecting an appropriate sentence.

IV. Providing Reasons in Sentencing

20. This brings me to the next point and that is the giving of reasons when sentencing. The legislation will in most instances provide for judicial discretion in sentencing. But this is not an unfettered discretion. Courts are accountable for their sentencing decisions and it is, therefore, incumbent on Judges to explain, at least in brief terms, the reasons that underlie the sentencing decision.

21. The judicial duty to give reasons is not a new concept. Lord Denning once observed that "[i]n order that a trial should be fair, it is necessary, not only that a correct decision should be reached, but also that it should be seen to be based on reason; and that can only be seen, if the judge states his reasons".[17] The duty has been recognised by our Courts in a number of authorities,[18] though of course, it should not be overlooked that the degree of detail in which the reasons are explained should correspond to that which is necessary to meet the requirements of a particular case.[19]

22. Judicial reasoning is all the more important in criminal cases because personal liberties are affected. In general, these reasons should be prepared and delivered with a number of objectives including these in particular:

    a. To enable the accused to understand the basis upon which the Judge convicted and sentenced him;

    b. To signal sentencing trends to all stakeholders including the Prosecution, the Defence Bar and, ultimately, the public;

    c. To reflect the due consideration of the issues by the Judge and to assure the legitimacy of the judiciary in the eyes of the public. This is how the point was put in *R v Sheppard*:[20]

    d. Decisions on individual cases are neither submitted to nor blessed at the ballot box. The Courts attract public support or criticism at least in part by the quality of their reasons. If unexpressed, the judged are prevented from judging the Judges.

    e. To enable an appellate court to understand the Judge's decision with a view to determining whether in all the circumstances, appellate intervention is warranted;[21] and

    f. To guide future Courts when sentencing offenders for similar offences. Where the Judge's reasons for imposing a particular sentence are not made known, it may not be safe to rely on that as a precedent. Moreover in such circumstances, the sentencing Judge relying on the decision might lose sight of the particular facts and circumstances which are of the first importance in sentencing.[22]

23. Where appellate Judges are concerned, the last of the factors noted above assumes particular importance. It must be noted that the State Courts deal with the significant majority of criminal cases in Singapore. In the small proportion of cases that come on appeal, among the primary functions of the appellate Judge is to provide guidance and clarity in sentencing law and practice. Appellate Judges have the duty to consider and resolve with reasoned judgments, incongruent, contradictory or uneven sentencing precedents and practices. This was the approach taken, for instance, in *Edwin s/o Suse Nathen*[23] in relation to the offence of driving when intoxicated; in *Yap Ah Lai v Public Prosecutor* ("*Yap Ah Lai*")[24] in relation to the offence of importing duly unpaid tobacco products; and, most recently, in *Poh Boon Kiat*[25] in relation to vice-related offences.

24. In recent months, the decisions of the appellate courts have also clarified the position in relation to the relatively straightforward matter of the treatment of aggravating and mitigating factors. At one level, this might seem to be the most basic of considerations for counsel as well as for sentencing Judges. Yet, the following seemingly obvious aspects of how these should be dealt with have had to be clarified:

    a. That the absence of an aggravating factor is neutral to sentencing and cannot be equated with or treated as a mitigating factor;[26]

    b. That offence-specific aggravating and mitigating factors should be identified by the courts and these will generally even if not invariably be linked to the rationale of sentencing that applies in relation to that particular offence;[27] and

    c. As I have already mentioned, that care must be taken to avoid double-counting aggravating factors or taking factors that are already inherent in the definition of the offence as an aggravating aspect of the offence.[28]

V. Sentencing Guidelines

25. I have touched on the important role that appellate courts play by laying down sentencing guidelines. But it would be useful to make some brief observations as to *how* these may best be used. As the very name suggests, these are meant to provide guidance and indicative benchmarks for sentences. The primary object is to provide a degree of predictability as well as to achieve some measure of consistency so that like cases are treated alike. The sentencing guidelines can also help to ensure that the full range of sentencing options is utilised by sentencing Judges. But we must remember that these guidelines are no more than a judicial creation designed to aid the sentencing Judge in the discharge of his functions. While seeking to achieve consistency in sentencing, a key element that will always underlie the use of these guidelines is the flexibility with which they must be applied so as to achieve the just outcome in each case.

26. It virtually goes without saying that neither the guidelines and benchmarks in general nor the suggested ranges usually contained within them, can be regarded as

rigid or impermeable. They certainly cannot operate as a tally sheet to be unthinkingly applied by sentencing Courts. Indeed, this must follow even from the simple fact that these guidelines do not and cannot encompass every conceivable fact or consideration that may bear on the sentencing calculus. For example, the drink-driving benchmark considers only the level of alcohol in the offender's blood or breath and not the manner in which he drove or other mitigating or aggravating circumstances. In effect the benchmarks serve as a starting point from which Courts can develop the precise sentence to be imposed in each case after a careful assessment of all the circumstances. Ultimately, even in considering these benchmarks and guidelines, the Court must always be aware that in fixing a sentence, the Court is exercising a *discretionary* judgment and the guidelines cannot and do not prescribe the exercise of that discretion.

27. To introduce some structure in the development of these guidelines, we formed the Sentencing Council in 2013, chaired by Justice Chao Hick Tin and on which I sit as an *ex-officio* member. The Council aims, among other things, to promote the development of a methodology and framework that will enhance consistency in sentencing by identifying areas in which the issuance of a judgment containing sentencing guidelines might promote coherence or consistency in sentencing. Appeals in these areas may then be assigned for hearing before a specially designated panel of three Judges, with a view to their considering the issuance of guideline judgments. Unlike some other jurisdictions in which sentencing panels or councils have been formed and function in a non-judicial capacity with a focus on data collection and on sentencing trends and practices, our Sentencing Council, which is constituted entirely of judges and judicial officers seeks to identify areas that would benefit from judicial pronouncements at an appellate level. As the jurisprudence of these panels builds up over time, it is hoped that this will make an important contribution towards consistency and clarity in our sentencing practice. Of course, even aside from this process, the appellate Judges can and do prescribe sentencing guidelines whenever they deem it appropriate.

VI. Prospective Overruling

28. But the creation of sentencing guidelines and benchmarks can give rise to transitioning problems. This arises because shifts in societal concerns may conceivably cause shifts in sentencing; or at a more mundane level, if it turns out that the previously prevailing sentencing practice was misinformed or mistaken. How should a Court approach this without doing violence to the legitimate expectations that offenders may have formed based on previously entrenched precedents that are now considered unreliable?

29. It is a core principle to the Rule of Law that rules are meant to be prospective, open and clear in order to be able to guide conduct.[29] This is articulated in art 11(1) of our Constitution which prohibits punishment on the basis of a retroactive criminal law and in the maxim *nullum crimen sine lege* (which means that conduct cannot be punished as criminal unless some rule of law has already declared conduct of that kind to be criminal and punishable as such). Those who have conducted their affairs on the basis of a reasonable and legitimate understanding of the law may expect that they should not be penalised if a later judicial pronouncement establishes that the interpretation was wrong. But in the common law system, judicial pronouncements are by default, unbound by time, and apply both retroactively and prospectively. The Court's pronouncement of the law would thus affect the specific offender before it as well as those yet to come. To balance the tension between the retroactive operation of the common law system and the Rule of Law value of laws being pronounced and applied prospectively, some Courts have developed and applied the concept of prospective overruling in selected cases. In Singapore, judicial pronouncements are by default fully retroactive, but the doctrine of prospective overruling is also recognised and has been applied. Appellate courts thus have the discretion to restrict the retrospective effect of their pronouncements within a framework including these factors: [30]

    a. the extent to which the law or legal principle concerned is entrenched;

    b. the extent of the change to the law caused by the new ruling;

    d. the extent to which the change of the law is foreseeable; and

    e. the extent of reliance on the law or legal principle concerned.

30. A clear example of the application of prospective overruling in Singapore may be found in *Abdul Nasir bin Amer Hamsah v Public Prosecutor* ("*Abdul Nasir*").[31] The appellant had been sentenced to life imprisonment and 12 strokes of the cane for kidnapping. The prevailing

practice on the part of the Executive had been to treat a sentence of life imprisonment as equivalent to a sentence of 20 years' imprisonment. However, life imprisonment was interpreted by the Court of Appeal in *Abdul Nasir* to mean the whole of the remaining period of the convicted person's natural life. This was a dramatic change from a hitherto well-established and well-known position and would have been crushing if it were applied retroactively. Indeed, the Court decided that to apply its ruling to the appellant would be grossly unfair and accordingly held that its decision would only take prospective effect.

31. A more recent decision where the issue was fully considered is *Public Prosecutor v Hue An Li* ("*Hue An Li*").[32] The accused had fallen asleep at the wheel and collided with a lorry thereby causing the death of a passenger in the lorry. She pleaded guilty to the charge of causing death by a negligent act and was fined $10,000 and disqualified from driving for five years. The accused placed reliance on a previous decision of the Court in *Public Prosecutor v Gan Lim Soon* ("*Gan Lim Soon*"),[33] where it had been said that a fine would be sufficient in most cases of causing death by a negligent act. But the relevant section of the Penal Code had been amended in the period since the pronouncement of the Court in *Gan Lim Soon* and as a result, it was held that the position in *Gan Lim Soon* was no longer tenable. The Court held that the starting point for such an offence was properly, a period of imprisonment for up to four weeks.[34] However, reliance had been placed on *Gan Lim Soon* by various Courts at first instance and on appeal, both before and after the amendments to the Penal Code had been made. *Gan Lim Soon* was thus well entrenched in the law and changes in the law in relation to it were not foreseeable. Therefore, prospective effect was given to the Court's decision in *Hue An Li* in relation to its decision to depart from *Gan Lim Soon*.

32. In *Poh Boon Kiat*,[35] the same approach was taken on the basis that a revised benchmark which made imprisonment mandatory for first time offenders for certain vice-related offences was contrary to the legitimate expectations of the accused as the entrenched position had been a fine.[36]

33. Prospective overruling raises some interesting issues as to whether the revised benchmark which is expressly stated to apply prospectively should take such effect immediately upon pronouncement so that trial Judges would be bound to apply the revised benchmarks immediately; or only to cases that are commenced after the pronouncement; or only to conduct committed after the pronouncement. There is no straightforward answer and this will have to be resolved in time through case-law. But as a wholly tentative observation offered without the benefit of argument, if the primary underlying concern is that the legitimate expectations, upon which parties have arranged their affairs, should not be defeated, then it would suggest that the new rule would only apply to conduct that takes place after the rule has been pronounced. If however, the focus is instead on the institutional limitations of the judicial role and the concern that Judges should not be legislating transitional provisions to cover their pronouncements, then the new rule should be applicable to any case falling for determination after it has been pronounced. These are vexed issue that I suspect may have to be dealt with in due course.

VII. The Role of the Prosecution in Sentencing

34. I have thus far focused on the role and practice of the Court in sentencing. Let me turn briefly to consider another major stakeholder in the criminal justice system: the Public Prosecutor. **The Prosecution owes a duty to the Court and to the wider public to ensure that the factually guilty and only the factually guilty are convicted, and that all relevant material is placed before the Court to assist it in its determination of the truth.**[37] **This duty extends to the stage of sentencing where the Prosecution should place all the relevant facts of the offence and the offender before the Court. Furthermore, the Prosecution should always be prepared to assist the Court on any issues of sentencing.**[38] **But what does this mean in practical terms?**

35. It is perhaps possible to extrapolate from those principles that are widely accepted and to arrive at some thoughts about the prosecutorial role in sentencing. First, the Prosecution acts only in the public interest. That immediately distinguishes it from those who appear in a private law suit to pursue the interest of a private client. On this basis, there would generally be no need for the Prosecution to adopt a strictly adversarial position. Second, that public interest extends not only to securing the conviction in a lawful and ethical manner of those who are factually guilty, but also to securing the appropriate sentence.

36. The latter point is a critical one. Private victories tend to be measured by the size of the damages awarded or the pain inflicted on the opposing side. But the prosecutorial function is not calibrated by that scale. The appropriate

sentence will often *not* bear a linear relationship to the circumstances. A sentence of probation in one case may be more appropriate than a custodial sentence in another. Hence, this calls for the Prosecution to reflect on why it takes a particular view of what sentence is called for in a given case and to articulate those considerations so that the sentencing Judge can assess these and assign them the appropriate weight.

37. I suggest that the Prosecution can play a vital role by identifying to the Court:

    a. The relevant sentencing precedents, benchmarks and guidelines;

    b. The relevant facts and circumstances of the offence and of the offender that inform where in the range of sentences the case at hand may be situated;

    c. The offender's suitability and other relevant considerations that may bear upon whether particular sentencing options that might be available should be invoked;

    d. The relevant aggravating and mitigating considerations;

    e. The relevant considerations that pertain to aggregating sentences

    f. Any particular interest or consideration that is relevant and that pertains to the victim; and

    g. Where it may be appropriate to order compensation to be paid to the victim, the relevant considerations (including the appropriate quantum).

38. While the Prosecution may take the position that a certain sentencing range is appropriate in the circumstances, it must present all the relevant materials to enable the Court to come to its own conclusion as to what the just sentence should be.

39. These broad guidelines can be supplemented with another very practical point. All the relevant facts must be proven beyond a reasonable doubt; and in guilty pleas, the accused must know all the facts on the basis of which he pleaded guilty. For the Prosecution to raise a fact undisclosed in the statement of facts or ask the Court to draw an inference from the facts at the stage of sentencing may be unfairly prejudicial to the offender, who cannot be punished for something that is not proven.[39] Hence, the statement of facts must be prepared with this in mind.

40. The Court's role in arriving at the correct sentence can be greatly assisted by the Prosecution and I look forward to the Prosecution adopting these suggestions in formulating sentencing submissions.

VIII. Conclusion

41. I began this address by considering some theories of crime and punishment; and then examined some of the basic nuts and bolts of sentencing from the perspective of the Courts and the role of the Prosecution in sentencing.

42. Before closing, let me make some observations on the need to keep an eye on what happens after the sentence has been served. In most cases, the end goal of punishment must be to reintegrate offenders into society. The criminal justice system would not be complete without such a narrative. The reintegration of offenders extends beyond the rehabilitation and reformation of the offender and focuses instead on the offender's re-inclusion or restoration as a member of society after serving the sentence. It is concerned with allowing full citizenship together with its accompanying rights and responsibilities to resume. The ex-offender should be able to move forward in society[40] and not be punished further by being cast aside whether intentionally or otherwise. *Unlike* rehabilitation which often works on the offender through reformative or curative programmes, reintegration works with the offender so that he can become the agent of his own reform.[41] There are considerable social benefits that can be traced to successful reintegration efforts, including reducing recidivism and the social costs of crime, and accessing a valuable pool of human resource. How then might we enhance the prospects of reintegration?

43. In traditional sentencing frameworks, the Court's role in reintegrating the offender would be to consider the objective of imposing a sentence that would rehabilitate and so promote the reintegration of the offender. Although the Singapore Prisons Service provides academic and vocational training to prisoners in order to improve their prospects of employment upon release,[42] the Court may take the view that other types of sentences might be more beneficial to the long term prospects of reintegration and might on this basis choose to order probation, reformative training or community-based sentences.

44. Going beyond this, there are plans to extend the emphasis on reintegration by monitoring how offenders progress *after* sentencing and to hold offenders accountable for change. This is being done

through a new innovation referred to as the Progress Accountability Court, working in collaboration with the Singapore Prisons Service and the Ministry of Home Affairs. The Progress Accountability Court will consider the offender's present continuing conduct, while being cognisant of his past, and work with him towards securing his future. The offender will be invited to accept responsibility for his own progress and various aspects of his conduct will be pointed out both *of* as well as *for* improvement.

45. In the case of young offenders there will rarely be any conflict between the public interest and that of the offender. The public have no greater interest than that the young offender becomes a good citizen.[43] There is also often an interest in keeping young offenders out of the prison environment where they might more likely come into contact with hardened criminal elements and also face stigmatisation after being released.[44] To prevent this, alternative sentencing options are available which may better fulfil the dominant objectives of rehabilitation and reintegration in relation to young offenders. As noted in *Public Prosecutor v Mohammad Al-Ansari bin Basri,*[45] probation and reformative training are two forms of sentences which are an expression of those dominant objectives.

