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SINGAPORE PROPERTY TAX LAW AS IT STANDS

The *Rebus Sic Stantibus* Principle and the Statutory Formula

The Singapore jurisprudence appears to have adopted the proposition that the *rebus sic stantibus* principle is to be disapplied where s 2(3) of the Singapore Property Tax Act (Cap 254, 2005 Rev Ed) is applied. This article argues that this proposition perhaps ought to be stated more precisely. The principle is only disapplied where s 2(3)(b) is applied because it would run contrary to the statutory fiction imposed by s 2(3)(b) that the land is to be valued as if it were vacant land. There should be no disapplication of the principle where s 2(3)(a) is applied due to the absence of any such conflict. In practice, the Chief Assessor and courts appear to have implicitly recognised this. However, the recent “Swiss Club case” (*HSBC Trustee (Singapore) Ltd v Chief Assessor and Comptroller of Property Tax* [2018] SGVRB 2) might have departed from this by disapplying the principle when s 2(3)(a) was applied. This provides an opportune moment to clarify the underlying proposition and its rationale.

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I. Introduction

1 The *rebus sic stantibus* principle is an objective principle in property valuation that property should be valued as it stands, and as used and occupied when the assessment is made.¹ It is an established principle of English origin² which has been affirmed in Singapore on several occasions.³ Section 2(3) of the Singapore Property Tax Act⁴

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1 *Great Western and Metropolitan Railway Co v Hammersmith Assessment Committee* [1916] 1 AC 23 at 54.

2 Dating back to at least as far as the middle of the 19th century. See Guy Roots, *Ryde on Rating and the Council Tax* (LexisNexis, 14th Ed, 2018) at p 268.

3 For example, *Chief Assessor v Howe Yoon Chong* [1983–1984] SLR(R) 657; *Aspiden Holdings Ltd v Chief Assessor* [2006] 4 SLR(R) 521; and *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339.

4 Cap 254, 2005 Rev Ed.

(“PTA”) (“the Statutory Formula”) is of local origin⁵ and allows the Chief Assessor to deem the annual value of a property to be 5% of the value of either (a) the estimated value of the property, including any buildings thereon; or (b) the estimated value of the land as if it were vacant land. Following the decisions of the Singapore Court of Appeal in *Chief Assessor v Glengary Pte Ltd*⁶ (“*Glengary*”) and *Aspinden Holdings Ltd v Chief Assessor*⁷ (“*Aspinden*”), it appears that there is a legal principle that the *rebus sic stantibus* principle is to be disapplied where the Statutory Formula is invoked by the Chief Assessor.⁸ This principle is supported by a string of cases before the Valuation Review Board (“VRB”), one decided before⁹ *Glengary* and *Aspinden*, and two decided after¹⁰ them.

2 While this legal principle has generally been formulated in broad terms to apply whenever the Statutory Formula is invoked, it bears remembering that the Statutory Formula has two limbs and the question arises whether the legal principle should apply to both limbs. Following the reasoning in *Glengary*, when s 2(3)(b) of the PTA is invoked by the Chief Assessor, the *rebus sic stantibus* principle must be disapplied because it runs contrary to the statutory fiction that the land is to be valued as if it were vacant land.¹¹ However, the *rebus sic stantibus* principle appears to be perfectly capable of co-existing with s 2(3)(a) of the PTA, which allows a property to be valued including any buildings thereon. Indeed, a careful reading of *Glengary*¹² and *Aspinden*¹³ suggests that these cases may support the proposition that the *rebus sic stantibus* principle may continue to apply where s 2(3)(a) of the PTA is invoked. Applying the (incorrect) broad principle that the *rebus sic stantibus* principle must be disapplied where s 2(3) of the PTA is invoked may not cause injustice in a situation where s 2(3)(b) of the PTA is invoked. In such a case, the principle is merely imprecisely stated. However, where s 2(3)(a) of the PTA is invoked instead, as in the recent case of *HSBC Trustee (Singapore) Ltd v Chief Assessor and*

5 Leung Yew Kwong & See Wei Hwa, *Property Tax in Singapore* (LexisNexis, 3rd Ed, 2015) at p 323.

6 [2013] 3 SLR 339 at [20].

7 [2006] 4 SLR(R) 521 at [36].

8 See *Halsbury's Laws of Singapore* vol 16 (“Revenue and Taxation – Other Taxes”) (LexisNexis, 2018 Reissue) at para 200.584; and Leung Yew Kwong & See Wei Hwa, *Property Tax in Singapore* (LexisNexis, 3rd Ed, 2015) at p 137.

9 *Poh Hee Construction Pte Ltd v Chief Assessor* (1992) 1 MSTC 5100 at 5102.

10 *The Legends Fort Canning Park Pte Ltd v Chief Assessor* [2015] SGVRB 1; *HSBC Trustee (Singapore) Ltd v Chief Assessor and Comptroller of Property Tax* [2018] SGVRB 2.

11 *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339 at [20].

12 *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339 at [20].

13 *Aspinden Holdings Ltd v Chief Assessor* [2006] 4 SLR(R) 521 at [36].

*Comptroller of Property Tax*¹⁴ (“the *Swiss Club* case”), the issue of precisely when the *rebus sic stantibus* principle must be disapplied becomes a material one as it affects the basis on which land is valued under s 2(3) of the PTA.

3 This article aims to establish the propositions raised above: that the *rebus sic stantibus* principle ought to be disapplied only where it runs contrary to a statutory fiction, which would be the case where s 2(3)(b) of the PTA is applied, but not s 2(3)(a). It would appear that in practice, an implicit distinction is drawn between the cases where ss 2(3)(a) and 2(3)(b) are applied. The proposition is not applied in its general (broad) form, but rather, correctly applied in that the *rebus sic stantibus* principle is only disapplied where s 2(3)(b) is applied, and still applied where s 2(3)(a) is applied. However, in the recent *Swiss Club* case, it appears that the *rebus sic stantibus* principle was disapplied even though s 2(3)(a) of the PTA was applied.¹⁵ In light of this, it may be an opportune moment to consider the theoretical foundations of the proposition itself and clearly state its scope.

4 Following this introduction, Part II¹⁶ lays out the law on the *rebus sic stantibus* principle and how it has been applied in Singapore. Part III¹⁷ goes on to briefly analyse the Statutory Formula. Part IV¹⁸ considers the particular issue of the interaction between the *rebus sic stantibus* principle and the Statutory Formula in the Singapore jurisprudence, tracing its development over time, and ultimately submitting that the conflict is really between the *rebus sic stantibus* principle and s 2(3)(b) of the PTA, but not s 2(3)(a).

II. The *rebus sic stantibus* principle

5 The *rebus sic stantibus* principle is an objective principle which states that a property should be valued as it stands, and as used and occupied.¹⁹ The principle, used in property valuation, aids in identifying comparable properties (for which actual valuation data exists), so as to provide an “anchor” for valuing the subject property (“the anchor

14 [2018] SGVRB 2 at [30]. In the interests of full disclosure, the author would like to declare that he was involved in the *Swiss Club* case as a trainee to the appellant’s counsel. Nevertheless, the views contained herein represent his honest analysis of the legal position.

15 *HSBC Trustee (Singapore) Ltd v Chief Assessor and Comptroller of Property Tax* [2018] SGVRB 2 at [30].

16 See paras 5–25 below.

17 See paras 26–29 below.

18 See paras 30–84 below.

19 *Great Western and Metropolitan Railway Co v Hammersmith Assessment Committee* [1916] 1 AC 23 at 54.

valuation”), as well as in determining the need for and extent of adjustments to be made to said anchor valuation to derive the annual value²⁰ of the subject property. There are two limbs to the *rebus sic stantibus* principle. The first limb relates to the physical state of the subject property, and the second limb relates to the use of the subject property.²¹

A. The first limb

6 The first limb of *rebus sic stantibus* requires that “matters affecting the physical state or physical enjoyment” of the property be considered at the valuation date.²² Comparable properties would thus be those whose physical state approximates, as closely as possible, that of the subject property. In ascertaining the “physical state” of the property, it is important to consider two sub-limbs: (a) how the subject property should be defined and delineated for the purposes of property tax;²³ and having done so, (b) the extent to which the physical state of a property considered for comparative anchor valuation approximates that of the subject property.

(1) *The first sub-limb: Defining and delineating the property to be assessed*

7 As a general rule, properties are separately identified in the Valuation List²⁴ and separately assessed.²⁵ This general rule is not

20 The annual value of a property is statutorily defined as the gross amount at which the taxable property can reasonably be expected to be let from year to year. It is determined by reference to a “hypothetical tenant” and what he would pay to rent it from year to year. See s 2(1) of the Property Tax Act (Cap 254, 2005 Rev Ed); *London County Council v The Churchwardens and Overseers of the Poor of the Parish of Erith in the County of Kent, and the Assessment Committee of the Dartford Union* [1893] AC 562 at 588; *R v Paddington Valuation Officer, ex parte Peachey Property Corp Ltd* [1966] 1 QB 380 at 412.

21 *Williams (Valuation Officer) v Scottish & Newcastle Retail Ltd* [2001] EWCA Civ 185 at [17]; *Aspinden Holdings Ltd v Chief Assessor* [2006] 4 SLR(R) 521 at [32].

22 *Burvill v Jones (Valuation Officer)* [2013] UKUT 101 (LC) at [38].

