Fitting in a Presumption of ADR
Allegations of internal wrongdoing should not be ignored. Whistleblowers may propagate malicious rumours or shine a spotlight on fraudulent acts, but the riskiest course of action is inaction. Failure to respond swiftly and decisively may lead to an escalation of problems and unwelcome attention. The need for multidisciplinary, corporate wide, rapid response investigative capabilities has never been greater.

FTI Consulting provides clients with a complete range of global investigative resources. Our professionals are among the industry’s top practitioners, experienced in supporting legal counsel to investigate irregularities, obtain electronic evidence and analyse complex data to determine the veracity of allegations.

To find out more about how FTI Consulting can help you separate evidence from hearsay, please call +65.6324.2040 or visit www.fticonsulting-asia.com.
When Copernicus in 1543 published his hypothesis that the sun, and not the earth, is the centre of the universe, he was roundly condemned by some senior members of the religious establishment. And when Galileo proved by the use of telescopes that this was indeed correct, he was tried and later put under house arrest for the rest of his life.

The view that the sun, and not the earth, is indeed the centre of the universe, is not new. As early as about 270 BCE, a Greek called Aristarchus had already postulated that this was the case. But for various reasons, the view of Ptolemy (who lived two centuries after Aristarchus), that the earth was the centre of the universe, was preferred. So until the 16th century, when Copernicus revived the view of Aristarchus, the so-called “geocentric” view prevailed over the “heliocentric” view. We now take for granted that the sun is indeed the centre of the universe.

Many scientific hypotheses often can be proved as facts, or at least as having a scientific basis (or disproved as the case may be). Unfortunately, the same cannot often be said for differing views of the law. Despite the lack of scientific basis for many legal views and positions, the law cannot be credible without having “certainty and finality”. So how does the legal system achieve certainty and finality, when scientific or logical proof is often absent? And why are certainty and finality so important in the legal system? And why do we have to resort to giving a person a right to be heard before the matter becomes final?

In our everyday life, we take for granted the certainty and finality of many aspects of the judicial and legal system. We do know that there is no appeal beyond the Court of Appeal. We also know that in some non-justifiable situations, there is no appeal beyond the decision of the Minister.

Even in the earliest of legal systems, citizens with grievances had a right to be heard. This was often by way of a “petition” to the monarch, and the decision of the monarch was of course final. But with that right extended to more citizens, the system naturally had to be de-centralised, so the power to decide was given to governors, mayors, local heads, and in due course, to specially trained persons (who ultimately became known as Judges).

Over time, of course the right to be heard also gave birth to a new class of legal friends and proxies called lawyers.

The idea that citizens should have the right to redress their grievances, real or otherwise, is now so entrenched in the Western concept of democracy and justice that it would be difficult for any government to do otherwise. To this idea has been added what is now popularly known as “the rule of law”. The rule of law is a prerequisite to the proper governance of a modern nation.

For the rule of law to prevail, however, that rule has to be “certain and final”. However, “certainty” has actually two aspects. One is the certainty that comes with transparent laws and systems. With certainty comes predictability. Predictability of course has a different meaning in corrupt and dictatorial systems. In a modern legal system such as Singapore’s, predictability means the transparency of the law: in other words you go to Court knowing what laws cover the matter in dispute and with the knowledge that the Courts will decide according to established principles and in accordance with the merits of the case. And the decision will generally be published and subject to scrutiny.

The other aspect of certainty lies in the finality of the judicial decision. Right or wrong, the decision of the final Court is final. Indeed as a law student, we were told that the House of Lords/Privy Council was not the “court of last record”, but the “court of last error”. More critical lecturers would remind us that one can have a majority of Judges deciding in favour of a litigant, and yet he can lose his case: the litigant wins in the trial court (1-0); he wins again, unanimously, in the Court of Appeal (3-0), but he loses in the House of Lords by a majority vote (2-3). In total, he has six Judges deciding in his favour, and only three Judges deciding against him, and yet he has lost his case. While this may seem rather strange and funny, it illustrates firmly the concept of finality of the last Court. Finality is important, so that parties can get on with their lives, and not re-visit the same issue.

But if it is clear that the last Court has the last say, is it necessary for that Court to be right? I think the answer is obviously “yes”; or at least in the minds of reasonable and informed people, the decision must generally be regarded as correct on the merits. Theoretically, one can say that the last Court need not be correct, as the loser is likely to be unhappy, and the winner will be happy. So, one can achieve this same result by the toss of a coin. But in the real world, for a community to exist as a unit, the system must work, and work well. So, if the Courts are not to be seen as
Certainty and Finality in the Law

Diary

Upcoming Events

Council Bulletin

Council’s Guidance Note 1 of 2012: Informing a Client of His Right to Taxation or Review of a Fee Agreement 

Alter Ego Turns 10!
The Attorney-General’s Challenge Cup 

Introducing a “Presumption of ADR” for Civil Matters in the Subordinate Courts

The Legal Implications of the Consumer Protection (Fair Trading) Act to the Financial Industry

The Ethical Perils of Breaching Criminal Procedural Rules on the Client’s Instructions

Tea with the Law Gazette — Afternoon Tea with Stephen Atherton QC

The Young Lawyer — Amicus Agony

Legal Updates

Obiter

Alter Ego — The Alter Ego Journey

Book Shelf — The New Lawyer: How Settlement is Transforming the Practice of Law by Julie MacFarlane

Professional Moves

Admission of Advocates and Solicitors

Information on Wills
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The latest canal front bungalow and semi-Ds.

With strong Government support in the form of aggressive development measures and the future of the East Toll Road, Leisure Farm offers investors a unique opportunity to secure future capital gains.
biased, and the law not to be seen as an ass, there must be a perception that justice has been done. In other words, reasonable and informed people must generally agree that the Court's decision is correct on its merits.

And to ensure that that perception is reinforced, litigants are given the right to appear in Court, and to have their choice of counsel to represent them. In other words, the citizen must have his day in Court. In many cases, even when he has lost, he is satisfied that he has been heard.

And to ensure that the best legal view will ultimately win the day, lawyers and jurists must continue to articulate what may seem like heretical views. The irrepressible Lord Denning was overruled on many occasions, but persevered to make new law. His Lordship, however, did mellow somewhat after the severe scolding he received in the House of Lords for daring to "give gratuitous advice" to that august body in Conway versus Rimmer. Certainly a far less painful fate than what Sir Thomas Moore received for not doing the King's bidding four centuries earlier and what Galileo had to undergo.

All of the above will be familiar to experienced lawyers and Judges, but it bears reminding that this well-established system of delivering justice was not so obvious in the old days, or even in some other countries today. So while certainty and finality in the law cannot be so easily proved as a scientific hypothesis, it is nonetheless real. Perhaps the ultimate test lies in the mind of the citizen – he has no telescope but he can usually recognise injustice or unfairness when he sees it.

Wong Meng Meng, Senior Counsel
President
The Law Society of Singapore

Diary

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Organiser</th>
<th>Venue</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 April 2012</td>
<td>Dialogue Session for Subordinate Courts' Practitioners</td>
<td>Organised by the Continuing Professional Development Committee</td>
<td>Subordinate Courts Bar Room</td>
</tr>
<tr>
<td>10 April 2012</td>
<td>Primers on Professional Ethics for Practice Trainees</td>
<td>Organised by the Continuing Professional Development Committee</td>
<td>NTUC Business Centre</td>
</tr>
<tr>
<td></td>
<td>Visit by the President of the Council of Judges (Russia)</td>
<td>Law Society of Singapore</td>
<td></td>
</tr>
<tr>
<td>17 April 2012</td>
<td>Seminar on Mareva Injunctions in Aid of Foreign Proceedings</td>
<td>Organised by the Continuing Professional Development Committee</td>
<td>Capital Towers, FTSE Room</td>
</tr>
</tbody>
</table>
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At Lockton we value long-term relationships and dedication to client service excellence.

As insurance brokers we have access to the most competitive products and, because we are specialists, our clients know that the policies we provide are totally suited to their needs.
Diary

19 & 26 April 2012
Legal Secretarial Course (Foundation Module)
Organised by the Continuing Professional Development Committee
5.00pm-7.30pm
Capital Towers, FTSE Room

23 April 2012
Seminar on Psychology of Sexual Offences
Organised by the Continuing Professional Development Committee
4.00pm-6.00pm
Subordinate Courts Auditorium

28-30 April 2012
Annual Malaysia/Singapore Bench and Bar Games 2012
Jointly organised by the Sports Committee and the Malaysian Bar Council
Sarawak, Kuching

Upcoming Events

8 May, 5 & 8 June 2012
Primers on Professional Ethics and Legal Profession (Solicitors’ Accounts) Rules for Practice Trainees
NTUC Business Centre

4-5 May 2012
Law Society – LAWASIA International Conference on eCommerce and Communication: Regulating a New World Order
NUS Suntec City Guild House

4-5 October 2012
Alternative Dispute Resolution Conference: The 5Cs of ADR (Collaboration, Communication, Consensus, Co-operation and Conclusion)
Mercer is a global leader in human resource consulting, outsourcing and investment services. Mercer works with clients to solve their most complex benefit and human capital issues, designing and helping manage health, retirement and other benefits. It is a leader in benefit outsourcing. Mercer's investment services include investment consulting and multi-manager investment management. Mercer's 20,000 employees are based in more than 40 countries. The company is a wholly owned subsidiary of Marsh & McLennan Companies, Inc., which lists its stock (ticker symbol: MMC) on the New York and Chicago stock exchanges. For more information, visit www.mercer.com.

**Legal Capability**

Currently in Asia, we have 4 lawyers and 1 outsourced contract lawyer located in Singapore, Seoul, and Beijing organized along geographical basis for our South Asia, North Asia and Greater China markets. In the next few years in line with the anticipated growth of our business in the Asian region, our team is likely to increase in size.

We will keep our in-house team relatively lean and we also utilize the outsourced options of traditional law firms and alternative legal service providers that are integrated within our facilities to deal with the “peaks” in our workload and for specialist or local legal expertise.

Our team is working with the rest of our legal colleagues in the Marsh & McLennan Companies group to look at ways that we can improve the service quality, efficiency and productivity, and reduce the risks for the company and the costs of the legal department.

**Main external counsel**

Mercer and the other operating companies (namely Marsh, Oliver Wyman and Guy Carpenter) within the Marsh & McLennan Companies group have a very substantial combined external legal expenditure on a global basis. We prefer a strategy that involves building closer and deeper relationships with a small number of chosen global law firms. In Asia, where possible, we try to leverage on our global legal firm relationships for consistent quality and cost of legal services. However, we do retain local counsel for their local expertise and contacts in countries where the global relationship law firms are not as strong.

In your opinion, why have in-house lawyers become an increasingly indispensable part of an organisation?

From my observation, once a company has grown into a certain size or undertakes business in regulated sectors, it will find that it is quite important and cost effective to have its own in-house legal counsel.

Even if external counsels are engaged by the company, in-house counsels can play an important and cost effective bridge between the business people and external counsels.

Apart from being legal professionals, in-house counsels possess other skills and attributes such as communication skills, logical thinking and organization skills that make us effective risk managers and business partners.

In recent times, the role of the General Counsel has diversified into a multi faceted role (where the General Counsel can wear the 'hat' of Lawyer, Legal Manager, Compliance Manager, and Company Secretary). In your opinion, do you believe this has increased your risk profile?

We have a separate Compliance & Professional Standards function at Mercer. Due to our businesses becoming more globalised, complex and regulated, certainly the Legal function's risk profile has increased.

Our business leaders act as our directors and officers of our legal entities and act as our responsible officers in connection with our regulated activities. They assume risks for and on behalf of Mercer and they look towards the Legal and Compliance teams to guide them to navigate their legal and regulatory obligations. To be an effective and trusted business partner for them, I feel that we should demonstrate that we are willing to stand side-by-side with them regarding these issues. I believe that once they can see that our interests are aligned for the best interests of our firm, they will be more willing to trust and depend on us and in turn, it will be easier for us to convince them to see our views.

What is the best advice you have ever received?

“Treat the firm as if it is your own (and do not just behave as an employee)” – then you will naturally care about and look after your firm and want to possess all those positive attributes that a good corporate counsel should have such as being proactive, responsive, thorough, cost conscious, practical and pro-business, etc.

JLegal provides expert knowledge and comprehensive coverage of the in-house market. Contact us today.
Council Update

Workplans and Budgets of Standing Committees 2012

Council approved the proposed workplans and budgets of the majority of the Committees of 2012.

Confirmation of Terms of Reference of the Alternative Dispute Resolution Committee 2012

Council approved the proposed amendments to the terms of reference of the Alternative Dispute Resolution Committee, namely:

1. To promote mediation and arbitration as an alternative to legal proceedings in the Courts;

2. To promote, implement and review the Law Society Arbitration Scheme and any mediation schemes under the Law Society. To continue with appointment or other support functions for ICC Arbitration;

3. To organise legal education and training programmes on mediation and arbitration with other professional and foreign organisations; and

4. To work with the Subordinate Courts, the High Court and community organisations on setting up mediation options.

Pilot Pro Bono Arbitration Scheme Proposed by the Alternative Dispute Resolution Committee

Council approved the proposed Pilot Pro Bono Arbitration Scheme (the “Pilot Scheme”) which will come under the umbrella of the Law Society Arbitration Scheme. The Pilot Scheme will be for disputes of up to $20,000 with arbitrations to be conducted on a documents-only basis. The usual LawSoc Arbitration Rules would also apply to arbitrations under the Pilot Scheme except that the sole arbitrator would waive his or her fees.

Pro Bono Guide for Law Practices

Council gave in-principle approval for the publication of a Pro Bono Guide for Law Practices (the “Guide”) which sets out advice, precedents and information to assist law practices that wish to establish, develop or expand their pro bono practices. The aim of the Guide is to encourage the provision of pro bono legal services amongst law practices and members.

Dialogue Session for Subordinate Courts’ Practitioners

President Mr Wong Meng Meng, SC, held a dialogue with members who regularly engage with the Subordinate Courts in their course of work on 2 April 2012 at the Subordinate Courts Bar room. The dialogue session was an opportunity for members to raise concerns or suggestions regarding their practice areas. At the dialogue, the President also updated members on initiatives by the Law Society to assist members in their practice following an earlier dialogue with members on 23 March 2011.
We invite you to consider a career as a LEGAL SERVICE OFFICER and to be deployed to the ATTORNEY-GENERAL’S CHAMBERS

COME Make A Difference: Help Shape The Future

The Attorney-General’s Chambers (“AGC”) plays a pivotal role in Singapore’s criminal justice system, and also serves as the “nation’s law firm” by providing legal advice and representing the State in domestic cases and international disputes. In carrying out its duties, the AGC is committed to enhancing the rule of law and maintaining the integrity of Singapore’s legal system.

The AGC is looking for people who are passionate about making a difference at the national level. In return, we will devote resources to making you the best lawyer you can be through our structured training programmes. If you desire to engage in a meaningful and rewarding career with unrivalled training opportunities and exposure to a wide variety of intellectually stimulating work, we invite you to consider applying to join as a Legal Service Officer and be deployed to one of our divisions below.

(A) Civil Division

The State Counsel in the Civil Division render legal service to Government agencies on a diverse spectrum of issues spanning constitutional law, human rights matters, land acquisitions, public finance and all types of regulatory matters. You will provide legal advice, draft and vet legal documents, and represent Government in all civil proceedings. This will demand frequent and in-depth interaction with policy makers and operational agencies as well as discussion and negotiations with lawyers from private law firms. You will be part of a team of highly motivated lawyers working on challenging legal work and delivering creative solutions to issues of national significance.

(B) Crime Cluster comprising the Criminal Justice Division, the Economic Crimes & Governance Division and the State Prosecution Division

As a Deputy Public Prosecutor in the Crime Cluster, you will take charge of criminal cases. You will evaluate evidence and exercise prosecutorial discretion on whether or not to prosecute. You will also provide legal advice on criminal matters to Government agencies. You will be responsible for the conduct of criminal cases, often involving complex facts and issues of law. You will also have the opportunity to take on appellate litigation work in the Supreme Court. Whichever Crime Cluster Division you are part of, you are certain to be involved in exciting and challenging advocacy work as part of our team of passionate and experienced litigators.

(C) International Affairs Division (IAD)

You will join a team of highly driven lawyers who take charge of a wide range of demanding and fulfilling international law work that advances and protects Singapore’s interest on the international plane. You will advise Government agencies on all aspects of international law including Air and Oceans law, International Trade and Investment law, International Criminal and Human Rights Law, Privileges and Immunities etc. You will also represent the State in international negotiations and international dispute settlement procedures. If you have a passion for international law, you will find the international law practice in the IAD unparalleled in terms of variety and complexity.

Requirements

- Singapore Citizen or Permanent Resident (with an intention to apply for citizenship)
- At least 3-5 years of relevant experience in litigation and advisory work
- At least a Class 2.1 (or equivalent) from the NUS or scheduled universities; those with a Class 2.2 may be considered in exceptional cases

Eligible applicants are invited to submit, by 30 Jun 2012, the Application Form (available at: http://www.lsc.gov.sg) with your resume and copies of academic certificates and transcripts to:

The Director, Singapore Legal Service
1 Supreme Court Lane, level 4, Supreme Court, Singapore 178879
Please contact us at email: lsc_sec@lsc.gov.sg if you have any query.
We invite you to consider a career as a LEGAL SERVICE OFFICER and to be deployed to the

SUBORDINATE COURTS AS A DISTRICT JUDGE

Administering Justice, Upholding Law & Order

The Subordinate Courts provide an effective and accessible system of justice, inspiring public trust and confidence. If you have a passion for public service, seek intellectual challenge, and aspire to make a difference through the fair administration of justice, we invite you to join as a Legal Service Officer and be deployed to the Subordinate Courts as a District Judge.

(A) Criminal Justice Division

The Criminal Justice Division invites respected lawyers with litigation experience (especially criminal litigation experience) to apply. You will hear trials, decide and impose appropriate sentences (where applicable) in a demanding array of cases of commercial crimes, crimes against persons and property, drug and other offences. You will have the opportunity to impact lives by adopting a problem-solving approach in cases with youthful offenders and offenders with mental conditions. You will also mediate community disputes so that parties may resolve their differences amicably. In dispensing justice to maintain law and order in society, you will have a rewarding career.

(B) Civil Justice Division

The Civil Justice Division seeks esteemed lawyers with litigation experience (especially civil litigation experience) to apply. You will case-manage, hear and decide interlocutory matters, Registrar’s Appeals and trials. Your jurisdiction will include contract and commercial cases, general torts and other claims such as medical negligence and probate matters. You will also preside over court dispute resolution sessions, seeking creative, holistic and win-win solutions for litigants. In ensuring an effective and efficient resolution of civil and commercial disputes, your role is critical towards building a less litigious society.