46. Probation orders do not give rise to a conviction and so these will enable offenders to maintain a crime-free record. The idea is to wean them away from any propensity towards long time involvement in crime, and to enable and encourage reform so that they may become self-reliant and useful members of society.[46] One of the legislative objects of the Probation of Offender Act[47] is to rehabilitate young offenders. The Parliamentary Debates referred to the fact that young offenders would "benefit from the personal care, guidance and supervision of a Probation Officer", giving them an opportunity "to turn over a new leaf and become … responsible member[s] of society".[48] A probation order is intended to provide support for the individual so as to assist him in avoiding further crime. This in turn advances the greater public interest by helping to protect society as a whole.[49]

47. Reformative training is a sentencing option which is only available to persons under the age of 21, and can be imposed in lieu of imprisonment, even where the offender already has a criminal record. It thus affords the Courts with some flexibility. Offenders are "constructively engaged" during the period of incarceration and subject to a compulsory post-release phase during which they will be placed under supervision and are liable to be recalled for failure to comply with the conditions imposed on them. The regime involves a combined effort on the part of the trainees' mentors, family members and senior re-integration officers from the supervision centre to ensure a smooth return into society.[50]

48. With the new Criminal Procedure Code which came into effect in 2011, our Courts have also been empowered to impose community-based sentences which afford the sentencing Judge considerable flexibility in dealing with offenders with a view towards enhancing their chances of reintegration while maintaining the penal objectives of deterrence, retribution and crime prevention.

49. Reintegration through the use of community-based sentences is enhanced primarily because the offender is not dislodged from society. This minimises stigmatisation and exclusion and hence inevitably, makes reintegration much easier. Reintegration might also be enhanced by pairing a sentence of probation with appropriate conditions, thereby providing a more focused rehabilitative and re-integrative structure for the offender.[51]

50. Ladies and gentlemen, the task of sentencing an offender justly is, definitely, a complex exercise. This is a question that concerns not only the Courts but all the stakeholders in the criminal justice system. With the assistance of the Prosecution and the Defence Bar, the Courts can expect to be well-placed to discharge their function of imposing the just and appropriate sentence for each case. But the system would be enhanced if the stakeholders kept firmly in mind the goal of ensuring that after the sentence has been served, ex-offenders are re-integrated into mainstream society. I believe the discussions in the course of this Conference will indeed raise many interesting issues and perspectives and provide much further material for debate and study. I wish you all a most fruitful conference. Thank you.

* I am deeply grateful to my law clerk, Leong Yi-Ming, for the considerable assistance she gave me in the research and preparation of this paper.

Notes

1 Subordinate Courts, Annual Report 2012: "Upholding Justice, Serving Society, Inspiring Trust", p 38.

2 See for instance [2008] 2 SLR(R) 684 ("") at [33].

3 L Zedner, (Oxford University Press, 2004), p 85.

4 [2013] 4 SLR 1139 ("").

5 at [44]; [2012] 3 SLR 776 at [24].

6 [2014] SGHC 186.

7 At [60]-[61]. See also [2014] SGHC 171 ("") at [59]-[60].

8 *Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*").

9 Section 307(1), Criminal Procedure Code (Cap 68, 2012 Rev Ed).

10 at [41], [45] and [46].

11 at [52].

12 At [58], [59] and [63].

13 at [81].

14 DA Thomas, (Heinemann, 1979), p 30.

15 AW Campbell, (Thomson West, 2004), p 143.

16 A Denning, *The Road to Justice* (Stevens, 1955), p 29.

17 [2012] 1 SLR 676 (""), [2013] SGCA 20, [2014] 3 SLR 180 ("").

18 at [30].

19 [2002] SCC 6 at [5].

20 at [58].

21 See at 11[d], [39] and [52].

22 [2013] 4 SLR 1139.

23 [2014] 3 SLR 180.

24 [2014] SGHC 186.

25 [2011] 1 SLR 481; at [24].

26 See for example at [26]-[33]; at [81]-[87].

27 See for example at [87].

28 at [109].

29 at [124].

30 [1997] 2 SLR(R) 842.

31 [2014] SGHC 171.

32 [1993] 2 SLR(R) 67.

33 At [60]–[61].

34 [2014] SGHC 186.

35 At [112]–[113].

36 [2011] 3 SLR 1205 at [200].

37 (1987) 9 Cr App R (S) 216, at 218; [2014] HCA 2 at [38]-[39] and [57].

38 at [36].

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48 *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 at [41].

49 *Public Prosecutor v Saiful Rizam bin Assim and other appeals* [2014] 2 SLR 495 at [20].

50 See for example *Public Prosecutor v Vikneshson Marian s/o Devasagayam* [2013] SGDC 134; *Public Prosecutor v Tan Yong Chang* [2012] SGDC 161.

Just Walk – Justice on the Move

The Chief Justice, Judges and members of the Bar participating in the walk

The Law Society of Singapore held its inaugural Walkathon, Just Walk "Justice on the Move" on 10 January 2015. Approximately 2,000 lawyers, friends from the legal fraternity and the wider community participated in the 5.4km walk past key legal institutions such as the Supreme Court, the State Courts, Attorney-General's Chambers, Ministry of Law and the Law Society of Singapore, highlighting the community's belief that fairness and justice are of paramount importance.

Participants included, amongst others the Honourable Chief Justice Sundaresh Menon, Attorney-General VK Rajah, Justice Steven Chong, Justice Vinodh Coomaraswamy and Judicial Commissioner See Kee Oon. The morning walk concluded with participants giving a long round of applause to celebrate the contributions of the late Subhas Anandan before enjoying a lively concert featuring the talented Abraham Vergis from Providence Law, The Unbillables, a nine-man band from Backer & Mackenzie.Wong & Leow, amongst others.

Just Walk "Justice on the Move" marked a concerted attempt to ensure widening income gap or social divide does not prevent individuals from obtaining adequate legal representation. The walkathon raised more than $2 million which includes a dollar-for-dollar matching contribution from the Government's Care and Share grant. The funds raised from the Walkathon will go towards the Society's Justice for All initiative and will support its outreach work, increase awareness and provide legal representation to those who are in need but are of limited means.

One such initiative is Enhanced CLAS which now covers a broader range of offences and provides unbundled services which assist those who have decided to plead guilty. It also boasts five CLAS Fellows who work on CLAS cases full-time, representing CLAS applicants. Enhanced CLAS hopes to reach out to more than 6,000 people a year.

Just Walk "Justice on the Move" would not have been a success without the support of our stakeholders, the community and members. We are pleased to acknowledge our donors below.

A word from our participants about Just Walk

"We were very pleased to be part of the Just Walk "Justice on the Move" initiative in support of the Law Society of Singapore's outreach efforts for pro bono programmes. The event was well organised and the walk covering the key institutions in Singapore's legal landscape was especially meaningful for the State Courts, as we celebrate the 40th anniversary of the State Courts building this year in September. It was extremely heartening to see the great enthusiasm and support from my colleagues and all those who walked with us."

Judicial Commissioner See Kee Oon, Presiding Judge of the State Courts

"The Just Walk event was an excellent opportunity for the legal fraternity and its stakeholders to come together to support a good cause. The Supreme Court was very pleased to be able to be a part of this meaningful event. I am very heartened by the enthusiasm and efforts of my colleagues who not only participated in the walkathon but raised funds for pro bono services with a Charity Bazaar."

Juthika Ramanathan, Chief Executive, Supreme Court

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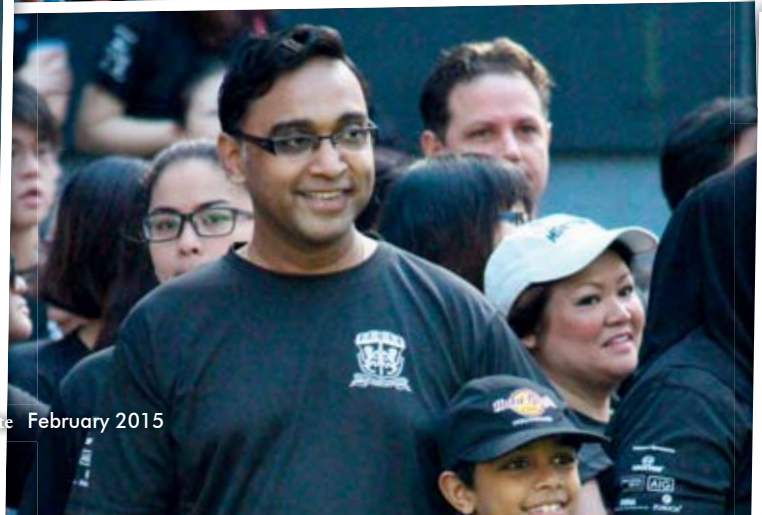
And the Walk Begins

Just Walk

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In November 2014, a dedicated piece of legislation to combat human trafficking was debated and passed in Parliament by way of a private member's Bill after close consultation with the public and the Singapore Inter-Agency Taskforce on Trafficking-in-Persons. The article explains the reasons and motivations behind the introduction of the Prevention of Human Trafficking Bill and its main tenets.

Dismantling Human Trafficking: The Need for a Dedicated Piece of Legislation

Over the years, there have been attempts to deter human trafficking. These valuable attempts have come in the form of various pieces of legislation, including the Women's Charter, the Children & Young Persons Act and the Immigration Act. However, because these pieces of legislation were not specifically enacted to deter human trafficking, their effectiveness in that regard is limited.

Past Limitations

The Women's Charter does not criminalise the act of trafficking a man. The Children & Young Persons Act only applies to victims below a certain age. The Immigration Act deals more with situations of human smuggling where, by and large, the person smuggled consents to be smuggled.

In principle, none of these limitations should have prevented the criminalisation of the act of trafficking, ie neither the age nor the gender of the victim should prevent the prosecution of the offender, and consent of the victim to trafficking should be deemed invalid in law.

This suggested the need to enact a dedicated piece of legislation to deter human trafficking and, also, to protect the victims of it.

New Objectives

The objectives of the Prevention of Human Trafficking Bill are four-fold. First, the Bill clarifies our legal regime by providing a formal definition of trafficking-in-persons ("TIP") and prescribing appropriate penalties to allow us to deal with human trafficking in a more targeted and deterrent manner. Second, it empowers enforcement agencies with the necessary investigation and enforcement levers to tackle TIP. Third, it provides measures to protect and support trafficked victims, and encourage the reporting

of trafficking or suspected trafficking activities. Lastly, the Bill will bring Singapore closer in line with international standards, and uplift efforts to combat TIP in Singapore and the surrounding region.

A New and Relevant Definition

Significantly, the new law dedicated to criminalise trafficking in persons possesses the added ability to deter acts beyond the more known type of exploitation – essentially, the dedicated legislation has the width to cover not just sexual exploitation but exploitation of innocent victims for different, lesser known, purposes, such as labour trafficking and organ trafficking.

Therefore, the recently passed Prevention of Human Trafficking Bill states:

> Any person who recruits, transports, transfers, harbours or receives an individual... by means of
>
> a. the threat or use of force or other forms of coercion;
>
> b. abduction;
>
> c. fraud or deception;
>
> d. the abuse of power
>
> e. the abuse of a position of vulnerability of the individual; or
>
> f. the giving to, or the receipt by, another person having control over that individual of any money or other benefit to secure that other person's consent
>
> for the purpose of exploitation (whether in Singapore or elsewhere) of the individual shall be guilty of an offence.

Significantly, the definition of exploitation is a wide one, ie "exploitation" includes not just sexual exploitation but the removal of organs, forced labour, slavery or practices similar to slavery or servitude.

From the definition above, the law makes clear the three necessary elements for the offence to be made out. First, there must be an "act" of recruitment, transportation, transfer, harbouring or receipt of an individual. Second, this act must be accompanied by "means" of a threat or use of force, or any other form of coercion, of abduction, or fraud, or deception, or of an abuse of power or a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over the trafficked victim. Third, these must be done for the "purpose of exploitation", such as sexual exploitation, forced labour, or organ removal. As TIP is a serious charge, all three elements must be proved. Cases which fall short of the required thresholds may still be taken up by other existing laws, where appropriate.

Less Distinction Makes for a More Versatile Law

No distinction is made between a female or a male victim and, importantly, the consent of a victim of trafficking in persons to the intended exploitation is irrelevant in the eyes of the law when determining whether an offence of trafficking in persons has been committed.

Under the Prevention of Human Trafficking Bill, gender, consent and age will not form barriers to prosecution – this allows for a more versatile law.

An Answer to Hybrid Exploitation

The law has the ability to deal with hybrid types of exploitation. For example, if a lady comes to Singapore under the belief that she will work as a waitress in a restaurant but when she arrives is forced, against her will, into providing sexual services to customers in addition to serving them drinks and she is not paid for her service, then such a case could arguably fall under two limbs of exploitation – namely, sexual exploitation and forced labour. This signals that no single type of exploitation is more heinous than the other.

The Law Addresses the Transnational Nature of the Crime

It does not matter whether the act of trafficking in persons is done partly in and partly outside Singapore provided that the act, if done wholly in Singapore, would constitute an offence of trafficking in persons. This allows the law to recognise the transnational nature of the crime and deter it.

Public Consultations

In the course of 2014, six public consultation sessions were convened with members of the public, the legal fraternity, religious and secular groups, NGOs and VWOs to seek views and suggestions on the proposed Prevention of Human Trafficking Bill. These views and suggestions – and the open sharing of experiences of those working with and amongst trafficked persons – canvassed from 300 participants were instrumental in shaping the Bill. Key findings during the public consultations were considered carefully. For example, it was raised during the public consultation that Singapore's definition of key TIP terms should be closely aligned with international benchmarks and standards, but should also be adapted to suit the local context. Another key finding was that the Bill should cover TIP perpetrators and all parties in the criminal value chain, including abettors, middlemen and facilitators of TIP offences. Essentially, the responses during the public consultations assisted in achieving the following features in the Bill:

International standards

As aligned with international standards, the Bill defines a person under 18 years old as a child. The law stipulates lower requirements for the trafficking offence to be made out for child victims in recognition of their vulnerability to exploitation. To afford a child greater protection under the law, there is no requirement for the Prosecution to prove the methods or means used. It is sufficient for the Prosecution to show that there was an act to recruit, transport, transfer, harbour or receive a child victim for the purposes of exploitation.

Recruitment and transportation overseas

As TIP is a transnational crime, the law holds a trafficking offender liable in Singapore even if his acts which comprise the offence straddle between Singapore and another jurisdiction. This recognises the transnational nature of trafficking activities where the acts of recruitment and transportation may take place overseas with Singapore being the destination or the transit point.

Ringleaders and masterminds

Besides traffickers, persons who abet the offence are similarly liable to be punished. The law sets out acts which constitute abetment of the trafficking offence under the Penal Code. These include conveying instructions, providing transport or shelter, or participating in any act to promote the actual or intended exploitation of the trafficked victim. The scope of the law covers ringleaders and masterminds who order their subordinates to carry out the trafficking acts, as well as middlemen who knowingly make arrangements to place trafficked victims with their exploiters.

Profiting from TIP

It will additionally be an offence for a person to receive any payment in connection with the exploitation of another person with the knowledge that he or she has been trafficked. This targets persons such as pimps and labour agents who have received payment from the trafficking activity but who are not directly involved in the trafficking offence itself or in the abetment of it.

Protection of victims

The best way to protect those at risk of becoming victims is to deter human trafficking altogether. But, deterrence of the crime without a focus on the vulnerable and innocent victims would not be ideal. Thus, the law provides for temporary shelter so that recovery can take place in the safety of a secure environment beyond the reach or manipulation of the offender or associated syndicates. Counselling is also legislated as a victim care measure, in the hope that this will assist victims in their recovery. Further support measures in the form of trials **in camera** and the non-disclosure of victims' names in the media are part of the legislation so that the giving of testimony in Court, which can be a traumatic event for victims, will be made somewhat easier.

Calibrated Penalties

To provide sufficient deterrence and reflect the severity of human trafficking, the Bill prescribes stiff penalties in the form of mandatory imprisonment terms and fines. Under cl 4(1), a first-time offender of a trafficking offence shall be punished with a fine not exceeding $100,000 and with imprisonment for a term not exceeding 10 years.

Convicted persons may further be liable to caning not exceeding six strokes, which can be imposed at the Court's discretion where warranted. To send a stronger signal against those who are minded to re-offend, the penalties for a repeat offender will be a fine not exceeding $150,000 and

imprisonment for up to 15 years, essentially up to one and a half times what a first offender could be liable to receive. Caning of up to nine strokes will also be mandatory for repeat offenders. Similar penalties are prescribed for the offence of knowingly receiving payment in connection with exploitation of a trafficked person.

Taken together, these provisions create an encompassing umbrella of offences that target the main TIP actors, and allow us to take them firmly to task.

In calibrating the penalties, they were benchmarked against comparable crimes of somewhat similar gravity in other Acts, such as the offence of importing a woman for purposes of prostitution under s 373A of the Penal Code which also provides for a maximum 10-year imprisonment sentence.