23 *Woolway (Valuation Officer) v Mazars LLP* [2015] AC 1862 at [5], where Lord Sumption JSC states the question thus: “Given that non-domestic rates are a tax on individual properties, what is the property in question?” See also the similar Singapore position, *ie*, that the *rebus sic stantibus* principle can be used to identify the assessable entity: *Aspinden Holdings Ltd v Chief Assessor* [2006] 4 SLR(R) 521 at [32].

24 A “Valuation List” comprising the annual values of all taxable property in Singapore is compiled by the Chief Assessor annually. See s 10(1) of the Property Tax Act (Cap 254, 2005 Rev Ed).

inflexible, however, and multiple separate properties may be assessed as one unit, thereby being jointly subjected to the application of the *rebus sic stantibus* principle. However, any such identification must not offend the *rebus sic stantibus* principle that the land should be valued “as it stands”.²⁶

8 There are two principles applicable to the identification of a property: (a) the geographical test; and (b) the functional test. The primary test is the geographical test, but the functional test may sometimes be relevant.²⁷

(a) *The geographical test.* The geographical test is based on visual or cartographic unity.²⁸ Properties which are contiguous *prima facie* form one property for valuation purposes.²⁹ However, contiguity is not the only factor. As Lord Sumption held in the leading English case of *Woolway (Valuation Officer) v Mazars LLP*:³⁰

If adjoining houses in a terrace or vertically contiguous units in an office block do not intercommunicate and can be accessed only via other property ... of which the common occupier is not in exclusive possession, this will be a strong indication that they are separate hereditaments.

(b) *The functional test.* Where two spaces are geographically distinct, the functional test may nevertheless enable them to be treated as a single property. Property A (“A”) would be valued together with a non-contiguous property B (“B”) if A is functionally essential to the enjoyment of B as B stands or *vice versa*, but not if A and B are in themselves functionally independent and merely complement each other in some overarching purpose.³¹ Whether A is functionally essential to the enjoyment of B is to be objectively assessed.³²

25 *Woolway (Valuation Officer) v Mazars LLP* [2015] AC 1862 at [1]; *Aspinden Holdings Ltd v Chief Assessor* [2006] 4 SLR(R) 521 at [14] (where this position is implicitly stated).

26 *Norman v Department of Transport* (1996) 72 P & CR 210.

27 *Woolway (Valuation Officer) v Mazars LLP* [2015] AC 1862 at [6] and [17].

28 *Woolway (Valuation Officer) v Mazars LLP* [2015] AC 1862 at [12].

29 *Norman v Department of Transport* (1996) 72 P & CR 210.

30 [2015] AC 1862 at [12]. It is noted that unlike English law, there is no concept of the hereditament as the unit of assessment in Singapore law. Rather, s 6(1) of the Property Tax Act (Cap 254, 2005 Rev Ed) refers to “houses, buildings, lands and tenements”, collectively referred to as “property” in s 6(2). This has to be borne in mind when reading the English case law.

31 *Gilbert (Valuation Officer) v S Hickinbottom & Sons Ltd* [1956] 2 QB 40 at 49–50; see also *Woolway (Valuation Officer) v Mazars LLP* [2015] AC 1862 at [14], approving this statement of principle.

32 *Woolway (Valuation Officer) v Mazars LLP* [2015] AC 1862 at [12].

The test is commonly applied by asking whether the two sections could reasonably be let separately,³³ though it is not the only test; a factual judgment on the part of the valuer and the exercise of a large measure of professional common sense is required.³⁴

(c) *Application of principles in Singapore law.* In *Aspinden*, the Singapore Court of Appeal considered whether various strata lots in a shopping mall could be amalgamated and assessed as a single assessable entity. The court held that the *rebus sic stantibus* principle applied to strata lots, such that, where several lots were combined and occupied as one, they would be regarded as a single “tenement” and assessed as such on a combined basis.³⁵ In coming to its decision, the Court of Appeal also considered the Chief Assessor’s decisions in several older cases (“the *Jalan Nuri* cases”). The *Jalan Nuri* cases concerned several houses where a house and its garden each occupied a separate lot with no physical walls or dividing lines between them. The court held that the lots should have been assessed as an integral whole.³⁶

9 In *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor*,³⁷ the VRB had to consider whether a carpark adjacent to a shopping mall should be exigible to assessment on a combined basis. The VRB held that the properties should be separately assessed because: (a) the carpark was physically separate and distinct from the shopping mall; (b) there was no distinct association of any part of the carpark with any retail, warehouse or ancillary units of the shopping mall; (c) the function of a carpark was clearly distinct from that of a shopping mall; and (d) the carpark was capable of being separately let.³⁸ The factors considered by the VRB are arguably a direct and substantive application of the geographical test (with the focus on physical separation) and functional test (with the emphasis on functional differences between the carpark and the shopping mall, as well as the capacity for separate letting of the carpark), with both tests leaning in favour of separate assessment on the facts of this case.

33 *Woolway (Valuation Officer) v Mazars LLP* [2015] AC 1862 at [12].

34 *Woolway (Valuation Officer) v Mazars LLP* [2015] AC 1862 at [12].

35 *Aspinden Holdings Ltd v Chief Assessor* [2006] 4 SLR(R) 521 at [18].

36 *Aspinden Holdings Ltd v Chief Assessor* [2006] 4 SLR(R) 521 at [63] and [66].

37 [2017] SGVRB 1.

38 *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2017] SGVRB 1 at [36].

(2) *The second sub-limb: Comparing physical states of subject and comparable properties*

10 In selecting appropriate comparable properties, the *rebus sic stantibus* principle requires that regard be had to the physical state and other crucial physical aspects of the subject property. Thus, in *Robinson Brothers (Brewers), Ltd v Assessment Committee for the No 7 or Houghton and Chester-le-Street Area of the County of Durham*³⁹ (“*Robinson Brothers*”), Scott LJ observed that the properties must be rated on the basis of “all its actualities”, including all of its intrinsic advantages and disadvantages, and all of its imperfections and drawbacks which may deter or reduce competition for it.⁴⁰ It follows that both the physical condition and material physical features of a property as it stands must be taken into account when identifying a comparable property.

11 The *Robinson Brothers* position was cited with approval in *Chief Assessor v Howe Yoon Chong*.⁴¹ In that case, the property in question, owned by one Howe, had a long, finger-like projection leading to the road. The Chief Assessor increased the assessment of annual value to account for that projection. Howe objected to the additional assessment. The Court of Appeal upheld the decision of the Chief Assessor on the grounds of the *rebus sic stantibus* principle; the projection was a part of the property as it in fact stood and served real purposes (eg, access for the property to the road) and should be considered in determining the annual value of the property.⁴²

12 Practically, for the purposes of assessments, it is often difficult to find a comparable property that is exactly identical in all particulars to the subject property. Thus, it is likely that a proxy comparable will have to be identified, and appropriate adjustments made to the annual value derived from the comparables to account for differences in physical condition between them,⁴³ though, here, allowances may be made for *de minimis* structural alterations which do not change the mode or category of occupation and (crucially) would likely be taken into account by a hypothetical tenant bidding for the premises.⁴⁴ Thus,

39 [1937] 2 KB 445.

40 *Robinson Brothers (Brewers), Ltd v Assessment Committee for the No 7 or Houghton and Chester-le-Street Area of the County of Durham* [1937] 2 KB 445 at 468.

41 [1983–1984] SLR(R) 657.

42 *Chief Assessor v Howe Yoon Chong* [1983–1984] SLR(R) 657 at [15].

43 *Chief Assessor v Howe Yoon Chong* [1983–1984] SLR(R) 657 at [25]; *Wilson-Smith v Attrill (Valuation Officer)* [2011] UKUT 287 (LC) (concerning whether and to what extent adjustments should be made for an access ramp to the subject property).

44 *Wilson-Smith v Attrill (Valuation Officer)* [2011] UKUT 287 (LC); *Williams (Valuation Officer) v Scottish & Newcastle Retail Ltd* [2001] EWCA Civ 185 at [74].

(cont'd on the next page)

given the near impossibility of finding identical comparables, it stands to reason that any comparable, to be truly such, must share certain common material physical features with the subject property.

13 These material physical features are not exhaustively or authoritatively defined for every situation that may arise. However, English authority has provided some guidance as to what factors might be considered. In *Cheale Meats Ltd v Ray (Valuation Officer)*⁴⁵ (“*Cheale Meats*”), the following factors were identified in the context of an abattoir and characterised as a “series of filters” weeding out inappropriate comparable alternatives or indicating material sources of adjustment to the comparison-derived annual value of the subject property: (a) location (proximity to producers and markets, access and transport communications, observed by the English Lands Tribunal in *Cheale Meats* to be a “key criterion”); (b) size; (c) age, condition and layout;⁴⁶ and (d) facilities.

14 These factors were also applied in the Irish Lands Tribunal case of *Kennedy Entertainments Ltd v The Commissioner of Valuation*.⁴⁷ In the local case of *The Legends Fort Canning Park Pte Ltd v Chief Assessor*⁴⁸ (“*The Legends*”), involving the rating of a town club located near the central business area, the VRB observed that the sale value of another club would serve as an appropriate comparable because of their similarity in locality, size and facilities,⁴⁹ which is broadly similar to the conditions set out in *Cheale Meats* above.

15 The weight to be given to each factor likely depends on the facts of each case. An increased emphasis on location is likely to be given in respect of industrial or commercial properties, though the particular locational features of the subject property to be considered will depend on the nature of the subject property as it stands. Thus, in the case of an abattoir, the locational features considered would include the quality of road communications (*ie*, distance and ease of access to highways) and proximity to the “main pig and cattle producing areas of Great Britain”.⁵⁰

See also *Re Manning (Valuation Officer)* [2014] UKUT 476 (LC); and *Sheffield United Tours Ltd v Elliott (Valuation Officer) and Sheffield Metropolitan District Council* [1983] RA 81.