(C) Family and Juvenile Justice Division

The Family and Juvenile Justice Division calls for distinguished lawyers with litigation experience (especially family litigation experience) to apply. You will handle sensitive and often emotionally charged divorce, maintenance, domestic violence, adoption, mental capacity and juvenile cases. You will mediate disputes to achieve specific solutions to meet the unique circumstances of parties. The work is extremely meaningful and fulfilling as the approach is to protect family obligations, promote the best interests of children and rehabilitate and restore youths. You will shape not only the lives of parties before you, but their families and beyond.

Requirements

- Singapore Citizen or Permanent Resident (with an intention to apply for citizenship)
- At least 5 years of relevant experience in criminal, civil and/or family litigation work
- At least a Class 2.1 (or equivalent) from the NUS or scheduled universities; those with a Class 2.2 may be considered in exceptional cases
- Integrity, professionalism and strong legal competence
- Excellent interpersonal and communication skills and a team player

Eligible applicants are invited to submit, by 30 Jun 2012, the Application Form (available at: http://www.lsc.gov.sg) with your resume and copies of academic certificates and transcripts to:

The Director, Singapore Legal Service
1 Supreme Court Lane, level 4, Supreme Court, Singapore 178879
Please contact us at email: lsc_sec@lsc.gov.sg if you have any query.
We invite you to consider a career as a LEGAL SERVICE OFFICER and to be deployed to the REGISTRY OF THE SUPREME COURT.

Play your part in the Administration of Justice

The Registry of the Supreme Court (“the Registry”) plays an integral part in the civil and criminal justice process, ensuring that the cases that come before the superior courts in the land are administered fairly and at the highest of standards. If you have a heart for public service, crave an intellectually-challenging vocation, and believe that you have what it takes to contribute to a world-class Judiciary, we invite you to join as a Legal Service Officer and be deployed to the Registry as a Senior Assistant Registrar or an Assistant Registrar.

The Senior Assistant Registrars and Assistant Registrars perform both judicial and administrative functions, and may be concurrently appointed as District Judges and Magistrates. In their judicial capacity, they preside over the full range of chamber hearings, from pre-trial to post-trial matters. They are also actively involved in the management of cases that come before the High Court and the Court of Appeal. In their administrative capacity, they manage a wide spectrum of legal, policy, financial, human resource and other issues affecting the functioning of the Registry and the Supreme Court. They helm innovative projects to steer the Supreme Court towards greater organisational excellence. As a Senior Assistant Registrar or Assistant Registrar, you will be part of a select group of individuals who contribute to the constant endeavours of the Registry and the Supreme Court to be at the cutting-edge of the administration of justice.

You can expect to be trained and developed professionally to excel in the performance of all the various functions. The structured training programme of the Registry includes extensive and intensive judicial education in substantive and procedural law as well as legal writing, drafting and other skills; coaching and mentorship by senior Registrars and High Court Judges; and attachments to foreign courts and agencies. It also includes development in areas such as leadership, policy formulation and public administration.

Requirements

- Singapore Citizen or Permanent Resident (with an intention to apply for citizenship)
- At least 5 years of relevant experience in criminal and / or civil litigation work
- At least a Class 2.1 (or equivalent) from the NUS or scheduled universities
- Integrity, professionalism and strong legal competence
- A team player with excellent interpersonal and communication skills

Eligible applicants are invited to submit, by 30 Jun 2012, the Application Form (available at: http://www.lsc.gov.sg) with your resume and copies of academic certificates and transcripts to:

The Director, Singapore Legal Service
1 Supreme Court Lane, level 4, Supreme Court, Singapore 178879
Please contact us at email: lsc_sec@lsc.gov.sg if you have any query.
Council’s Guidance Note 1 of 2012: Informing a Client of His Right to Taxation or Review of a Fee Agreement

1. This Guidance Note takes effect on 24 April 2012.

2. This Guidance Note sets out the relevant principles on the scope of the duty of an advocate and solicitor (“solicitor”) in informing a client of his right to have the Court tax the bill of costs (including an interim bill) or review the fee agreement in all matters, whether contentious or non-contentious.

3. All solicitors “should act on the basis that they can have their bills of costs taxed under the law” and “have an obligation to inform their clients of this option”: Law Society of Singapore v Andre Ravindran Saravanapavan Arul [2011] 4 SLR 1184; [2011] SGHC 224 (“ARSA”) at para 33. The Court in ARSA was of the view that “[a] solicitor who offers to have his bill taxed is … unlikely to have the frame of mind or intention to overcharge his client”.

4. If a dispute arises on a bill or a query is raised about a bill in a contentious or non-contentious matter, the solicitor must inform the client in writing of his right to apply to Court to have the bill taxed or to review the fee agreement. In this regard, the Court in ARSA noted at para 32 that:

Even where a bill rendered by a solicitor is prima facie excessive, any potentiality of the solicitor’s conduct in rendering that bill being regarded as professional misconduct in the form of overcharging can usually be remedied or ameliorated by an offer to have the bill taxed (if it is taxable) under the Rules of Court (Cap 322, R 5, 2006 Rev Ed) (in this regard, see The Law Society of Singapore v Tan Thian Chua [1994] SGDSC 11 at [5], where the solicitor was merely reprimanded and ordered to pay the costs incurred by the Law Society in the disciplinary proceedings as, inter alia, his bill, although excessive, had been accompanied by an offer of taxation in the first place). Taxation provides the best means for an aggrieved client to determine what the proper fee is for the actual work done by his lawyer, and for the lawyer to avoid having to face a disciplinary charge for overcharging. If the bill is not taxable, the prudent course is for the solicitor to negotiate a mutually acceptable amount or even offer mediation.

5. If the client consents to taxation or if the Court orders taxation, it is preferable for the solicitor to draw the client’s attention to O 59 r 28(4)-(5) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), in particular that:

a. the delivery of a bill of costs by a solicitor to his client shall not preclude the solicitor from presenting a bill for a larger amount or otherwise for taxation; and

b. upon such a taxation, the solicitor shall be entitled to such amount as is allowed by the Registrar, notwithstanding that such amount may be more than that claimed in any previous bill of costs delivered to his client.

6. Where a solicitor believes that a client knows or reasonably ought to know of his right to have the Court tax the bill of costs or review the fee agreement, for example, where the solicitor had informed the client of this right in a previous retainer, the solicitor may decide not to inform the client of this right. However, all solicitors should have regard to the words of the Court in ARSA at para 33 that solicitors who “fail or omit to [inform their clients of the option of taxation] do so at their peril”.

7. In complying with this Guidance Note, all solicitors should:

a. seek to resolve all disputes on costs with their clients through negotiation or mediation (such as the Law Society’s Cost Dispute Resolve scheme); and

b. have regard to ss 108 to 128 of the Legal Profession Act and in particular the sections reproduced in the Appendix, namely, ss 109(6), 113 and 120.

Date: 24 April 2012

The Council of the Law Society of Singapore
APPENDIX

Section 109(6):

“Agreements with respect to remuneration for non-contentious business

(6) If on any taxation of costs the agreement is relied on by the solicitor or law corporation or limited liability law partnership and objected to by the client as unfair or unreasonable, the taxing officer may enquire into the facts and certify them to the court, and if on that certificate it appears just to the court that the agreement should be cancelled, or the amount payable thereunder reduced, the court may order the agreement to be cancelled, or the amount payable thereunder to be reduced, and may give such consequential directions as the court thinks fit.”

Section 113:

“Enforcement of agreements

(1) No action or suit shall be brought or instituted upon any such agreement as is referred to in section 111.

(2) Every question respecting the validity or effect of the agreement may be examined and determined, and the agreement may be enforced or set aside without suit or action on the application by originating summons of any person or the representatives of any person, party to the agreement, or being or alleged to be liable to pay, or being or claiming to be entitled to be paid the costs, fees, charges or disbursements in respect of which the agreement is made, by the court in which the business or any part thereof was done or a Judge thereof, or, if the business was not done in any court, then by the High Court or a Judge thereof.

(3) Upon any such application, if it appears to the court or Judge that the agreement is in all respects fair and reasonable between the parties, it may be enforced by the court or Judge by rule or order, in such manner and subject to such conditions (if any) as to the costs of the application as the court or Judge thinks fit.

Allen & Overy Singapore is looking to recruit a high calibre Singapore qualified Corporate/M&A partner to complement its current practice and to assist with the firm’s growth in Singapore as a strategic hub for the wider Asia Pacific region.

The role would suit a high achieving Partner wanting the freedom to develop local and regional clients supported by an award winning team in Singapore.

If you are interested in talking to us about this position please do not hesitate to contact us at Singapore_HR@allenovery.com.
(4) If the terms of the agreement are deemed by the court or Judge to be unfair or unreasonable, the agreement may be declared void.

(5) The court or Judge may thereupon order the agreement to be given up to be cancelled, and may direct the costs, fees, charges and disbursements incurred or chargeable in respect of the matters included therein to be taxed, in the same manner and according to the same rules as if the agreement had not been made.

(6) The court or Judge may also make such order as to the costs of and relating to the application and the proceedings thereon as the court or Judge thinks fit.

(7) On the application (within 12 months after the amount agreed under the agreement has been paid by or on behalf of the client or by any person chargeable with or entitled to pay it) of the person who has paid the amount, any court or Judge having jurisdiction to examine and enforce the agreement may, if it appears to the court or Judge that the special circumstances of the case require it —

(a) reopen the agreement;
(b) order the costs, fees, charges and disbursements to be taxed; and
(c) order the whole or any portion of the amount received by the solicitor or law corporation or limited liability law partnership to be repaid by him, on such terms and conditions as to the court or Judge seems just.

(8) Where any such agreement is made by the client in the capacity of guardian or of trustee under a deed or will, or of committee of any person or persons whose estate or property will be chargeable with the amount payable under the agreement or with any part of that amount, the agreement shall before payment be laid before the Registrar, who shall examine it and disallow any part thereof, or may require the direction of the court or a Judge to be taken thereon.

(9) If in any such case the client pays the whole or any part of the amount payable under the agreement without the previous allowance of the Registrar or court or Judge as aforesaid, he shall be liable at any time to account to the person whose estate or property is charged with the amount paid, or with any part thereof, for the amount so charged.

(10) The solicitor or law corporation or limited liability law partnership who accepts the payment may be ordered by any court which would have had jurisdiction to enforce the agreement, if it thinks fit, to refund the amount received by him or the law corporation or the limited liability law partnership."

Section 120:

“Order for taxation of delivered bill of costs

(1) An order for the taxation of a bill of costs delivered by any solicitor may be obtained on an application made by originating summons or, where there is a pending action, by summons by the party chargeable therewith, or by any person liable to pay the bill either to the party chargeable to the solicitor, at any time within 12 months from the delivery of the bill, or, by the solicitor, after the expiry of one calendar month and within 12 months from the delivery of the bill.

(2) The order shall contain such directions and conditions as the court thinks proper, and any party aggrieved by any such order may apply by summons that the order be amended or varied.

(3) In any case where a solicitor and his client consent to taxation of a solicitor’s bill, the Registrar may proceed to tax the bill notwithstanding that there is no order therefor.

(4) Section 39 of the Subordinate Courts Act (Cap. 321) shall not apply to proceedings brought under this section.”
Olswang Asia
Legal expertise for Technology, Media and Telecoms
Rajan Chettiar, well-known columnist of the long-running “Alter Ego” column, had much to be proud of when he marked the 10th year of writing this column in April. Yes, that’s 120 pieces over 120 months, and 78 persons whom he interviewed and profiled in the earlier years of the column, in sickness and in health, in between originating summonses, hearings and trials, client meetings, overseas travel, volunteer commitments, and the highs, lows and stresses of law practice, not to mention getting married, renovating his house, and shifting office in between. It’s been quite a ride over the decade. Through it all, Rajan has tirelessly churned out the column every month and brought new meaning to the phrase, better late than never. Late yes, for submission of the column, but never never.

It was thus only fitting that the Law Society commemorated this 10-year milestone with a bash on 20 April 2012 which saw Council members, the Publications Committee, past interviewees and supporters of “Alter Ego”, and of course his wife, Shane, coming together to celebrate the occasion.

We are grateful to Rajan for his dedication and commitment to “Alter Ego” and the Law Gazette. We admire his courage in openly sharing with readers the ups and downs of his life,
and the joys and pains of practice which many of us identify vicariously through him. Keeping the column going while running a busy law practice is no easy feat, not to mention thinking up topics that continue to keep readers engaged, as Rajan has done, is truly admirable.

I personally thank Rajan for his friendship and for the many things I have learned from editing his column. I have been inspired by his optimism, simplicity, love for life, doggedness in the face of stress and troubles, and his deep care and concern for his family and friends. I think I have even forgiven him for those heart-stopping moments when I thought he’d never meet his deadline!

► Sharmaine Lau
Director, Publications

True to form, Rajan has duly turned in the “Alter Ego” column for this month which can be found on page 44-45.
The inaugural Attorney-General’s Challenge Cup 2012 was played out on a sunny Saturday morning on 17 March 2012 at the Jalan Besar Stadium. This was a joint collaboration between the Attorney-General’s Chambers (“AGC”) and the Law Society of Singapore in bringing together two key stakeholders in the administration of criminal justice – namely, the Prosecution and the Criminal Bar – in a more social and informal setting. It was a good opportunity for both sides to get to know each other out of Court and to get some valuable exercise through a game of football, which both the Honourable Attorney-General Sundaresh Menon and Vice-President of the Council of the Law Society, Mr Lok Vi Ming, SC made reference to in brief pre-match speeches.

Before the game started, the contrast in how each team went about warming up was somewhat telling. The Criminal Bar team whose average age was in the mid-40s did a brief but sufficient warm up by (slow) jogging once along the breadth of the pitch and doing a few minutes of stretching. In contrast, the AGC team whose average age was in the late-20s did running laps up and down the breadth of the pitch and conducted a considerably longer warm-up session. Little did the AGC team know that the Criminal Bar team did not want to expend too much energy before the actual game started.

The match was an open and closely contested affair, with numerous highlights and several chances on goal for both sides. In the dying minutes of the game, the AGC team was awarded a penalty as the last defender for the Criminal Bar team was fully committed to a tackle, the result of which he clearly did not intend. Despite protestations to the referee that the requisite mens rea was lacking, the penalty stood and was converted with aplomb by the captain of the AGC team, Andre Jumabhoy.

The game ended with the AGC team lifting the inaugural Cup by a 1-0 victory and the Honourable Attorney-General challenging the Law Society to a re-match the following year. At the end, it did not matter which team won as the more important aim of reinforcing old friendships and forging new ones within members of the Criminal Bar and with the Prosecutors from AGC was achieved.

Players and supporters alike shared a meal and some drinks at the post-match lunch, after which the Criminal Bar team allegedly began training hard and working towards wresting the Cup from the AGC team in 2013. At the time of print, representations have apparently been made to AGC to strenuously deny these allegations.

Darrell Low
Derek Kang
Criminal Practice Committee
The Law Society of Singapore
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This article traces the development of Court ADR programmes in the Subordinate Courts for civil disputes. It also discusses the implications of Practice Directions Amendment No. 2 of 2012 introducing a “Presumption of ADR”.

Introducing a “Presumption of ADR” for Civil Matters in the Subordinate Courts

Introduction

The Courts were once associated primarily with the adversarial trial process. The judiciary was perceived as a forum for public vindication and adjudication of disputes. That concept of the judiciary has slowly changed as the Alternative Dispute Resolution (“ADR”) movement grew steadily. In many jurisdictions, ADR options have been gradually incorporated into the judicial process, and become an integral part of the litigation landscape. The Courts have redefined their role to provide not only adjudication, but also a range of dispute resolution options.1

In this regard, the Subordinate Courts’ vision expressly states that the Courts serve the society with a “variety of processes for timely resolution of disputes”.2 The Subordinate Courts provide Court ADR services and refer parties to external ADR providers. In addition to providing a range of dispute resolution processes, the Courts have also been encouraging parties to consider ADR at the earliest possible stage. This article traces and reviews the development of the Court ADR for civil matters and discusses the changes introduced via Practice Directions Amendment No. 2 of 2012.

The Subordinate Courts’ Philosophy Concerning the Use of ADR in Civil Disputes

There are two prongs to the Courts’ philosophy concerning the use of ADR. First, the Courts seek to provide litigants with access to ADR. The trial process provides many benefits as a process for the vindication of rights. However, it may also engender ill effects such as the deterioration of relationships or the incurring of large or disproportionate expenses. The Subordinate Courts, while not eschewing the trial process, have provided a non-confrontational setting to resolve civil disputes. The Primary Dispute Resolution Centre (“PDRC”) was established in 1994 to provide Court Dispute Resolution (“CDR”) services within the Courts. ADR was developed not as a means to reduce case backlog, a problem the Courts had already resolved in the early 1990s, but as a non-confrontational way of resolving disputes to preserve relationships. In short, the Subordinate Courts view ADR and the trial process as different ways to resolve disputes; a holistic judicial system should provide litigants access to both modes of resolving disputes.

Moving a step further, the Courts have also encouraged litigants to consider ADR as their first choice in resolving disputes in Court.3 Using ADR at an early stage helps minimise cost of litigation as well as potential deterioration in relationships between opposing litigants. Conversely, attempting ADR at a more advanced stage of a civil suit has proven to be challenging, because parties have become increasingly entrenched in their positions and are intent on proceeding to trial.4 There have been several steps taken by the Courts to exhort parties to make ADR their first choice in dispute resolution:

1. Pre-action protocol and ADR for non-injury motor accident (“NIMA”) claims

This was the first ADR programme initiated in 2002. The pre-action protocol introduced a costs and case management regime that facilitate early exchange of information and pre-writ negotiation. All NIMA claims that are filed in Court are also required to go through the CDR process in the PDRC, approximately eight weeks after appearance has been entered.5 A Judge from PDRC gives a brief neutral evaluation of the case to enable parties to understand their chances of success at trial and to negotiate using the evaluation as a basis. To complement this measure, the Subordinate Courts worked together with the Monetary Authority of Singapore to introduce the FIDeRC-NIMA scheme in 2008 to facilitate the resolution of low value NIMA claims in an affordable way. All NIMA claims less than $1,000 had to be first brought before the Financial
Industry Dispute Resolution Centre for resolution through mediation or adjudication. The jurisdiction for this scheme was increased to $3,000 in 2010.