Listing Aggravating Factors will Aid the Court in Sentencing

To further recognise the grave injustice suffered by victims of human trafficking, the legislation provides a non-exhaustive list of aggravating factors which the Court may take cognisance of when considering whether a harsher punishment is merited. Such factors include where:

1. the offence involves serious injury or death of the victim or another individual;

2. the trafficked victim was particularly vulnerable due to pregnancy, illness, infirmity, disability or any other reason, and the offender was aware of the trafficked victim's particular vulnerability;

3. the trafficked victim was a child; or

4. the offence exposed the trafficked victim to a life-threatening illness.

As an extension of these principles, and as mentioned above, where a person is convicted of a second or subsequent offence, the Court may sentence the person to a punishment one and a half times more severe than the amount of punishment the Court would have meted out to a first time offender.

The Selfless Work of Those Who Assist Trafficked Persons

When I visited a local shelter last year, before the Bill was introduced in Parliament, I was moved by the commitment of the staff in their care for trafficked women. During a tour of the centre, they shared the centre's philosophy: "It is worthwhile to leave the whole world behind to save one life". Such is the commitment of the many good people who assist the vulnerable who fall prey to trafficking syndicates.

The Bill shares that ethos. Indeed, if a syndicate is deterred from exploiting just one person as a result of this Bill, it would have served its purpose. Of course, it is hoped that the Bill will protect more than just one person from being exploited.

Conclusion

Human trafficking is an inhumane crime, which leaves victims buried in deep anguish. A dedicated piece of legislation allows us to deter this scourge and protect our most vulnerable. It attempts to empower the powerless and give a voice to the voiceless. It is hoped that the law will help deter exploitation of victims on our shores and the transhipment of victims through our country. It signals the values our society holds – the rejection of human exploitation and the willingness to protect and care for the vulnerable.

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In *Mohamad Fairuuz bin Saleh v PP* [2014] SGHC 164, a specially constituted three-judge panel of the Singapore High Court considered the proper construction of s 5 of the Probation of Offenders Act. In doing so, the Court identified anomalies in the effect of s 5 where probation is not a sentencing option for certain offences that are relatively less serious in nature. This article discusses the anomalies raised by the Court and proposes practical solutions to rectify those anomalies.

Probing the Law on Probation: Suggestions for Reform *Mohamad Fairuuz bin Saleh v PP* [2014] SGHC 264

Introduction

To any criminal law practitioner, the Court's power to grant probation as a sentencing option is of significant importance. Probation represents, to their clients, the key out of incarceration.

Section 5 of the Probation of Offenders Act (Cap 252, 1985 Rev Ed) ("POA") sets out the power of the Singapore Courts to grant probation. Section 5 uses three peculiar terms to create three categories of offences, namely:

1. Sentences which are "fixed by law";

2. Sentences carrying "specified minimum sentences"; and

3. Sentences carrying "mandatory minimum sentences".

For the latter two categories of offences, the Court can only grant probation if the offender:

1. is between 16 and 21 of age at the time of conviction; and

2. was not previously convicted of an offence with a mandatory or specified minimum sentence.

What do those three peculiar terms mean?

Setting the Scene

The learned Tay Yong Kwang J in *Lim Li Ling v PP* [2007] 1 SLR(R) 165 ("*Lim Li Ling*") considered those three terms in some detail. Tay J held that:

1. A "mandatory minimum sentence" means a sentence where a minimum quantum for a particular type of sentence is prescribed, and the imposition of that type of sentence is mandatory;

2. A "specified minimum sentence" means a sentence where a minimum quantum for a particular type of sentence is prescribed, but the imposition of that type of sentence is not mandatory; and

3. A sentence "fixed by law" is one where the Court has no discretion as to the type of sentence (which is mandatory) and the quantum of the prescribed punishment, and also includes "mandatory minimum sentences" and "specified minimum sentences".

However, counsels' (and their clients') desire to secure the invaluable key of probation has led to continued debate over

how each of those three terms should be interpreted. In *PP v Lin Zhi Yi* (Magistrate's Appeal No 361 of 2010) ("*Lin Zhi Yi*"), the Singapore High Court granted probation to a 23-year-old offender although the offence in question ostensibly carried a specified minimum sentence. The offender was convicted under s 14(1)(b)(i) of the Moneylenders Act 2008, which provided for "a fine of not less than $20,000 and not more than $200,000 or to imprisonment for a term not exceeding 2 years or to both". The option of granting a fine of not less than $20,000 ostensibly satisfied Tay J's interpretation of a "specified minimum sentence". Consequently, if one were to follow *Lim Li Ling*, it is arguable that the High Court did not have the power to grant probation in *Lin Zhi Yi*.

As the High Court's decision in *Lin Zhi Yi* was unreported, practitioners did not have the benefit of the Court's reasoning: how then should *Lin Zhi Yi* be reconciled with *Lim Li Ling*? The need for clarification was compounded when Part XVII of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") – enacted in 2010 to introduce "community sentences" – adopted the same three phrases in setting out the Court's power to grant community sentences.

The uncertainties in the law were recently addressed by a specially constituted three-judge-panel of the Singapore High Court (presided by Sundaresh Menon CJ) in *Mohamad Fairuuz bin Saleh v PP* [2014] SGHC 264 ("*Fairuuz*"). This note first summarises how the Court in *Fairuuz* had interpreted s 5 of the POA, before discussing the anomalies in the operation of s 5 that *Fairuuz* had identified. A review of the POA may, therefore, be timely. This writer offers certain practical solutions that may be considered by the legislature in ameliorating the anomalies identified by the Court.

Proper Interpretation of the POA

Section 5(1) of the POA comprises a main body and a proviso. The main body of s 5(1) of the POA reads as follows:

> 5.—(1) Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is **fixed by law**) is of the opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him, make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer or a volunteer probation officer for a period to be specified in the order of not less than 6 months nor more than 3 years (emphasis added).

Immediately following the main body of s 5(1) of the POA, a proviso reads as follows:

> Provided that where a person is convicted of an offence for which a **specified minimum sentence or mandatory minimum sentence of imprisonment or fine or caning** is prescribed by law, the court may make a probation order if the person —
>
> (a) has attained the age of 16 years but has not attained the age of 21 years at the time of his conviction; and
>
> (b) has not been previously convicted of any such offence referred to in this proviso, and for this purpose section 11(1) shall not apply to any such previous conviction (emphasis added).

The Court in *Fairuuz* agreed with *Lim Li Ling* on the interpretation of the terms "mandatory minimum sentence" and "specified minimum sentence" found in the proviso to s 5 of the POA. The Court, however, held that offences which have sentences that were "fixed by law" did **not** include offences which carried mandatory or specified minimum sentences. Be that as it may, the Court recognised that the interpretation in *Lim Li Ling* would ultimately yield the same result.

Specified Minimum Sentence

Out of the three terms under consideration, the Prosecution's submissions on the term "specified minimum sentence" merit mention. This term posed some difficulty because of a dearth of legislative material and case law that would shed light on its proper interpretation.

The Prosecution contended that *Lim Li Ling*'s interpretation was incorrect. According to the Prosecution, an offence would carry a "specified minimum sentence" only if the punishment provision carried two elements:

1. A sentence which is at the discretion of the Court to impose but which if it is imposed carries with it a stipulated minimum quantum; **and**

2. An independent mandatory sentence.

This point is better illustrated with an example. According to the Prosecution, if an offence provided for a discretionary fine of at least $10,000, or a discretionary jail term not exceeding five years, that was not an offence which carried a "specified minimum sentence". However, if an offence provided for a discretionary fine of at least $10,000, and a mandatory jail term not exceeding five years, that was an offence which carried a "specified minimum sentence".

The basis for the Prosecution's submission was the Explanatory Statement to the Probation of Offenders Bill (Bill No 25 of 93). The Explanatory Statement provided as an example of a "specified minimum sentence" s 4 of the Betting Act (Cap 21, 1985 Rev Ed). Any person convicted of an offence under s 4:

> … shall be liable on conviction to a fine of not less than $10,000 and not more than $100,000 and shall also be punished with imprisonment for a term not exceeding 5 years.

Section 4 of the Betting Act carries with it two types of punishment – a discretionary fine, which is subject to a minimum amount, and mandatory imprisonment. Consequently, the Prosecution's argument was that the term "specified minimum sentence" must be construed narrowly in strict compliance with the example of s 4.

The Prosecution's position was not accepted. According to the Court, the term "specified minimum sentence", on its plain meaning, refers to the sentence that is imposed rather than the range of punishment options that are prescribed. The only part of the punishment provision in s 4 of the Betting Act that could be read as containing a specified minimum sentence was the fine.

Be that as it may, what is noteworthy was the effect that the Prosecution's argument sought to achieve. Underlying the Prosecution's submission is a recognition that the scope of the term "specified minimum sentence" should not be overly expansive.

Legislative materials suggest that the proviso to s 5 of the POA was enacted to restrict the circumstances under which probation could be granted for "serious" offences. During the reading of the relevant Bill, Minister Yeo Cheow Tong stated that the proviso was intended to deny probation for "very serious offences, like rape, robbery, being part of a syndicate in extortion" (Singapore Parliamentary Debates, Official Report (10 November 1993) vol 61 at col 936):

> I would like to clarify that only offenders who are guilty or who have been convicted of serious offences are denied probation, ie, they are convicted and sentenced with a mandatory minimum sentence and therefore they are denied probation. Sir, these are for very serious offences, like rape, robbery, being part of a syndicate in extortion, and so on. For the other lesser offences they are still eligible for probation.

The terms "minimum mandatory sentence" and "specified minimum sentence" used in the proviso therefore acted as proxy indicators for offences which were "serious". Probation would not be available as a sentencing option for adult (or repeat youth) offenders in offences carrying mandatory or specified minimum sentences.

Consequently, if the scope of the term "specified minimum sentence" was overly expansive, there would potentially be more offences for which the Court could grant probation only when the two conditions in the proviso were met. That would have the effect of curtailing the Court's powers to grant probation – an effect the Prosecution's submission in *Fairuuz* sought to avoid.

Deficiencies of the POA

Although the Prosecution's submission was not accepted, the Prosecution's underlying concern not to restrict the availability of probation as a sentencing option was shared by the Court. The Court identified certain anomalies where probation was not available as a sentencing option for offences which were relatively less serious in nature.

Specifically, the Court observed that the usage of "minimum mandatory sentence" and "specified minimum sentence" as proxy indicators for "serious" offences created anomalous results (*Fairuuz* at [74]-[76]):

> [W]e would like to make some observations in relation to what might appear to be anomalous in some respects as to the circumstances in which probation might or might not be available as a sentencing option. Specifically, the concern is that probation would not be a sentencing option for adult offenders (as a result of para (a) of the Proviso) and repeat youth offenders (as a result of para (b) of the Proviso) for what might appear to be relatively less serious offences, whereas it might well be a sentencing option for adult offenders and repeat youth offenders who have committed what are seemingly more serious offences just because Parliament has not thought it fit to impose either a mandatory or specified minimum sentence in the latter instances. An illustration will bring the point into focus.
>
> A first time offender convicted of an offence for the possession, exhibition or distribution of uncensored films under s 21 of the Films Act (Cap 107, 1998 Rev Ed) shall be liable to "a fine of not less than $100 for each such film that he had in his possession (but not to exceed in the aggregate $20,000"). As a fine is the only prescribed sentence for this offence, the sentence would ordinarily be in the nature of a mandatory minimum sentence and consequently, the Proviso would apply to preclude the granting of probation

to both adult offenders and repeat youth offenders. However, probation would seem to be available to the same adult offender or repeat youth offender for what may be considered to be more serious offences but where the prescribed sentence is not a mandatory or specified minimum sentence, and therefore does not engage the Proviso. For instance, following *Poh Boon Kiat*, the sentence under s 140(1) of the Women's Charter (Cap 353, 2009 Rev Ed) for keeping, managing or assisting in the management of a brothel is a mandatory imprisonment term "not exceeding 5 years" and a discretionary fine "not exceeding $10,000". This sentence for an offence under s 140(1) of the Women's Charter is neither a mandatory nor a specified minimum sentence (even though a period of imprisonment is mandatory). Accordingly, the Proviso would not apply. As a result, the principal part of s 5(1) of the POA would govern and the consequence is that probation would prima facie be available to both adult offenders and repeat youth offenders. As noted above, this might appear to be anomalous.

We accept, of course, that it is a matter for Parliament rather than for the courts to decide on the relative gravity of offences. It chose to contain the excessive reach of the decision in *Juma'at* by the enactment of the Proviso. But the policy considerations that underlie a legislative choice to impose a mandatory or specified minimum sentence may not necessarily be identical or relevant to the consideration of whether or not probation should be available in a given case. We offer these observations as something Parliament may wish to consider.

These anomalies exist because the terms "mandatory minimum sentence" and "specified minimum sentence", by themselves, are not optimal proxy indicators as to when probation should be a sentencing option. While the term "specified minimum sentence" appeared to have made its debut only in the proviso to s 5 of the POA introduced in 1993, mandatory minimum sentences were introduced for various offences to the Penal Code in 1984 because the legislature thought that the punishment for those offences was too lenient and that harsher punishment was needed to combat the increasing crime rate at that time. While the legislature had focused on offences which had "caused the most concern and alarm to the public", the use of mandatory minimum sentences was primarily to counter what the legislature thought were "generally inadequate sentences" where Courts were "generally averse to custodial sentences".

Using "mandatory minimum sentences" as a proxy indicator in the proviso to s 5 of the POA is, therefore, arguably over-inclusive and under-inclusive at the same time. It is over-inclusive because it potentially includes offences which by their nature may not be serious, but had originally attracted what the legislature thought were inadequate sentences such as to warrant the introduction of mandatory minimum sentences. It is under-inclusive because it potentially excludes offences which by their nature are serious, but did not attract inadequate sentences such as to warrant the introduction of mandatory minimum sentences. The same critique applies to the use of "specified minimum sentence" as well.

Several examples will illustrate this point.

Probation is not available as a sentencing option for an adult (or repeat youth) offender for relatively minor offences such as: possession, exhibition or distribution of uncensored films under s 21 of the Films Act (Cap 107, 1998 Rev Ed), and touting under s 32 of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed).

Yet probation is available for certain relatively more serious offences such as voluntarily causing hurt by dangerous weapons or means, buying or disposing of any person as a slave, buying a minor for purposes of prostitution, rioting with a deadly weapon, concealing the existence of a design to wage war against the Government, abandoning a child under 12 years of age, and causing death by rash or negligent act.

Discretionary Death Sentences

Another thorny issue concerns offences which used to carry mandatory death but now carry discretionary death sentences, such as ss 300(b), (c) and (d) of the Panel Code. For these offences, the Court now has the discretion to choose between death or imprisonment for life (and if the latter, the offender is also liable to caning).

Offences which carry a mandatory death penalty are offences for which the sentence is "fixed by law". Probation has never been a sentencing option for mandatory death offences since the original enactment of the Probation of Offenders Ordinance (Ordinance 27 of 1951).

Following the reasoning in *Fairuuz*, offences which now carry discretionary death are arguably offences which carry a "specified minimum sentence" – the Court has the discretion to prescribe imprisonment, but does not have the discretion as to its minimum quantum (which is life). These offences are no longer offences the sentences of which are "fixed by law". While the inherent nature of these offences is highly likely to militate against the granting of probation orders in the first place, it remains possible for the Court to grant probation to a youth offender who has committed one of these offences.

Was that the legislative intent when discretionary death sentences were introduced?

The Way Forward

It is timely for the law on probation to be reviewed – and this is not a lone view. In 2006, a commentator had observed that it was not "valid to assume that an offence is 'serious' just because it is either a specified minimum offence or a mandatory minimum offence". More recently, a commentator suggested that the legislature could consider either removing the proviso to s 5 of the POA completely, or review the offences which carry specified or mandatory minimum sentences.

The complete abolition of the proviso to s 5 of the POA alone may create uncertainty and confusion. One could expect defence counsel to seek a probation order in almost every other case. It may also be impractical (at least in the short term) for the legislature to prescribe whether probation is a sentencing option for each and every offence.

While the notion of giving the Court wider discretion in sentencing is generally laudable, there should be a set of legislative criteria or guidelines to determine when and how the power to grant probation ought to be exercised. Bearing in mind the close relationship between the criteria for community sentences (under s 337 of the CPC) and the criteria for probation (under s 5 of the POA), an exhaustive and comparative analysis of how the POA should be reformed merits another article by itself. Nevertheless, the legislature could consider several suggestions in any reform to s 5 of the POA.