45 [2012] UKUT 61 (LC).

46 It is important to note that in the UK, there is a statutory fiction that the subject hereditament is in a state of reasonable repair: see para 2(1) of Schedule 6 to the Local Government Finance Act 1988 (c 41). There is no equivalent statutory fiction in Singapore.

47 [2002] VR/27/2000.

48 [2015] SGVRB 1.

49 *The Legends Fort Canning Park Pte Ltd v Chief Assessor* [2015] SGVRB 1 at [25].

50 *Cheale Meats Ltd v Ray (Valuation Officer)* [2012] UKUT 61 (LC).

16 Local cases have shown that the locational features would markedly differ for country clubs. In *The Legends*, which, as has been noted, concerned the rating of a town club located in the town area, proximate to shopping amenities and well served by public transport links, it was noted that the use of a site at the north-eastern tip of Singapore, far removed from the town area, could not serve as a useful comparable because of the lack of proximity to shopping amenities and to public transport networks.⁵¹

17 Accordingly, the approaches taken by the UK and Singapore courts to the first limb of the *rebus sic stantibus* rule appear to be broadly aligned with each other. The identification of comparables for rating comparisons would depend on three main factors: location, size and facilities, with the weighty features of each depending on the unique set of circumstances in each case, particularly the nature of the property as it stands.

B. The second limb

18 The second limb of the *rebus sic stantibus* rule relates to the use of the subject property; the subject property can only be valued according to its *actual usage*.⁵² Thus, the identification of comparable properties for the purpose of rating are constrained by the “actual usage” of the subject property. The “actual usage” of the subject property appears to be given a broad reading, and indicates the existence of a “penumbra” of acceptable alternative usages surrounding the actual use to which the subject property is put, as long as they are in the “same mode or category”. Under both Singapore and English law, the statement of principle is as laid out by the English Lands Tribunal in *Fir Mill Ltd v Royton Urban District Council and Jones (Valuation Officer)*,⁵³ that:⁵⁴

... the mode or category of occupation by the hypothetical tenant must be conceived as the same mode or category as that of the actual occupier. A dwelling-house must be assessed as a dwelling-house, a shop as a shop, but not as any particular kind of shop; a factory as a factory but not any particular kind of factory. [the “*Fir Mill Principle*”]

51 *The Legends Fort Canning Park Pte Ltd v Chief Assessor* [2015] SGVRB 1 at [35].

52 *Aspiden Holdings Ltd v Chief Assessor* [2006] 4 SLR(R) 521 at [53].

53 (1960) 7 RRC 171.

54 *Fir Mill Ltd v Royton Urban District Council and Jones (Valuation Officer)* (1960) 7 RRC 171 at 185. This was adopted with approval in the Singapore case of *Diethelm & Co Ltd v Chief Assessor (No 2)* [1959–1986] SPTC 290. This principle was referred to by the English Court of Appeal in the subsequent case of *Byrne v Parker* [1980] RA 45 at 49–50.

However, beyond the *Fir Mill* Principle, what is considered to be the same mode or category of use as the actual use to which the subject property is put is a “matter of fact in each case”.⁵⁵

19 In the local cases of *Bata Shoe Co Ltd v Chief Assessor*⁵⁶ and *Diethelm & Co Ltd v Chief Assessor (No 2)*⁵⁷ (“*Diethelm*”), the VRB considered arguments that the subject property, both factories for shoes and furniture respectively, could only be valued with reference to comparable properties that were shoe and furniture factories respectively. Both propositions were rejected on the grounds of the second limb of the *rebus sic stantibus* principle; valuation evidence furnished by comparable properties “within the same general industrial class”⁵⁸ could be used to establish an anchor annual value for the subject property.

20 Where comparables lie outside the scope of the second limb of the *rebus sic stantibus* principle, they are only of use in determining the final annual value of the subject property if the valuation evidence derived therefrom is relevant to the circumstances of the case.⁵⁹ This is a vague statement of principle, but it is arguable that it may apply, for example, where the subject properties both share similar defects (for example, an increased risk of flooding). The discount applied to one property with respect to these defects may well be considered relevant to determining the quantum of the discount to be applied to the other in respect of the same defect, even though both properties would not be considered strictly “comparable” within the definition of the second limb of the *rebus sic stantibus* principle.

(1) *Relevance of planning and zoning permissions*

21 Some controversy exists as to whether planning and zoning permissions may define the scope of the “penumbra” of acceptable alternative usages in applying the second limb of the *rebus sic stantibus* principle.

22 The idea that alternative uses permitted by the planning legislation could be considered as within the “same mode or category” as the actual use of the subject property was considered in the English

55 *Sheffield United Tours Ltd v Elliott (Valuation Officer) and Sheffield Metropolitan District Council* [1983] RA 81.

56 [1971] 1 MLJ xli.

57 [1959–1986] SPTC 290.

58 *Bata Shoe Co Ltd v Chief Assessor* [1971] 1 MLJ xli.

59 *Williams (Valuation Officer) v Scottish & Newcastle Retail Ltd* [2001] EWCA Civ 185 at [52].

Lands Tribunal case of *Midland Bank Ltd v Lanham (Valuation Officer)*,⁶⁰ where it is stated:

... that in valuing for rating purposes it is necessary to take the hereditament as it stands *rebus sic stantibus*; that the value as thus restricted must relate to the hereditament in its existing physical state; and that the use of the hereditament must be taken to be within the same mode or category as the existing use. So much, I think, is established by authority, ... finally, *all alternative uses to which the hereditament in its existing state could be put in the real world, and which would be in the minds of competing bidders in the market*, are to be taken as being within the same mode or category, where the existence of such competition can be established by evidence. [emphasis added] [“the *Midland Bank Principle*”]

The reference to “all alternative uses” which would be “in the minds of competing bidders in the market” would clearly allow all alternative uses permitted by planning permissions to be considered in applying the *rebus sic stantibus* principle. Thus, a shop would not necessarily need to be valued as a shop if planning permission allowed it to be used for light industry in its present existing state. The *Midland Bank Principle* therefore represented an expansion of the *Fir Mill Principle*.

23 The *Midland Bank Principle* was rejected by a superior tribunal in *Williams (Valuation Officer) v Scottish & Newcastle Retail Ltd*⁶¹ (“*Scottish & Newcastle*”), where Robert Walker LJ held that the *Midland Bank Principle* was “either self-contradictory, or at best reduces the second limb of the [*rebus sic stantibus*] rule to a pale reflection of the first limb”.⁶² The self-contradictory nature of the *Midland Bank Principle* lay in the fact that its reference to “all alternative uses ... appears to contradict the immediately preceding reference to the use being limited to the same mode or category as the existing use”.⁶³ The *Midland Bank Principle* also rendered the second limb of the *rebus sic stantibus* rule essentially meaningless, and established the first limb of the *rebus sic stantibus* as the primary (if not the sole) governing principle of assessment, by being so broad as to encompass nearly all possible comparable properties as acceptable alternative usages to the subject property.

24 Despite its rejection in England, however, the *Midland Bank Principle* has survived in the Hong Kong case of *Commissioner of*

60 [1978] RA 1.

61 [2001] EWCA Civ 185.

62 *Williams (Valuation Officer) v Scottish & Newcastle Retail Ltd* [2001] EWCA Civ 185 at [69].

63 *Williams (Valuation Officer) v Scottish & Newcastle Retail Ltd* [2001] EWCA Civ 185 at [42].

*Rating and Valuation v Lai Kit Lau Mutual Aid Committee*⁶⁴ (“*Lai Kit Lau*”), which was decided before *Scottish & Newcastle*. In *Lai Kit Lau*, Kempster JA held that, “where there is evidence of a demand for like premises to be put to some alternative use, such evidence may be taken into account”. This restatement of the *Midland Bank* Principle focuses on evidence of market demand for alternative uses rather than on what the property in fact is (the focus of the *Fir Mill* Principle.)

25 While the *Fir Mill* Principle appears to be good law in Singapore, having been cited in *Diethelm*, the applicability of the *Midland Bank* Principle is uncertain. The *Midland Bank* Principle appears to have been rejected in *Singapore Turf Club v Chief Assessor*⁶⁵ (“*Singapore Turf Club*”), where in the assessment of a race course complex, the VRB rejected the relevance of zoning rules that permitted it to be alternatively used for “public open spaces”, holding instead that the complex was to be valued as a race course complex. More recently, in *The Legends*, the issue was whether a comparable country club could be used as a basis for valuing a town club, given that the zoning of the country club was “Recreation” while that of the town club was “Park and Garden”. The VRB held that:⁶⁶

... the suggestion that the subject property should be assessed in accordance with its zoning as ‘Park and Garden’ runs contrary to the principles of *rebus sic stantibus* in ascertaining the annual value. In estimating the ECV, *the property must be assessed based on its current approved usage and as it stands. In this case, the subject property must be assessed as a clubhouse. The subject property is not used only as park or garden space. The rebus sic stantibus principle requires the subject property to be assessed in its physical condition and existing approved use as a recreational clubhouse, regardless of its zoning.* [emphasis added]

While the phrase “regardless of its zoning” appears to imply that planning permissions are completely irrelevant (thereby displacing the *Midland Bank* Principle), the earlier reference to the subject property not being used only as park or garden space appears to imply otherwise, leading to some ambiguity. If the first statement (*ie*, that planning permissions are irrelevant) holds true, then there is no need to refer to the zoning use of the subject property as park or garden space at all.