2. Medical negligence claims
Having observed the success of the above scheme, the Courts in 2006 introduced a similar pre-action protocol for medical negligence cases. This protocol gave potential claimants the opportunity to discuss their cases with medical practitioners or hospitals at an early stage instead of commencing legal action. Where a medical negligence suit was filed, it would also be directed to the PDRC for CDR.

3. Pre-action protocol and ADR for personal injury claims
The above regime was extended to personal injury matters (excluding medical negligence cases) in May 2011. Cases such as motor accidents resulting in injury or industrial accidents have to comply with a pre-action protocol that facilitates negotiation. As with NIMA cases, these cases are also dealt with the PDRC by way of brief neutral evaluation.

4. All other civil disputes: The ADR Form at the Summons for Directions stage
For all other civil suits, litigants could request for a CDR session in PDRC at any stage of the proceedings by consent. In 2010, the Courts encouraged litigants to consider using ADR at the summons for directions stage. The parties are required to read the ADR Form which set out information on ADR options, certify on the form that they and their lawyers had discussed ADR options and indicate their decision concerning using ADR. The Deputy Registrar hearing the summons for directions would use the information in the forms as a basis to refer the cases for the appropriate mode of ADR. The authors have written earlier about this initiative, and highlighted that this was a step taken by the Courts to facilitate greater awareness of ADR and to encourage a culture change to consider ADR at an early stage.

5. The latest change: A Presumption of ADR
In tandem with the above developments, the most recent Practice Direction has introduced a significant change in the use of ADR. The courts now expressly endorse the early use of ADR, as it is now presumed that ADR should be attempted. We turn now to elaborate on this development.

The Courts and ADR: Should the Courts Intervene?
A more fundamental question is whether the lower Courts should actively encourage the use of ADR and what might be the most appropriate way to do so? Judiciaries have often stepped in to recommend ADR because of the low rate of participation and general unfamiliarity with ADR. As Lord Woolf astutely noted in the Report on Access to Justice, “[P]arties are often reluctant to make the first move towards a negotiated settlement, or to suggest ADR, in case this is interpreted by their opponent as a sign of weakness. Legal advisors who are not themselves experienced in ADR often adopt a similar attitude, and so the court itself, as a neutral party, has an important role in pointing out what options are available.” Another academic has opined that some degree of mandating ADR is needed as a temporary expedient because individuals do not usually use ADR voluntarily and should be given the opportunity to experience the benefits of ADR. Yet another writer reviewed data from a few jurisdictions and highlighted that where the Courts have been active in referring cases for mediation over some time, the culture of the legal profession could change and lawyers were more likely to use mediation on their own volition. In other words, the Courts are in a unique position to facilitate the use of ADR when the parties or lawyers are tentative and unfamiliar with ADR. More importantly, the Courts’ encouragement could contribute to a change in culture.

The Courts’ intervention, while well-intended, should not undermine the voluntary and consensual nature of ADR. In particular, mediation, which is the most common form of ADR, places great emphasis on the parties’ self-determination and autonomy. The parties have to make their own decisions to resolve their dispute during the mediation. The mediator merely facilitates their negotiation and does not impose a solution on them. When a party is compelled into participating in ADR, the very essence of ADR may potentially be eroded.

The author has noted this palpable tension between “coercion into” and “coercion within” mediation elsewhere. It was also submitted, in the light of this danger, that Court ADR programs should permit parties to opt out of ADR based on exceptional circumstances. The Courts in Florida and Ontario have implemented such programmes, and satisfaction rates have been high. A referral of all cases for ADR would lead to arbitrariness and also neglects the reality that not all cases may be appropriate for this mode of dispute resolution. On the other hand, the Courts’
exhortation to participate in ADR should not be easily diluted by freedom for the parties to opt out for any reason. The criteria for opting out should be clear and not set at too lenient a standard. A nuanced approach is needed for a Court ADR programme to ensure that it is effective and yet does not lead to excessive coercion.

The Presumption of ADR: What it Means

In brief, this initiative provides for automatic referral of all civil cases for ADR. Provision is made for parties to be exempted based on certain stipulated grounds. There may, however, be subsequent cost implications, where a party has opted out of ADR based on unsatisfactory reasons. More attention is also directed towards cases of low value, in which the cost of litigation is likely to be disproportionate to the amount sought in the claim.

Pre-Trial Conference to Consider ADR

The presumption applies to all civil disputes. NIMA and personal injury cases are currently referred to the PDRC as a matter of course according to Practice Directions. In respect of other cases, parties may file a summons for directions ("SFD") as usual, according to the Rules of Court. Where a Defence has been entered and six months have lapsed without the parties filing a summons for directions, the Court will call for a pre-trial conference ("PTC"). One of the main focuses of the SFD and PTC is to discuss and refer cases to suitable ADR.

Two Tracks

Cases will be dealt with at the PTC or SFD according to two tracks:
1. "Recommended ADR" Track
   These are general claims of lower value, the early settlement of which is likely to result in more substantial savings in time and costs for parties. The following cases fall under this track:
   a. Claims is $20,000 or less; or
   b. Claims between $20,000 and $60,000 and will take more than three days of trial.
2. "General" Track
   All other cases fall under the General Track.

Automatic Referral for ADR

Cases will be automatically referred by the SFD or PTC Judge for ADR unless the parties opt out of ADR. Under the General Track, a party may opt out for any reason. Under the Recommended ADR Track, a party may opt out based on three stipulated reasons: (i) ADR has been attempted before; (ii) the dispute involves a question of law; or (iii) for other good reason. A party may still opt out for unsatisfactory reasons as ADR is not mandatory. However, such conduct may be taken into account by the Court when making subsequent costs orders pursuant to O 59 r 5(1)(c) of the Rules of Court, which states:

The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account the parties' conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution.

The ADR Form

The ADR Form, which used to be filed at SFD stage, will continue to be filed by all parties before the date of the SFD or PTC. The form has the following three components:
1. A section to be completed by lawyers, concerning details of the case such as the nature of claim and the expected number of days at trial. This section was in the previous ADR Form.
2. A section to be read by parties. This section provides information on the different ADR options and provides a guide on how to choose the most suitable option.
3. A section to be completed by parties: The parties have to certify that their lawyers have explained the available ADR options to them. They should also indicate whether they are opting out of ADR.

The ADR Options

There are four ADR options for litigants to choose from:
1. Mediation at PDRC
2. Neutral Evaluation at PDRC
3. Mediation at Singapore Mediation Centre
4. Arbitration under the Law Society Arbitration Scheme
An earlier article in the Law Gazette explained the different ADR options more thoroughly.17

- Mediation involves a neutral third party facilitating the conversation between the disputing parties with the goal of assisting them to reach an agreement.

- Neutral Evaluation was made available as an ADR option last year under a pilot project.18 It involves a third party neutral, a Judge, giving the parties a non-binding assessment of the case at an early stage on the basis of brief presentations made by the parties. Unlike

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The All-New Nissan Elgrand

Tan Chong Motor Sales announces the launch of the third-generation Nissan ELGRAND 2.5L Highway Star, Nissan’s premier luxury mobile suite.

All-new ELGRAND 2.5 Highway Star

In line with its longstanding reputation for excellence, the third-generation ELGRAND imparts a strong luxury presence and welcoming sense of hospitality and comfort for driver and passengers alike. The 8-seater interior offers a number of features designed specifically for passenger comfort, such as high-quality seats and a Private Theatre System with an 11-inch electronic retractable monitor.

Key features of the new ELGRAND are:

1. Distinguished Styling
   - The development of the new ELGRAND is based on the concept of “Dynamism and Luxury you can feel” – which is expressed throughout the ELGRAND’s exterior and interior.
   - The low and wide body proportions emphasize the ELGRAND’s stability, with dynamic lines flowing from the front and leading all the way down the sides, highlighting its powerful profile. With its 1,815mm height, the ELGRAND has no problems entering private car parks and shopping mall car parks that come with height restrictions.
   - Each pillar is blacked-out, adding to the look of strength and solidity. The darkened windows framed from the side all the way to the rear with chrome moldings that help to enhance a luxurious presence is a world’s first. Rear combination lamps with horizontal and vertical lines add originality; while chrome-coated, aluminum-alloy wheels complete the luxurious and appealing appearance of the ELGRAND. In addition, the twin sunroof fills the cabin with light and airiness for the most enjoyable journey for passengers.
   - ELGRAND’s high-quality interior space focuses on enveloping driver and passengers in supreme comfort. Using the latest technology, a 3-dimensional plush seat design offers support for the entire body, while helping to maintain a relaxed and stress-free posture. The ELGRAND also comes with front passenger ottoman seat and foldable 2nd and 3rd row seats.
   - The interior’s highly-functional wood-grained instrument panel adds a luxurious touch, while the meter panel that is illuminated with a blue ring, gives the interior a modern look.

2. Exhilarating, Yet Fuel-Efficient Performance
   - The ELGRAND is equipped with a 2.5-liter QR25DE engine, providing responsive acceleration from low speeds, and high torque giving the vehicle a quick response and a strong driving feel. The engine is rated at a maximum output of 125kW (170PS)/5,600rpm and maximum torque of 245Nm/3,900rpm.
   - The newly refined Xtronic CVT-M6 transmission boasts significantly improved fuel economy and powerful performance. Its wide gear range and low-speed lockup function helps to achieve excellent fuel mileage. Furthermore, the driver’s driving and acceleration control is automatically detected by the Adaptive Shift Control system to provide an optimized driving condition, combining superior driving performance and fuel efficiency.
   - Another special feature is the ECO mode function which maximizes acceleration performance, CVT response and integrated control CVT transmission schedules to improve fuel efficiency. Adopting a smooth assist takeoff system, Eco-Drive Assist supports the driver for smooth acceleration and better fuel economy, while the Smart-rev Control system maintains constant engine revolutions to avoid uneven speed changes and unnecessary fuel consumption.

Platform, Body and Suspension

The ELGRAND’s all-new platform gives it a low center of gravity, comfortable seating for up to eight adults and riding comfort for both driver and passengers.

- The combination of high-performance steering and rigid shock absorbers provides outstanding straight-line stability. Both the front and rear suspension utilize aluminum links and lower load springs that are lighter than the previous ELGRAND. The rear multi-link suspension assists in providing both superior driving stability and ride comfort. ELGRAND’s low center of gravity packaging, along with 4-wheel rebound spring shock absorbers, provides complete control and stability during steering and cornering. The ELGRAND also offers a small turning radius of 5.7m. In addition, the
73L fuel tank form is optimized to best fit the vehicle's body.

- Quiet operation is another key element of the ELGRAND platform and body structure. Significantly improved surface rigidity, a vibration-resistant floor and bead-shaped sound dampening flooring are utilized. In addition, the use of an acoustic windshield, sound insulators and strategically located dampening materials help give ELGRAND the top level in noise canceling and comfort in class.

ELGRAND also utilize YOKOHAMA dB (decibel) tyres to help achieve excellent vibration and road noise reduction levels. The 18-inch sized wheels have the equivalent low road noise of standard 16-inch wheels.

3. Advanced Technology and Equipment

The ELGRAND offers the latest advanced technology and features, ranging from the Around View Monitor and a private theater system.

The Around View Monitor is ideal for use during parking. The system utilizes simulated steering direction indicators and reverse positioning displayed on the monitor (Parking Guide System). The front/rear wide view monitor gives priority to safety with a 180° perspective view when negotiating visibly difficult intersections and reversing from parking lots.

Owners seeking theatre-quality entertainment on the road will be pleased to know that the Private Theatre System is offered as a standard on the Elgrand. The system, with 2 wireless headsets, features a large 11-inch electronic retractable monitor that allows greater visibility even from the 3rd row seats.

Another world’s first function utilized on the ELGRAND is the one touch switch system that not only unlocks the doors, but also automatically opens the One-Touch Auto Slide Door. Other utility features include a second mirror installed above the rearview mirror for easy communication with passengers in the 2nd and 3rd row seats.

ELGRAND also offers a long list of available safety technologies, including:

- Xenon headlamps
- Auto light system (linked front wipers, dawn sensors)
- Active AFS
- Halogen fog lamp equipped front bumper
- VDC (Vehicle Dynamics Control (TCS functionality included))
- ABS (Anti-lock Braking System) + Brake Assist + EBD (Electronic Brake force Distribution control system)
- Front seat active headrest
- Body construction for pedestrian protection / High-strength body construction (Zone Body)
- Driver and passenger seat SRS air bag system
- Driver and passenger seat SRS side air bag system
- SRS curtain air bag system
- Second and third row 3-point seatbelt with ELR (Emergency Locking Retractor)
- Second seat ISO FIX Child seat anchor (right and left)
- TPMS (Tire Pressure Monitoring System)

For more information about the Nissan Elgrand 2.5 please contact:
Lynn Ng at 6490 9693 or email: lynn_ng@tanchong.com
Penny Liew at 6490 9691 or email: penny_liew@tanchong.com
mediation, in which the mediator assists the parties in reaching an agreement without necessarily stating an opinion on the case, the explicit aim of Neutral Evaluation is to provide a without-prejudice evaluation of the strengths and weaknesses of a case.

- Arbitration is similar to litigation as a neutral party makes a binding decision on the dispute, except that the neutral is a private adjudicator instead of a judge. The Law Society Arbitration Scheme has been in place since 2007, and provides a speedy and simple way of resolving disputes. More information on this scheme may be found at http://www.lawsociety.org.sg/lsas.

Mediation of civil disputes filed in the Subordinate Courts at the Singapore Mediation Centre has been recently made available this year. The Subordinate Courts and SMC have jointly launched a premier mediation scheme, in which parties may pay SMC a reduced fee of $800 (plus GST) per party to use SMC’s mediation services. More information on all these options is provided on PDRC’s website, at http://www.subcourts.gov.sg, under Civil Justice Division – Court Dispute Resolution/Mediation, and Law Society’s website at http://www.lawsociety.org.sg/lsas/.

**Effective Date**

Only cases filed on or after the effective date of the Practice Direction will be called for pre-trial conferences six months after the date of writ. In respect of earlier cases, the new ADR Form should be filed if a summons for direction is taken up after the effective date of the Practice Direction.

**Other Changes**

Apart from introducing the Presumption of ADR, the Practice Direction has also created a new section in the Subordinate Courts Practice Direction concerning ADR. Previous paragraphs concerning resolution of NIMA claims, personal injury claims, medical negligence claims and assessment of damages have been moved to this section. Furthermore, the expected standards for preparation for and attending mediation and neutral evaluation have been clearly set out.

The following are notable changes:

1. Opening statements for both mediation and Neutral Evaluation have to be exchanged and submitted to Court not less than two days before the session. The
formats for these opening statements have been provided in the Practice Direction.19

2. Requests for adjournments should be made not less than two working days in advance for NIMA and PI cases; and not less than seven working days in advance for other cases undergoing mediation or neutral evaluation. Consent of all parties should be obtained before the request is submitted by fax to PDRC.20

3. Attendance of parties: For NIMA and PI cases, only lawyers have to attend the first Court Dispute Resolution session. Parties need not attend unless the Court subsequently directs so. For mediation and neutral evaluation sessions, generally, both lawyers and their clients have to attend.21

4. It has been highlighted that all communications made during CDR are without prejudice and confidential, and shall not be revealed in pleadings or affidavits or communicated to the Court in other ways.

Conclusion

The presumption of ADR represents a culmination of the Subordinate Courts’ attempts to exhort parties to consider conciliatory ways of resolving their disputes, before using litigation as a last resort. As stated in the Courts’ Code of Ethics and Basic Principles on Court Mediation, the Courts seek to “help Court users to resolve their differences through joint problem solving in a non-confrontational setting, without resorting to trial” and the Courts “envision a future in which Court users will make ADR their first choice in resolving disputes in Court”.22 The Courts’ role is limited only to encouraging the use of ADR through various measures that increase the awareness of ADR. The building of an ADR ethos would ultimately hinge on the joint collaboration of the judiciary, the Bar and other major players in the mediation scene.

➤ District Judge Joyce Low
District Judge Dorcas Quek
Primary Dispute Resolution Centre
Subordinate Courts

Practice Directions Amendment No. 2 of 2012 is available on the Subordinate Courts’ website at http://www.subcourts.gov.sg under “Legislation and Directions”. More information on ADR for civil disputes is also available at the Subordinate Courts’ website under “Civil Justice Division – Court Dispute Resolution/Mediation”.

Notes

2 The Subordinate Courts’ Justice Statement, accessible at http://www.subcourts.gov.sg under the section “About Subordinate Courts”.
3 See Code of Ethics and Basic Principles of Court Mediation, available at http://www. subcourts.gov.sg, under “Civil Justice Division, Court Dispute Resolution/ Mediation”.
4 Roselle L. Wissler, “Court Connected Mediation in General Civil Cases: What We Know from Empirical Research” (2001-2002) 17 Ohio State Journal on Dispute Resolution 641, at 677, noting that empirical data suggested that cases were more likely to be settled if the mediation was held sooner after the case was filed.
6 See Practice Direction No 1 of 2008 and Practice Direction No 4 of 2011.
7 See Practice Direction No 3 of 2006, and para 25D of the Subordinate Courts Practice Directions.
8 See Practice Direction No 2 of 2011, and para 25C of the Subordinate Courts Practice Directions.
9 See Practice Direction No 2 of 2010.
15 See generally, para 25A and Form 6A of the Subordinate Courts Practice Directions.
16 Paragraphs 18 and 25A of the Subordinate Courts Practice Directions.
18 Registrar's Circular No 5 of 2011. See also Law Gazette.
19 Paragraphs 25F and 25G of the Subordinate Courts Practice Directions.
20 Paragraph 25 of the Subordinate Courts Practice Directions.
22 Available at http://www.subcourts.gov.sg, under “Civil Justice Division, Court Dispute Resolution/Mediation”.
The Lehman Bros debacle resulted in the extension of CPFTA to protect consumers in the financial industry. What does this mean to the financial institutions?