One possible reform is to amend s 5 such that probation is generally available for all offences (except for offences punishable with death or offences punishable with life imprisonment). However, for offences with a specified or mandatory minimum sentence of fine, imprisonment or caning exceeding **specific quantum levels**, only first time youth offenders are eligible. In this way, the legislature can use the quantum levels as a more accurate proxy to calibrate and indicate the "seriousness" of offences with specified or mandatory minimum sentences. This suggestion may be preferred if the legislature takes the view that most offences with specified or mandatory minimum sentences are indeed relatively serious in nature. The main deficiency of this suggestion is that some relatively serious offences may not carry a specified or mandatory minimum sentence in the first place – the Courts would still have the power to grant probation for such offences. However, the legislature may take the view that the starting point should be to grant greater, rather than lesser, sentencing discretion to the Courts.

Alternatively, the legislature could abandon the use of specified or mandatory minimum sentences in s 5. Section 5 can simply prescribe that probation is generally available for all offences (except for offences punishable with death or offences punishable with life imprisonment). However, for offences which are punishable with a term of fine, imprisonment or caning which exceeds specific quantum levels, only first time youth offenders are eligible. This concept is not unique: under s 337(1)(i) of the CPC, community sentences are generally not available as a sentencing option for offences which are punishable with a term of imprisonment which exceeds three years.

One deficiency of this suggestion is that it may be too blunt, and may not capture certain offences the seriousness of which may be expressed by the legislature through the mandatory nature of fine, incarceration or caning, rather than the quantum of the sentence. A *via media* to mitigate this deficiency could be a hybrid of the two solutions above:

Probation is generally available for all offences (except for offences punishable with death or offences punishable with life imprisonment). However, for offences which are: (i) punishable with a term of fine, imprisonment or caning which

exceeds specific quantum levels; or (ii) carry a mandatory minimum sentence of fine, imprisonment or caning which exceeds specific quantum levels (which would be lower than those in the preceding category), only first time youth offenders are eligible.

Finally, s 337 of the CPC sets out in some detail both the types of offences, as well as the types of **offenders** for which community sentences would not be a sentencing option. Section 5 of the POA may benefit from a similar architecture.

Conclusion

The balance to be struck in any reform exercise to s 5 of the POA is one where, as a starting point, the Courts should be given as much sentencing discretion as possible, especially in relation to first time youth offenders. At the same time, there needs to exist a careful calibration of the offences that are deemed relatively serious enough to preclude probation as a sentencing option. Regardless of any eventual reform adopted by the legislature, the objective of the foregoing analysis is to set out a conceptual framework to aid the legislature in achieving this difficult and delicate balance.

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This article focuses the spotlight on one of the recent key amendments to the Singapore Companies Act – the introduction of a buyout remedy for winding-up applications under section 254(1)(i). How would this change affect our shareholders' rights regime moving forward?

Recent Amendment to the Singapore Companies Act: Buyout Remedy in Section 254(1)(i) – a Shifting Paradigm?

In a bid to maintain Singapore's competitiveness in this rapidly evolving business landscape, the Ministry of Finance established a high-level Steering Committee back in October 2007 to carry out a fundamental review of the Singapore's Companies Act.[1] This exemplifies Singapore's pragmatic efforts at improving the regulatory and governance framework to keep Singapore's reputation as an international financial hub on the cutting edge of the business landscape.[2]

This article focuses the spotlight on one of the recent key amendments to the Singapore Companies Act pursuant to the Companies (Amendment) Bill which was passed in Parliament in October 2014 – the introduction of a buyout remedy for winding-up applications under s 254(1)(i). The underlying consideration behind this amendment is an attempt to avoid "practical injustice", by conferring the Courts with the flexibility to order a share buyout instead of a winding-up in cases where companies are still economically viable notwithstanding the breakdown in relationship between shareholders. The aim is to achieve a fairer and more efficient solution for the majority to buyout the minority if the Court is of the opinion that it is "just and equitable" to do so. However, would this change signal a shift in paradigm for our shareholders' rights regime?

When the relationship between shareholders of a company has irretrievably broken down, the two main statutory exit mechanisms commonly resorted to are ss 216 and 254(1)(i) which aggrieved parties often plead for relief in the alternative in the hope of boosting their chances of success. The previous decision of *Sim Yong Kim v Evenstar Investments Pte Ltd* ("*Evenstar*")[3] provides useful clarifications with respect to the conceptual basis on which relief might be granted under each section. Notwithstanding the overlap in their scope and remedial powers, the Court also reminded us that both sections should nevertheless be regarded as distinct jurisdictions. Essentially, s 254(1)(i) is a broader jurisdiction (to the exclusion of s 216) covering situations involving fault-neutral deadlock amongst shareholders. However, the harsh remedy of a winding-up would not seem justifiable if the company remains commercially viable and where it may be a more efficient solution for a share buyout instead. Evidently, the recent amendment to s 254(1)(i) seeks to plug this unsatisfactory gap in the law.

As a matter of statutory construction, the present s 254(1)(i) restricts the remedial powers of the Court by limiting the remedy to solely a winding-up order. This limited discretion regrettably ties the Courts' hands when often times a more practical remedy may be to order a buyout of shares instead. However, we should also be alive to the possible implications of this amendment on the holistic statutory framework that governs shareholders' rights. Taking into account the interrelationship between ss 254(1)(i) and 216 and their respective functions, the insertion of a buyout remedy in s 254(1)(i) (which was primarily intended to deal with winding-up) may risk conflating both sections

and present conceptual and practical difficulties which the Courts would subsequently have to grapple with. This could also lead to an unwarranted remedy arbitrage and procedural issues, as will be discussed subsequently in this article.

While the amendment to s 254(1)(i) seeks to address certain practical considerations, there remains, however, a troubling tension of preserving a flexible jurisdiction for the Courts to do practical justice and while ensuring greater certainty in the law. To this end, this article proposes an alternative perspective to consider amending the scope of s 216 to encompass instances of fault-neutral deadlock in the management of the company as well, and instead confine the use of s 254(1)(i) to genuine winding-up applications only. Additionally, this article also reconsiders the practicality of "shot-gun" clauses in shareholder agreements to deal with deadlock amongst shareholders.

Unravelling the Relationship – Twins or Cousins?

Historical Development

In Singapore, our laws relating to minority protection are generally found under s 216 (the "oppression" jurisdiction) and s 254(1)(i) (the "just and equitable" jurisdiction) of the Singapore Companies Act. Both sections are exit mechanisms commonly resorted to by aggrieved parties pursuant to which a Court may order a winding up of a company, whereas in contrast to the UK statutory regime,[4] winding up is available as a remedy solely under the UK equivalent "just and equitable" jurisdiction. Unlike the Singapore Companies Act, there is a more apparent distinction between the "oppression jurisdiction" and the "just and equitable" jurisdiction equivalent under the UK statutory regime.

As a preliminary point, it would be useful for us to draw reference from the equivalent UK provisions from which our local laws are modeled after so as to better appreciate the rationale and inter-relationship between s 216 and s 254(1)(i).

The birth of the equivalent "oppression remedy"[5] in the UK came about when the Cohen Committee,[6] back in 1945, designed a statutory remedy against the oppression of minority shareholders in the form of s 210 of the Companies Act 1948,[7] which was subsequently replaced with the statutory predecessor of ss 459-461[8] (equivalent to our s 216) that considerably widened the scope of this alternative remedy then.[9] Following this change, the phrase "oppressive conduct" in the previous s 210 was replaced with a more liberal and flexible requirement of "unfairly prejudicial" conduct. The objective was to remove any likely restrictive interpretation, and to decouple the "oppression" remedy from its historical attachment to the "just and equitable" winding-up provision as its predecessor had been.

It was also the traditional reluctance of the Courts to wind up a company that led to the development of the statutory "oppression" remedy to allow Courts to resolve intra-corporate disputes without resorting to a winding up under the "just and equitable" ground.[10] Ordering a winding up was akin to pronouncing a death sentence on the Company. In fact, it was also provided by s 225(2) of the 1948 Act[11] then, that winding up orders must be a last resort and only when there are no suitable alternative remedies. This "oppression" remedy was envisioned as a broader and more flexible remedy that was more appropriate to deal with a range of 'reprehensible' conduct in corporate affairs to achieve practical justice.

An Asymmetrical Relationship – Overlapping but Distinct Sections

While both ss 254(1)(i) and 216 occupy distinct realms in the Singapore's Companies Act and have their own respective scope of application, it is apparent that these two sections do overlap to some extent since the object of both sections is to remedy any form of unfair conduct.[12] Despite the overlapping rationales, the Court in the decision of Evenstar also took the opportunity[13] to clarify the distinct conceptual basis for relief under each section.

Following Chan CJ's (as he was then) analysis in *Evenstar*, while the application of equitable principles exists in both ss 254(1)(i) and 216 to remedy unfair conduct on the part of controlling shareholders, they were never intended to be coterminous jurisdictions. Where the two jurisdictions do in fact overlap, Singapore's position is in consensus with Parker J's dictum in *Re Guidezone Ltd*[14] that in order to reconcile the concurrent jurisdictions under the two sections in a principled manner, "the degree of unfairness required to invoke the 'just and equitable' jurisdiction should be as onerous as that required to invoke the 'oppression' jurisdiction".

The distinction arises, however, as a matter of statutory construction and where we compare the scope of their applications. A plain reading suggests that the Court's jurisdiction under s 254(1)(i) may be broader than that under s 216 in certain cases[15] and as succinctly suggested in Palmer's Company Law, it appears that s 254(1)(i) is wider because mere proof of a breakdown of trust and confidence may be enough to ground the winding-up remedy.[16]

Additionally, instances of fault-neutral deadlock amongst shareholders may only fall under s 254(1)(i), but the same facts may not amount to oppressive or unfair conduct on the part of controlling shareholders that is commonly dealt with under s 216. When dealing with deadlock amongst shareholders, it ought to be recognized that the inequity or unfair prejudice does not lie in the oppressive or wrongful conduct of the other shareholder(s) in the management of the company or the conduct of its affairs per se, but in the opposing shareholders' insistence on locking the applicant shareholder in the company despite the stalemate they have reached concerning the conduct of the company's business.

In fact, a plain reading of ss 254(1)(i) and 216 draws a reasonable conclusion that relief under each section is founded on different bases. Presently, an application under s 254(1)(i) only affords a petitioner a winding up order, whereas a successful application under s 216[17] gives the Court a wide discretion to make any order as it thinks fit.[18] Having said that, what amounts to commercial unfairness under s 216 is based upon rational principles and subject to the facts of each case to prevent "palm tree" justice. A winding up order against an operational and viable company under s 216 is usually only granted as a last resort and if the state of affairs cannot be remedied by any other means (such as a shares buyout).[19]

While both sections overlap in scope and remedial powers, it is crucial that our statutory laws governing shareholders' rights remain principled and rational, so that potential applicants may have a better appreciation of the different circumstances which each section should be intended to address.

Potential Roadblocks Ahead[20]

Winding up a solvent and viable company is indisputably a harsh and drastic measure to take and this invariably compromises the economic interests of all shareholders including other corporate stakeholders involved.[21] Section 254(1)(i) provides that the Court may order a company to be wound up if the Court is of the opinion that it is "just and equitable" to do so. This confers a wide and unfettered discretion to wind up a company provided that it would be "just and equitable" to do so. Paradoxically, s 254(1)(i) has been aptly described as a provision that covers a multitude of sins.[22] On its face, while the section deals with a multitude of conduct, the sole remedy available under s 254(1)(i) is a winding up order. The lack of remedial discretion under s 254(1)(i) practically ties the Courts' hands to a winding up remedy. This is hardly a satisfactory result, especially when the company concerned is a flourishing one.

Previous seminal cases in Singapore[23] have illustrated that such challenges are not merely hypothetical and Judges[24] often have to resort to judicial techniques to "soften" the harshness of a winding up order by exercising its powers to make interim orders under s 257(1) of the Companies Act – to stay the execution of the Order until the parties have had an opportunity to negotiate a practical compromise and reach a mutually acceptable solution to their dispute which typically results in a buyout of shares. Such interim orders attempt to temper any inequity that may ensue from a winding up and also balances the interests of all the stakeholders including the Company's.

Following the amendments, the provision of a buyout remedy under s 254(1)(i) attempts to expand the limited remedial discretion that our Courts presently struggle with. However, the benefit of remedial flexibility must be balanced against the notion of legal certainty. This article suggests that the potential benefits of allowing Courts to order a buyout under s 254(1)(i) may be outweighed by three potential problems.

Remedy Arbitrage

First, inserting a buyout remedy under s 254(1)(i) could likely result in "remedy-shopping" and arbitrage between ss 254(1)(i) and 216 leading to greater uncertainty in our shareholder's rights regime. Maintaining a clear distinction in the types of relief that may be obtained under each section prevents either from being rendered superfluous. Given that s 254(1) deals with a broader range of situations as compared to s 216 (ie restricted to commercial unfairness), aggrieved shareholders may, following the changes, strategically opt to bring oppression-style cases under s 254(1)(i) (in the hope of obtaining a buyout order) rather than s 216 leading to an undesirable migration of oppression-style cases from the former to the latter section.

Typically for applications under s 216, where a winding up is unlikely to be ordered as an appropriate remedy, a concurrent winding up application under s 254(1)(i) is less theoretically defensible. The "clean hands" doctrine impugns bad-faith applications and prevents applicants from bypassing the more appropriate remedies available under s 216. The amendments to s 254(1)(i) however cast a smokescreen and "masks" potential vexatious applications, blurring the distinction between *bona fide* and bad faith winding up applications.

Procedural Effects

Second, allowing Courts to order a buyout under s 254(1)(i) may result in unintended procedural problems caused by inserting a buyout remedy into a part of the Companies

Act that is primarily intended to deal with winding up applications. As discussed above, it is likely that aggrieved shareholders will opt to bring their claims under s 254(1)(i) and a spiteful applicant may seek to take advantage of the potential inconvenience and disruption that a winding up application may cause to a company to put maximum pressure on the counter parties into a disadvantageous buyout or exit.

As far as operational and successful companies are concerned, aggrieved shareholder(s) would be seeking a buyout remedy and not a winding up. However, once an application for a winding up under section 254(1)(i) is made, the company in question is invariably subject to the winding up regime of the Companies Act.[25] Upon the commencement of a winding up application, the Companies Act imposes certain disabilities and inconveniences upon the company.[26] In particular, s 259 of the Companies Act provides that any disposition of the company's property made after the commencement of the winding up is void unless the Court orders otherwise. This has adverse effects on third parties such as creditors and suppliers, who may refrain from dealing with a company that is the subject of a winding up application. This may also result in unfair and costly consequences for companies that are the subject of s 254(1)(i) oppression-style claims but are unlikely to be wound up.

A winding up application will inadvertently attract unwanted and negative publicity[27] as a mere application under s 254(1)(i) may lead to the impression that the company is insolvent or under financial difficulty. This precipitates a loss of confidence on the part of creditors, customers and even employees. The Court of Appeal has recognised and guarded against such unfairness by finding that s 216 petitions, even if a winding up is one of the remedies being sought, should not be considered winding up petitions.[28]

Tipping the Framework Balance? – Majority Rule vs Minority Rights

Third, inserting a buyout remedy under s 254(1)(i) may disrupt the statutory framework that governs our shareholders' rights regime, and risks opening the floodgates. It is a delicate balance between *de facto* majority rule and the protection of minority shareholders' rights under our Companies Act framework. The current wording of s 254(1)(i) maintains this balance by allowing Courts to protect minority shareholders in an almost unlimited set of circumstances (ie just and equitable considerations) while restricting the remedy available to only a winding up order.

On the other hand, s 216 allows the Court to order an expansive range of remedies as it thinks fit for alleged conduct that falls under the ambit and parameters of "commercial unfairness" only[29] as the Court determines based on the facts of each case. Limiting the remedial options available and to only genuine winding up applications under s 254(1)(i) has been critical in preventing a flood of frivolous minority claims.

The potential roadblocks of an untested version of s 254(1)(i) may translate to a heightened sense of uncertainty if oppression-style cases "migrate" over to the "just and equitable" winding up jurisdiction. Afterall, it is preferable that lawyers should be able to advise their clients with greater certainty whether or not a petition is either appropriate and/or likely to succeed.[30] The challenge ahead lies in balancing a broad and flexible jurisdiction for the Court to do justice while maintaining certainty and predictability in the law in a judicious manner.

Rethinking the Amendments – a Possible Alternative?