64 [1986] HKLR 93.

65 [1983] 2 MLJ cxxxiii.

66 *The Legends Fort Canning Park Pte Ltd v Chief Assessor* [2015] SGVRB 1 at [39].

III. The Statutory Formula

A. *Methods of assessment*

26 It will be recalled that the “annual value” of taxable property is statutorily defined as the gross amount at which the taxable property can reasonably be expected to be let from year to year.⁶⁷ In determining this value, several methods of assessment may be applied. Leung and See list four principal methods of assessment:⁶⁸ (a) the “Rental Comparison Method”;⁶⁹ (b) the “Contractor’s Test”;⁷⁰ (c) the “Profits Method”;⁷¹ and (d) the “Statutory Formulae”.⁷² The first three methods of assessment attempt to derive an annual value in accordance with the statutory hypothesis in the PTA (*ie*, the gross amount at which the taxable property can reasonably be expected to be let from year to year,⁷³ even though that property might not have been let out at all).⁷⁴ On the other hand, the Statutory Formula is different in that it is not a valuation method but only a formula, which deems the annual value to be 5% of the estimated value of the property.⁷⁵

B. *The Statutory Formula*

27 Section 2(3) of the PTA provides as follows:

67 Property Tax Act (Cap 254, 2005 Rev Ed) s 2(1).

68 Leung Yew Kwong & See Wei Hwa, *Property Tax in Singapore* (LexisNexis, 3rd Ed, 2015) at p 257.

69 Where the annual value of a property is estimated using the rents of comparable properties as a guide. See Leung Yew Kwong & See Wei Hwa, *Property Tax in Singapore* (LexisNexis, 3rd Ed, 2015) at p 260.

70 Where an interest rate is applied to the capital value of a property to determine the annual value of a property. See Leung Yew Kwong & See Wei Hwa, *Property Tax in Singapore* (LexisNexis, 3rd Ed, 2015) at p 289.

71 Where the annual value of a property is determined by reference to the anticipated profits that may be generated by the business which occupies the property. See Leung Yew Kwong & See Wei Hwa, *Property Tax in Singapore* (LexisNexis, 3rd Ed, 2015) at p 306.

72 There are several kinds of statutory formulae which apply to specific kinds of situations. See Leung Yew Kwong & See Wei Hwa, *Property Tax in Singapore* (LexisNexis, 3rd Ed, 2015) at pp 314–323. A “Statutory Formula” of general application also exists in s 2(3) of the Property Tax Act (Cap 254, 2005 Rev Ed) and uses the capital value of a property to derive its annual value. All references in this article are to the general “Statutory Formula”. See *Property Tax in Singapore* at p 323.

73 Property Tax Act (Cap 254, 2005 Rev Ed) s 2(1).

74 Leung Yew Kwong & See Wei Hwa, *Property Tax in Singapore* (LexisNexis, 3rd Ed, 2015) at p 257.

75 *Chief Assessor v National Shipbreakers Pte Ltd* [1979–1980] SLR(R) 623 at [27]–[33].

(3) In assessing the annual value of any property, the annual value of the property shall, at the option of the Chief Assessor, be deemed to be the annual value as defined in this Act or the sum which is equivalent to the annual interest at 5% —

(a) on the estimated value of the property, including buildings, if any, thereon; or

(b) on the estimated value of the land as if it were vacant land with no buildings erected, or being erected, thereon.

28 The Statutory Formula is to be applied, at the discretion of the Chief Assessor, where any of the other methods of assessment are not appropriate.⁷⁶ The threshold for questioning the discretion of the Chief Assessor appears to be an extremely high one. Even if it may be possible or even practical to apply any of the other methods of assessment, the Chief Assessor may yet be able to apply the Statutory Formula. In *City Developments Ltd v Chief Assessor*⁷⁷ (“*City Developments*”), the Singapore Court of Appeal held that “there were effectively only two ways in which CDL could challenge the Chief Assessor’s exercise of discretion under s 2(3) of the Act, *viz*, that the Chief Assessor had either acted illegally, or he had acted irrationally”.⁷⁸

29 The Statutory Formula does not specify how the estimated value of the property is to be derived. While it provides that the annual value is 5% of the estimated value, the Statutory Formula provides no guidance on how to determine the estimated value in the first place. In *Tai Lai Holdings Pte Ltd v Chief Assessor*⁷⁹ (“*Tai Lai*”), the VRB held that the estimated value “must be the market value of the property. In arriving at an estimate of the market value of the subject properties, the Chief Assessor is entitled to take into account what a willing buyer is prepared to pay for the subject properties and what a willing seller is prepared to accept for parting with the subject properties”.⁸⁰

IV. The Statutory Formula and the *rebus sic stantibus* principle

A. *Displacement of the rebus sic stantibus principle*

30 This section of the article seeks to show that the local jurisprudence has formulated a proposition that the *rebus sic stantibus*

76 *Chief Assessor v National Shipbreakers Pte Ltd* [1979–1980] SLR(R) 623 at [32].

77 [2008] 4 SLR(R) 150.

78 *City Developments Ltd v Chief Assessor* [2008] 4 SLR(R) 150 at [9].

79 (1991) 1 MSTC 5076.

80 *Tai Lai Holdings Pte Ltd v Chief Assessor* (1991) 1 MSTC 5076 at 5077.

principle is to be displaced where the Chief Assessor has invoked the Statutory Formula (s 2(3) of the PTA in general and not specifically s 2(3)(b)). Several cases and leading texts refer to this proposition in this broad sense. However, it is noted that it would appear that in practice, the learned commentators and Boards do appreciate that the proposition does not apply in its broad sense. They have implicitly drawn a distinction between the cases where s 2(3)(a) and s 2(3)(b) are invoked. The proposition is not applied in its general (broad) form, but rather, correctly applied in that the *rebus sic stantibus* principle is only disappplied where s 2(3)(b) is invoked, and still applied where s 2(3)(a) is invoked.

31 However, it is worth exploring the theoretical foundations of this proposition and highlighting that the proper scope of the proposition should be accurately stated. This may help to prevent confusion which may arise if the proposition as currently stated in the cases and texts is read out of context.

(1) *The VRB cases*

32 As early as 1992, in *Poh Hee Construction Pte Ltd v Chief Assessor*⁸¹ (“*Poh Hee Construction*”), the VRB held that “it was not possible for [them] to say that the Chief Assessor must use the rule *rebus sic stantibus*” where s 2(3) of the PTA applied.⁸² In *The Legends*, the VRB held that “the *rebus sic stantibus* principle states that the assessable entity should be valued according to its physical nature and condition as well as its usage”, thus finding the principle to have no application where s 2(3) of the PTA applied.⁸³ In the recent *Swiss Club* case, the VRB held, citing *Aspinden*, *Halsbury’s Laws of Singapore*⁸⁴ and *Property Tax in Singapore*,⁸⁵ that “where there is a statutory formula for the assessment of annual value like in section 2(3) of the Act, the common law principle of *rebus sic stantibus* does not apply”.⁸⁶

(2) *The Court of Appeal cases*

33 In *Aspinden*, the Singapore Court of Appeal drew a distinction between deeming provisions in the PTA that provide for a statutory formula for the assessment of annual value (ss 2(3) and 2(5) of the PTA)

81 (1992) 1 MSTC 5100.

82 *Poh Hee Construction Pte Ltd v Chief Assessor* (1992) 1 MSTC 5100 at 5102.

83 *The Legends Fort Canning Park Pte Ltd v Chief Assessor* [2015] SGVRB 1 at [19].

84 Vol 16 (“Revenue and Taxation – Other Taxes”) (LexisNexis, 2015).

85 Leung Yew Kwong & See Wei Hwa, *Property Tax in Singapore* (LexisNexis, 3rd Ed, 2015).

86 *HSBC Trustee (Singapore) Ltd v Chief Assessor and Comptroller of Property Tax* [2018] SGVRB 2 at [30]–[31].

and those that do not (s 2(7) of the PTA), holding that common law principles of valuation such as the *rebus sic stantibus* principle would continue to apply in cases of the latter (but, it may be implied, not the former).⁸⁷ Several years later, *Aspinden* was followed by yet another Court of Appeal decision, *Glengary*, where the court held that “[i]t is clear from a plain reading of s 2(3)(b) of the Act that the usual principles of reality and *rebus sic stantibus* must be circumscribed, or more accurately, give way to the statutory fiction of ‘vacant land’”.⁸⁸

(3) *The leading texts*

34 With the benefit of the court’s reasoning in these two Court of Appeal decisions, the learned authors of *Halsbury’s Laws of Singapore* have commented that “[t]he *rebus sic stantibus* principle in so far as it restricts the assessment to the actual use of the property, does not apply in the application of the Chief Assessor’s statutory formula option. That common law principle is displaced by the statutory provisions”.⁸⁹ Similarly, the learned authors of the seminal text, *Property Tax in Singapore*, have expressed the view that “[i]n the application of the option in s 2(3), the *rebus sic stantibus* principle however does not apply in arriving at the ‘estimated value’ of the property. The words ‘estimated value’ in s 2(3) which point to the market value that the property will fetch in the open market, is not limited to the value of the property based on its existing physical condition and use”.⁹⁰

B. *Analysing the positions taken in the various authorities*

35 However, careful consideration of the present authorities reveals that the various positions taken are perhaps not as uniform as might seem at first glance.