The Legal Implications of the Consumer Protection (Fair Trading) Act to the Financial Industry

Scope of CPFTA

The scope of the Consumer Protection (Fair Trading) Act (Cap 52A) ("CPFTA") is now extended to govern all “financial products” and “financial services” regulated by the Monetary Authority of Singapore and all commodity trading under the Commodity Trading Act. Thus, the CPFTA will govern: (i) all banking activities under the Banking Act (e.g., deposits, mortgages, letters of credit, bank guarantees, credit facilities etc.; (ii) all financial products provided by a financial adviser under the Financial Advisers Act (e.g., structured deposits, foreign exchange, leveraged foreign exchange, life policies, investment-linked policies etc); and (iii) all activities relating to dealing in securities, fund management, marketing collective investment schemes, trading in futures and leveraged foreign exchange etc under the Securities and Futures Act. The CPFTA no longer governs only retail consumer goods and services but applies to a wide range of financial products and services as well. It may be worthwhile to note that the CPFTA does not apply to the acquisition of estate or interest in immovable property (however, it applies to rental of residential property), employment contracts and pawn broking.3

Objective and Application of CPFTA

As the name of the Act implies, the objective of the CPFTA is to protect the consumer4 against “unfair practices”5 by the supplier6 in relation to any consumer transaction.7 The CPFTA only applies to a supplier or consumer who is resident in Singapore; hence a tourist will not enjoy any protection under CPFTA. Also, the offer or the acceptance relating to the consumer transaction must be made in or sent from Singapore. Hence, there must be sufficient “nexus” between the consumer transaction and Singapore.8

What is Unfair Practice

According to s 4:

It is an unfair practice for a supplier, in relation to a consumer transaction-

- to do or say anything, or omit to do or say anything, if as result, a consumer might reasonably be deceived or misled;
- to make a false claim;
- to take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer-
  - is not in a position to protect his own interest; or
  - is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction; or
- without limiting the generality of paragraph (a), (b) and (c), to do anything specified in the Second Schedule.

There are four types of “unfair practices”. First is misrepresentation (s 4(a)). For instance, a relationship manager (“RM”), in selling a financial product to a consumer, may choose only to highlight the benefits of a financial product but not the risk that may be peculiar to that product. Second is making false claims (s 4(b)). A RM may make certain claims relating to the performance of a financial product which cannot be substantiated. Third is taking advantage of consumer (s 4(c)). During the Lehman Brothers debacle, there were clear instances of mis-selling where RMs were selling complex financial products to “vulnerable investors” such as lorry driver, delivery man, elderly seamstress and other less educated elderly non-English speaking customers. These consumers did not understand nor did they have the means to protect their own interests when they purchased the financial product. Fourth is specific unfair practices (s 4(d)). The 2nd Schedule has specified 20 instances of “unfair practices”. Item 11 is of particular interest. It states: “Taking advantage of a consumer by including in an agreement terms and conditions that are harsh, oppressive or excessively one-sided so as to be unconscionable”. It is common knowledge...
that most banking and financial product documents are drafted in a "one-sided" manner. It is also interesting for suppliers (including financial advisers) to note that using small prints to conceal a material fact from a consumer is also a "specific unfair practice" under item 20 of the 2nd Schedule. This is particularly relevant to disclaimers and warnings used by suppliers in the marketing materials.

In determining whether a supplier is engaged in an unfair practice, the reasonableness of the supplier's action, in the circumstances he was in, must be considered. Hence, the test of "reasonableness" should be used. For instance, due consideration ought to be given on whether the RM has performed a proper product due diligence before selling the financial product to a consumer to ensure the suitability of the financial product for the particular consumer.

Consumer's Right to Sue for Unfair Practices

It is interesting to note that there is no provision for criminal sanction under the CPFTA for the acts of unfair practice. The "penalty" lies in a civil action against the supplier. Pursuant to s 6 (2), a consumer who has entered into a consumer transaction involving an unfair practice may commence a civil action against the supplier if the claim does not exceed the Prescribed Limit of S$ 30,000. If the claim exceeds $30,000 (e.g. $32,000), the consumer may abandon the excess amount ($2,000) and sue the supplier for the sum of $30,000. But why would a consumer want to sue for a lesser amount? The answer is obvious. There are clear advantages for the consumer to sue the supplier under the CPFTA than under common law. We shall examine these legal advantages.

Burden of Proof (Section 18A)

According to s 18A, it states:

If, in any court proceedings taken in any court between a consumer and a supplier in relation to a consumer transaction, any dispute arises as to whether the supplier has complied with any specific requirement of this Act ….., the burden of proving that the supplier has so complied shall be on the supplier.

Under s 18A, the consumer need only allege that the supplier was engaged in an unfair practice. The supplier will have to prove that it has not engaged in any of the four types of unfair practices described earlier. In other words, under the CPFTA, the burden of proof is reversed from the consumer (plaintiff) to the supplier (defendant) to avoid any liability under the consumer transaction. This reversal of the conventional rule of evidence that a plaintiff must prove his case certainly favours the consumer.

Parol Evidence Rule Abolished (Section 17)

Section 17(1) states:

Notwithstanding sections 93 and 94 of the Evidence Act (Cap 97), parol extrinsic evidence establishing the existence of an express warranty is admissible in any action relating to a consumer transaction between a consumer and a supplier even though it adds to, varies or contradicts a written contract.

Generally under the parol evidence rule, oral evidence cannot be used to vary, add to or contradict a written agreement. The effect of s 17 is to dis-apply the general parol evidence rule under the Evidence Act. In a typical scenario where a RM sells a financial product to a consumer, he/she may make statements which may not be in the sale agreement. For instance, to encourage a consumer to purchase the financial product, the RM may assure the consumer that it is a "very safe product" or "you won't lose any of your capital" etc. This may directly contradict the prospectus or profile statement which classified the financial product for "growth" or "not capital guaranteed". A tape recording of such a sale presentation may be admitted as evidence to contradict the sale agreement which would otherwise be inadmissible.

Interpretation of Documents (Section 18)

Section 18 states:

If a consumer and a supplier enter into a consumer transaction and –

a. all or any part of the transaction or contract is evidenced by a document provided by a supplier; and

b. a provision of the document is ambiguous, the provision must be interpreted against the supplier.

This means that where there is ambiguity in a consumer transaction agreement, the ambiguity must be interpreted in favour of the consumer.

No Contracting Out (Section 13)

Section 13 (1) and (2) provide:

(1) The provisions of this Act shall prevail notwithstanding any agreement to the contrary and any term contained in a contract is void, if and to the extent that it is inconsistent with the provision of this Act.
(2) Any waiver or release given of any right, benefit or protection conferred under this Act shall be void.

Under s 13, a supplier and a consumer is not allowed to mutually agree to contract out of the CPFTA. Thus any provision in the contract that is inconsistent with the CPFTA and any waiver of benefit, right or protection by the consumer under the CPFTA is void. This is to prevent the supplier from coercing the consumer into signing an agreement that would compromise his right, benefit and protection under the CPFTA.

Concluding Comments

As can be seen from the above discussion, the legal significance and legal implications in extending the scope of the CPFTA to the financial industry are clear. Banks and other financial institutions will be more vulnerable to civil suits for unfair practices under the CPFTA. With the tweaking of the rules of litigation/evidence to benefit the Consumers, Consumers will have a better chance in winning their cases against the financial institutions. To avoid this, the financial institutions will have to review their consumer transaction documents to ensure compliance with the CPFTA. This will be quite a massive undertaking.9

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Notes

1 “Financial Products” is defined in s 2 to include “any arrangement, transaction or contract regulated or supplied by any person regulated under — (a) any written law administered by the Monetary Authority of Singapore; (b) the Commodity Trading Act (Cap 48A); (c) such other written law as the Minister may by order prescribe”.

2 “Financial Services” is defined in s 2 to include any services regulated or supplied by any person regulated under items (a), (b) and (c) in the definition of “Financial Products”.

3 See definition of “Excluded Transaction” in the 1st Schedule.

4 “Consumer” is defined in s 2 to mean “an individual who, otherwise than exclusively in the course of business — (a) receives or has the right to receive goods or services from the supplier; or (b) has the legal obligation to pay a supplier for goods and services that have been or are to be supplied to another individual.

5 To be discussed later.

6 “Supplier” is defined in s 2 to include (amongst others) “a person who, in the course of the person's business (a) provides goods and services”.

7 “Consumer Transaction” is defined in s 2 to mean — (a) the supply of goods or services by a supplier to a consumer, as a result of a purchase, lease, gift, contest or other arrangement; or (b) an agreement between a supplier and a consumer, as a result of a purchase, lease, gift, contest or other arrangement, in which the supplier is to supply goods or services to the consumer or to another consumer specified in the agreement, but does not include any transaction specified in the First Schedule”.

8 See s 3

9 The Association of Banks in Singapore has recently called upon all the banks in Singapore to review their banking documents to ensure compliance with the CPFTA.

Erratum

We refer to the article Declining to “Advise” a Person with Opposing Interests Under Rule 30 PCR in the April 2012 issue. On page 27, the sub-heading ‘American Bar Association: Interpreting “Advice” Based on Need to Prevent Lawyer Over-reaction’ is incorrect. The correct sub-heading should read as: ‘American Bar Association: Interpreting “Advice” Based on Need to Prevent Lawyer Overreaching’.

We apologise for the error.
This article discusses the ethical perils of solicitors breaching criminal procedural rules on their client’s instructions in light of the recent English Court of Appeal decision of *R v SVS Solicitors*.

The Ethical Perils of Breaching Criminal Procedural Rules on the Client’s Instructions

**Introduction**

In civil proceedings, lawyers are “entitled to use all available legal procedures to the best advantage of the client”, but ethical perils surface when they “manipulate or misuse the machinery” of procedural rules. As Professor Jeffrey Pinsler SC has observed, ethical principles have become intertwined with civil procedure in recent years, with the Singapore Courts making, in a number of cases, “express observations on civil proceedings concerning such matters as evaluating the issues and circumstances of a case with a client …, the drafting of documents and the approach to evidence at trial”. It appears that a similar trend is developing for criminal proceedings in Singapore vis-à-vis lodging appeals and the prosecutor’s duty of disclosure. One of the most difficult ethical dilemmas in criminal proceedings is the proper balance to be struck between a solicitor’s duty to the Court and his duty to the client. Recently, the English Court of Appeal issued a controversial decision *R v SVS Solicitors* on this ethical issue. This article explores the ethical perils of breaching criminal procedural rules on the client’s instructions.

**The Decision in SVS Solicitors**

The controversy in *SVS Solicitors* began with a simple case of a botched burglary. On 10 November 2010, three men wearing balaclavas broke into a house occupied by a woman, her two sons and a lodger called Samuel Amoako. However, the burglars subsequently discovered that they had burgled the wrong house. Mr Amoako managed to escape and alert the police. One of the burglars, Luke Nseki, attempted to run away when the police arrived on the scene but was caught and detained.

Circumstantial and forensic evidence pointed to Nseki’s involvement in the burglary. A balaclava was found not far from where Nseki was first seen and had his DNA on it. On Nseki’s clothing were fragments of glass matching the window that the burglars had smashed during the burglary. Nseki, however, did not comment when interviewed by the police.

Nseki was charged with aggravated burglary and represented by the firm SVS Solicitors. At the first plea and case management hearing, the Firm applied to dismiss the charge “as there was no identification or forensic evidence connecting Nseki to the premises”. The Firm’s application was later withdrawn when the prosecution served the forensic evidence.

Subsequently, the prosecution served a hearsay notice on the Firm concerning the evidence of Mr Amoako who was in Australia. Under Part 34.3 of the Criminal Procedure Rule 2011 (“CPR”), the defence, if it wished to object to the introduction of hearsay evidence, must apply to the Court within the stipulated timelines. In particular, CPR 34.3(2)(d) provided that the application must explain any facts disputed by the defence, why the evidence was not admissible and any other objection.

The Firm objected to the prosecution’s hearsay notice and insisted that Mr Amoako’s presence at the trial was “essential” to the defence case. However, the Firm neither served any grounds of objection nor at any time disclosed the defence case to the Court before the trial. The prosecution then had to fly Mr Amoako from Australia to give evidence at the trial. When the trial commenced on 26 April 2011, the defence counsel informed the trial Judge that “a defence case statement had just been drafted” and proceeded to serve an unsigned defence case statement on the Court and the prosecution. The defence case statement essentially denied Nseki’s involvement in the burglary and claimed that Nseki had been invited into the house by Mr Amoako as the two men were in a homosexual relationship. Nseki said that he had been arrested after Mr Amoako told him to leave upon hearing “a loud smashing noise from the back of the property and the word ‘police’”.

Singapore Law Gazette May 2012
The Firm later withdrew from acting for Nseki on the same day on the basis of professional embarrassment and new solicitors took over. When the trial resumed the next day, Nseki changed his account by filing a second defence case statement which stated that he had been selling drugs near the house and tried to run away when he saw a policeman. Nseki was eventually convicted by a majority of ten to two of burglary and sentenced to 10 years’ imprisonment. Thereafter, the trial Judge invited written submissions from the Firm as to why it should not pay the wasted costs of Mr Amoako’s attendance. The Firm submitted that it should not pay wasted costs because it:

1. had instructions consistent with the unsigned defence case statement and was accordingly obliged to challenge Mr Amoako’s evidence and put the defence case to him; and

2. was instructed by Nseki that he did not wish to serve a defence case statement at that stage, notwithstanding advice to the contrary.

The trial Judge held that the Firm was liable for wasted costs in the sum of £3,042.50 as it had deliberately breached CPR 34.3(2) which "incidentally kept the defendant's options open" and "had failed to act with the competence reasonably to be expected by ordinary members of the profession", who were “expected to know the rules and to comply with them”. Legal professional privilege was irrelevant to the Firm’s decision to object to the prosecution’s hearsay notice as Nseki’s defence vis-à-vis Mr Amoako’s evidence was not disclosed. The trial Judge also held that if Nseki had disclosed his intention to put to Mr Amoako his “incredible defence” at the commencement of the trial, he might well have changed his instructions to the Firm without any professional embarrassment arising.

On appeal against the trial Judge’s order, the Court of Appeal rejected the Firm’s initial argument that the wasted costs was caused by “Nseki’s change of instructions on the second day of the trial, which was an occurrence that the [Firm] could not reasonably have foreseen”, rather than the Firm’s breach of CPR 34.3(2). On the civil standard of probabilities, the Court affirmed the trial Judge’s findings of fact on the causation issue and held that whether the Firm may not actually have the foreseen the consequences of serving a proper application to object to the prosecution’s hearsay notice was irrelevant.

More critically, the Firm argued that it was not liable for wasted costs because it had only made an error of judgment as a “perfectly respectable firm that had acted in a way that [it was] entitled to think was proper”. Although Nseki had given the Firm instructions, they “were not sufficiently firm, despite [the Firm’s] efforts, for a defence to be served until the first day of trial …”. The Court also rejected this submission as it held that the Firm should have set out in the application, that part of Nseki’s case that it had to put to Mr Amoako, or withdraw from acting if Nseki refused to allow this. The Court further observed that Nseki was manifestly seeking to manipulate the court’s process and the Firm’s conduct in insisting on Mr Amoako’s attendance at the trial without disclosing the defence case made it “complicit” in the client’s manipulation. As the Firm’s failure to comply with CPR 34.3(2) was deliberate and serious, the Court upheld the wasted costs order against the Firm.

In the aftermath of SVS Solicitors, the Law Society of England and Wales (“LSEW”) expressed concerns that the decision “raise[d] difficult questions for solicitors on where the balance lies between their duty to their client and to the court” and indicated that it would “seek to intervene if permission to appeal [was] granted”. However, as there was no right of further appeal from the Court of Appeal to the Supreme Court on costs orders against a non-party to criminal proceedings, the LSEW was unable to obtain leave to intervene. The LSEW nevertheless issued an updated practice note to its members to take into account the effect of SVS Solicitors. In particular, the LSEW advised criminal solicitors to inform the Court if their clients prevented them from complying with their obligations under the CPR “by failing to provide [them] with any instructions or sufficient instructions”.

The Proper Balance Between a Solicitor’s Duty to the Court and Duty to the Client

Does SVS Solicitors suggest any useful ethical guidelines for Singapore criminal law practitioners in determining the proper balance between a solicitor’s duty to the Court and his duty to the client where compliance with criminal procedural rules is concerned? Three observations are offered in this regard:

1. Whether the intent and purport of the procedural rule is targeted at the client or the solicitor;

2. Whether the solicitor had assessed or verified the client’s instructions in a timely manner; and

3. Whether the solicitor had made an error of judgment in breaching the procedural rule.

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2. Whether the solicitor had assessed or verified the client’s instructions in a timely manner; and

3. Whether the solicitor had made an error of judgment in breaching the procedural rule.
1. Whether the Intent and Purport of the Procedural Rule is Targeted at the Client or the Solicitor

The Singapore Court of Appeal has observed that in civil proceedings, “[i]n advancing his client’s cause, the employment of legal tactics or strategies by a solicitor in order to pin an opposing party or to extract concessions is not improper if carried out in accordance with the intent and purport of the Rules of Court.” The same could be said of criminal proceedings and this was seen in SVS Solicitors where the trial Judge had distinguished the ethical considerations between filing a defence statement and an objection to a hearsay notice. On the one hand, a solicitor was “required to advise his client that he should comply with a requirement to serve a Defence Statement”. But if the client refused to do so, the solicitor would “commit no breach of the rules which could be punished by way of a Wasted Costs Order”, while the client could be sanctioned under the CPR.

On the other hand, if a solicitor failed to comply with his obligations under the CPR to explain why the hearsay notice was opposed, that would be the solicitor’s failure if he continued to act. This was because the solicitor owed a higher duty to the Court not to breach the CPR, even if he was only acting on his client’s instructions in insisting that Mr Amoako attended the trial.

Therefore, one yardstick in deciding the proper balance could be whether compliance with the procedural rule in question is the responsibility of the client or the solicitor, which in turn depends on the intent and purport of the rule. This yardstick, however, has potentially wide ramifications as many criminal procedural rules require the solicitor to file an application or serve documents on the accused’s behalf.

Moreover, it may not be easy to distinguish whether a breach of the procedural rule concerned is by the client or the solicitor or both. For example, for a notice of alibi, s 278(4) of the Criminal Procedure Code 2010 (“CPC”) provides that unless proved otherwise, such a notice offered on the accused’s behalf “is regarded as having been given with the accused’s authority”. Therefore, if any of the statutory requirements for the notice is breached, both the accused and his solicitor could be held liable.

Nevertheless, it would appear that the solicitor is primarily responsible for a breach of his duty vis-à-vis a potential alibi witness. In Holden & Co v Crown Prosecution Service (“Holden”), which involved five appeals against wasted costs orders made against separate law firms, the English Court of Appeal held in one case that a solicitor was in breach of his duty to the Court as he failed to give a notice of alibi as soon as he had the witness’s evidence in his possession even though he was unable to obtain his client’s express instructions in time and did not have an opportunity to assess the witness’s reliability. The Court did not accept that the accused would be prejudiced if the notice of alibi had to be given before the solicitor had ascertained the witness’s reliability based on the circumstances of the case and s 11(5) of the Criminal Justice Act 1967 which was in pari materia to s 278(4) of the CPC. The Court held that the solicitor should have given the requisite notice first with a covering letter explaining why the accused’s instructions could not be obtained in time. After the solicitor had expeditiously obtained the accused’s instructions, the notice could then be withdrawn if necessary. However, as the solicitor in that case was found to have made a “genuine mistake as to the law”, the wasted costs order was set aside.