While it is possible that instances of fault-neutral deadlock may on certain occasions warrant the winding up of the company under s 254(1)(i), it is less clear whether such cases should necessarily be confined to this section exclusively, considering that both sections' objectives are to remedy unfairness. The challenge of isolating fault-neutral deadlock situations (which does not amount to commercial unfairness) under s 254(1)(i) may result in "practical injustice" for the reasons discussed above.

Section 216 – Time for a Makeover?

This article proposes an alternative perspective of rewording s 216 to facilitate a more comprehensive framework. The present wording of s 216 regrettably confines the conception of "unfairness" to specific categories of conduct

concerning: (i) the conduct of the company's affairs or the exercise of director's powers in a manner that is oppressive; and (ii) the acts of the company or resolutions by members or debenture holders which unfairly discriminates against or prejudices.[31] Rather than distinguishing one ground from the other, this traditional categorical phrasing ought to be abandoned.[32] Afterall, it may not be in the Court's best interest to have detailed guidelines as to do so may result in "satellite litigation", which may be used to mount challenges against the Court's judicial discretion, and otherwise constrain discretion since each case is unique. As was reiterated by the Court in *Over & Over Ltd v Bonvest Holdings Ltd,*[33] afterall the ultimate litmus test is one of "commercial unfairness" in determining whether a set of facts, which differs from case to case, may be found under s 216.

It is proposed that s 216 could be worded as a single broad test of commercial unfairness, the purpose of which is to identify conduct which offends the standards of commercial fairness, standards of fair dealing and conditions of fair play[33] which enjoins the Courts to intervene. This attempts to broaden the conception of commercial unfairness to allow the Courts to adequately deal with unfair prejudice arising from instances of fault-neutral deadlock[34] between shareholders of companies that are still viable and operational under s 216 instead of s 254(1)(i) which is commonly pleaded under as well.

216 – (1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX…
~~that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive …or in disregard of his or their interests as members…of the Company; or~~
~~that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures…which unfairly discriminates… or is otherwise prejudicial to one or more of the members…~~

…[to insert and replace with]…

that the affairs or conduct of the company, have been carried out or results in… which unfairly prejudices the interests of certain members to the extent that it would offend the reasonable standards of commercial fairness …

The above illustrates a proposed amended s 216 where the language of "unfairly prejudice" attempts to expand the scope of application, to include instances of deadlock amongst shareholders. In such instances, the unfair prejudice could arguably arise from the majority's conduct in maintaining or insisting on the association despite changed circumstances. This also recognises that commercial unfairness does not arise only out of a failure to comply with prior agreements or expectations and may also "spring" into existence where circumstances have changed so as to involve situations not covered by previous arrangements and understanding (such as fault-neutral deadlock leading to an irretrievable breakdown in relationship).[36]

Accordingly, a winding up order under s 254(1)(i) should always be considered a remedy of last resort and, in light of the problems highlighted above, be confined to genuine and legitimate winding up applications only – specifically where there has been an irretreviable breakdown in relationship between the shareholders and where there is no longer any commercial intention or justifiable reasons to sustain the commercial business of the company.

Revisiting "Shotgun" Clauses

Another possible alternative to consider is the function of "shotgun" clauses in shareholder or joint venture agreements. A shotgun clause is a form of *ex ante* exit mechanism which usually stipulates that a party has the right to offer one's shares to another party at a particular fair price. In the event the offeree decides against buying the offered shares at such price, following which, the offeror is obliged to buy over the offeree's shares at the same specified price. The key characteristic of this is that the shareholder making the initial offer sets the price and terms, while the other shareholder receiving the offer gets to choose whether to sell or buy at that price and on those terms. This mechanism keeps the shareholder who triggers the shotgun clause honest when setting the offer price and payment terms since one cannot be certain whether the initial offered shares at such terms would be rejected.

However, in a scenario of multiple shareholders or where there are majority and minority shareholders, the minorities are likely to be constrained by limited financial resources. For example in a 90/10 scenario, the 10 per cent minority shareholder(s) will have to come up with at least nine times as much money as the other 90 per cent shareholder(s) if the former wishes to trigger the shotgun clause.[37]

Ultimately, the goal towards a fair, efficient, no-fault corporate divorce will be a challenge in practice.

Conclusion

As with any new initiative, the amendments introduced in the Companies (Amendment) Bill bring with it novel

questions and challenges that may not lend themselves to obvious answers, at any rate not when the amendments are still at its nascent stage. Pragmatic considerations underlie this particular amendment to confer Courts with greater remedial powers in hearing winding up applications in order to do practical justice. However, potential problems of this amendment to s 254(1)(i) could shake up our foundations of certainty and predictability, which nevertheless, is a *sine qua non* to the efficacy of our shareholders' rights regime.

Moreover, the insertion of a buyout remedy under s 254(1)(i) would be noted as an idiosyncratic and unprecedented deviation from other common law jurisdictions which Singapore has traditionally modeled its shareholders' regime closely after and is likely to result in greater uncertainties moving forward.

An overly liberal remedial discretion must be eschewed, lest the structure and integrity of our shareholders' rights regime be undermined. Moving forward, if Singapore is to retain its reputation as a reliable and efficient financial hub, our legal framework must better manage the balance between majority rule and the protection of minority shareholders' rights to promote a conducive business environment for companies to operate in. Whatever the relative merits and justifications of this amendment may be, the least we need is a disruptive shift in paradigm for our shareholders' rights regime.

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Notes

1 Companies Act (Cap 50, 2006 Ed).

2 Ministry of Finance, Singapore, *Report of the Steering Committee for Review of the Companies Act* Consultation Paper, June 2011).

3 [2006] 3 SLR 827.

4 Refer to ss 994-996 Companies Act 2006UK).

5 This article recognises that the oppression remedy is also commonly referred to as the unfair prejudice remedy. Although they are used interchangeably as a matter of semantics, there is a difference between the old oppression test and unfair prejudice test subsequently developed. For the purposes of this article, it will generally be referred to as the oppression remedy.

6 Report of the Committee on Company Law Amendment (Cmd 6659, HMSO, London 1945), para. 60.

7 This remained in force until 1980 before the Jenkins Committee amended and replaced it with s 75 of the UK Companies Act 1980, which eventually became s 459 of the UK Companies Act 1985.

8 Pursuant to ss 459-461 of the Companies Act 1985 (UK). These provisions have recently been repealed and substantially re-eacted as ss 994-996 of the Companies Act 2006 (UK). This comment will, however, continue to make reference to the repealed provisions since all the decisions under discussion were decided under the previous regime.

9 Section 210 of the Companies Act 1948 was also described as an "Alternative remedy to winding up in cases of oppression" and it was also provided by s 225(2) of the 1948 Act (the provision now contained in s 125(2) of the 1986 Act) that if the Court was of the opinion that the petitioner was entitled to some other relief as well as a winding up order, it should not make a winding up order if the petitioner was acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

10 See *Re A Company* [1997] 1 B.C.L.C 479; the Judge struck out the winding up petition on the basis that it was a remedy of last resort, there was no realistic possibility of it succeeding, and that an order under s 994 for the purchase of the petitioner's shares would be at a fair price taking into account the allegations of unreasonably low dividend payments. See also *Fuller v Cyracuse Ltd* [2001] 1 B.C.L.C 187.; the Court held that it was an abuse of process for a minority shareholder to persist with a winding up petition under s 122(1)(g) when he had been offered a buyout at a price fixed by an independent valuer.

11 The provision now contained in s 125(2) of the 1986 Act.

12 *Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 3 SLR (R) 827 at [37]; affirmed in *Over & Over Ltd v Bonvests Holdings Ltd* [2010] 2 SLR 776.

13 Given that the Court of Appeal's finding in this case that Mike (respondent) was obliged to buy the petitioner out and had failed to do so (thus establishing "unfairness" for purposes of s 216 as well as s 254(1)(i), it was strictly unnecessary to deal with this argument at length. Nevertheless, Chan CJ took the opportunity to examine the relationship between the two provisions.

14 [2000] 2 BCLC 321.

15 Most commonly, this "just and equitable" ground will usually be relied upon when there is: (i) irretrievable breakdown; (ii) loss of substratum; and (iii) Fraudulent Inception and Purpose.

16 Geoffrey Morse, *Palmer's Company Law* (1st Ed, Sweet & Maxwell), para 8.1008.

17 The recent decision in *Over & Over Ltd. v Bonvest Holdings Ltd* [2010] 2 SLR 776 has clarified the scope of s 216 that to succeed under this section, the complainant member must demonstrate that the conduct of the company "offends the standards of commercial fairness and is deserving of intervention by the courts". Although there are four grounds in s 216(1) upon which a member can make an application, the four grounds have been interpreted as alternative expression of a single ground based on "commercial unfairness".

18 *Companies Act* (Cap 50, 2006 Rev Ed) s 216(2).

19 *Lim Swee Khiang v Borden Co (Pte) Ltd* [2006] 4 SLR (R) 745 at [91]. See *Tang Choon Keng Realty (Pte) Ltd v Tang Wee Cheng* [1991] 2 SLR (R) 1; *Kuah Kok Kim v Chong Lee Leong Seng Co (Pte) Ltd* [1991] 1 SLR (R) 795.

20 This section draws reference, as a starting point, from the Report of the Steering Committee for Review of the Companies Act Consultation Paper, June 2011, in

particular to the comments highlighted by NUS academics regarding the potential problems of inserting a buyout under s 254(1)(i).

21 Furthermore, the public may feel the negative repercussions of a winding up, particularly parties who have ongoing dealings with the company.

22 See CH Tan (ed), *Walter Woon on Company Law* (Student Ed, 2009), para 17.53.

23 See *Chow Kwok Chuen v Chow Kwok Chi* [2008] 4 SLR 362; *Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 3 SLR (R) 827; and *Lim Swee Khiang v Borden Co (Pte) Ltd* [2006] 4 SLR (R) 745.

24 See for example, *Chow Kwok Chuen v Chow Kwok Chi* [2008] 4 SLR 362.

25 See s 255(2) of the Companies Act; A winding up is deemed to commence at the time of the making of the winding up application.

26 *Supra* (note 21 above), para 17.75 to 17.93.

27 Pursuant to r 24 of the Companies (Winding Up) rules. Notably, the Companies (Winding Up) Rules are not applicable with respect to an application under s 216 of the Companies Act.

28 See *Kuah Kok Kim v Chong Lee Leong Seng Co (Pte) Ltd* [1991] 1 SLR(R) 795 at para 10: "… It is significant to note that sub-s (3) of s 216 provides that where an order for winding up of the company is made under sub-s (2), the provisions of the Companies Act relating to winding up shall apply as if the order had been made upon a petition presented by the company. Until a winding up order is made, none of the provisions in Pt X of the Act, provisions relating to winding up of companies, apply. In particular, upon commencement of proceedings under ss 216, 258, 259, 260, 261, 267, 334 and 335 of the Act, which operate upon commencement of winding up proceedings against a company and which impose grave consequential disabilities on the company, have no application, and the company is not subject to any such disabilities. It is abundantly clear to us that proceedings instituted under s 216 of the Companies Act are not in truth winding-up proceedings – certainly not winding-up proceedings under Part X of the Act – even if a winding-up order is expressly asked for in such proceedings …".

29 Refer to *Over & Over Ltd v Bonvests Holdings Ltd* [2010] 2 SLR 776.

30 The UK Company Law Reform Steering Group has concluded that on balance, the benefits of certainty outweighed the risk of injustice in periphery cases: See *Modern Company Law for a Competitive Economy: Completing the Structure* (UK, Department of Trade and Industry, Consultation Document of the Company Law Reform Steering Group, London: Her Majesty's Stationery Office, November 2000) at paras 5.78-5.81 [Completing the Structure].

31 See s 216(1)(a) and (b), Companies Act.

32 See also *Minority Shareholders' Rights and Remedies* (LexisNexis, 2nd Ed, 2007), Margaret Chew rightly points out that (at pp 120-121): … any exercise in further defining or refining each of the expressions "oppression", "disregard of interests", "unfair discrimination" or "prejudice", in order to ascertain any differences in their meaning and application looks to be a frustrating one. It would be futile, if not impossible, to split pedantic hairs over the precise and exact meaning of the medley phraseology favoured by the legal draughtsman. The fruit of such labour could only add uncertainty and confusion.

33 [2010] 2 SLR 776.

34 *Re Tri-Circle Investment Pte Ltd* [1993] 1 SLR(R) 441.

35 Deadlock does not mean a temporary impasse. The deadlock must be on-going to justify such an order being made; See *Re Cappuccitti Potato Co.* [1972] O.J. No. 536, 17 C.B.R. (N.S.) 213 (H.C.J); a single instance or isolated instances of disagreement do not afford sufficient grounds. There must be such a sufficiently serious disagreement that it would not be reasonable to believe that the shareholders will resolve their differences and co-operate in the running of the corporation; See *Prussin v Park Distributors Inc.* (1963), 6. C.B.R. (N.S.) 31 (Que. S.C.).

36 *Re Metropolis Motorcycles Ltd.*, at [90] (emphasis added).

37 Phil Thomson, "*Shotgun clauses and Owner Managers: Limitations and Alternatives*"; Business Lawyer, Corporate Counsel; available at: <http://www.thompsonlaw.ca/pdf_folder/Shotgun_2004.pdf>.

Our Time with the Pro Bono Services Office

During the months of February to April 2014, the Pro Bono Services Office ("PBSO") was inundated with requests from students from the NUS/NYU double-degree program. Over the course of one year, students were able to earn two LLM degrees from New York University ("NYU") and the National University of Singapore ("NUS"), and become qualified to sit the New York Bar exam. The program was highly regarded and recently finished with its final batch of students approaching the PBSO to volunteer their skills. The NYU@NUS program produced outstanding graduates who sought to thrive in their chosen fields of endeavour around the globe. The program took great pride and satisfaction in delivering a global legal education that combines the best of what the USA and Singapore had to offer.

As a result, the final batch of NUS/NYU students came looking to complete their mandatory 50 hours of *pro bono* work before shipping out to New York for the final stage of their double masters. Over the course of several months, the PBSO became a temporary home to a dozen highly qualified and intelligent soon-to-be international lawyers from all around the world. The students proved themselves to be invaluable, bringing new knowledge and insight to the PBSO, as well as teaching themselves the intricacies of how legal aid and law awareness is delivered in Singapore.

I was proud to be the direct supervisor to these students and found their overwhelming enthusiasm to contribute to PBSO projects to be inspiring. I was also very impressed by the gusto the students took towards drafting content for our Community Legal Clinic Manual, despite its excessive length and at times, dry content. The volunteers spent a considerable amount of time at the PBSO hunched over their laptops furiously researching and writing content for the FAQs we had sourced from the public. Their contributions have both deepened the content of our CLC manual, as well as made it targeted and streamlined. The results will speak for themselves over the next few months.

It is a shame that the NUS/NYU program is no longer being continued, as the contributions of these students to the PBSO were incredibly helpful, and hopefully we will continue to receive volunteers of such high calibre in the future.

After finishing their studies here in Singapore, I requested that some of the students update me on their progress as well as write a simple reflection piece, so that others can gain insight on what they learnt in their time with us.

Patrick Onyemaechi Kainz
NUS LLM Candidate (2014), Austria

I was very happy to get a *pro bono* attachment with the PBSO in December 2013 and March 2014 while I was studying for my Master of Laws at the National University of Singapore.

I have come to understand that the PBSO fulfils a very important role in facilitating access to the law for the general public in Singapore. Their publications and events are pursuing one important goal: Informing lay people of their rights so that they can make self-determined decisions in their everyday life without the fear of getting caught up in "legalese".

During my time with the PBSO, I have assisted in drafting a recommendation for implementing a legal framework for social enterprises. Also, I was engaged in file review for the legal clinics in which attorneys offered free advice to clients in family, civil, criminal and employment law. Furthermore, I contributed to an update of the legal manual for the family law clinics. This manuscript will allow lawyers to respond to the most common questions faster.

My attachment with the PBSO has allowed me to work in fields of law to which I had rarely gotten any exposure before. It was an enriching experience to see that my knowledge of the law will also allow me to venture into new legal fields. Over and beyond anything else however, my attachment with the PBSO has given me the feeling that I could give something back to Singapore and its people, which have shown me such great hospitality.

Fernando J. Marranzini
NUS LLM Candidate (2014), Dominican Republic

"*Pro bono*" work is, first and foremost, a chance to selflessly exercise the legal skills attained after many years of study and practice, for the benefit of others. My work with the Law Society of Singapore's Pro Bono Services Office consisted primarily of updating the "Bankruptcy" Chapter of the Community Legal Clinic Manual, affording me with a great opportunity to familiarise myself with an area of the law which had always piqued my interest but had so far eluded the scope of my professional practice: insolvency law.