(1) *Absolute language: The rebus sic stantibus principle has no application where s 2(3) of the PTA is applied*

36 In the three VRB cases of *Poh Hee Construction*, *The Legends* and *Swiss Club*, and the seminal text, *Property Tax in Singapore*, the language used is rather absolute, with each authority stating that the

87 *Aspinden Holdings Ltd v Chief Assessor* [2006] 4 SLR(R) 521 at [36].

88 *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339 at [20].

89 *Halsbury’s Laws of Singapore* vol 16 (“Revenue and Taxation – Other Taxes”) (LexisNexis, 2018 Reissue) at para 200.584.

90 Leung Yew Kwong & See Wei Hwa, *Property Tax in Singapore* (LexisNexis, 3rd Ed, 2015) at p 137.

rebus sic stantibus principle has no application where s 2(3) of the PTA applied.⁹¹

(2) *Qualified language: The rebus sic stantibus principle is not applicable in so far as it restricts the assessment to the actual use of the property*

(a) *Halsbury's Laws of Singapore: Citing Tai Lai*

37 The learned authors of *Halsbury's Laws of Singapore* qualify their statement regarding the non-applicability of the *rebus sic stantibus* principle by saying that this applies "in so far as it restricts the assessment to the actual use of the property".⁹² This statement references the second limb of the *rebus sic stantibus* principle, which, it will be recalled, relates to the actual use of the subject property, and is distinct from the first limb, which relates to the physical state of the property. The authority which the learned authors of *Halsbury's Laws of Singapore* cite for this is *Tai Lai*.⁹³ It is noted that the term "*rebus sic stantibus*" is never expressly used in *Tai Lai*, but the principle can be somewhat discerned from the following passage by the VRB in the case:⁹⁴

In arriving at an estimate of the market value of the subject properties, the Chief Assessor is entitled to take into account what a willing buyer is prepared to pay for the subject properties and what a willing seller is prepared to accept for parting with the subject properties and that both the buyer and the seller must of course take into consideration the fact that these are eight contiguous plots with the potential of being used for a large development.

38 While one can see how the learned authors of *Halsbury's Laws of Singapore* drew their conclusion from *Tai Lai*, with respect, the proposition gleaned from the case may perhaps be more precisely stated. Firstly, *Tai Lai* was a case where the equivalent of s 2(3)(b) was invoked by the Chief Assessor. Thus, it may be a little tricky to extend the principle in *Tai Lai* to include cases involving s 2(3)(a) as well. Secondly, it does not directly follow that just because the estimated

91 *Poh Hee Construction Pte Ltd v Chief Assessor* (1992) 1 MSTC 5100 at 5102; *The Legends Fort Canning Park Pte Ltd v Chief Assessor* [2015] SGVRB 1 at [19]; *HSBC Trustee (Singapore) Ltd v Chief Assessor and Comptroller of Property Tax* [2018] SGVRB 2 at [30].

92 *Halsbury's Laws of Singapore* vol 16 ("Revenue and Taxation – Other Taxes") (LexisNexis, 2018 Reissue) at para 200.584.

93 *Tai Lai Holdings Pte Ltd v Chief Assessor* (1991) 1 MSTC 5076. See *Halsbury's Laws of Singapore* vol 16 ("Revenue and Taxation – Other Taxes") (LexisNexis, 2018 Reissue) at para 200.584, fn 13.

94 *Tai Lai Holdings Pte Ltd v Chief Assessor* (1991) 1 MSTC 5076 at 5081.

market value is determined by what a willing buyer is prepared to pay and what a willing seller is willing to accept, one is not allowed to consider the actual use of the property. At the very least, there is no express prohibition on this point, leaving the door open for the possibility, if unlikely, that we might consider the “willing seller” to be in the same trade of the “willing buyer”, and intending to continue to put the land to the same use after purchase. Finally, while the VRB in *Tai Lai* did recognise that the estimated market value was to take into consideration the fact that the plots could potentially be combined, it also does not directly follow that all the factors relating to the physical state of the property (*ie*, all factors relating to the first limb and not to the second) may be taken into account when the Statutory Formula is invoked by the Chief Assessor.

(b) Other cases

39 Apart from *Tai Lai*, three other cases may arguably be said to support the proposition of the learned authors of *Halsbury’s Laws of Singapore*. The first two were cited in *Tai Lai* itself, where the VRB referenced *Nagappa Chettiar v Collector of Land Revenue*⁹⁵ (“*Nagappa Chettiar*”) for the proposition that “[m]arket value’ has been defined as the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of land”; including the latter case’s citation of *Nanyang Manufacturing Co v Collector of Land Revenue, Johore*⁹⁶ (“*Nanyang Manufacturing*”) stating that “the safest guide to determine fair market value is the evidence of sales of the same land or similar land in the neighbourhood”.⁹⁷

40 Also, in the decision of the Federal Court of Malaysia in *Collector of Land Revenue, Kuantan v Noor Chahaya bte Abdul Majid*⁹⁸ (“*Noor Chahaya*”), the court held that “[w]hile the learned judge rightly directed himself that potentiality is a factor to be taken into account in assessing compensation he had formed the erroneous view that market value and potential value are two separate items to be determined separately and then to be added to one another”, and that “[m]arket value” must indeed include potential value”.⁹⁹

95 [1971] 1 MLJ 59 at 60.

96 [1954] 1 MLJ 69.

97 *Tai Lai Holdings Pte Ltd v Chief Assessor* (1991) 1 MSTC 5076 at 5081.

98 [1979] 1 MLJ 180.

99 *Collector of Land Revenue, Kuantan v Noor Chahaya bte Abdul Majid* [1979] 1 MLJ 180.

(c) Analysis of the cases

41 At first glance, it would seem that the only case which may potentially have any force as binding precedent is *Nanyang Manufacturing*, being a case of the Malaysian High Court decided before Singapore's independence. *Tai Lai* is a decision of the VRB, *Nagappa Chettiar* is a decision of the Malaysian High Court decided post-Independence, *Noor Chahaya* is a decision of the Federal Court of Malaysia decided post-Independence, and *Halsbury's Laws of Singapore* is not binding case authority.

42 Further, it is noted that with the exception of *Tai Lai*, none of the abovementioned cases actually related to s 2(3) of the PTA or provisions *in pari materia*. Given that the issue in question is precisely whether the *rebus sic stantibus* principle is applicable where s 2(3) of the PTA is also applied, it is difficult to draw any clear statement of principle from the cases. References to "market value", "similar land" and "potential value" in themselves do not clearly establish the proposition that the actual use of the property is irrelevant when estimating market value under s 2(3) of the PTA.

43 The fact that clear principles are difficult to extract from the *Tai Lai* decision, and its status as a VRB decision, makes it difficult to rely on it as persuasive authority, especially in light of the two major Court of Appeal decisions of *Glengary*¹⁰⁰ and *Aspinden*,¹⁰¹ decided after *Tai Lai*, which do not appear to go as far as to support the broad proposition in *Halsbury's Laws of Singapore* that the *rebus sic stantibus* principle is not applicable when assessing a property under s 2(3) of the PTA. *Tai Lai* itself was never mentioned by the Court of Appeal in either *Glengary* or *Aspinden*.

44 It is noted that, in the *Swiss Club* case, the respondent cited *Tai Lai* for the proposition that the *rebus sic stantibus* principle is not applicable when assessing a property under s 2(3) of the PTA.¹⁰² The VRB accepted the respondent's argument in that case.¹⁰³

45 In summary, it is submitted that the proposition allegedly established in *Tai Lai*, as interpreted by the learned authors of *Halsbury's Laws of Singapore*, that where s 2(3) of the PTA applies, the *rebus sic stantibus* principle is to be displaced insofar as it restricts the

100 *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339 at [20].

101 *Aspinden Holdings Ltd v Chief Assessor* [2006] 4 SLR(R) 521 at [36].

102 *HSBC Trustee (Singapore) Ltd v Chief Assessor and Comptroller of Property Tax* [2018] SGVRB 2 at [16].

103 *HSBC Trustee (Singapore) Ltd v Chief Assessor and Comptroller of Property Tax* [2018] SGVRB 2 at [30].

assessment to the actual use of the property, is not a principle binding on the Singapore courts. Further, given the lack of detailed reasoning on the point, its persuasive value is also somewhat limited. Even if the proposition is accepted, the context in which it arose in *Tai Lai*, relating to the s 2(3)(b) of the PTA context, would mean that in the absence of any additional persuasive argument, it should be confined to s 2(3)(b) cases and not extended to s 2(3) cases in general. In this respect, the purported extension of the proposition to s 2(3) cases in general, and application in the context of a s 2(3)(a) case (as in the *Swiss Club* case) is questionable. This is particularly the case because the VRB in the *Swiss Club* case did not provide any specific arguments on why the proposition should be so extended to s 2(3)(a) cases.

- (3) *Highly specific language: The rebus sic stantibus principle is not applicable in so far as it runs contrary to the statutory fiction of vacant land in s 2(3)(b)*

46 The Court of Appeal in *Glengary* chose its words very carefully, not only specifying that the overarching consideration was the need to give way to the statutory fiction of vacant land, but also mentioning s 2(3)(b) specifically.¹⁰⁴ In light of the Court of Appeal's authority, the fact that this decision deals precisely with the issue of the interaction between the *rebus sic stantibus* principle and s 2(3)(b) of the PTA, and the carefully reasoned judgment of the court, it is submitted that one must look to this case for a complete understanding of this area of law. The *Glengary* decision will be covered in detail in the following section of this article, where the limits of the *rebus sic stantibus* principle are discussed.