The following general guiding principles may be extracted from SVS Solicitors and Holden, but they will probably have to be adapted to the relevant procedural rule concerned in each case:

1. Based on Holden, if the intent and purport of the procedural rule is targeted at the solicitor, a possible guiding principle may be for the solicitor to make the necessary disclosure to the Court as soon as possible so as to comply with the procedural rule concerned, if his client will not be prejudiced.

2. If complying with the rule would, however, mean a disclosure adverse to the client, the solicitor should, as suggested by the trial Judge in SVS Solicitors, first obtain the client’s consent to disclosure, failing which he would have to withdraw from acting for the client in view of his overriding duty to the Court. This course of action would also be consistent with r 58(a) of the Legal Profession (Professional Conduct) Rules (“PCR”) which provides that a solicitor “shall cease to act for a client if ... the client refuses to authorise him to make some disclosure to the Court which his duty to the Court requires him to make”.

3. In withdrawing from the case, the trial Judge in SVS Solicitors suggested that “all the court need be told is that the client is not permitting the solicitor to comply with the rules”, which would not itself trigger a breach of legal professional privilege. As mentioned above, the LSEW has also advised its members to inform the Court of their “inability to comply with the rules” in such a scenario, but they should not disclose communications between the solicitor and the client because of privilege.
2. Whether the Solicitor had Assessed or Verified the Client’s Instructions in a Timely Manner

The Singapore Court of Appeal has affirmed that the duty of candour to the Court does not require the solicitor to verify the truthfulness or factual accuracy of his client’s instructions, unless there are compelling reasons or circumstances, for example, where his client’s statements are inherently incredible or logically impossible.25 At the same time, the Court observed that:

...a solicitor cannot simply take whatever the client states at face value. The solicitor has a duty to the client to assess the instructions holistically and explain to the client what may support or contradict the claim. He has to ensure that his client understands the duty to be truthful and the consequences of being found to be untruthful.26

When is the proper time for a solicitor to assess or verify his client’s instructions? This requires a judgment call by the solicitor, given that truth may sometimes be stranger than fiction and clients may sometimes not provide complete information for solicitors to be able to assess the veracity of the instructions. The problem of hindsight bias may also arise as it may be easy to determine that the client’s statements were false or inherently incredible after the client had given a number of conflicting testimonies in Court, but such issues may have been virtually impossible to detect before the trial.

SVS Solicitors suggests that the lack of sufficient instructions from the client may not justify the solicitor’s delay in assessing or verifying his client’s instructions, as there is a real risk of inferring the solicitor’s complicity in any scheme by the client to manipulate the Court process. This risk is also illustrated in the Malaysian Court decision of Mitra & Co v Thevar27 (“Mitra”), although it was a civil case and did not involve the breach of any procedural rule. In Mitra, the solicitor had simply relied on his client’s instructions that the contents of an opposing witness’s affidavit were untrue and that his client would produce witnesses supporting him at the trial. The trial Judge had ordered wasted costs against the solicitor for failing to interview his client’s witnesses before the trial in light of the opposing witness’s contradictory account. The order was only overturned on appeal because the solicitor was found to have concurrently possessed an affidavit of an important witness supporting his client’s case, but this fact was for some reason not disclosed to the trial Judge.

A general guiding principle arising from SVS Solicitors and Mitra may, therefore, be that a solicitor should assess or verify his client’s instructions as soon as practicable after he is put on notice that his client’s defence is challenged by a third party, for example, the prosecution in SVS Solicitors or the opposing witness in Mitra. The longer the solicitor delays in assessing or verifying his client’s instructions, the greater the risk he runs in being held to have breached his duty to the Court, especially when he is required to comply with a procedural rule to reveal matters concerning his client’s defence.

3. Whether the Solicitor had Made an Error of Judgment in Breaching the Procedural Rule

It is established law in both England and Singapore that a mere error of judgment would generally not justify invoking the Court’s jurisdiction to make a wasted costs order against a solicitor.28 The underlying basis of the Court’s jurisdiction is a “breach of the duty owed by the solicitor to the court to perform his duty as an officer of the court in promoting within his own sphere the cause of justice”.29 In Singapore, the Court’s wasted costs jurisdiction in criminal proceedings is both inherent and statutory.30

SVS Solicitors suggests that where a solicitor is responsible for complying with a criminal procedural rule and does not assess or verify his client’s instructions in a timely manner, he would not be found to have made an error of judgment by breaching the rule. Also, in one of the five appeals in Holden, the solicitors’ failure to secure the attendance of a key witness by contacting him at his last known address resulted in an abortive trial and was held to be more than a mere error of judgment. Although not reprehensible, the solicitors’ conduct amounted to “a serious dereliction of the solicitor’s duty to the court” because they relied solely on their client’s instructions that the witness, who was the client’s brother, “had gone to ground” and would be reluctant to attend”.31

On the other hand, in another appeal in Holden, the accused, who was “said to be a difficult man” changed his instructions repeatedly on whether he would plead guilty to a charge of robbery because his preferred counsel was unavailable.32 As a result, the solicitors were unable “to give the earliest possible indication of a likely guilty plea” and the accused only pleaded guilty on the first day of trial after meeting his preferred counsel.33 The trial Judge ordered wasted costs against the solicitors in view of the costs incurred in getting down the witnesses for trial. On appeal, the Court
was persuaded by the solicitors’ difficulties in arranging an earlier conference with the accused’s preferred counsel or any other counsel and held that if the solicitors had committed any error in not arranging an earlier conference, it was merely an error of judgment.

Although the two above-mentioned Holden appeals did not involve a breach of a procedural rule, it may be possible to explain the cases by reference to a guiding ethical principle in r 55(b) PCR, which states that a solicitor must “use his best endeavours to avoid unnecessary adjournments, expense and waste of the Court’s time”. So long as the “best endeavours” test is satisfied, a solicitor should not be liable for wasted costs even if he had breached a procedural rule which led to unnecessary costs incurred. Such a yardstick would also help ensure that solicitors who themselves are victims of the client’s machinations are not unfairly penalized by a wasted costs order.

**Conclusion**

The guiding ethical principles discussed in this article offer a starting point in deciding the proper balance between a solicitor’s duty to the Court and his duty to the client in complying with criminal procedural rules. Criminal law practitioners should be alert to the potential duties to the Court imposed by such rules, in particular those which place the onus to comply on the solicitor and require the solicitor to disclose his client’s defence. At the same time, to expect criminal law practitioners not to make any errors of judgment would be a counsel of perfection.

*The views expressed in this article are the personal views of the author and should not be taken to represent the views of the Law Society of Singapore or the Law Society’s Ethics Committee.*

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2. Ibid.
7. Ibid, at [6].
8. Ibid, at [9].
10. Ibid.
11. Ibid, at [19].
12. Ibid, at [20].
13. Ibid, at [21].
15. Ibid.
16. Ibid, at [24].
20. Supra, note 6, at [18].
21. Ibid.
25. Supra, note 1, at [118].
26. Ibid.
27. [1960] MLJ 79.
28. Supra, note 4; Ridehalgh v Horsefield [1994] Ch 205.
29. Ibid.
30. Supra, note 4, at [34].
32. Ibid, at 274-5.
33. Ibid.
On Friday 16 March 2012, Sue-Anne Moo of the Law Society had the privilege of interviewing Stephen Atherton QC over tea, after he spoke at length on the topic of “Approval of Insolvency Officeholders’ Remuneration – The UK Experience and Perspective” at a Insolvency Practitioners’ Association of Singapore seminar. Nish Shetty, vice-chairperson of the Law Society’s Insolvency Practice Committee, also spoke at this seminar as a guest panelist. It was a very interesting chat that revealed many sides to Mr Atherton. Beneath his unassuming and amiable charm, lies a very ambitious determined man who told me that since the age of eight, he knew that he had wanted to be a barrister. In his early days of practice, his only aim was to make QC.

Set out below are a few of the topics we discussed briefly with this charming QC and his candid responses:

**Afternoon Tea with Stephen Atherton QC**

**Why did you choose to set up shop in Singapore?**

20 Essex Street (the barristers’ chambers of which I am a member) was invited by the Singapore authorities to help open up Singapore as an international arbitration hub. We thus set up shop here with the approval and support of the Singapore authorities. The aim of our setting up shop here was therefore to help grow Singapore’s capabilities in arbitration, in competition with Hong Kong.

**There has been a push towards liberalising the regime to allow QCs easier entry to Singapore to handle cases on an ad-hoc basis. What are your views on this?**

This is very helpful for business. In the UK, work is very competitive, certainly at the silk level. A lot of people have, therefore, tried to expand their work overseas. I have myself done a considerable amount of work in the Cayman Islands, Bermuda and the Virgin Islands in Court. I have not managed to get into the Courts in Hong Kong, but I have been called to the bar in Brunei and had the prospect of being called to the bar in East Malaysia but could not get the papers done in time.

I find that it is very important for Singapore to allow QCs to practise here, to have an added pool of extremely talented common law lawyers. Certainly in the area of insolvency, I would like to think I have sufficient expertise in cross-border insolvency to offer, after 22 years in practice.

Our ability to enter the Singapore market more easily will also be helpful in cases where the large Singapore law practices are unable to act for the individual client due to conflict of interests (for example, in financial and commercial disputes involving banks).

In such circumstances, it is less likely that we would be conflicted out from acting for the individual client compared to an experienced senior lawyer from a large Singapore law practice.

Further, what English QCs can offer is lower costs for the Singapore consumer, in comparison to the quality of service we can offer. The English Bar is cost-efficient, as we are self-employed and thus we have lower overheads. I do believe English QCs are able to provide best-quality representation at a cheaper rate than their Hong Kong counterparts.

**In Singapore, there has been ongoing discussion on what an appropriate basis is for legal practitioners’ remuneration and whether the traditional basis of the use of time-costs ought to be reviewed. Do you think the principles relating to insolvency practitioners’ fees would be relevant considerations for legal remuneration across different areas of practice?**
In insolvency, the main costs incurred by clients are payment of fees to solicitors and insolvency practitioners. That is the main burden placed on the insolvency estate.

Across all types of cases, solicitors in the UK also always have had to present their costs very stringently as solicitors’ costs are scrutinised by the Courts far more carefully than the fees of barristers. By the time barristers are engaged for any matter, the fees tend to have been already formally agreed with the client.

In the UK, the Solicitors Regulation Authority requires solicitors to put the right of taxation into the contract with their clients. In comparison, the UK Bar was less regulated than their solicitor counterparts. Of late, the UK Bar is trying to create a regime that is more on a par with the solicitors, i.e., that we need to be more accountable to clients on the fees that we charge as barristers.

The UK Solicitors Regulation Authority is now accepting applications for Alternative Business Structures (“ABS’s”). This is a growing international trend that will change the face of legal practice. How do you think this will affect the high street small firms in the UK? Do you have any views on what is a good strategy for Singapore law practices to adopt in light of these forthcoming changes?

I am not sure if the “Tesco law” revolution will affect the small high street small law firms in the UK. There will always be a place for the small UK law firm in respect of domestic areas of work such as criminal and family law cases. I do not think the increase in ABSs will impair the access to justice.

For Singapore, I foresee that there will be an increasing number of joint ventures with the bigger law practices.

I believe that the ability for the smaller Singapore law practices to survive similarly does not disappear even if the bigger foreign law practices come into the market. Foreign law practices may get a foothold in the Singapore market, but they have a very different clientele base from that of the smaller Singapore law practices.

If Singapore law practices want to be seen as competing in the real world, they must be willing to face up to the reality of competition by the admission of foreign law firms and foreign lawyers.

There are various views expressed in support of the arguments both for and against third party litigation funding. What are your views on this issue?

I believe it provides liquidity for litigants who don’t have the income to institute proceedings; this is particularly pertinent in the context of insolvency matters, as third party litigation funding is allowed in insolvency matters in the UK.

What are your views on legal ethics?

To me, ethics is common sense. For example, if I see an item of evidence or an issue of law in the course of preparing my submissions, which clearly is adverse to my client, I would nevertheless have to discharge my duty to the Court by disclosing such information. It is something that comes instinctively.

It is very rare that I have gone to the Bar Council to ask about ethical issues pertaining to my practice. When I have approached them, it is usually to confirm the preliminary view that I have formed. I personally do not recall having had ethics training during my bar examination days.

Having said that, I still do believe lawyers need to be trained in ethics as part of their preparation for professional practice. I do accept that the nature of role of solicitors is more complex, especially with regards to holding clients’ money. They do have more rules to be accountable to than barristers. Barristers do not need to worry about holding of clients’ money, as we do not take funds to account, unlike solicitors, but our code of ethics cannot be any less stringent.

In Singapore, the issue of where the line should be drawn in bringing disciplinary proceedings against lawyers has been raised. Do you think a lawyer’s personal misconduct should be subject to Court scrutiny?

I think to make this a general principle would be very onerous on lawyers. If a lawyer loses his or her temper in Court and behaves in a professionally discourteous manner, I can understand and accept that there may be grounds for sanctions being imposed. However, if the conduct was done in a personal capacity and the lawyer was expressing his or her grievances on personal matters, why should that be held against him or her as a lawyer?

Having said that, I am of the view that there are certain matters where we should not abuse our role as lawyers. For example, I am aware that if I use my chambers’ notepaper to send a note to a third party borrower on behalf of a lender, it is usually to confirm the preliminary view that I have formed. I personally do not recall having had ethics training during my bar examination days.

What are your views on legal ethics?
As the representative body for young lawyers in Singapore, the Young Lawyers Committee (“YLC”) focuses on issues relevant to those new to legal practice. Stay tuned to this monthly column for useful tips and advice, features and updates on YLC’s social and professional events.

Amicus Agony

Continuing Assessment

Dear Aunt Agony,

What is this new CPD requirement? I know that it stands for continuing professional development, but would you not agree that we are already subject to continuous assessment (by seniors, bosses and clients) and we are rightly developing as lawyers through long working hours (what can possibly make us look more like professionals than looking over-worked, in desperate need of coffee or booze in any order, and being chained to our working devices?)

Alas, upon reading the not-so-fine print, it seems that I do have to fulfil the CPD requirement if I am to continue my survival as a minion. How then, am I to go about doing it?

Looking for precedents,
Constantly-assessed-to-be-up-to-scratch-maybe

Dear Constantly-assessed-to-be-up-to-scratch-maybe,

While this is might be a new requirement, perhaps, the first step you should have figured out is that you have to sign up for seminars?

If you manage to choose correctly, you might end up choosing the same seminars as your seniors and/or bosses. This might work out in a two ways: you do not have to explain yourself as your seniors and/or bosses are also looking to fulfil the CPD requirements; or, your seniors and/or bosses might be too busy to attend and you are given permission to go take notes for them. Win-win.

Should the above conditions not materialise, when informing your seniors and bosses that you are going off for a seminar, always preface this with “I have to fulfil CPD requirements”. The last time I tried that, my boss gave an ambiguous nod before I could finish my sentence and stalked off. I took this as a sign of approval.

Guidelines not precedents,
Aunt Agony

Seeking Leave

Dear Aunt Agony,

I am tired of seeking leave and then having to forfeit said leave when last-minute work arises when the other party makes urgent applications for leave from the Court. I have forfeited my leave because of this! Is this normal or am I missing some step in proceeding?

Feeling lost,
Still seeking leave (and approval)

Dear Still seeking leave (and approval),

While this is might be a new requirement, perhaps, the first step you should have figured out is that you have to sign up for seminars?

First, I would suggest that you ensure that the seminars that you sign up for are relevant and pertinent to your current area of practice. Second, you might want to look at seminars that are short and summarise general developments of law (you can avoid less reading up and save time too).
Unfortunately (or fortunately), not one of us is indispensable. This should mean that any one of your colleagues should sufficiently cover you when you are away, assuming you give sufficient notice and instructions. This is especially so if you are a little minion; minions all look about the same from afar and so long as they do their work adequately.

You could try taking leave during the relatively unpopular periods (relative as everyone always loves a holiday any time anywhere) or during the early part of the year so that you can have multiple tries at scoring a holiday.

You could also try talking to your seniors about it. If no one cares and you are truly overworked, why, there is always the option of quitting.

With leave,
Aunt Agony

Letters to a Young Practitioner – CPD Obligations

Dear Young Practitioner,

Yes you! Don’t look away. We are talking to you. The one who was called to the Singapore bar on or after 2 January 2007, and who currently holds a practising certificate. And yes, it certainly includes you, the one with years of legal experience (eg in-house, with the Singapore Legal Service or at any overseas Bar), but who only just got called to the Singapore Bar after 2007. We are not, however, referring to you, the fellow who got called in 2002 and then decided to embark on other, less-lawyerly quests, like competing in Singapore Idol or climbing Mount Everest, and who only just decided to return to practice last year.

So yes, this is just a letter from your friendly Young Lawyers Committee (“YLC”). Yup, from lawyers just like you – young, good looking and smart. And just like you, we have to comply with the new continuing professional development requirements, or what we in the in-crowd fondly refer to as our “CPD obligations”. These obligations are rather important, (or at least, are important so long as you intend to be in practice next year), because you will need to have complied with your 2012 CPD obligations when you apply to renew your practising certificate come April 2013.

So what do the CPD obligations entail?

First, you need to be aware of the concept known as “the CPD Point”: We will each need to accumulate a certain number of CPD Points per practice year. The number of CPD Points that each young practitioner needs is based on the duration of your practising certificate this year. So if you, like the rest of us, currently hold a practising certificate valid from 1 April 2012 onwards, then you will need to accumulate a total of eight CPD Points this year (this doubles to 16 CPD Points next year, but we will get to that in another letter). And if you currently do not hold a practising certificate but will be getting one later this year, then if you hold your new practising certificate for at least five months this practice year, you will need to accumulate four CPD Points. Hence, if you hold the practising certificate for less than five months this practice year (yes, this refers to all you practice trainees reading your colleague’s copy of the Law Gazette, who are getting called at end July 2012), you do not need to accumulate any CPD Points this practice year (check back again for your obligations next year).

Second, CPD Points can be accumulated in a number of ways. However, you need to be aware that there are two types of CPD Points – Public CPD Points and Private CPD Points. There is no limit to the amount of Public CPD Points that you can accumulate, but you can only accumulate half of your CPD Points via Private CPD Points. In other words, if you, like the rest of us, have to accumulate eight
CPD Points this year, you can only accumulate up to four Private CPD Points towards your total of eight CPD Points, although you are welcome to accumulate eight Public CPD Points and no Private CPD Points, if you wish.