The work turned out to be a professionally enriching experience through which I was able to gain knowledge of the legal framework governing bankruptcy procedures in Singapore and the roles played by the different actors in the process: creditors, debtors, guarantors and public institutions. Moreover, the work

was personally enriching in that I knew my contributions to the Manual might one day positively impact the legal situation of a person in need who looks to the Pro Bono Services Office for assistance.

Yasuyuki Suzuki
NUS LLM Candidate (2014), Japan

PBSO gives me a chance to get in closer touch with general people in trouble. At the PBSO, I contributed for revising the legal guide book, for the part of making a will and probate of a will of that book. I had a chance to attend a free legal clinic. Through the work of revising the material, I found differences in legal framework of inheritance law from the one in my home country. Especially, the treatment of the Corporate Provident Fund is based on the social welfare system in Singapore and seems very unique to me. What was more interesting for me was the free legal clinic.

When I was working in Japan as a lawyer, I handled similar tasks several times. However, in the clinic at Pro Bono Services Office, I could change my stance to an assistant and observe people coming there for consultation closer. I could also see how lawyers were careful in handling with people's concerns. I will try to act in the same manner when I consult with individuals for their personal problems next time. In short, *pro bono* work was a very good chance to refresh my mind and rethink about fundamental duty as a legal professional: giving a hand to people in trouble and support their life. I want to keep working for public interests in any forms once I go back to practice.

Michele Terlizzese
NUS LLM Candidate (2014), Italy

Pro bono work is unpaid and I had always thought it sounded like an oxymoron. Moreover, since I graduated in law, I have simply been too busy to think about anything else but my career. These are the main reasons for which I hadn't thought about doing something like that in my Country, before coming to Singapore.

In Singapore, for various reasons, I was forced to do some *pro bono* work to comply with a mandatory requirement to enroll in a certain Bar. The work I performed at the Law Society PBSO consisted in making legal research and drafting the chapter on Family Law of the Community Legal Clinic Manual.

This made sense once I assisted legal clinics sessions and helped lawyers in making records while they were advising on relevant legal issues (eg contract of employment, contract of work, wills, and defamation). In fact, lawyers cannot be experts in all the sectors of the law and the referred Manual is indeed used by volunteer lawyers to provide free legal assistance during the Community Legal Clinic sessions.

Apart from learning about Singaporean Family Law, the characteristic that impressed me the most about *pro bono* work has been that I was actually helping people in need with my work, since I had never experienced such feeling working as a lawyer. After completing 50 hours of work I must say that I will never forget my *pro bono* experience and I am truly willing to repeat it again, once completed my LL.M. studies.

Primoz Sega
NUS LLM Candidate (2014), Slovenia

To put it first, an experience with LawSoc PBSO was very pleasant and provided a good insight in *pro bono* work. The team in the office was just great and very welcoming.

Generally, to me the *pro bono* work means a way of giving back to the community a part of the educational privilege I was, fortunately, given. It also requires one to deal with areas of law not yet known to him before; the ones that most affect lives of regular people. Also, *pro bono* gives you certain pleasure of knowing that you are helping people who would otherwise never be able to retain legal services they so much need to protect their fundamental rights.

During my time with LawSoc PBSO, I dealt mostly with the civil law clinic. I came in touch with civil and family law of Singapore and, excitingly, also with Syariah law. In addition, I touched on Malaysian law as well.

I only attended one clinic; family clinic at the Family Court. I learned that the clients would often come in ill prepared or with a wrong perception of their case and merits they base it on. Often they are in distress and are not properly focused. While they often keep their own perception of the case, they also try to persuade a lawyer to agree with them and to show explicit approval for their, often wrong, legal reasoning.

Besides the great coworkers, I will definitely remember the above mentioned clinic at the Family Court which gave me an opportunity to meet face to face with the people seeking advice.

Andrea Discepola
NYU Bar Exam Candidate, Canada

I've been volunteering with the Law Society's Pro Bono Services Office for the past five months and have been involved in a variety of areas including the Criminal Legal Aid Scheme, Family Legal Clinics, Civil Legal Clinics, and a project aimed at the provision of free legal information to the public. The most interesting of these are the Family Legal Clinics. I aspire to be a family lawyer in Singapore and being involved in these clinics, meeting the clients, and listening to their stories has only re-emphasised my desire to practise Family Law.

The most memorable Clinic was where we stayed behind with a client after the Clinic had ended to assist her further as her case was a cross-border issue and the welfare of the client and her infant were at stake. I hope to one day become a Singapore qualified family lawyer so that I may volunteer my time at the Family Legal Clinics to inform people of their rights and how to safeguard them. The Law Society's Pro Bono Services Office provides an invaluable service and I've enjoyed my experience with them thus far.

Matthew Boyd
NY Bar Candidate, UK

In a time when people are struggling to make ends meet, I feel the provision of *pro bono* services is a critical activity which should be carried out by those who have greater means, as a way of giving back to their community.

The most rewarding part I found in undertaking *pro bono* work was the feeling that, even if you have only provided the slightest amount of help, what I have done has made a positive impact on somebody's life. Furthermore, I found that it even assisted me in improving my lawyering ability!
In particular, through the nature of the legal matters which typically comprise *pro bono*, I was exposed to areas of law such as family law and criminal law, which I had not previously had so much knowledge about.

Although I see that the *pro bono* culture worldwide is not at the level it ought to be, I can certainly see an upward trend in people/companies who are embracing the ideas of what underpins the need for *pro bono* work in general: to ensure the person on the street is fully aware and confident in knowing and being able to enforce his/her legal rights.

Although I have only recently been interested in participating in *pro bono* work, I can definitely see myself pursuing further *pro bono* projects and activities in the future. I would also encourage anybody who may be interested, but either does not know exactly the full scope of what *pro bono* services comprise or has not entered into the *pro bono* network to give it a try, and I am sure you will receive the same rewarding and enriching experience as I did!

Jean Ting
NY Bar Candidate, Singapore

Pro Bono work is a crucial, but often underappreciated, aspect of the legal services landscape. Participating in *pro bono* efforts prompted me to reflect on the role of lawyers in addressing the everyday needs of the larger community. The values of fairness and justice that underpin the legal system can only truly be realised if all parties in disputes have the capabilities to advance their best case, which in turn requires access to resources. The Pro Bono Services Office facilitates this through its range of schemes and programs targeted at individuals as well as community service organisations at various levels, and it fulfills the important role of matching their needs to law practices that have the interest and expertise to offer advice and assistance.

In my time with the Pro Bono Services Office, I have witnessed the passion and dedication of the staff and volunteers in furthering its mission. Through working to update the criminal law manual, I learnt that in addition to having knowledge about legal rules and doctrines, it is at least equally important to understand the nuts and bolts of the working systems and processes of the legal system. For instance, members of the public are more likely to ask questions about the process of filing a magistrate's complaint or seek clarifications on arrest, custody and bail, than to ask questions about the content of legal rules at the preliminary stage. To begin to help them at all, having a grasp of these related processes is extremely important, but is often less explored in law school.

It has also been eye-opening to learn about the schemes in place to assist charities and NGOs, such as Project Law Help and the Joint International Pro Bono Committee. Pro Bono efforts are often thought of in terms of assisting individuals, yet there is also significant demand for assistance by non-profit organisations, particularly in areas of corporate governance. By helping these organisations to become more financially and operationally efficient, they would in turn be better placed to further their public interest projects. In other words, Pro Bono work can not only help individuals directly in law-related issues, but can also help individuals indirectly on wider socio-economic dimensions through benefitting community service organisations that advance these objectives. Thus, given the broad skillsets required by Pro Bono clients, there is surely some way that every lawyer can contribute regardless of their area of work.

Overall, working at the Pro Bono Services Office has a fruitful and humbling experience. I am inspired to continue to contribute in any way possible in the coming years, as part of my duty as a lawyer and more broadly, as a member of the Singaporean community.

► **Hugh Turnbull**
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Pro Bono Services Office
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Lessons from My Parents

My parents celebrated their golden anniversary this month. During their celebratory party, it hit me that being married for 50 years is no mean feat. It is especially meaningful for a divorce lawyer who often sees marriages breaking up in less than five years.

How did they do it? My father was 24 and my mother was 16 when they got match-made. They were distant relatives. He moved to Singapore from India at 19 to work and she, the eldest daughter in her family, was living in a small village, Seenamangalam in South India. They met each other for the first time on their wedding day. After the marriage, she left behind her family in India and moved with her husband to Singapore. With no support system, they literally built their life here from scratch.

I was the first-born, when my mother was 17. Five years later and another three years after that, both my brothers came along. Though they had little in their early years, they gave the best to me and are responsible for who I am today. Their story is so similar to that of Singapore's. It is fitting that both are celebrating 50 years this year.

Like many immigrants, Singapore was their transient home. They always spoke of "going back to their country". However, the Singapore bug was infectious and they now say that they find it difficult to adapt to life in India even on short holidays. My mother commented recently that she is grateful for the opportunity she had gotten to make Singapore her home.

My parents have a fairy tale marriage. They are an example of the type of perfect marriage that one sees in movies. My brothers and I never saw or heard any unhappy exchanges or any misunderstandings between them. I grew up thinking that all marriages must be like that of my parents'. They set such high standards for me to follow.

It was only much later that I realised that they made many sacrifices and compromises for each other. My parents

are also the greatest communicators I know. They have so much to say to each other, and talk about anything and everything. When my father was still working, he would telephone my mother every day during his lunch hour and they would chat away. Even today, they would talk and talk to each other, from the moment they wake up till bedtime.

In a recent television talk show, it was mentioned that marriage is just an opportunity for a couple to understand each other, something which they can never completely do. Marriages are delicate relationships, especially in today's fast moving world. Relationships are difficult to maintain and require a lot of work. Many clients tell me that they and their spouses just drifted apart after marriage.

Communication is such an important ingredient in a marriage and yet it is a most difficult skill to develop. It can cause many misunderstandings, break relationships and lead to divorces. Mental health professionals advocate that couples try to talk to each other about everything and anything, and not just about important matters such as finance, household matters and children. When a person is unable to communicate, apparently there are deeper psychological issues that he is facing.

In the same talk show that I saw, it was suggested that women have a lot of positive views and ideas which husbands should allow them to express. Equality must exist between a couple in a marriage. If it does not, the power imbalance slowly breaks down the marriage.

I remember assisting an elderly woman who was losing her battle to cancer to obtain a divorce. To my question why the divorce was important to her at this stage, she replied, "I want to die a free and peaceful woman".

My father is a quieter person than my mother. He also listens to her views. He regards her as an equal partner in the marriage. He used to come home after work to help take care of the children every day.

Many years ago, when I was congratulating a friend at his wedding, he replied that the marriage only starts the day after the celebrations. Marriage counsellors have remarked that couples put more work into their wedding celebrations than in their married life. The first few years of a marriage are the most difficult as seen by the number of young marriages ending nowadays. The feeling of romance between a couple quickly wears off in a marriage once they have to juggle careers, run a household, manage extended families and raise children.

The Wife and I crossed our tenth year of marriage this month. After going through many challenges and navigating around our differences, we feel we have had a really long marriage. On a number of occasions, we even had serious doubts about the survival of the marriage.

What kept us going was reminding ourselves that we loved and cared about each other a lot, over and above the problems we faced. We each also made big sacrifices to sustain the marriage.

My parents love and care for each other very much in their own quiet ways. Poor health has inflicted my mother for the last 20 years. My father is always by her side to care for her and to accompany her for her medical appointments and various medical treatments. Recently, when my mother was taken ill during a holiday, he did not leave her side until she felt well enough to get out of bed. Again, another tall order for me to follow.

The Wife deserves a lot of kudos. She puts up with the temperamental and moody side of me which most people do not know about. She is a full-time working wife and a full-time home-maker. There is a running joke in our family that her total contributions to the marriage would bankrupt me in the event of a divorce. She is the rock in my life and I would not have made such progress in life without her.

Being a family lawyer has made me appreciate the importance of marriage and the pitfalls to avoid. It teaches me how I should treat the Wife in our marriage. I also realise the importance of building a strong and resilient marriage through marriage preparation courses and counselling. The lessons I learnt in my own marriage also help me to be a more effective family lawyer.

Finding the right partner, knowing them well, accepting them for what they are, appreciating the fact that marriage will not change them and being there for each other through thick and thin is the basic foundation of a lasting marriage. A lesson that my parents have taught me by example.

► **Rajan Chettiar**
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Arbitration in Singapore: A Practical Guide

International arbitration in Singapore has grown by leaps and bounds. SIAC has an active case load of 619. This book is a testimony to Singapore's importance in the global arbitration arena.

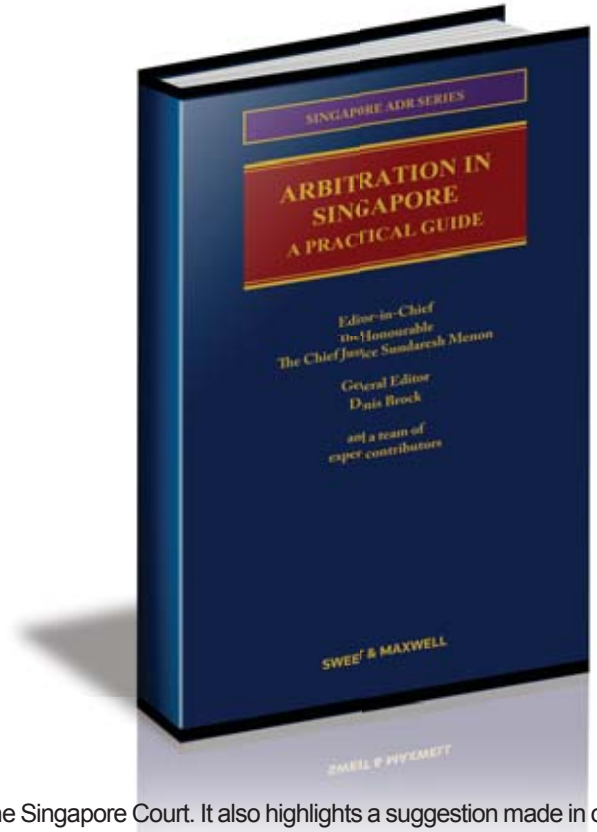
This is a must-have book for anyone who wants to know and operate in the Singapore arbitral system. The panel of authors are the "who's who" of the arbitral fraternity. This book is a practical guide which covers the procedural aspects of arbitration and also, focuses on arbitration in specific industries.

This book consists of 20 chapters. It begins with a historical overview of arbitration. The author covers the practice of arbitration from the Roman Empire, medieval England, France and Italy, and modern America. The significant international documents; the Geneva Protocol and Convention, the New York Convention and the Model Law are also discussed.

The next three chapters describe the role of the Court, the main features of arbitration and the legislative regime. Arbitration has been successful in Singapore because it has received strong support from the judiciary and Parliament. The Singapore Court of Appeal has announced that its role is to "support, and not to displace, the arbitral process". In conjunction to that, on 9 January 2014, the judiciary identified specialist arbitration Judges, among who are Justices Judith Prakash, Belinda Ang and Vinodh Coomaraswamy. The legislative framework in Singapore for arbitration is primarily found in two statutes; the Arbitration Act, and the International Arbitration Act for the international forum. Chapter 5 analyses the conflict of laws and the arbitral issues that arise from it.

Chapters 6 to 14 deal with the arbitral process proper. Starting with the arbitration agreement, it chronologically describes each step in the proceedings. For example, how the appointment of the arbitrator is done, the requirements of the notice of arbitration, including amending and responding to the notice, and the recognition, enforcement and challenge of the arbitration award. The steps outline the practical considerations with existing literature for easy reference. For example, the case of *PT First Media v Astro Nusantara International BV and others* [2013] is analysed at length, providing a complete picture of the grounds on which a Court can refuse enforcement of a domestic international arbitration. The ends of Chapter 6 and Chapter 12 have samples of model arbitration clauses and award templates.

The content of this book showcases step by step the workings of the arbitration process. It also offers a broad range of practical tips. For example, arbitrators should be aware that the principle of competence-competence has limited practicability in Singapore, and where such a ruling is made, it may be subject to review by



the Singapore Court. It also highlights a suggestion made in other literature that the Singapore Courts have the power to order third party document production for arbitrations that have foreign seats.

The final five chapters explain the practice of arbitration in specific industries: construction, intellectual property, domain name dispute resolution, shipping and international trade, oil and gas, and end with investment protection and international dispute resolution in Singapore.