- (4) *Comments made obiter*

47 While the *Aspinden* case was cited by the VRB in the *Swiss Club* case for the proposition that *rebus sic stantibus* does not apply "where there is a statutory formula for the assessment of annual value like in section 2(3) of the Act",¹⁰⁵ it is doubtful whether the *Aspinden* case does indeed take us that far. The first difficulty arises from the fact that the proposition adopted by the VRB in the *Swiss Club* case was actually *obiter dicta* in *Aspinden*, since the issue in question that the Court of Appeal was deciding in *Aspinden* related to s 2(7) of the PTA and had nothing to do with s 2(3). This brings us to the second difficulty, which is that any proposition on s 2(3) that may be drawn from *Aspinden* is

¹⁰⁴ *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339 at [20].

¹⁰⁵ *HSBC Trustee (Singapore) Ltd v Chief Assessor and Comptroller of Property Tax* [2018] SGVRB 2 at [30]-[31].

necessarily one which arises by implication. In that case, the court held as follows:¹⁰⁶

... ss 2(3) and 2(5) of the PTA provide a statutory formula for the assessment of annual value. This is to be contrasted with s 2(7) which does not specify a similar formula. It can therefore be inferred that common law principles of valuation, such as the *rebus sic stantibus* principle, remain relevant in an assessment pursuant to s 2(7).

The court thus did not expressly state that the *rebus sic stantibus* principle would be displaced where ss 2(3) and 2(5) of the PTA were applied; and even if it did, such a pronouncement would not only be *obiter*, but likely to be out of context and a generalisation as well.

48 If the statements of the Court of Appeal in *Aspinden* are indeed *obiter* on this point, then the only binding authority in this area would appear to be the case of *Glengary*, and it is to that case we now turn, to establish the limits of the *rebus sic stantibus* principle.

C. What are the limits of the *rebus sic stantibus* principle?

(1) *The inapplicability of the rebus sic stantibus principle in Glengary is confined to cases where it runs contrary to a statutory fiction*

49 In *Glengary*, the Court of Appeal held that, from a plain reading of s 2(3)(b) of the PTA, the usual principles of reality and *rebus sic stantibus* must be circumscribed, or more accurately, give way to the statutory fiction of “vacant land”.¹⁰⁷ Immediately, the clarification and precise wording of the Court of Appeal suggests that it did not mean that the *rebus sic stantibus* principle was to be completely displaced where s 2(3)(b) of the PTA applied. Rather, the court specifically stated that the *rebus sic stantibus* principle cannot be applied in so far as it must give way to the statutory fiction of vacant land.

(a) The concept of a statutory fiction

50 In *Glengary*, the Singapore High Court noted that to give effect to a statutory fiction is to treat something as if it were really something else, or as if it had qualities which it did not have.¹⁰⁸ Full effect is to be

106 *Aspinden Holdings Ltd v Chief Assessor* [2006] 4 SLR(R) 521 at [36].

107 *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339 at [20].

108 *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339 at [31].

given to the statutory fiction¹⁰⁹ and its ambit must be determined from an analysis of its purpose.¹¹⁰ As Goh Yihan explains:¹¹¹

[T]he statutory fiction is only to be carried to its logical conclusion within the framework of the purpose for which it was created. Such purpose may in turn be inferred from the inevitability of the consequences flowing from the statutory fiction. If the consequences were inevitable, then it may be presumed that Parliament intended them and will be within the purpose of the statutory fiction.

51 The Court of Appeal went on to affirm the principles applied by the High Court judge, but differed in their interpretation of the objective behind s 2(3)(b) of the PTA, holding that the pre-sales were not to be included in the assessment of the estimated value of the deemed vacant land.¹¹²

(b) Circumscribing the *rebus sic stantibus* principle

52 The reasoning for the circumscription of the *rebus sic stantibus* principle in such a context was elaborated upon by the court, which stated that:¹¹³

Whereas measuring the value of a plot of land by reference to its hypothetical rental value measures the actual use and occupation of the land ..., measuring the value of that land by reference to its capital value measures the *potential* use and occupation of the land. The hypothetical rent is limited by the buildings and particular uses to which the land has been put. On the other hand, an assessment based on capital value permits the valuer to take into account wider considerations, including the full potential development value of the land as a vacant piece of land. [emphasis in original]

53 It is clear that the rationale for circumscribing the *rebus sic stantibus* principle in *Glengary* was that the application of the principle would run counter to the legal fiction that the property in question was deemed to be vacant land. It is submitted that the exclusion of the *rebus sic stantibus* principle in *Glengary* is thus limited to the legal rule that the *rebus sic stantibus* principle must not be applied if it runs counter to a legal fiction.

109 *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339 at [32].

110 *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339 at [35].

111 Goh Yihan, "Chapter 12: Statutory Interpretation" in *The Legal System of Singapore: Institutions, Principles and Practices* (Gary Chan Kok Yew & Jack Lee Tsen-Ta eds) (LexisNexis, 2015) at para 12.67.

112 *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339 at [22]–[23].

113 *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339 at [21].

54 There are potentially two legal fictions in s 2(3)(b) of the PTA. The first is, of course, that the property in question is deemed to be vacant land. The second is that the annual value of the property in question is deemed to be 5% of the estimated value of the land. The second legal fiction is the provision which deems the annual value of the property, and thus it is the first legal fiction that must be carefully considered.

(c) Vacant land

55 The key question here is what the statutory fiction of “vacant land” actually means. Guidance can be derived from *Glengary* itself, where the court held that “the statutory fiction of ‘vacant land’ permits the assessment of land value by reference to its capital value”, and that “an assessment based on capital value permits the valuer to take into account wider considerations, including the full potential development value of the land as a vacant piece of land”.¹¹⁴ In other words, the statutory fiction of “vacant land” appears to require that the current use of the land be ignored for the purposes of valuation.

(d) Is the statutory fiction of vacant land the same as the *Midland Bank* Principle?

56 As discussed above, the *Fir Mill* Principle states that the mode or category of occupation by the hypothetical tenant must be conceived as the same mode or category as that of the actual occupier.¹¹⁵ The *Midland Bank* Principle in turn represents an expansion of the *Fir Mill* Principle, such that alternative uses permitted by the planning legislation could be considered as within the “same mode or category” as the actual use of the subject property.¹¹⁶

57 As noted in *Scottish & Newcastle*, the *Midland Bank* Principle appears to reduce the second limb of the *rebus sic stantibus* principle to a pale reflection of the first limb,¹¹⁷ in that it effectively negates the effect of the second limb. It may be argued that if the *Midland Bank* Principle requires a valuation to take into consideration all alternative uses permitted by the planning legislation, then that may be substantively no different from the statutory fiction of “vacant land”, which requires that the current use of the land be ignored for the purposes of valuation.

114 *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339 at [21].

115 *Fir Mill Ltd v Royton Urban District Council and Jones (Valuation Officer)* (1960) 7 RRC 171 at 185.

116 *Midland Bank Ltd v Lanham (Valuation Officer)* [1978] RA 1.

117 *Williams (Valuation Officer) v Scottish & Newcastle Retail Ltd* [2001] EWCA Civ 185 at [69].

58 This might also shed some light on the apparent rejection of the *Midland Bank* Principle in *Singapore Turf Club*,¹¹⁸ which involved the application of the contractor's test rather than the Statutory Formula. This case also hints that the *Fir Mill* Principle rather than the *Midland Bank* Principle will be applied in Singapore. It is only where s 2(3)(b) comes into play that the substantively equivalent statutory fiction of "vacant land" becomes relevant.

(2) *The application of deeming provisions in the PTA does not override the common law principle of rebus sic stantibus as a matter of course*

59 The proposition that the *rebus sic stantibus* principle should only be displaced when it runs counter to a legal fiction can be seen in *Aspinden*, where the court held that:¹¹⁹

34 Section 2(7) of the PTA did not displace any principle of assessment established under the common law. Section 2(7)(b) merely provided that the annual value of a strata lot was to be assessed as if it was a freehold estate in land. Consequently, the *rebus sic stantibus* principle should still apply in assessing the annual value of the subject properties. ...

35 ... the word 'deemed' was not intended to override existing principles of assessment. Instead, it merely served to clarify the tax position of strata lot owners under the strata regime. ...

60 In other words, where it is possible to apply both the relevant legal fiction and the *rebus sic stantibus* principle without conflict, the *rebus sic stantibus* principle should not be circumscribed.

(3) *The first limb of the rebus sic stantibus principle can still apply where section 2(3) applies*

61 As noted above, the first limb of *rebus sic stantibus* requires "matters affecting the physical state or physical enjoyment" of the property to be considered at the valuation date.¹²⁰ This raises issues of (a) how should the subject property be defined and delineated for the purposes of property tax;¹²¹ and having done so, (b) to what extent should the physical state of a property considered for comparative anchor valuation approximate that of the subject property? The first issue does not seem to conflict with any statutory fiction. As for the

118 *Singapore Turf Club v Chief Assessor* [1983] 2 MLJ cxxxiii.

119 *Aspinden Holdings Ltd v Chief Assessor* [2006] 4 SLR(R) 521 at [34]–[35].

120 *Burvill v Jones (Valuation Officer)* [2013] UKUT 101 (LC).