What then are Public CPD Points? The answer, young *padawans*, is simple. You accumulate Public CPD Points whenever you attend a conference, lecture, seminar or workshop conducted by an “Accredited Institution”. The number of CPD Points offered for each such activity will be informed to you when you are signing up for the activity, and it will normally work out to one Public CPD Point per hour. The list of Accredited Institutions will change from time to time, but currently includes, among others, the Law Society of Singapore, the National University of Singapore Faculty of Law, the Singapore Management University School of Law and the Singapore Institute of Legal Education. Sadly, the English Premier League is not on that list.

Ok, that’s straightforward enough. But what about Private CPD Points? Those are, unfortunately, more complicated. There are five ways that you can accumulate such points.

First, you can write an article that is published in an approved publication such as the *Law Gazette* (although you can apply for Private CPD Points on a case by case basis if you publish your article elsewhere). The article must deal primarily with matters relating to the practice of law (sorry, restaurant reviews may feed the stomach but not your CPD quota) and be of significant intellectual or practical content.

Second, you can obtain CPD Points for attending a conference, lecture, seminar or workshop locally or overseas, that is not conducted by an Accredited Institution. This activity must deal primarily with matters relating to the practice of law, comprise significant intellectual or practical content, and seek to extend your knowledge or skill in one or more areas that are relevant to your practice needs.

Third, you can attend an in-house seminar conducted by your own (or other) law firm for its lawyers.

Fourth, you can attend a small group discussion, which is a seminar, workshop or discussion group organised by a group of lawyers or law practices. The discussion must be organised in advance, attended by at least three lawyers and must be structured. The last criterion may be evidenced by the presence of an agenda for discussion, and a chairman must be appointed who shall (because with great power lies great responsibility) cause notes of the discussion to be recorded and circulated to all lawyers who participated, within one week.

Lastly, you can review a multimedia, Internet-based, audio-visual, audio or video programme or material. The programme or material must be structured, and it must either watched or listened to (so yes, reading someone else’s lecture slides does not count, although watching a video recording of a lecture will). Further, the entire programme or material, including any accompanying material, such as quizzes or questionnaires, must be completed in its entirety.

In relation to the last four methods cited above, you will generally accumulate one Private CPD Point per hour, whilst for articles, you will accumulate one Private CPD Point for the first 1,000 words (and half a CPD point per 500 words thereafter).

Given the above, you will see that the new CPD obligations operate largely on an honour system. And even though we all know that us young lawyers are extremely ethical and honest, there will be random audits conducted in order to verify compliance. Hence, it is incumbent upon you to actually attend or complete the entire CPD activity as well as to keep the necessary records for three years, in order to prove that you have complied with your CPD obligations. If you find it too troublesome to keep track of your accrued CPD Points, you can head over to the friendly folks at the Singapore Institute of Legal Education CPD Centre (www.silecpdcentre.org.sg), where an ePortfolio system has been set up for your convenience.

And for good order we should mention that, for the sake of all you gunners out there, you cannot carry over your CPD Points from year to year (it’s called “continuing professional development”, not “law school”). So while you are more than welcome to attend as many courses as your budget and bosses might allow, only eight CPD Points accumulated this year will go towards the renewal of your practising certificate in 2013.

Since the CPD obligations are here to stay, it is time you get ready to start fulfilling them like the responsible young lawyers that you are! Do check out the Law Society website or the Singapore Institute of Legal Education’s CPD Centre website if you have any questions. In addition, the YLC would love to hear from you with suggestions on the CPD courses you would like conducted (once again, the English Premier League does not count). Just send your suggestions to communications@lawsoc.org.sg.

Learnedly Yours,
The Young Lawyers Committee
Legislation

Moneylenders (Amendment) Bill 2012 (B4/2012)

The Moneylenders (Amendment) Bill 2012 (B4/2012) (the “Bill”) was read the second time and passed in Parliament on 9 March 2012.

The Bill will amend the Moneylenders Act (the “MA”) for the following main purposes:
1. Add a new activity constituting the offence of assisting an unlicensed moneylender (referring a potential borrower to an unlicensed moneylender, intending to facilitate or knowing it to be likely to facilitate the lending of money by the unlicensed moneylender to the potential borrower);
2. Amend the power to require information and documents; and
3. Provide that the Registrar of Moneylenders or an authorised officer may be assisted by other persons when exercising certain monitoring powers under s 25(1).

The Ministry of Law has also announced that the Moneylenders Rules will be amended and the amendments will come into effect on 1 June 2012. The amendments are in four main areas:
1. Mandate the use of Effective Interest Rate;
2. Extend coverage of caps on interest rate, to a larger group of borrowers;
3. Remove certain fees from list of fees which moneylenders are allowed to charge borrowers; and
4. Abolish all exceptions to the limits on the amount of unsecured loan that a borrower can obtain.

Energy Conservation Bill 2012 (B8/2012)

The Energy Conservation Bill 2012 (B8/2012) was introduced in Parliament on 8 March 2012 and passed on 9 April 2012.

This Bill seeks to establish a framework for energy conservation measures to be implemented and energy data to be collected. In particular, the Bill seeks to achieve the following main purposes:
1. To provide for the appointment of authorised officers from the National Environment Agency to enforce the provisions in relation to the domestic and industry sectors, other than the transport sector;
2. To provide for the appointment of sector regulators and transport sector authorised officers from the Land Transport Authority of Singapore, Maritime and Port Authority of Singapore and Civil Aviation Authority of Singapore to enforce the provisions in relation to the transport sector;
3. To provide for the registration of suppliers and goods which consume electricity or other forms of energy and to require energy labelling of the goods;
4. To require corporations which qualify as registrable corporations to be registered and to implement energy management practices, namely:
   a. energy reporting;
   b. record-keeping;
   c. the submission of energy efficiency improvement plans; and
   d. the appointment of an energy manager; and
5. In relation to the transport sector, to provide for fuel economy labelling of motor vehicles and to require the implementation of energy management practices, similar to those required of registrable corporations, by corporations providing land transport, marine and port services or airport services (referred to as “transport facility operators”).

The Bill also makes consequential and related amendments to certain other written laws.

► Elizabeth Wong
Allen & Gledhill LLP

Obiter

Cadbury on Fertilizer?

A Chinese company has applied for registration of the mark “吉百利”(Cadbury in Chinese) on fertilizers. Cadbury brought a lawsuit after it failed in both opposition and review proceedings.

In the Court hearing, Cadbury claims that its prior mark “吉百利”(Cadbury in Chinese) has acquired fame and reputation and should be protected as a well-known mark against the opposed mark on dissimilar goods. The Trademark Review and Adjudication Board (“TRAB”) defends that although they understand that “Cadbury” is a well-known mark, yet they believe the registration on fertilizers would not cause confusion among consumers and thus injure the legitimate interest of Cadbury. Furthermore, the third party, (also the applicant of the disputed mark) argues that the distributing channels, target consumers, and markets for candies and fertilizers are so different that the disputed mark will not mislead the public.

The lawsuit focuses on the protection scope of a well-known mark, the key of which would be whether or not the Court would consider the doctrine of dilution against a well-known mark, which is also a highly controversial issue in the trademark world. We will continue to follow up the case.
The Alter Ego Journey

The Hard Effects of Practice

Why Be a Lawyer?

The Lifting of the Unbearable Writer’s Block

The Gen Y Relationship

A Lawyer, a Civil Servant and an Interior Designer

From Singlehood to Parenthood

THE GASTRONOMIC Relationships

The Singapore Happiness Index

A Lawyer, a Civil Servant and an Interior Designer

The Lost Conversations

Madam Kwa’s Lessons to Singapore

Excuse Me, I Want Good Service
This was the speech made by Rajan Chettiar at a get-together on 20 April 2012 to commemorate the 10th anniversary of “Alter Ego”.

When I was called to the Bar in 1997, one of the first things I did was to volunteer with the Law Society. I chose to volunteer in the Publications Committee. The late Palakrishnan Senior Counsel or Pala as he was known to us, was then the Chairman of the Committee. He “arrowed” me to write about contingency fees for the Singapore Law Gazette. Despite his busy schedule, he never forgot to chase those of us who did not submit our articles on time.

I must say a bit about Pala here. After the first Publications Committee meeting chaired by Pala, I vividly remember returning to the office full of new found energy, enthusiasm and positivity towards law practice as a first year lawyer. I later had an opportunity to reflect about Pala’s influence on my life in “Alter Ego” (September 2003 issue). On this day, I wish to thank Pala for giving me the push to write for the Singapore Law Gazette and more importantly, for being the inspiration in my career.

I have always enjoyed writing. I started writing poems when I was nine. Sometime in 2002, I proposed to the Publications Committee the idea of interviewing lawyers with interesting hobbies and interests as well as former lawyers who had ventured into other fields. I felt that this would give a “lifestyle” angle to the Gazette and hopefully encourage more people to read it. The Committee liked the idea but there were no takers to front the column, so I volunteered to write the column without knowing that I would have the privilege of interviewing more than 75 individuals including luminaries such as former Minister Mentor Lee Kuan Yew, Dean Walter Woon, activist Somaly Mam and many overseas lawyers, to name a few.

I have had the great pleasure of not only meeting these individuals in person, but also learning from them about daring to venture into the unknown, the importance of passion in life and living life to the fullest.

In the last few years, however, I found myself having no time to do interviews. So, I started writing about issues which affect us as lawyers and as human beings.

This column has given me the invaluable opportunity to pursue this great love of writing on the side of my law practice. It also gave me the opportunity to get to know members of the Judiciary, in particular, Justice of Appeal, V K Rajah who never forgets to tell me that he is reading my column and reminds me not to stop writing each time we meet. The column has also served as the starting point of many conversations and forging of friendships with many lawyers whom I would otherwise never have known. Many would tell me how the column resonated with them and how it influenced their thoughts and their perspective on life.

I have a long list of people to thank this afternoon.

First, President of the Law Society, Wong Meng Meng and the Council for acknowledging my contribution to the Gazette and generously hosting this event.

Second, there are four ladies who I never forget when I think about this column. They are:

Malathi Das. There is one aspect of Mal that many outside the Committee do not know about. She is the creative brain behind the Gazette who comes up with all the clever ideas for the attractive covers of the Gazette each month. Mal, thank you for coming up with the name of the column, “Alter Ego”.

Sharmaine Lau, Director of Publications. Without Sharmaine’s endless support, patience in issuing me numerous reminders, giving me the absolute deadline to submit my column and her friendship, I do not think “Alter Ego” would have reached 10 years.

Shirin Kamsir, the former officer of the Publications Department. Although she had to juggle numerous duties in the Secretariat, she was always there with a smile to take photographs of the interviewees.

My wife, Shane. When we were dating, I would make her edit my columns. She is probably the only person who openly criticises and cringes at my writing style. Thank you for allowing me to share many aspects of my life and our personal lives in the column. Not to upset her over what I write about her in the columns, I have encouraged her not to read the column in the last few years.

Third, I wish to thank the interviewees, some of whom are here today and others who sent me congratulatory messages on this anniversary, for graciously and openly sharing aspects of their lives and their views for the column.

Last but not least, all of you and the many others who are not here today for reading the column month after month. Your words of encouragement and support kept me going during the most difficult periods in the last 10 years when I struggled to keep this column alive.

With your friendship and support, I hope to continue writing this column. Thank you.

► Rajan Chettiar
Rajan Chettiar & Co
E-mail: rajan@rajanchettiar.com
Lawyer as Rights Warrior and Conflict Resolver

The New Lawyer: How Settlement is Transforming the Practice of Law by Julie MacFarlane

Clarence Darrow, Atticus Finch, Johnnie Cochran, Jan Schlichtmann and Gerry Spence – what image of lawyers do they bring to your mind? If your answer is a fearless fighter for justice, you are right. Be it in real life or in fiction, we are all familiar with the popular notion of litigation lawyers as rights warriors. But the litigation lawyer as a conflict resolver? Is he or she an imaginary character or an emerging reality?

With the recent announcement of the “Presumption of Alternative Dispute Resolution” initiative in the Subordinate Courts, lawyers will no doubt play a significant role in advising their clients of the various ADR options such as mediation, neutral evaluation and arbitration and representing them through one or more ADR mechanisms. It is, therefore, timely to examine the experiences of lawyers in other jurisdictions which have moved towards a more party-autonomous and less adversarial system of conflict resolution. The New Lawyer: How Settlement is Transforming the Practice of Law provides a good starting point to explore the opportunities and challenges for the lawyer as conflict resolver.

The author of The New Lawyer, Julie MacFarlane, is a professor who teaches Lawyer as Conflict Resolver at the University of Windsor. In The New Lawyer, she describes three key professional beliefs underpinning the traditional adversarial advocacy model: (a) the emphasis on rights-based approaches to conflict resolution; (b) the belief in the importance of procedural justice; and (c) the lawyer’s control of substantive decision-making in the lawyer-client relationship. Professor MacFarlane notes that dissatisfaction with the zero-sum game of the traditional advocacy model and other socio-economic factors have led to a new advocacy of conflict resolution in the United States and Canada. The new advocacy model seeks a holistic solution to client’s needs through problem-solving as opposed to zealous advocacy in an adversarial setting.

One example she uses to illustrate the new advocacy model is collaborative law. Collaborative lawyering removes the spectre of litigation by requiring lawyers to agree contractually with their clients to resolve the conflict by negotiation. If negotiation fails, the lawyers involved agree to be disqualified from continuing to act for their clients as an incentive to work towards reaching an early settlement. Collaborative law, therefore, changes the three key beliefs by involving other professionals and including non-legal solutions in resolving the conflict, giving the client more autonomy and participation in the negotiation process and extending the importance of procedural justice beyond the adjudication context.

Professor MacFarlane also makes two important observations about the new lawyer which should be borne in mind as the Singapore legal profession tries the new advocacy model. Firstly, she emphasizes that the lawyer’s new conflict resolution role is to complement, and not to replace, the existing adversarial advocacy role. The additional skill-set required of the new lawyer is geared towards conflict resolution, but builds upon the traditional principles of adversarial advocacy. Secondly, the law still has a key role to play under the new advocacy model. Professor MacFarlane dispels a misconception that the new lawyer need not use his or her legal expertise in resolving conflicts. On the contrary, even though legal remedies may not fully address the parties’ concerns, legal frameworks provide critical yardsticks in guiding parties towards settlement and remain an effective tool to protect vulnerable parties.

While Professor MacFarlane embraces the new advocacy model, she does not present a rose-tinted view and highlights a number of ethical challenges facing the new lawyer. One significant ethical issue is when does the new lawyer cross the line from placing legitimate pressure on to coercing his client to settle the dispute? This issue arises in collaborative lawyering as the disqualification clause means that a lawyer has a personal stake in ensuring that the dispute is resolved without resort to litigation and may, therefore, be more likely to coerce his client into settlement. Professor MacFarlane suggests that regular meetings with clients on whether to continue the collaborative process would alleviate the danger of coercion.

In conclusion, The New Lawyer is essential reading for lawyers who wish to understand the special skill-set and mindset change required under the new advocacy model and seize the opportunities offered in the Singapore legal landscape to be both rights warriors and conflict resolvers.

► Alvin Chen
Chief Legal Officer
Director, Representation and Law Reform
The Law Society of Singapore
E-mail: alvin@lawsoc.org.sg

Note: The New Lawyer is published by UBC Press and is available at amazon.com
LexisNexis Annotated Statutes of Singapore:
Electronic Transaction Act
By Rosemary Lee

This First Edition provides commentary on the new Electronic Transactions Act with a look at the legal provisions facilitating electronic contracting and governing the use of electronic transactions in Singapore. It includes all significant Singapore cases with references to the United Nations Convention on the Use of Electronic Communications in International Contracts. This book is useful for legal practitioners in search of clear answers to issues concerning various aspects of electronic transactions in Singapore.

Table of Contents
Part I Preliminary
Part II Electronic Records, Signatures and Contracts
Part III Secure Electronic Records and Signatures
Part IV Regulation of Specified Security Procedures and Specified Security Procedure Providers
Part V Use Of Electronic Records And Signatures by Public Agencies
Part VI Liability of Network Service Providers
Part VII General

About the Author
Rosemary Lee is a technology lawyer at Pinsent Masons MPillay LLP. She is an Advocate & Solicitor of Singapore (2004) as well as a Solicitor of England and Wales (2008). A regular speaker at the Pinsent Masons MPillay LLP’s Out-Law events, Rosemary frequently advises on various aspects of e-commerce, privacy and data protection. Her vast experience includes IT and outsourcing transactions, software licensing, telecommunications projects & general technology, as well as commercial contracting.