The Asia Pacific is growing in its reputation as the preferred arbitration venue. In that collective effort, Singapore has established itself as one of the preferred arbitral institutions for domestic and international arbitration. The index and the sequence of the topics make for easy reference for users of this guide. The contributors have simultaneously compiled a practical handbook and a research treatise. Consultation of this book to simplify difficult procedural or evidential decisions is well advised.

► **Professor Datuk Sundra Rajoo**
Director
Kuala Lumpur Regional Centre for Arbitration

For more information about *Arbitration in Singapore: A Practical Guide* or Sweet & Maxwell, visit http://www.sweetandmaxwellasia.com.sg/.

Pursuant to s 93(5) of the Legal Profession Act, the Council of the Law Society is required to publish the findings and determination of the Disciplinary Tribunal in the *Singapore Law Gazette* or in such other media as the Council may determine to adequately inform the public of the same.

This summary is published pursuant to the requirement of s 93(5) of the Legal Profession Act.

Disciplinary Tribunal Report

In the Matter of Looi Wan Hui, an Advocate and Solicitor

The Disciplinary Tribunal found that the Respondent had conducted himself in a manner that amounts to a misconduct unbefitting of an advocate and solicitor as an officer of the Supreme Court or member of an honourable profession within the meaning of s 83(2)(h) of the Legal Profession Act (the "Act").

The Respondent acted for the father-in-law ("Plaintiff'" of the Complainant's sister ("Defendant"). The Plaintiff commenced action against the Defendant for return of his car, which the Defendant had been using. Following mediation, a settlement was reached and Final Judgment was entered, pursuant to which the Defendant was to pay the Plaintiff the sum of $24,800 in seven monthly installments. On 27 December 2012, the Complainant attended at the Respondent's office to deliver a cheque for the first installment payment on behalf of the Defendant. There was an altercation between the Respondent and the Complainant. The Complainant lodged a complaint that the Respondent had confronted the Complainant in a threatening manner and had shouted abusive and/or threatening words.

The following charge, pursuant to s 83(2)(h) of the Act, was preferred against the Respondent:

Charge

"You, Looi Wan Hui, are charged that on 27th December 2012, at about 11.00 am at 101 Upper Cross Street, #05-56 People's Park Centre, Singapore 059357 did conduct yourself in a manner that amounts to misconduct unbefitting of an advocate and solicitor and officer of the Supreme Court or as a member of an honorable profession within the meaning of section 83(2)(h) of the Legal Profession Act (Cap 161), to wit-

a. Charging at one Hun Sze Liang to confront him in a threatening manner and shouting the following abusive and/or threatening words or words to that effect:-

   'You and your sister lost this case. I will make you, your family and your sister all bankrupt'; and

b. Saying words loudly to one Wee Pei Ling, Corrine for one Hun Sze Liang to hear:-

   'Make sure you bank in the cheque today. People like these are likely to have bounced cheques. They can't afford to pay'

At the hearing, the Complainant and the Respondent gave their own versions of the event. At the conclusion of the hearing, the Society left it to the Disciplinary Tribunal to determine which version was more credible.

Findings of the Disciplinary Tribunal

The Disciplinary Tribunal found that, though there was a heated argument between the parties, it was not established beyond a reasonable doubt that the Respondent had "charged at the Complainant" and had confronted him in a threatening manner shouting, "You and your sister lost this case. I will make you, your family and your sister bankrupt" or words to that effect. The Disciplinary Tribunal opined that the Respondent would know that it was legally impossible to make the Complainant and his family a bankrupt as only the Defendant was liable to pay the judgment sum and may commence bankruptcy proceedings against her only if she defaulted. The Disciplinary Tribunal was, therefore, of the view that the Complainant's version on this aspect was exaggerated and thus could not be accepted.

The Disciplinary Tribunal then considered the evidence on the second allegation that the Respondent had said loudly to Wee Pei Ling, Corrine, ("Corrine") and for the Complainant to hear, the words "Make sure you bank the cheque today.

People like these are likely to have bounced cheques. They can't afford to pay". The Disciplinary Tribunal found that before this statement was made there was already a heated argument and the Respondent did disengage himself from further arguments, did walk to his room and close the door and in the course of his return to his room did make the offensive statement for the Complainant to hear. The Disciplinary Tribunal considered Corrine's evidence that the Complainant was very angry and "got riled up" but she could not really recall what the Respondent had said as she was busy writing the receipt for the installment payment. The Disciplinary Tribunal found it "odd" that she could not recall what the Respondent had said even though the statement was made to her but she could remember the Complainant's reaction that he was very angry and riled. The Disciplinary Tribunal was of the view that such evidence, coming from essentially a non-independent witness called to give supportive evidence in favour of her employer, does provide some basis for the inference that in fact the Respondent must have made the statement to Corrine but loud enough for the Complainant to hear.

Accordingly, the Disciplinary Tribunal found that the Respondent had made the statement as set out in paragraph (b) of the charge and determined that the Respondent had conducted himself in a manner that amounts to misconduct unbefitting of an advocate and solicitor as an officer of the Supreme Court or member of an honourable profession within the meaning of s 83(2)(h) of the Act. The Disciplinary Tribunal was mindful that it does not follow that once a finding that s 83(2)(h) of the Act had been made out, the matter should be referred for disciplinary action pursuant to s 93(1)(b) of the Act. Following the decision in *Law Society of Singapore v Jasmine Gowrimani d/o Daniel* [2010] 3 SLR 390, a Disciplinary Tribunal ought to refer only matters of sufficient gravity for disciplinary action in respect of serious cases. The Disciplinary Tribunal was of the view that there was no cause of sufficient gravity for disciplinary action pursuant to s 93(1)(b) of the Act and determined that the Respondent be reprimanded by the Society for his misconduct and ordered that he pay $2,000 as contribution to part of the costs and disbursements to the Society.

The Council's Decision

Pursuant to s 94(3) of the Act Council has accepted the determination of the Disciplinary Tribunal and has reprimanded the Respondent for his misconduct.

New Law Practices

Mr Tan Kai-Lit Melvin (formerly of Ascentsia Law Corporation) has commenced practice under the name and style of **Kai Law Chambers** on 2 January 2015 at the following address and contact numbers:

151 Chin Swee Road
#03-21 Manhattan House
Singapore 169876
Tel: 6235 2418
Fax: 6235 2398
E-mail: kailawchambers@outlook.sg

Mr Fong Chee Yang and **Mr Fong Mun Yung Gregory John** (both formerly of Beston Law LLP) have commenced practice under the name and style of **Fong & Fong LLC** on 12 January 2015 at the following address and contact numbers:

150 South Bridge Road
#02-05 Fook Hai Building
Singapore 058727
Tel: 6532 2366
Fax: 6532 2367
E-mail: legal@fongllc.com
Website: www.fongllc.com

Mr Leong Kum Kwok (formerly of Bih Li & Lee) has commenced practice under the name and style of **Leong Kum Kwok Law Practice LLC** on 12 January 2015 at the following address and contact numbers:

1 Coleman Street
#05-15 The Adelphi
Singapore 179803
E-mail: kkleong2001g@gmail.com

Mr Anthony Tan Lay Tiong and **Mr Tan Lay Pheng** (both formerly of Tan Andrea Seah & Partners) have commenced practice under the name and style of **AT Law Practice LLP** on 22 January 2015 at the following address and contact numbers:

480 Lorong 6 Toa Payoh
#07-03 HDB Hub East Wing
Singapore 310480
Tel: 6478 6210
Fax: 6325 6501
E-mail: anthony@tas-partners.com

Mr Deepak Natverlal (formerly of Maximus Law LLC) has commenced practice under the name and style of **Crown Juris Law LLC** on 23 January 2015 at the following address and contact numbers:

150 South Bridge Road
#02-11 Fook Hai Building
Singapore 058727
Tel: 6532 0416
Fax: 6532 0459
E-mail: info@crownjurislaw.com
Website: www.crownjurislaw.com

Dissolution of Law Practices

The law practice of **Beston Law LLP** dissolved on 11 January 2015.

Outstanding matters of the former law practice of Beston Law LLP have, with effect from 12 January 2015, been taken over by:

Fong & Fong LLC
150 South Bridge Road
#02-05 Fook Hai Building
Singapore 058727
Tel: 6532 2366
Fax: 6532 2367
E-mail: legal@fongllc.com
Website: www.fongllc.com

Conversion of Law Practices

Eugene Thuraisingam has converted to a limited liability partnership, **Eugene Thuraisingam LLP**, on 13 January 2015 and is operating at the following address and contact numbers:

One Phillip Street
#03-02
Singapore 048692
Tel: 6557 2436
Fax: 6557 2437
E-mail: eugene@thuraisingam.com
Website: www.thuraisingam.com

The following are Partners of **Eugene Thuraisingam LLP: Mr Eugene Thuraisingam, Mr Nakoorsha Bin Abdul Kadir** and **Mr Cheong Jun Ming Mervyn** (all formerly of Eugene Thuraisingam).

Change of Law Practices' Addresses

Grays LLC
141 Cecil Street
#05-00 Tung Ann Association Building
Singapore 069541
Tel: 6333 3007
Fax: 6333 3008
(wef 15 December 2014)

JC Law Asia LLC
16 Raffles Quay
#40-01B Hong Leong Building
Singapore 048581
T: 6222 8338
F: 6225 9386
E: office@jclawasia.com
(wef 29 October 2014)

SL Tan & Co
133 New Bridge Road
#16-06
Singapore 059413
Tel: 6538 4251
Fax: 6538 5414
(wef 19 January 2015)

Syed Yahya & Partners
228 Changi Road
#02-01 Icon @ Changi
Singapore 419741
Tel: 6447 3455
Fax: 6447 4454
E-mail: syplaw@singnet.com.sg
(wef 16 January 2015)

Jenny Lai & Co
101A Upper Cross Street
#08-20 People's Park Centre
Singapore 058358
Tel: 6227 7347
Fax: 6225 2251
E-mail: jlcosg@gmail.com
(wef 14 January 2015)

Pinnacle Law LLC
Branch Office
24 Peck Seah Street
#06-02 Nehsons Building
Singapore 079314
(wef 15 January 2015)

Information on Wills

Name of Deceased (Sex) NRIC Date of Death	Last Known Address	Solicitors/Contact Person	Reference
Goh Miang Heng (M) S1566865B 22 December 2014	Blk 151 Tampines Street 12 #02-08 Singapore 521151	Yeo & Associates LLC 6220 3400	YPT/Misc2015/Lee Meow Swang
Wong Mei Lin@Wong Ah Yat (F) S0407875F 24 December 2014	22 Grove Crescent Singapore 279158	Rajah & Tann Singapore LLP 6232 0704	GVG/VMN/shn
MC Intyre Gloria (F) S0729675D 15 July 2013	51 Lorong Stangee Singapore 425042	Drew & Napier LLC 6531 2447	JLTL/393861
Anna Wong Ann Naa (F) S6912165I 3 October 2014	Blk 764 Choa Chu Kang North 5 #06-277 Singapore 680764	Summit Law Corporation 6597 8363	201410653/11
Toh Hno Soi (M) S0222889J 23 December 2014	Blk 433 Bukit Panjang Ring Road #03-617 Singapore 670433	P. Tan & Company 6538 5263	PT/Probate/5384.15
Sinay Bin Hachan (M) S0534986I 18 May 2014	Blk 701B Yishun Avenue 5 #10-610 Singapore 762701	Jayne Wong Advocates & Solicitors 6466 9221	JW/ll/81847/LA
Tan Ah Chee (F) S2081816F 13 January 2015	Blk 178 Ang Mo Kio Avenue 4 #11-959 Singapore 560178	Hoh Law Corporation 6553 5186	AO/P20047.15/vt
Tan Chui Chui (F) S1272518C 15 January 2012	Blk 360C Admiralty Drive #02-48 Singapore 753360	Hoh Law Corporation 6553 5186	AO/P20050.15/vt
Lim Sock Koon (F) S0271539B 20 October 2014	Blk 96 Commonweath Crescent #10-04 Singapore 140096	Tng Soon Chye & Co 6438 3133	TSC.2965.Prob.2014-ak
Karthik Srinivasan (M) Indian Passport: Z2377947 19 December 2014	New 36 Sivaji Street T Nagar, Chennai 600017 India	Tan Leroy & Chandra 6429 0788	LST/K/7158/2015/c
Sim Kern Teck (M) S0291390I 7 January 2015	Blk 82 Tiong Poh Road #02-11 Singapore 160082	Allen & Gledhill LLP 6890 7856	DDN/ptc/1015001051

To place a notice in this section, please write to the Publications Department at The Law Society of Singapore, 39 South Bridge Road, Singapore 058673, Fax: 6533 5700, with the deceased's particulars, a copy of the death certificate and cheque payment of S$85.60 per notice made in favour of 'The Law Society of Singapore'. All submissions must reach us by the 5th day of the preceding month.

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Private Practice

REGULATORY PARTNER — Singapore — 8+ PQE

Major local law firm seeks a senior Singapore qualified lawyer to join their Regulatory team as a partner to grow the existing practice. The ideal candidate will have strong experience in advising on a variety of regulatory and compliance issues. Candidates from financial institutions as well as top tier law firms will be well regarded. (SLG 11629)

SENIOR BANKING ASSOCIATE — Singapore — 6-10 PQE

This leading international law firm is seeking a senior Singapore qualified banking lawyer to join its highly regarded banking and finance team. Senior experience in international and cross-border transactions as well as general advisory matters gained in a top tier firm will be essential. (SLG 1139)

TMT/IT ASSOCIATE — Singapore — 3-5 PQE

An international law firm with a strong reputation in technology is seeking a mid-level associate. This role will be exposed to a wide variety of high profile corporate commercial IT / TMT work. Candidates must have international experience in general corporate and transactional work with a TMT or outsourcing focus. (SLG 11536)

DISPUTES ASSOCIATE — Singapore — NQ-3 PQE

This large global law firm is seeking junior disputes lawyers with excellent academics and previous training/work experience in a top tier local or international law firm. Expertise in financial services and related investigations will be well regarded. (SLG 11643)

ASSET FINANCE (SHIPPING) ASSOCIATE — Singapore — NQ-3 PQE

A top tier international law firm is seeking a junior asset finance lawyer, ideally with experience in shipping. Candidates with strong project finance experience, looking to broaden their practice, will also be considered for this role.
(SLG 11691)

BANKING ASSOCIATE — Singapore — NQ-3 PQE

This international law firm is looking for an enthusiastic NQ or junior lawyer to join its dynamic banking practice. This will be a great role for learning the ropes in a friendly and collaborative team with exposure to broad banking and finance matters. (SLG 11720)

In-House

SENIOR M&A COUNSEL — Singapore — 15-18 PQE

A major investment firm with global interests across various sectors is looking for a senior lawyer to provide legal advice on a broad range of high profile corporate transactions including capital raising work, private and public M&A. Candidate must be a Singapore qualified lawyer with strong transactional cross-border M&A experience. (SLG 10679)

REGIONAL COMPLIANCE AND RISK — Singapore — 12-15 PQE

Global leader in insurance consulting is looking for a senior risk and compliance officer to oversee their compliance function across APAC. Candidates with strong familiarity in FCPA, Anti-Bribery act and experience dealing with the regulators would be preferred. (SLG 11701)

SENIOR COUNSEL — Singapore — 9-13 PQE

Major leading property company seeks to hire a senior counsel to assist with their investments across the Asia region. The lawyer will be responsible for working with the business team on fund raising, M&A and joint venture projects across the region. (SLG 11593)

M&A COUNSEL — Singapore — 7-12 PQE

A global investment firm is seeking to hire a Singapore qualified lawyer with strong transactional cross border M&A experience. Candidates with experience in M&A transactions in China are preferred for this position.
(SLG 10678)

LEGAL COUNSEL — Singapore — 3-7 PQE

Major US listed company in the IT space is seeking to hire a lawyer to support its commercial sales business across the Asia region. This role will focus on a broad range of commercial and customer service related contracts. (SLG 11732)

FINANCE COUNSEL — Singapore — 3-5 PQE

A leading regional bank is looking for a legal counsel to provide legal support to its Global Market business across the Asia region. Candidates with broad range of banking, finance and/or capital markets experience gained from top tier law firms will be considered. (SLG 10609)

Professionals Recruiting Professionals

These are a small selection of our current vacancies. If you require further details or wish to have a confidential discussion about your career, market trends, or would like salary information then please contact one of our consultants in Singapore (EA Licence: 07C5776):

Lucy Twomey or Jean Teh on +65 6557 4163.
To email your details in confidence then please contact us on legal.sg@alsrecruit.com.