121 *Woolway (Valuation Officer) v Mazars LLP* [2015] AC 1862 at [5]; *Aspinden Holdings Ltd v Chief Assessor* [2006] 4 SLR(R) 521 at [32].

second, there is a need to consider the relevant factors. In *Cheale Meats*,¹²² the factors (a) location; (b) size; (c) age, condition and layout; and (d) facilities, were listed as potentially relevant factors.

62 It is submitted that these factors have to be interpreted as being factors that relate to the land itself and not the use of the land, if the first limb of the *rebus sic stantibus* principle is not to be rendered *otiose*. In that case, there too is no conflict between the first limb of the *rebus sic stantibus* principle and any statutory fiction. Consequently, the first limb of the *rebus sic stantibus* principle should still be applicable even if s 2(3) is invoked by the Chief Assessor.

(4) *The rebus sic stantibus principle is still applicable where s 2(3)(a) of the PTA applies*

63 As submitted above, the *rebus sic stantibus* principle should only be circumscribed where it conflicts with a relevant legal fiction in the PTA. It is further submitted that this position receives much greater support from the existing case law than a position arguing for a blanket inapplicability of the *rebus sic stantibus* principle whenever s 2(3) of the PTA applies.

64 In *The Legends*, the VRB accepted that s 2(3)(a) of the PTA should be applied to determine the annual value of the property. Yet, the VRB made no mention of any circumscription of the *rebus sic stantibus* principle in such an assessment. Rather, it expressly held that since the subject property was being used as a clubhouse despite its zoning as a “Park and Garden”, it was necessary to assess it based on its current approved usage and as it stands. Further, it noted that the “*rebus sic stantibus* principle requires the subject property to be assessed in its physical condition and existing approved use as a recreational clubhouse, regardless of its zoning”.¹²³

65 It would thus appear that despite s 2(3)(a) of the PTA being applied in *The Legends*, both limbs of the *rebus sic stantibus* principle were not only readily applied, but affirmed by the VRB in that case. It is submitted that this is explicable on the grounds that in *The Legends*, there was no question of the *rebus sic stantibus* principle conflicting with any statutory fiction. The legal fiction in s 2(3)(a) operates to deem the annual value of the property as 5% of the estimated value of the property, including any buildings thereon. It is noted that unlike s 2(3)(b), there is no additional statutory fiction that the land be “vacant land”. In fact, such a proposition would be at odds with the express

122 *Cheale Meats Ltd v Ray (Valuation Officer)* [2012] UKUT 61 (LC).

123 *The Legends Fort Canning Park Pte Ltd v Chief Assessor* [2015] SGVRB 1 at [39].

words of s 2(3)(a) that the property includes any buildings thereon. Both limbs of the *rebus sic stantibus* principle appear not to conflict with s 2(3)(a) and thus, should not be displaced in this context.

66 Further authority for the proposition that the *rebus sic stantibus* principle is not automatically excluded when s 2(3) of the PTA is applied can be found in *Wave House Singapore Pte Ltd v Chief Assessor*¹²⁴ (“*Wave House*”) where the VRB accepted that the Statutory Formula (s 2(3)(a)) could be used as a check method to the rental comparison method.¹²⁵ In this context, the *rebus sic stantibus* principle was accepted and applied. It was held that the assessment of the subject property should take into account the property as it stood and as it was used at the time of the assessment.¹²⁶

D. Summary of the legal position and its importance

67 It would thus appear from the cases that the applicability and application of the *rebus sic stantibus* principle hinges on whether the principle conflicts with a statutory fiction under s 2(3)(b) of the PTA. There might be such a conflict because the second limb of the *rebus sic stantibus* principle considers the actual use of land, while s 2(3)(b) considers the potential use of the land. Where there is such a conflict, the principle is to be displaced insofar as necessary to avoid the conflict. Since the only statutory fiction that may be of relevance in the s 2(3) context is that of “vacant land”, it would appear that the *rebus sic stantibus* principle will apply even where s 2(3)(a) is invoked by the Chief Assessor. In addition, since the first limb of the *rebus sic stantibus* principle appears to be in harmony with the statutory fiction of “vacant land”, it would appear that it is only where s 2(3)(b) is invoked by the Chief Assessor that the second (and only the second) limb of the *rebus sic stantibus* principle should be displaced.

68 It is important to have a clear understanding of the relevant legal principles at play because ss 2(3)(a) and 2(3)(b) of the PTA operate in very different ways. The estimated capital value of a property can generally be broken down into two components: (a) “Land Value”; and (b) “Building Value”. It stands to reason that the value of the property as vacant land and as developed land, with buildings on it, may be different; although the value of the latter may not always exceed that of the former.

124 [2016] SGVRB 1.

125 *Wave House Singapore Pte Ltd v Chief Assessor* [2016] SGVRB 1 at [59] and [67].

126 *Wave House Singapore Pte Ltd v Chief Assessor* [2016] SGVRB 1 at [55].

69 When s 2(3)(b) of the PTA is invoked by the Chief Assessor, the *rebus sic stantibus* principle will not apply in the assessment of the estimated value of the property to the extent that there is a conflict with the principle. However, the estimated value of the property will include only the Land Value component, since the statutory fiction is that the land is vacant land. On the other hand, when s 2(3)(a) of the PTA is invoked by the Chief Assessor, the *rebus sic stantibus* principle will apply in the assessment of the estimated value of the property. But the estimated value of the property will include both the Land Value and the Building Value, since s 2(3)(a) provides that the land be considered with any buildings on it. While there is a very high threshold of questioning the exercise of discretion of the Chief Assessor as to whether to invoke s 2(3), and if so, whether to invoke s 2(3)(a) or s 2(3)(b),¹²⁷ it is submitted that the Chief Assessor is bound by the consequences of his decision according to the abovementioned points. In other words, the Chief Assessor has a broad discretion as to whether to invoke s 2(3)(a) or s 2(3)(b), but having made his choice, consequences will flow as a matter of law: invoking s 2(3)(a) allows both Land Value and Building Value to be taken into consideration (“Case 1”), while invoking s 2(3)(b) only allows the Land Value component to be taken into consideration (“Case 2”).

70 It is worth noting that the “Land Value” in Case 1 and that in Case 2 may well be different because, as this article has sought to show, the “Land Value” is computed subject to the *rebus sic stantibus* principle in Case 1 but not in Case 2. By way of example, a property may currently be used as a recreational club, with a large clubhouse, but is actually zoned as residential property. If the Chief Assessor invokes s 2(3)(a), the Building Value of the clubhouse would be included, but the Land Value would be based on its current club use (in accordance with the *rebus sic stantibus* principle). On the other hand, if the Chief Assessor invokes s 2(3)(b), the Building Value of the clubhouse would be excluded, but the Land Value would be based on its potential use as residential property and much higher (the *rebus sic stantibus* principle being displaced because it runs contrary to the statutory fiction).

E. Practical application of the proposition

71 It would appear that while the proposition has been rather broadly stated, in practice, the courts have wisely “read-down” the proposition such that the *rebus sic stantibus* principle is only disapplied where there is a conflict between it and the statutory fiction (*ie*, in s 2(3)(b) cases only).

127 *City Developments Ltd v Chief Assessor* [2008] 4 SLR(R) 150 at [9].

72 While references to the *rebus sic stantibus* principle being disappplied in all cases involving the application of s 2(3) were made in *Tai Lai*¹²⁸ and *City Developments*,¹²⁹ both cases in fact involved the application of s 2(3)(b), which made application of the proposition apt, even if it could have been more precisely stated. As for cases involving the application of s 2(3)(a), like *The Legends*,¹³⁰ *Wave House*¹³¹ and *Singapore Turf Club*,¹³² it would appear that despite the proposition arguably precluding the application of the *rebus sic stantibus* principle in such cases, the principle has in fact been consistently applied.

73 The only curious case so far where the *rebus sic stantibus* principle was arguably not applied where s 2(3)(a) was invoked is the *Swiss Club* case.¹³³ Although s 2(3)(a) of the PTA was invoked by the Chief Assessor and both the Land Value and Building Value were taken into consideration in the assessment, the VRB held that the *rebus sic stantibus* principle was inapplicable, rejecting the appellant's contention that regard should be had to the fact that the property was zoned for residential use.¹³⁴ While it was open to the Chief Assessor to assess the property under s 2(3)(a) or s 2(3)(b) of the PTA, given that it had chosen s 2(3)(a), the *rebus sic stantibus* principle should have been applicable and the Land Value should have been adjusted to reflect the fact that the property was zoned for residential use. The alternative would have been an assessment under s 2(3)(b), under which the *rebus sic stantibus* principle would not have been applicable, but accordingly, only the Land Value ought to have been taken into consideration in the assessment.

F. Possible reasons for the two limbs

74 It is not easy to discern the legislative purpose or object of the statute. Section 2(3) is of local origin¹³⁵ but there is no mention of such legislative purpose or object in *Hansard*. F A Chua J has suggested that the provision is “a last resort formula to be applied when any of the

128 *Tai Lai Holdings Pte Ltd v Chief Assessor* (1991) 1 MSTC 5076 at 5081.

129 *City Developments Ltd v Chief Assessor* [2008] 4 SLR(R) 150 at [9].

130 *The Legends Fort Canning Park Pte Ltd v Chief Assessor* [2015] SGVRB 1 at [39].

131 *Wave House Singapore Pte Ltd v Chief Assessor* [2016] SGVRB 1 at [55].

132 *Singapore Turf Club v Chief Assessor* [1983] 2 MLJ cxxxiii.