LexisNexis Annotated Statutes of Singapore:


Key Features
• Preliminary Notes on the legislative history of each statute and interpretation principles
• Commentary on key terms and phrases in the statutory provisions, backed with references to case authorities, parliamentary debates, law commission papers, academic opinions and UNCITRAL opinions and commentary
• References to recent decisions including all Singapore cases relating to the statutes
• Drafting considerations for international and domestic sale of goods contracts

About the Author
Jeffrey Lee (LL.B (Hons) (National University of Singapore); LLM (Queen Mary & Westfield College London)) is called as an advocate & solicitor of Singapore, solicitor of England and Wales as well as a barrister & solicitor of Ontario, Canada. First called to the bar in 1991, he concentrates his works mainly in the areas of corporate and intellectual property matters. He regularly contributes legal articles and commentaries to legal and professional publications; and has co-authored Vol 5 Halsbury’s Laws of Singapore on Commercial Law (Sale of Goods and Consumer Protection) – Butterworths 2001 and 2005 and has published the first version of the annotated commentary of Commercial Law Statutes in 2003.
New Law Practices

Ms Lim Pheck Hoon Joan (formerly of Chan Kam Foo & Associates) has, with effect from 1 April 2012, commenced practice under the name and style of Legal Options LLC at the following address and contact numbers:

20 Havelock Road
#02-45 Central Square
Singapore 059765
Tel: 6438 8039
Fax: 6428 8360
E-mail: info@legaloptions.biz

Ms Parhar Sunita Sonya (formerly of S. S. Parhar & Co) has, with effect from 1 April 2012, commenced practice under the name and style of S. S. Parhar Law Corporation at the following address and contact numbers:

20 Havelock Road
#02-38 Central Square
Singapore 059765
Tel: 6438 6483
Fax: 6234 4798
E-mail: sunita@ssparhar.com

Mr Eugene Thuraisingam (formerly of Stamford Law Corporation) has, with effect from 9 April 2012, commenced practice under the name and style of Eugene Thuraisingam at the following address and contact numbers:

1 Phillip Street
#03-02
Singapore 048692
Tel: 9842 3912
E-mail: thuraisingam.eugene@gmail.com

Mr Shanthi Kumar Navaratnam (formerly of Island Law LLC) has, with effect from 1 April 2012, commenced practice under the name and style of N. S. Kumar Law Practice at the following address and contact numbers:

30 Raffles Place
Level 17, Room 1726, Chevron House
Singapore 048622
Tel: 9862 4365
E-mail: nskumar712@gmail.com

Ms Dorothy Chai Li Li (formerly of Tan Leroy & Chandra) has, with effect from 1 April 2012, commenced practice under the name and style of Dorothy Chai Law Practice at the following address and contact numbers:

133 New Bridge Road
#14-10 Chinatown Point
Singapore 059413
Tel: 9298 1118
E-mail: dorothychai@dclaw.com.sg

Ms Lee Mong Jen (formerly of Wu LLC) has, with effect from 1 April 2012, commenced practice under the name and style of LMJ Law Corporation at the following address and contact numbers:

14 Robinson Road
#08-02 Far East Finance Building
Singapore 048545
Tel: 6327 1276
Fax: 6327 1576
E-mail: lmj@mjleeassociates.com

Mr Marcus Phuah Kok Liang has, with effect from 4 April 2012, commenced practice under the name and style of Marcus Phuah & Co at the following address and contact numbers:

4 Battery Road
22nd Storey, Bank of China Building
Singapore 049908
Tel: 9758 2931
E-mail: marcus.phuah@gmail.com

Mr Mohamed Baiross and Mr Iswadi Bin Masnan (both formerly of Lexcompass LLC) have, with effect from 1 April 2012, commenced practice under the name and style of I. R. B. Law LLP at the following address and contact numbers:

117A Jalan Sultan
Singapore 199007
Tel: 6298 2537
Fax: 6298 2547
E-mail: baiross@irblaw.com.sg

Conversion of Law Practices

The partnership of Abraham Logan & Partners converted to a sole proprietorship on 1 April 2012. The sole proprietor of the law practice is Mr Abraham Tilak Kumar. The operating address and contact numbers of the law practice remain unchanged.

The partnership of Joseph Lopez & Co converted to a sole proprietorship on 7 April 2012. The sole proprietor of the law practice is Mr Joseph Lopez. The operating address and contact numbers of the law practice remain unchanged.

Dissolution of Law Practices

The law practice of S. S. Parhar & Co dissolved on 31 March 2012. Outstanding matters of the former law practice of S. S. Parhar & Co have, with effect from 1 April 2012, been taken over by:

S. S. Parhar Law Corporation
20 Havelock Road
#02-38 Central Square
Singapore 059765
Tel: 6438 6483
Fax: 6234 4798
E-mail: sunita@ssparhar.com
Admission of Advocates and Solicitors

The Law Society of Singapore congratulates the following petitioners who were admitted as advocates and solicitors of the Supreme Court on Wednesday, 11 April 2012.

<table>
<thead>
<tr>
<th>Serial No</th>
<th>AAS No</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>253/2011</td>
<td>Frederick Eng Seng Goh</td>
</tr>
<tr>
<td>2.</td>
<td>301/2011</td>
<td>Tan Yong Seng Nicklaus (Chen Rongsheng Nicklaus)</td>
</tr>
<tr>
<td>3.</td>
<td>318/2011</td>
<td>Chew Ee-Kai Daryl</td>
</tr>
<tr>
<td>4.</td>
<td>8/2012</td>
<td>Wong Joy Ling</td>
</tr>
<tr>
<td>5.</td>
<td>9/2012</td>
<td>Ang Ai Ling</td>
</tr>
</tbody>
</table>

Corrigendum
In the March 2012 issue it was reported that the sole practice of A C Cheong & Co converted to a partnership on 20 February 2012. The conversion took place on 20 January 2012, and not 20 February 2012.

We apologise for the error.

Addendum
In the February 2011 issue it was stated that Prestige Legal LLP had taken over outstanding matters of the former law practice of Mustaffa & Co with effect from 19 January 2011. Law practices may wish to note that Prestige Legal LLP has taken over only certain matters of Mustaffa & Co. Please contact Prestige Legal LLP for clarification if necessary.
## Information on Wills

<table>
<thead>
<tr>
<th>Name of Deceased (Sex)</th>
<th>Last Known Address</th>
<th>Solicitors/Contact Person</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ng King Nguang (M)</strong></td>
<td>Blk 69 Bedok South Avenue 3 #10-480 Singapore 460069</td>
<td>Rodyk &amp; Davidson LLP</td>
<td>DKYH/PWPW/36380.8</td>
</tr>
<tr>
<td><strong>Ang Luang Loh (F)</strong></td>
<td>Blk 655 Yishun Avenue 4 #05-411 Singapore 760655</td>
<td>Dora Boon &amp; Company</td>
<td>DB/1734/11</td>
</tr>
<tr>
<td><strong>Chua Kok Kee (M)</strong></td>
<td>Blk 543 Jelapang Road #19-64 Singapore 670543</td>
<td>Chambers Law LLP</td>
<td>VL.et.1112593.SST</td>
</tr>
<tr>
<td><strong>Leo Eng Chor (M)</strong></td>
<td>Blk 102 Towner Road #04-256 Singapore 322102</td>
<td>Tng Soon Chye &amp; Co</td>
<td>TSC.2624.Prob.2011-sj</td>
</tr>
<tr>
<td><strong>Goh Chin Yuan @ Goh Chin Guan (F)</strong></td>
<td>16 Thomson View Singapore 574515</td>
<td>Ramdas &amp; Wong</td>
<td>EL/fi/IL.ESTATE.505</td>
</tr>
<tr>
<td><strong>Lam Ah Pou (F)</strong></td>
<td>Blk 50 Chai Chee Street #09-845 Singapore 461050</td>
<td>ST Chew &amp; Partners</td>
<td>ST1360/12</td>
</tr>
<tr>
<td><strong>Susan Oliveiro-Belliston (F)</strong></td>
<td>Blk 254 Bangkit Road #06-214 Singapore 670254</td>
<td>UniLegal LLC</td>
<td>BG/mp/836/12</td>
</tr>
<tr>
<td><strong>Tan Kian Meng (M)</strong></td>
<td>16 Lorong Salleh Singapore 416770</td>
<td>Jayne Wong Advocates &amp; Solicitors</td>
<td>JW/11/81321/LA</td>
</tr>
<tr>
<td><strong>Michael Chew Choon Ling (M)</strong></td>
<td>33 Almond Crescent Singapore 677787</td>
<td>Chong Chia &amp; Lim LLC</td>
<td>CKK.TJS.2012.20152.mc</td>
</tr>
<tr>
<td><strong>Chen Soo Siang (F)</strong></td>
<td>10 Pasir Ris Walk Singapore 518240</td>
<td>Ho &amp; Wee</td>
<td>RW.c.8992.12</td>
</tr>
<tr>
<td><strong>Ng Siew Wan (F)</strong></td>
<td>9 Lim Tai See Walk Singapore 267771</td>
<td>Rajah &amp; Tann LLP</td>
<td>LLS/ttp</td>
</tr>
</tbody>
</table>

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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 $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.
Invitation for Contribution of Articles

The Singapore Law Gazette (“SLG”), an official publication of the Law Society, aims to be an educational resource for both practising lawyers and in-house counsel, a forum for debate, and a useful reference of high quality commissioned articles covering all legal specialties.

Members of the Law Society, non-practising legal professionals and professionals in related fields are welcome to submit well-researched manuscripts that are of educational merit and likely to be of interest to a wide-ranging legal audience.

Submissions are welcome throughout the year. All submissions should be unpublished works between 1,500 to 2,500 words and are subject to the Law Society’s review.

The SLG is the premier legal journal for all lawyers and other related professionals practising in Singapore. Our articles are read by 5,000 readers including practitioners, the judiciary, the legal service, the academia, libraries, overseas bar associations and a significant number of in-house counsel in Singapore.

We look forward to hearing from you!
In-house

Sr. Compliance Counsel (10-12 yrs pqe)       REF: 10718/SLG
Our client, a global player in the telecommunications industry, is looking for a senior counsel to be a part of their global Compliance team and take charge of the corporate compliance program. The ideal candidate should be qualified with at least 10-12 yrs of strong compliance experience gained internationally from an in-house or a law firm.

Head Legal, APAC (10 yrs pqe)              REF: 10729/SLG
Our client, a global player in the telecommunications industry, is looking for a skilled individual to provide leadership in all legal matters and to head the current team in Asia Pacific. The ideal candidate should be qualified with at least 10yrs of strong transactional experience gained regionally in the telecom/technology industry, further insights on enterprise communications and emerging markets would be a plus.

Compliance Counsel (7-8 yrs pqe)       REF: 10723/SLG
Technology MNC seeks a compliance professional for a stand-alone regional role. Candidates with 7-8yrs experience in handling compliance related matters and with the ability of contract drafting/ negotiation, auditing and/or prevention of fraud/corruption are required for this role. Candidates with FCPA experience and a software background will have an advantage. Excellent English language skills along with another Asian language are desired.

Legal Counsel (15yrs pqe)                  REF: 10728/SLG
A strong corporate/commercial lawyer is sought after by our client, a shipping and maritime institution. You will advise on corporate, commercial laws, M&A matters and ensure corporate governance. Candidates with at least 6 yrs pqe, admitted in the Singapore Bar with prior experience at a law firm/in-house and relevant knowledge at a global/regional level will be best-suited for this role.

Corporate Secretariat (5 yrs exp)            REF: 10730/SLG
Our client, this global logistics company is seeking a skilled corporate secretariat to manage all corporate secretarial matters and ensure compliance. You should be well-versed with the relevant tasks including general administrative work, updating registers, preparing for board meetings, updating company website etc. This role requires you to work very independently and report to the legal counsel with timely support when required.

Private Practice

Associate (2+ yrs pqe) Abu Dhabi, UAE       REF: 10691/SLG
Our client, a leading regional law firm is looking to expand it’s presence in the Middle East. This is a fantastic opportunity for individuals looking to broaden their experience. Singapore qualified candidates are encouraged very strongly to apply.

Corporate Associate (2-3 yrs pqe)       REF: 10692/SLG
A leading international law firm with a global reach is looking for a 2-3 yrs pqe Singapore qualified associate. Candidates with strong credentials and a common law background should apply.

Arbitration Associate (2-6 yrs pqe)             REF: 10699/SLG
This is a unique opportunity to work for a prestigious US law firm, who is looking to add a mid-level associate to their team. The ideal candidate should have previous arbitration experience. More junior candidates with a strong track record are encouraged to apply.

Funds Associate (1-3 yrs pqe)       REF: 10688/SLG
Our client, a leading international law firm is looking to hire a junior Funds Associate with 1-3 yrs pqe ideally Singapore qualified. The candidate should have first rate academics and private practice experience in a premier law firm. The successful candidate should possess general experience in corporate/ M&A areas; however direct funds experience is not necessary.

Office Manager (Law Firm)       REF: 10667/SLG
Join this growing boutique law firm in an Office Manager role, as they look out for a committed individual for their Singapore office. The ideal candidate will have prior experience running a legal office. Experience in dealing with local government authorities and the ability to multi-task is essential. Strong communication skills required, as well as the ability to handle administration work independently and effectively.
The Ministry of Manpower (MOM) aims to build a globally competitive workforce and a great workplace for a cohesive society and a secure economic future for all Singaporeans. We are a progressive, employee-centric organisation that believes in professional development and promoting work-life harmony to allow staff to harmonise work and personal needs.

The mission of the Legal Services Department (LSD) of the Ministry of Manpower is to ensure compliance with manpower legislation through effective regulation, thereby ensuring fair manpower practices, greater opportunity and economic security for all Singaporeans.

We invite qualified candidates to apply for the following positions:

**PROSECUTING OFFICER**

**Job Scope**

The primary function of the department is to prosecute offenders under the various Acts administered by the Ministry in the Subordinate Courts. These include the Employment of Foreign Workers Act (Chapter 91A), the Immigration Act (Chapter 133), the Factories Act (Chapter 104), the Workplace Safety and Health Act (Chapter 354A), the Employment Act (Chapter 91), the Work Injury Compensation Act (Chapter 354) and the Employment Agencies Act (Chapter 92). Your functions and duties include the following:-

- Applying knowledge of relevant laws and court procedures to effectively prepare and conduct mentions, pre-trial conferences and trials for criminal matters.
- Acting as a mentor in guiding officers through novel and complex cases.
- Analysing the legal implications of industry trends and recommending changes to departmental policies to align with market settings.
- Eligible officers may also be offered the opportunity to assist in civil work. This would include assisting in (a) rendering sound legal advice to internal and external clients and (b) reviewing, drafting and vetting the manpower legislation administered by the Ministry.
- Over time, you may also be appointed as an Assistant Commissioner (Work Injury Compensation) (“AC/WIC”) under the Work Injury Compensation Act (Chapter 354). As AC/WIC you will adopt a quasi-judicial role by interpreting the law, assessing the evidence presented, and controlling how hearings unfold with insurers, legal counsels and claimants.
- Individuals holding LLB degrees awarded by universities recognised under the Legal Profession Act (Chapter 161, Section 2(2)), Legal Profession (Qualified Persons) Rules (“the Rules”) may wish to note that any period of employment as a prosecuting officer will be counted as relevant legal practice or work for the purposes of section 15A of the Legal Profession Act (Chapter 161) (“LPA”) and will also be counted towards the practice training period for the purposes of section 13 of the LPA.

**Job Requirements**

Candidates should possess:

- A good degree in any discipline (both fresh graduates and mid-career professionals).
- The ability to advocate and think on one’s feet.
- The ability to write clearly and reason compellingly is highly essential.

**ASSISTANT COMMISSIONER (FOREIGN MANPOWER)**

**Job Scope**

Under an impending amendment to the Employment of Foreign Manpower Act (Chapter 91A) (“EFMA”), the Ministry will be empowered to impose administrative financial penalties (AFPs) to deter regulatory breaches more expeditiously and effectively under the EFMA to complement criminal prosecution. This is aimed at protecting the integrity of the work pass framework and levelling the playing field for employment opportunities for Singaporeans. You will be part of the Foreign Manpower Commission (“FMC”) under the Legal Services Department. As an Assistant Commissioner for Foreign Manpower, your roles and responsibilities include the following:

- Assessing the evidence according to the relevant laws and determine whether an infringement had taken place.
- Calling for further investigations and additional documentary evidence if necessary.
- Holding a hearing to examine witnesses and other relevant evidence to resolve the disputed issues.
- Producing grounds of decision should an appeal be filed to the Appeal Board. The Appeal Board will consist of three persons led by a President who is qualified to be a Judge of the Supreme Court.
- Analysing the legal implications of industry trends and recommending appropriate legal measures.

**Job Requirements**

Candidates should possess:

- A good degree with at least 5 years’ of relevant experience in litigation, arbitration or criminal investigatory work.
- The ability to think and navigate quickly in different policy and operational spheres with a strong analytical mind to focus on core issues.
- The ability to write clearly and reason compellingly is highly essential.

For more information on the Ministry of Manpower and the detailed requirements for the above positions, please log-on to our website at [www.mom.gov.sg/careers](http://www.mom.gov.sg/careers) or [www.careers.gov.sg](http://www.careers.gov.sg)

Interested applicants are invited to submit their full resumes with current and expected salaries as well as contact information through our careers page by 22 June 2012.

We regret that only short-listed candidates will be notified.
Advertise in the Law Gazette’s Appointments section.

For enquiries, please contact Jumaat Sulong at +65 63490172 or email jumaat.sulong@lexisnexis.com
APAC Lead Counsel (10+ PQE), Singapore
A well established European company is looking to engage a senior lawyer in a standalone role in their South East Asian HQ at Singapore. Reporting to the General Counsel you will provide legal support for daily business needs of the Asia Pacific Zone as well as actively contribute towards implementation of strategies as member of the department's executive management team. The role entails a high level of visibility and responsibility. Prior in-house Asia Pacific market experience with MNCs, ideally in manufacturing or FMCG's and some experience in corporate finance and banking matters is a must. Fluency in Mandarin is preferred. [S3070]

Senior Legal Counsel (7+ PQE), Singapore
Seeking lawyers from healthcare and pharmaceutical industry space to join the Asia Pacific legal team of a multi-specialty health care company. Working closely with the corporate R&D group, you will manage contracts and special projects relating to clinical trials and also be involved in other general corporate matters. Prior experience in clinical contract work, fluency in written and spoken Mandarin and the willingness to travel will give you an edge. Competitive remuneration package is on offer. [S3057]

Compliance Counsel (5-10 PQE), Singapore
An exciting opportunity to join the Global Compliance team of a US listed provider of communications solutions. Reporting to the Global Head of Compliance, the role entails reviewing and developing the company’s worldwide compliance policies, conducting audits and investigations on any possible infringement or violation of regulations, codes of conduct or legislation such as the US Foreign Corrupt Practices Act and developing training programs relating to the company’s policies and guidelines. Prior experience in corporate compliance matters, particularly in FCPA or other anti-bribery laws will be preferred. Competitive remuneration package is on offer. [S2842]

Regional Legal Counsel (5-8 PQE), Singapore
Exciting opportunity for a commercial lawyer to be an integral member of a reputed oil & gas MNC. Working closely with business units in the APAC region your responsibilities include assisting on a wide range of complex corporate and commercial matters, advising on a broad range of issues including JVs, M&As, marketing, compliance and trading. Excellent academics and strong Singapore and regional corporate experience highly valued. Competitive remuneration and regional exposure working in a dynamic and fast paced organisation being the primary attractions. [S3063]

Legal Counsel (3-5 PQE), Singapore
Join the legal team of one of the leading technology companies in the world. Reporting directly to the General Counsel, the new incumbent shall assist with a range of general corporate commercial matters including drafting and advising on agreements such as sale and purchase. Fluency in Mandarin, strong drafting skills and ability to work in a team will help you secure this role. Candidates qualified in the Commonwealth region and based in Singapore are welcome to apply. [S3051]

Legal Counsel (5 PQE), Singapore
Excellent opportunity to join the legal team of a dynamic hospitality company based in Singapore. With primary focus on operational and corporate matters, you will also handle some regulatory matters. Emphasis will be on drafting, reviewing and negotiating various operational and other corporate commercial contracts such as procurement, outsourcing and sales contracts. Strong corporate commercial background and Singapore law experience are pre-requisites for this role. Attributes such as strong commercial acumen and a positive attitude highly regarded. [S3050]