Hong Kong
(852) 2920 9100
als@alsrecruit.com

Singapore
(65) 6557 4163
singapore@alsrecruit.com

Beijing
(86) 10 6567 8728
beijing@alsrecruit.com

Shanghai
(86) 21 6372 1058
shanghai@alsrecruit.com

IN-HOUSE

Contracting Counsel (8+ PQE), Singapore

A leading provider of IT and consulting services seeks a highly motivated and energetic lawyer to join their legal team in Singapore, to provide legal advice and support to the company's commercial projects in South East Asia. Primary responsibilities include reviewing, drafting and negotiating legal documentation for complex contracts. The successful candidate should have Singapore work experience and good transactional experience in IT - those familiar with systems integration, outsourcing, management consulting, cloud, analytics will have an edge. You should also be an independent worker with keen commercial acumen. [S19700]

Legal Counsel (5-8 PQE), Singapore

The financial arm of an international MNC, is looking to hire a 5-8 PQE lawyer, to provide legal support on their financing products, services and solutions. This position is based in Singapore and will cover the South East Asia region. The ideal candidate should be a good team player and have strong contract drafting skills; prior banking experience is good-to-have but not a strict prerequisite. Some travel is anticipated. [S37718]

Shipping Counsel (4-7 PQE), Singapore

Our client, a leading Fortune 500 company, is hiring a shipping/freight lawyer to join their well-established legal team. You must have good experience in dry and wet shipping, commercial arrangements for the shipping of energy and resources, and related disputes within the international commodities trading context, and should ideally be Singapore-qualified. The successful candidate can expect excellent career progression in a dynamic and fast-paced organisation. [S36001]

Legal Counsel (2-4 PQE), Singapore

Leading corporate secretarial company seeks a legal counsel to assist in the full spectrum of in-house legal and compliance matters. The broad spectrum of tasks will provide exciting learning opportunities as well as a great training platform for upward progression. Responsibilities entail drafting and reviewing a wide variety of legal and commercial agreements including business and operational contracts, IP/IT contracts, M&A agreements among others. Law degree from a recognized university and some prior experience working with a law firm or as an in-house legal counsel will hold you in good stead. [S38828]

Trust & Compliance Officer (10-14 PQE), Bengaluru, India

US IT MNC seeks a lawyer to be tasked with the responsibility of driving corporate compliance programs and initiatives throughout India and South Asia; you will maintain appropriate processes and operating mechanisms to meet policy compliance & regulatory responsibilities; identify key critical-to-compliance needs; determine risks and improve controls; coordinate with the business and provide training support. Candidates with at least 10 years' experience in directing/leading compliance required. Strong interpersonal skills, the ability to interface with cross-functional teams, management and regulators/regulatory agencies with excellent written and oral communication skills are advantageous. [S37127]

PRIVATE PRACTICE

Tax Partner (6+ PQE), Singapore

This is an exciting opportunity for a tax lawyer to join a leading firm in Singapore with a strong regional presence and grow their tax practice. The successful candidate will advise a pool of existing clients, both private and corporate, on a range of tax matters including issues relating to local and cross-border transactions, structuring and planning services, and disputes with IRAS. Interested candidates must be Singapore-qualified and have at least 6 years tax experience gained in a reputable law firm. [S37713]

Banking & Finance Senior Associate (6-10 PQE), Singapore

A large international law firm, is seeking a senior associate to join the firm's Banking & Finance team. This team is one of the most well regarded corporate finance practices in the region. The practice acts for both borrowers and lenders across a broad range of local and cross-border transactions including syndicated and bi-lateral loans, securitized debt, as well as asset and project financing matters. The ideal candidate would be Singapore called with 6-10 years of prior experience with a top-ranked local or international Banking & Finance practice. Extensive experience leading multi-party, cross-border transactions would be looked upon highly favourably. [S31991]

Employment Lawyer (5-10 PQE), Singapore

A boutique international firm, seeks a mid-level employment lawyer to expand its employment advisory practice to the firm's Singapore office. The ideal candidate will be common law qualified, and have regional exposure to employment and labour issues in Australia and ASEAN. The role will be responsible for working with team members in Europe to support existing clients, as well as develop the firm's practice in Singapore. The candidate must be highly motivated, entrepreneurial, capable of working autonomously, and excited about the opportunity to build a regional practice. [S18800]

Corporate Associate (3-6 PQE), Singapore

A well regarded local law firm is seeking a senior associate to join the firm's corporate department. The role will encompass M&A and general corporate and corporate finance work for domestic and international clients throughout the region and Singapore. Candidates with extensive finance, capital markets or M&A experience are welcome to apply. Preference for candidates that are called to the Singapore bar. [S38826]

Derivatives Lawyer (2-6 PQE), Hong Kong

A top-tier international law firm is seeking a mid-level Financial Regulatory lawyer to join the firm's Hong Kong office. The ideal candidate should have a broad range of experience in transactional and regulatory advisory related to financial products with particular knowledge of derivatives and other structured products. Applicants should also be HK or Common Law qualified, and Chinese language skills are preferred, but not required. [S35614]

We are looking! *If you possess a law degree, have about 3-5 PQE and are looking for a stimulating career, come talk to us! You will be trained by experienced legal recruitment specialists who believe in working with a high level of integrity and professionalism. As we give each of our Recruitment Consultants the opportunity for personal and professional growth, you will be exposed to the full cycle of the recruitment process, from business development to candidate sourcing and placement. Legal Labs offers an opportunity to build a recruitment career in an outfit that values open communication, hard work and ethical business conduct. In return, we will recognise your contribution to our continued growth in the region. [S37716]*

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Hong Kong
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Unit A, 20/F,
9 Queen's Road Central,
Central, Hong Kong

Email: resume@legallabs.com

IN-HOUSE ROLES

ELECTRONIC BANKING · SINGAPORE
Unique opportunity for a technology focused lawyer with experience advising on online environments to join the legal team of this international bank. This is a global role and will assist on the rollout of a new electronic banking platform.
Ref: 200051 6+ years

LEGAL TAX ADVISOR · SINGAPORE
Newly created role within an investment bank focusing on FATCA advisory matters on a global level. Previous FATCA/tax experience preferred but good lawyers with regulatory experience and a strong interest in this area also welcome to apply.
Ref: 199831 4+ years

SECURITIES SERVICES · SINGAPORE
Excellent opportunity for a mid-level lawyer to move into this collegiate and friendly team. Broad banking and securities background required. Product knowledge of custody, securities and derivatives clearing and settlement is an advantage.
Ref: 200251 3-6+ years

LOGISTICS · SINGAPORE
An exciting role exists in this leading logistics company in-house for a commonwealth qualified lawyer with at least 2 years of legal experience. Candidates with experience in shipping or international trade would be advantageous.
Ref: 199901 2+ years

PHARMACEUTICAL · SINGAPORE
A well-rounded role within this pharmaceuticals company exists for a junior lawyer. This is an exciting position which will expose candidates to the business. Candidates should possess at least 2 years of experience in practice.
Ref: 200081 2-4+ years

AVIATION · SINGAPORE
An exciting position has arisen in this aviation company for a lawyer with at least 5 years of legal experience. You should have experience working on aviation deals and Mandarin language skills are a must as you will be dealing with the China markets.
Ref: 197411 5+ years

SHIPPING · SINGAPORE
This US MNC in the shipping industry is looking for a regional counsel to cover the APAC region. The role has a general corporate focus. The ideal candidate will have offshore oil & gas experience. Candidates must be willing to travel.
Ref: 199441 4-7+ years

HOSPITALITY · SINGAPORE
A local listco seeks a lawyer with good corporate experience to join its legal team. Due to the focus within the team, the candidate should ideally have some hospitality related experience. Candidates must be called to the Singapore Bar.
Ref: 200181 5+ years

PRIVATE PRACTICE ROLES

ASSET FINANCE · SINGAPORE
Market leading finance team currently wishes to recruit a lawyer in line with growth. Ideally you will have experience in ship and/or aircraft finance but general banking lawyers looking to re-train/specialise are also of interest.
Ref: 199851 1-5+ years

CORPORATE · SINGAPORE
Global law firm seeks dynamic corporate lawyer to join the expanding team. You will assist an experienced partner on cross-border M&A and Private Equity matters on behalf of clients in the energy, healthcare and financial services sectors.
Ref: 200381 3-6+ years

INTERNATIONAL ARBITATION · SINGAPORE
Global practice currently requires an experienced arbitration lawyer to handle high value commercial arbitration matters. Excellent academic credentials and experience honed from another international or leading local firm is essential.
Ref: 200111 3-6+ years

TMT · SINGAPORE
Market leading IT/TMT team wishes to recruit an additional associate in line with growth. Working alongside a leading industry name you will handle a range of corporate IT/TMT related transactions on a global scale. Excellent prospects.
Ref: 198671 1-3+ years

LITIGATION · SINGAPORE
This global law firm is keen to hire a senior associate for its highly regarded disputes team. On offer will be a mix of arbitration, fraud, anti-bribery and general disputes work. There is a clear track to partnership for an ambitious person.
Ref: 196971 5+ years

REGULATORY · SINGAPORE
Brand new exclusive instruction. This long-established global law firm, is keen to hire a Financial Regulatory Partner. Will consider senior associates/counsel level candidates looking to make a vertical move and also in-house lawyers.
Ref: 116301 Partner

PROJECTS · SINGAPORE
A rare role at this international law firm. They are keen to hire a SG-qualified projects lawyer as a Counsel / Partner. Project Finance would be of particular interest but they would also consider infrastructure and construction experience.
Ref: 199521 Partner

CORPORATE · SINGAPORE
This leading international law firm is keen to hire a SG-qualified corporate M&A partner. There will be a strong pipeline of existing matters from the network to undertake and they will offer the platform to build your business in the region.
Ref: 186831 Partner

For Private Practice roles in Singapore and South East Asia contact Alex Wiseman on **+65 6420 0500** or **alexwiseman@taylorroot.com**
For In-House roles in Singapore and South East Asia contact Helen Howard on **+65 6420 0500** or **helenhoward@taylorroot.com**

Please note our advertisements use PQE purely as a guide. However, we are happy to consider applications from all candidates who are able to demonstrate the skills necessary to fulfil the role.

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BANKING & FINANCE ASSOCIATE - INTERNATIONAL LAW FIRM

A prominent global law firm is seeking a passionate mid-level finance associate to join its Singapore office. This role will involve extensive involvement in the drafting, negotiation and due diligence of a wide array of finance and project documents, as well as regularly attending client meetings. An ideal role for an ambitious associate seeking to take the next step in their career with a global law firm.

You must have between 4 to 6 years post qualification experience and be called to the bar in Singapore or the United Kingdom. Experience working on finance transactions covering South East Asia is advantageous. You must be professional, knowledgeable and meticulous. Excellent academics are an added advantage.

LEGAL DIRECTOR - INVESTMENT COMPANY

A unique opportunity exists with a global investment company who is currently seeking a Legal Director based in Singapore. You will provide legal support on investment deals and institutional deals, as well as liaising with external counsel on specific investment matters, together with overseeing the work of directors in general legal and compliance. This is a fantastic opportunity for a senior lawyer seeking to establish themselves in a global investment company.

You will have between 8 to 20 years' PQE with experience in transactional law, ideally specialising in public markets, corporate, funds, investments, banking or financial services. You will ideally have both in-house and private practice experience, and currently be in a senior role. Top-tier or blue-chip experience on a global scale is essential, along with familiarity working on matters in Singapore.

LEGAL COUNSEL - INSURANCE

A global insurance company is seeking a passionate legal counsel to join its energetic legal team in Singapore. This particular role will involve the provision of legal and regulatory advice to various business units, as well as drafting, negotiating and reviewing legal and commercial contracts on behalf of the organisation.

You must have at least six years post qualification experience and be qualified to practice in Singapore. An honours degree from a reputable Singapore university is also highly desirable, together with a strong commercial acumen, great negotiation skills and excellent interpersonal skills. This is a great opportunity for a driven lawyer to be part of a global business.

Contact Armin Hosseinipour (Reg ID No. R1440509) at armin.hosseinipour@hays.com.sg or +65 6303 0725.

MOTIVATED CORPORATE ASSOCIATE

A strong local firm is seeking an Associate or Senior Associate to join their corporate team. At present they have three main areas of practice, being Corporate, litigation and intellectual property (IP). They are one of the main players in the intellectual property market and are known for their leading IP strategies. Their corporate team currently consists of two Partners and they are seeking a valued individual to join their expanding business. Reporting to one of the Corporate Partners you will be responsible for providing corporate and commercial support in a broad range of transactions with particular focus on intellectual property.

You must have a minimum of three years PQE and be called to the Singapore bar. As you will be working in a close knit team, you should have an adaptable personality and be prepared to work in a small team. Understanding of intellectual property will be highly advantageous however solid corporate experience will be most important. This is an excellent opportunity for an experience corporate lawyer seeking to develop in a growing practice.

EXPERIENCED PARALEGAL

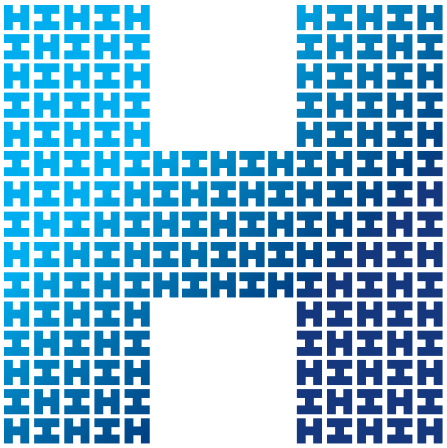
A leading international law firm is seeking a Paralegal to support their capital markets and securities team. You will be working closely with the existing support team to ensure that the needs of the fee earners are fulfilled, including but not limited to engaging in legal research, reviewing agreements and filing documentation.

You must have a bachelor degree from a reputable institution and a minimum of three years experience in a similar environment. Experience in capital markets, project finance or securities will be strongly favoured. This is a challenging opportunity for an experienced Paralegal.

PASSIONATE IP ASSOCIATE/IP EXECUTIVE

One of the strongest IP teams in the market is expanding their team, seeking to bring on board either an IP Associate or IP Executive. You will be working as part of the portfolio management team, focusing on Trademark portfolio management. Experience in the industry is crucial, particularly experience in the Singapore or APAC region. You should have a solid understanding of Trademarks and ideally be called to the Singapore bar. Those that are not called to the Singapore bar will only be eligible for the Executive position. This is a great opportunity for someone that is seeking to be a part of a prestigious IP team.

Contact Judy Liu (Reg ID No. R1333115) at judy.liu@hays.com.sg or +65 6303 0725.



The JLegal PQE

Personality Questionnaire Experience

Wilfred Ong

Associate General Counsel
Asia Pacific
at Avaya

Every month, JLegal takes a light-hearted look at the PQE of a senior in-house counsel. This month, we find out that Wilfred would love to be a Nat Geo writer or a doctor if he hadn't become a lawyer!

- What is on your mind at the moment?
  Too many things. I need to do a Chinese New Year spring clean and declutter - perhaps meditating might be a good start!
- Which talent would you most like to have?
  Being linguistically talented.
- What is your idea of misery?
  Being stuck at home sick, having to watch Hillbilly Hand-fishing or Extreme Couponing on cable TV…
- What do you most value in your friends?
  The ability to listen & willingness to put their phones aside when spending time with me.
- If you weren't a lawyer you would be a …
  Nat Geo writer.
- What is your most precious possession?
  My pets, since under the law, I can 'own' them.
- Where were you born?
  At the 'Buffalo Stable'… Kandang Kerbau Hospital.
- Where is the best place you have ever been to?
  Probably Turkey - it is rich in history, architecture, has different types of natural landscapes, colourful people and it provides a good contrast between tradition and modern living. It is also a place where people take separation of religion and state quite seriously.
- What is the strangest thing you have seen?
  People queuing up overnight to buy a cell phone.
- What is your greatest regret?
  Not having overcome my fear of blood, taking up medicine and then joining Médecins Sans Frontières.
- What do you consider your greatest achievement?
  Dropping A level Physics, taking up English Literature and scoring an A.
- What is your motto?
  Live and let live; never take yourself too seriously.
- Top 3 favorite movies of all time?
  I can only remember one… Shawshank Redemption. It has a lesson in there for everyone.
- What do you consider the most overrated virtue?
  "Respect for authority". Respect is earned, never a given.
- What is your greatest extravagance?
  Owning a car in Singapore be it a Nissan Sunny or a Lamborghini, is an extravagance.
- If you could change one thing about yourself, what would it be?
  To stop worrying about what others may think of me.

Happy Lunar New Year

from Pure Search

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