133 *HSBC Trustee (Singapore) Ltd v Chief Assessor and Comptroller of Property Tax* [2018] SGVRB 2 at [30].

134 *HSBC Trustee (Singapore) Ltd v Chief Assessor and Comptroller of Property Tax* [2018] SGVRB 2 at [8] and [30].

135 Leung Yew Kwong & See Wei Hwa, *Property Tax in Singapore* (LexisNexis, 3rd Ed, 2015) at p 323.

methods based on the primary definition is not appropriate”.¹³⁶ Chao Hick Tin J has clarified that the exercise of the option in s 2(3) is not limited to cases where other methods of assessment are “impossible” or “impractical”.¹³⁷ However, this relates only to the s 2(3) provision in general and does not shed any light on why there are two limbs in the provision.

75 Leung and See provide a plausible suggestion for the need for the two limbs. They note that in a relevant case, while land is under development, it may be assessed under s 2(3)(b). Upon completion, the completed property (comprising the land and the building) will then be assessed and the previous assessment will then be deleted. According to Leung and See, this is to prevent double assessment.¹³⁸ It may be possible that the purpose behind dividing s 2(3) into two limbs is because they catch different situations and Parliament recognised that it is necessary to treat properties in such situations differently.

76 It is noted that generally, the value of a property with buildings on it will be higher than that of the vacant land. However, depending on the state of repair of the buildings on the property, there may well be cases where the vacant land is worth more than the land with buildings on it. There is the possibility that Parliament contemplated the existence of both cases and wanted to give the Chief Assessor the option of assessing the property under the relevant limb of the Statutory Formula that would give rise to the higher estimated value.¹³⁹

77 There are two separate legal fictions in s 2(3): (a) s 2(3) as a whole allows the Chief Assessor to deem the annual value of a property as 5% on the estimated value of the property; and (b) s 2(3)(b) requires the Chief Assessor to take the estimated value of the land as if it were vacant land. It is worth considering the possibility that, given that s 2(3) as a whole does itself contain a legal fiction, Parliament could have intended for the *rebus sic stantibus* principle to be disappplied whenever s 2(3) as a whole was invoked (and not merely s 2(3)(b)).¹⁴⁰ Unfortunately, there is no real evidence to support this view. The *rebus sic stantibus* principle is a well-established principle and it was always

136 *Chief Assessor v National Shipbreakers Pte Ltd* [1979–1980] SLR(R) 623 at [32]; also see Leung Yew Kwong & See Wei Hwa, *Property Tax in Singapore* (LexisNexis, 3rd Ed, 2015) at p 325.

137 *Lee Tat Development (Pte) Ltd v Chief Assessor* [1995] 2 SLR(R) 785 at [20]; also see Leung Yew Kwong & See Wei Hwa, *Property Tax in Singapore* (LexisNexis, 3rd Ed, 2015) at p 325.

138 Leung Yew Kwong & See Wei Hwa, *Property Tax in Singapore* (LexisNexis, 3rd Ed, 2015) at p 326.

139 The author thanks the anonymous reviewer for raising this point.

140 Once again, the author would like to thank the anonymous reviewer for encouraging him to consider this issue.

open to Parliament to expressly legislate to exclude its application whenever s 2(3) was invoked. In the absence of any such expression of parliamentary intention, it is submitted that the common law *rebus sic stantibus* principle should apply unless it clearly runs contrary to a statutory fiction. In the present case, it only runs contrary to the second, but not the first, statutory fiction.

G. Where deeming provisions run contrary to a statutory fiction

78 As submitted earlier, the overarching question is whether the second limb of the *rebus sic stantibus* principle runs contrary to any statutory fictions. For the sake of completeness, it is noted that s 2(3) is not the only section in the PTA to provide for a statutory fiction. Two examples of such sections, as supported by case law, will be set out here, but several other statutory fictions exist in the PTA.¹⁴¹

(1) *Annual value of a strata lot to be assessed as if it was a freehold estate in land*

79 In *Aspinden*, the Court of Appeal affirmed the applicability of the *rebus sic stantibus* principle in delineating the property to be assessed, holding that:¹⁴²

34 ... Section 2(7) of the PTA did not displace any principle of assessment established under the common law. Section 2(7)(b) merely provided that the annual value of a strata lot was to be assessed as if it was a freehold estate in land. Consequently, the *rebus sic stantibus* principle should still apply in assessing the annual value of the subject properties. ...

80 The court also drew a distinction between deeming provisions in the PTA that provide for a statutory formula for the assessment of annual value (ss 2(3) and 2(5) of the PTA) and those that do not (s 2(7) of the PTA), holding that common law principles of valuation such as the *rebus sic stantibus* principle would continue to apply in cases of the latter (but, it may be implied, not the former).¹⁴³

81 With great respect to the court, it is humbly submitted that this broadly phrased principle might be more precisely formulated. It might not be the fact that a statutory formula expressly provides for the assessment of the annual value in ss 2(3) and 2(5) of the PTA that sets them apart from s 2(7) of the PTA, which has no such statutory

141 For example, see ss 2(1A), 2(8) and 2(9) of the Property Tax Act (Cap 254, 2005 Rev Ed).

142 *Aspinden Holdings Ltd v Chief Assessor* [2006] 4 SLR(R) 521 at [31]–[34].

143 *Aspinden Holdings Ltd v Chief Assessor* [2006] 4 SLR(R) 521 at [36].

formula. Rather, as submitted earlier, the distinction is likely to be due to the fact that in the context of s 2(7) of the PTA, the *rebus sic stantibus* principle does not run contrary to any statutory fiction. It would appear that even if ss 2(3) and 2(5) of the PTA are applied, the *rebus sic stantibus* principle would still be applicable in so far as it did not run contrary to any statutory fiction.

(2) *Excess land deemed to be vacant land*

82 In *The Trustees of the Hokkien Yeo Sze Fund v The Chief Assessor*,¹⁴⁴ the VRB considered the applicability of the *rebus sic stantibus* principle in the context of s 2(5) of the PTA, which provides that the value of the “subject property would be assessed at 5% of the estimated value of the excess land, which would be deemed to be vacant land and thus assessed in accordance with s 2(8) PTA, as if the subject property comprised a freehold estate in land”.¹⁴⁵

83 The VRB held that in such a context, the *rebus sic stantibus* principle had no application because it should not override “express statutory provision”¹⁴⁶ (ie, the statutory fiction). In doing so, it applied the unreported VRB decision of *Rheem Hume Pte Ltd v Chief Assessor*,¹⁴⁷ which had a similar fact pattern.¹⁴⁸ The VRB further considered that “the actual use of the land is irrelevant in such a determination”.¹⁴⁹

84 With respect to the VRB, it might be phrasing things a little too broadly to hold that the *rebus sic stantibus* principle had no application where s 2(5) of the PTA applied, since, as submitted above, even if the second limb runs contrary to the statutory fiction, the first limb does not and may nevertheless apply.

V. Conclusion

85 The discussion in this article focused on the applicability and application of the *rebus sic stantibus* principle in the context of an assessment made by the Chief Assessor under s 2(3) of the PTA. It is

144 [2007] SGVRB 3.

145 *The Trustees of the Hokkien Yeo Sze Fund v The Chief Assessor* [2007] SGVRB 3 at [19].

146 *The Trustees of the Hokkien Yeo Sze Fund v The Chief Assessor* [2007] SGVRB 3 at [18].

147 VRB Appeal No 1505/83.

148 *The Trustees of the Hokkien Yeo Sze Fund v The Chief Assessor* [2007] SGVRB 3 at [20].

149 *The Trustees of the Hokkien Yeo Sze Fund v The Chief Assessor* [2007] SGVRB 3 at [19].

observed that this is merely one manifestation of the overarching principle that statutory law generally takes precedence over common law rules where they run contrary to each other.

86 The *rebus sic stantibus* principle has two limbs and is not a single proposition, requiring that property should be valued (a) as it stands, and (b) as it is being used and occupied, when the assessment is made. Similarly, ss 2(3)(a) and 2(3)(b) of the PTA (and the other deeming provisions) are distinct in nature. In considering the applicability and application of the *rebus sic stantibus* principle, one should avoid broad generalisations and instead look to the substance of the matter on whether and where exactly any conflict between the common law and statutory rules might lie.

87 An examination of the case law in the area suggests that the VRB and the Singapore courts may have phrased the proposition a little too broadly, denying the applicability of the *rebus sic stantibus* principle where s 2(3) (as opposed to only s 2(3)(b)) is invoked by the Chief Assessor. This is understandable because the issue faced by the court in each case is often specific to one particular limb of the *rebus sic stantibus* principle (generally the second limb) and one particular subsection of s 2(3) of the PTA (generally s 2(3)(b)). It is thus likely that the court would not have had its attention drawn to the legal nature of the other limb or subsection of the *rebus sic stantibus* principle and s 2(3) of the PTA respectively. It would further appear that in practice, in the vast majority of cases, the broad phrasing of the principle has not resulted in any injustice, as the courts have largely only disappplied the *rebus sic stantibus* principle in cases where s 2(3)(b) is applied, and not in cases where s 2(3)(a) is applied. However, their judgments could potentially be read out of context and result in confusion as to the correct legal position in this area.

88 It is hoped that this article will provide a clear conceptual breakdown of the relevant concepts in this area and prevent confusion arising from potential out-of-context readings of the jurisprudence. It is humbly submitted that broad-brushed propositions in this highly technical and specific area are to be avoided.