Country Counsel (10+ PQE), Malaysia
Splendid opportunity to join one of the largest, most profitable companies in the world in a role based in Kuala Lumpur, Malaysia. Charged with the responsibility to lead bids and complex negotiations, work scope encompasses handling country issues such as import/export and HR matters, advising on legal and commercial matters, ensuring compliance with laws and regulations. Strong leadership qualities and ease of settling into a matrix system will be the key to success in this role. Lawyers qualified in the Commonwealth region, private practice background and from other industries will also be considered. [S3043]

Compliance Leader (6+ PQE), Delhi, India
Worldwide industry leader in property and corporate facility management services is looking for compliance professional to be based in Delhi, India. Driving, implementing and monitoring systems and processes in accordance with the regulatory framework you will partner with internal business leadership in maintaining appropriate processes and operating mechanisms to meet policy compliance and regulatory responsibilities and provide training support to the business. Some familiarity with FCPA will be advantageous, though not essential. [S3068]

www.legallabs.com
Private Practice

TRADEMARK ASSOCIATE  Singapore  4-5 PQE
This international firm has the leading intellectual property practice in Singapore. It is seeking a trademark associate to join its growing team. You will be qualified in Singapore and have experience in both commercial and litigious trademark work. You will be comfortable managing multiple files, be able to manage litigation and enforcement matters and advise on the licensing of trademark rights in international transactions. (SLG 8133)

REAL ESTATE ASSOCIATE  Singapore  2-5 PQE
Our client, a leading international law firm, is seeking an associate to join its Real Estate Team. You will be qualified in Singapore and be experienced in advising on strategic investments and divestments, REITS, developments and M&A in the property sector. (SLG 7096)

FINANCE/PROJECT FINANCE ASSOCIATES  Singapore  2-4 PQE
This US firm is looking for finance and project finance associates to join its growing practice in Singapore. Only candidates with magic circle or top tier firm experience will be considered. You will be qualified in the UK, US or Australia and must have top academics. Previous exposure to Asian markets is an advantage. Will pay New York rates. (SLG 7947)

DISPUTES/ARBITRATION ASSOCIATE  Singapore  1-2 PQE
This leading US firm is seeking a UK or Australian qualified lawyer to join its International Litigation and Arbitration Group. You will speak fluent Mandarin with the capability to read Chinese. You will have corporate fraud, internal investigations and arbitration experience from a top-tier firm. Will pay New York rates. (SLG 7890)

INTELLIGENCE PROPERTY ASSOCIATE  Singapore  1-2 PQE
Our client, a leading international law firm, is seeking an IP Associate to join its busy team. The team works across trademark, copyright and patent protection and enforcement, anti-piracy and anti-counterfeiting matters. Litigators with a demonstrable interest in IP will be considered. You will be qualified in Singapore with top academics. (SLG 8133)

CORPORATE ASSOCIATE  Singapore  1-2 PQE
This full service international law firm is seeking a Singapore qualified corporate associate with solid M&A experience to join its growing corporate team. You will be dynamic and ambitious. You must have top academics. (SLG 8136)

In-House

COMPLIANCE OFFICER – ASIA PAC  Singapore  7+ PQE
Our client, a global leading manufacturer, is seeking a compliance director for the Asia Pacific region. You will have at least 5 years’ compliance experience with expertise on issues of corporate compliance, anti-bribery laws and disclosure. You will have a strong investigation background. You will be currently based in Singapore and be fluent in Mandarin and English. You will come from an industrial or manufacturing background. (SLG 8058)

SENIOR REGULATORY ADVISOR  Singapore  4-7 PQE
An exciting opportunity to join the global regulatory affairs team of a leading US financial services company. This is an independent role based in Singapore. You will have at least 4 years’ regulatory experience in the securities or corporate law area in either Hong Kong or Singapore, with general knowledge of Asia-Pacific regional markets and regulatory environments. You will be primarily responsible for all regulatory matters for Asia-Pacific. (SLG 8012)

LEGAL COUNSEL  (Singapore, Indonesia, Aus/NZ)  Singapore  3-5 PQE
A leading global brands business is seeking a lawyer to join their Singapore office. The role will predominantly focus on Singapore with remit to include Indonesia, Australia and New Zealand. You will ideally have a good mix of private practice and in-house experience, be comfortable drafting commercial agreements and reviewing advertising and marketing materials and be familiar with the Singapore market. (SLG 8661)

IT COUNSEL (Investment Bank)  Singapore  2-4 PQE
Our client is a leading global investment bank. To work in their central legal team they are hiring a Singapore or international qualified IT commercial lawyer. Your responsibilities will include advising on technology, intellectual property, procurement and vendor arrangements, outsourcing, data management and privacy. You will have good regional exposure. You will have good broad IT experience and be up to 3 years qualified. Candidates who speak Mandarin will be preferred but this is not essential. (SLG 8139)

ISDA SPECIALIST  Singapore  2-3 PQE
Our client, a leading international bank, is seeking a documentation specialist to provide legal and documentation support to the investment bank in connection with derivatives transactions. You will be comfortable negotiating master documentation and resolving related issues. You will also be confident identifying legal risks in master agreements across multiple jurisdictions. (SLG 8119)

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:
Lisa Owens +65 6557 4159 or Gemma Glynn on +65 6557 4172

www.alsrecruit.com
We’re coming to you.
We are expanding our presence and strengthening our connection to our clients by opening a new office in Singapore.

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To ensure that we continue to provide the highest possible levels of service to our clients and candidates, we are opening an office in Singapore in June 2012.

For more information, please contact one of our experienced consultants:

Private Practice: Charlotte Brooks +852 2168 0784 charlottebrooks@puresearch.com
In-House: Rebecca Collins +852 2168 0793 rebeccacollins@puresearch.com
Expect the market leader to know the market

No-one knows the legal job market better than Taylor Root. After all, we’ve been leading the way in specialist legal recruitment for more than 20 years. And with offices around the world, we can advise on the widest range of opportunities across global firms, niche practices and in-house. So whether you’re recruiting legal talent or looking for your next career move, talk to the experts.

Contact us on +65 6420 0500 or visit taylorroot.com
In-House Roles

Upstream Oil & Gas  Ho Chi Minh
This international oil & gas company is currently looking for a lawyer with experience in upstream oil & gas matters to head up its legal team in Ho Chi Minh City. Prior experience in Vietnam is not essential. Ref: 136401. 10+ years

Reit – Legal/Compliance  Singapore
A renowned REIT seeks a legal/compliance counsel with experience in general commerce and financial regulatory areas, including involvement in compliance and corporate secretarial matters. Exposure to listed companies would be a strong advantage. Ref: 152201. 2+ years

Fin Serv/E-Commerce  Singapore
A highly innovative financial services company that is globally recognised as the leader in e-payments seeks a Head of Legal for its SEA business based in Singapore. You should have excellent financial services and regulatory experience. Ref: 185931. 12+ years

Financial Serv/Commercial  Singapore
An opportunity exists for an experienced commercial lawyer with prior experience dealing with the PRC and Asian markets for financial services, banking and card/travel related businesses. Chinese language skills would be a strong advantage. Ref: 137801. 10-12 years

Manufacturing Industry  Singapore
A leading manufacturing company headquartered in Singapore is looking for a lawyer. You should be called to a Commonwealth jurisdiction and have prior experience in commercial agreements. Spoken Chinese is desired. Contact us now. Ref: 186231. 2-5 years

Fortune 500 Company  Singapore
A globally renowned Fortune 500 company headquartered in China is looking for a Group Legal Counsel with in-house experience. You will be expected to work independently and offer full support back to Shanghai. Mandarin skill is key. Ref: 186041. 4-6 years

Healthcare Industry  Singapore
Our client is an established healthcare organisation based in Singapore. They are currently seeking a lawyer to come on board. Experience in commercial contracts and corporate secretarial is essential for the position. Ref: 186191. 2-4 years

Data Protection/Privacy  Singapore
Renowned international financial institution requires a lawyer with experience in data protection, data privacy and policy formation to advise on data security and cross border data transfer issues globally. Contact us now for more information. Ref: 186211. 7+ years

Capital Markets  Singapore/HK
Our investment banking client seeks to recruit a senior DCM lawyer to act as sole counsel to its expanding capital markets business across Asia. A high degree of commercial awareness is required from applicants for this autonomous role. Ref: 185710. 7+ years

Private Practice Roles

IP Litigation  Singapore
This international firm is keen to hire a Singaporean qualified lawyer to join its IP litigation team. You will undertake a broad range of work. The client is happy to consider non IP lawyers who are keen to change practice area. Ref: 186061. NO-2 years

Corporate M&A  Singapore
This top international firm is keen to hire a Singaporean qualified senior associate into its corporate team to go straight onto a two year partnership track. You will need public M&A experience and be keen to help build the practice further. Ref: 151501. 5-8 years

Corporate (Advisory)  Singapore
Excellent opportunity for a senior associate to join this international firm’s corporate team as a non transactional advisory lawyer. You will advise on corporate, regulatory and insurance matters and be on a fast track to partnership. Ref: 118101. 5-8 years

Arbitration  Singapore
Superb opportunity for an associate to join this top ranked arbitration practice. The 2 partner team undertakes a range of energy, trade, shipping, construction and commodity disputes across South East Asia. Contact us now. Ref: 185771. 4-9 years

Private Client/Trusts  Singapore
Unique opportunity to join an international firm boasting one of the world’s top private client practices. They are keen to make two hires: one at mid-level and one at partner level. Trusts experience with international clients is crucial. Ref: 185521. 4-12 years

Energy/Oil & Gas  Singapore
This top ranked international firm is looking to hire an associate to join its energy team. You will need oil & gas/LNG/M&A experience in relation to major projects and be comfortable taking a lead on transactions. Great career prospects. Ref: 186031. 4-8 years

Corporate M&A  Singapore
Rare opportunity for a Singaporean qualified lawyer to make the move into a leading international firm. It boasts one of the best and established offices in the region. A great mix of M&A/private equity work and excellent training on offer. Ref: 185971. NO-2 years

Funds  Hong Kong
Mid-level funds lawyer with experience in funds formation work – preferably PE funds – is wanted at this global international law firm that boasts a strong funds practice. You will be fluent in spoken and written Chinese. Ref: 165100. 3-5 years

Banking  Beijing
A Magic Circle firm is currently looking for a banking lawyer to join its team in Beijing. The ideal candidate should have good banking experience from a UK law firm and be fluent in Mandarin and English. Market leading team. Ref: 185120. 3-6 years

To discuss In-House roles, call Gladys Chew or Jeremy Poh on +65 6420 0500 or email gladyschew@taylorroot.com or jeremypoh@taylorroot.com

To discuss Private Practice roles, contact Alex Wiseman or Jamie Neubold on +65 6420 0500 or email alexwiseman@taylorroot.com or jamienuebold@taylorroot.com

Please note our advertisements use PQE/salary levels 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 | EA licence number 10C4100.
**PRIVATE PRACTICE – SINGAPORE**

**DISPUTES PARTNER**
UK firm is in the process setting up its office in Singapore and is seeking a disputes partner. You require a book of business and arbitration experience. On offer is their support to take a lead in the development of the office and your practice. (PTSAJ2402) **PARTNER**

**DCM & B&F - UK QUALIFIED**
Fantastic opportunity for a UK qualified lawyer to join a top tier firm in Singapore. Strong academics and experience in DCM and general finance is essential to apply for this role. Candidates should be team players. (PTSAJ2387) **4-6 YRS PQE**

**FINANCIAL REGULATORY**
This is an advisory role with a magic circle firm and the successful candidate will work with outstanding lawyers in a more predictable work environment. Candidates can come from in-house or PP environments. (PTSAJ2403) **JUNIOR TO MID-LEVEL**

**PUBLIC COMPANY M&A**
A junior and a senior lawyer are sought by this top-tier firm. Suitable candidates should be Singapore qualified, have public company takeover experience and very strong academic backgrounds. This is an exciting opportunity. (PTSAJ2398) **1-3 AND 5-7 YRS PQE**

**CORPORATE / FUNDS**
This is a rare opportunity with a top UK firm. Candidates with strong academics and funds experience will be considered. Candidates with general corporate M&A experience who are willing to learn funds work will also be considered. (PTSAJ2401) **1-5 YRS PQE**

**CAPITAL MARKETS LAWYER**
A capable Singapore qualified lawyer with strong ECM experience is sought by top UK firm. Suitable candidates will have good academics and a solid grounding in ECM work. Excellent training, work and package on offer. (PTSAJ2405) **1-5 YRS PQE**

**ARBITRATION**
To secure this arbitration role, working with one of the region’s top international firms, you must be Singapore and/or UK qualified. This role offers an opportunity to become involved in high end arbitration work with a renowned team. (PTSAJ2406) **3-9 YRS PQE**

**PRIVATE PRACTICE – WORLDWIDE**

**CAPITAL MARKETS – RIYADH**
Our magic circle firm client is looking to recruit a mid to senior capital markets lawyer to join its practice in Riyadh. Candidates with excellent experience and strong academics will be considered. Candidates are required to supervise junior lawyers. (MEAJ880) **4-6 YRS PQE**

**CONSTRUCTION / INFRASTRUCTURE DISPUTES – DUBAI**
This role would suit an ambitious disputes lawyer with experience in construction and infrastructure disputes and international arbitration. Superb environment and top quality work on offer with this top-tier international firm. (MEAJ861) **4 YRS+ PQE**

**BANKING & FINANCE ASSOCIATE – HONG KONG**
Excellent opportunity to work with the leading players in the market. Among various transactions, you will gain substantial exposure on high profile domestic and cross border acquisition and leveraged finance deals. Attractive salary on offer. (PTVT3041) **3 YRS+ PQE**

**CORPORATE ASSOCIATE – HONG KONG**
If you want top notch ECM / M&A exposure working with high profile investment banks, apply for this role with this international firm. Mandarin speakers are preferred. Fantastic working environment and highly competitive salary. (PTVT2933) **3 YRS+ PQE**

**MID-LEVEL CONSTRUCTION ASSOCIATE – DOHA**
International firm seeks a construction associate to join their Dubai based practice. Applicants should have construction litigation experience gained from an international firm. Well defined career path. (PTMB3030) **5-6 YRS PQE**

**BANKING & FINANCE LAWYER – DUBAI**
This regional powerhouse is looking for a banking & finance associate to join their Dubai office. You will have broad based banking & finance experience. Interesting work with very supportive partners. Tax fee salary package offered. (PTMB3046) **6 YRS+ PQE**

**PROJECTS ASSOCIATE – TOKYO**
Rare opening for a non Japanese speaker at one of Tokyo’s most prestigious and exciting law firms. You will have at least 3 years extensive experience within the projects / energy sector as part of a recognized international practice. (PTJAK0053) **3-7 YRS PQE**

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IN-HOUSE – SINGAPORE

SENIOR COUNSEL – IT / MNC
This household name is now on the lookout for a lawyer to add to its existing team. You will be working hand in hand with the business partners on deals of considerable size. Flexibility and commercial acumen are required for this position. (ISSMG1621) 5 YRS+ PQE

COMMERCIAL CONTRACTS ADVISOR - OIL & GAS
Daily functions of this exciting role will see junior to mid level lawyers handling frontline trading and commodities contracts. Expect to learn on the job in this excellent role for a private practice lawyer to move in-house. (ISSMG1622) 3-5 YRS PQE

INDIA LEGAL COUNSEL - IT / MNC – DELHI
This hire in New Delhi is the first foray by this US Tech giant in India. You will join a corporation with expanding revenue and operations, and will be based in New Delhi, with domestic travel. Strong remuneration and excellent name. (ISSMG1618) 5 -7 YRS PQE

REGIONAL COUNSEL - PHARMACEUTICAL
This healthcare giant operates worldwide across a number of health-related fields. A stellar opportunity for a senior lawyer with previous in-house healthcare experience, the right candidate will have over a decade of experience. (ISSMG1604) 10 YRS+ PQE

REGIONAL LEGAL COUNSEL - FINANCIAL SERVICES – HK
World leader in the financial services sector is looking for a seasoned lawyer to join its Asia Pacific legal team based in Hong Kong. As a VP of Legal, you will be providing advice on commercial transactions and regulatory matters. (ISEW1504) 6 YRS PQE

SENIOR CORPORATE COUNSEL - MNC – HK / CHINA
Reporting directly to the Global Head of Litigation based in the US, you will be lead counsel for all commercial litigation and regulatory work across the Asia Pacific region. Fluent English and Mandarin required. (ISEW1489) 6 YRS PQE

IP COUNSEL - TELCO – JAPANESE
Excellent IP role at a fast growing Japanese Telco/ online services company in Tokyo. You will handle various soft and hard IP matters, with experience preferably at manufacturing, trading or IT sectors. Native Japanese speakers preferred. (ISJAK0068) 5-7 YRS PQE

IN-HOUSE – SINGAPORE

LEGAL COUNSEL - SHIPPING
Attractive in-house opportunity for a junior lawyer looking to be part of the legal team of an SGX listed Shipping company. This is also ideal for non-shipping lawyers looking for a transition from private practice to in-house. (ISSRB1611) 2 YRS+ PQE

SENIOR LEGAL COUNSEL - SHIPPING
Working with a global leader in the energy and maritime solutions industry and reporting directly to the MD, you will step in as a Senior Legal Counsel in what promises to be a role that has an impact on key decisions. (ISSRB1614) 6 YRS+ PQE

LEGAL COUNSEL - REAL ESTATE / LAND
A Legal Counsel is sought to support an experienced legal team. The successful candidate will be called to the Singapore bar and, possess good drafting skills and the ability to interact with and advise stakeholders. (ISSRB1522) 1-2 YRS PQE

LEGAL COUNSEL - MNC
Our client’s global brand and leading presence is unquestioned in the industrial sector. This is a superb role for candidates with broad projects experience working at top law firms who seek a highly rewarding in-house career. (ISSRB1463) 4-6 YRS PQE

LEGAL COUNSEL - SHIPPING
Attractive opportunity for a corporate generalist who will also have the opportunity to learn the ropes handling in-house shipping and commodities work. Ideal for a junior lawyer looking for a transition from private practice to in-house. (ISSRB1613) 3 YRS+ PQE

LEGAL COUNSEL - FUND MANAGEMENT
If you possess commercial litigation experience, apply to this unique role with a distressed-debt fund management company. This exciting in-house role involves a generous amount of traveling and you will work independently on global transactions. (ISSRB1482) 2-5 YRS PQE

ISDA NEGOTIATORS - GLOBAL BANK
Premier bank has vacancies for derivatives document negotiators with strong knowledge of ISDA agreements. Responsibilities include negotiating customer agreements, pricing supplements and other structured note documentation. (ISSRB1396) 6 YRS+ PQE

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