IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 85

Civil Appeal No 191 of 2017

Between

ARW

… *Appellant*

And

(1) Comptroller of Income Tax
(2) Attorney-General

… *Respondents*

Civil Appeal No 192 of 2017

Between

ARW

… *Appellant*

And

Attorney-General

… *Respondent*

JUDGMENT

[Civil Procedure] — [Further arguments]

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ARW
v
Comptroller of Income Tax and another and another appeal

[2018] SGCA 85

Court of Appeal — Civil Appeals Nos 191 and 192 of 2017
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Chao Hick Tin SJ
20 August 2018

30 November 2018 Judgment reserved.

Chao Hick Tin SJ (delivering the judgment of the court):

Introduction

1 Civil Appeals Nos 191 and 192 of 2017 ("CA 191" and "CA 192" respectively) are appeals brought by the appellant, [ARW] ("the Appellant"), against the decision of the High Court judge ("the Judge") in *Comptroller of Income Tax v ARW and another (Attorney-General, intervener)* [2017] SGHC 180 ("the Judgment"). In CA 191, the Appellant appeals against the Judge's decision to grant the applications brought by the Comptroller of Income Tax ("the Comptroller") seeking: (a) an extension of time to file a request for further arguments ("the EOT Application") on public interest privilege and official secrecy in respect of the Appellant's specific discovery application ("the Discovery Application"); and (b) leave to admit further evidence ("the Further Evidence Application") in so far as it relates to the Comptroller's further arguments. The Comptroller is the first respondent and the Attorney-General

("the AG") is the second respondent in CA 191. In CA 192, the Appellant is appealing against the Judge's decision to grant leave for the AG to intervene in the dispute to state his position on the issue of public interest privilege. The AG is the sole respondent in CA 192.

2 On 20 August 2018, we heard oral arguments of parties and reserved judgment for both appeals. We would also add that in the course of oral submissions, and having regard to what was the object of the Discovery Application as well as the obstacle in the way of that application, we indicated to parties that a practical solution might well be to redact those documents in respect of which discovery is sought. Up to this point, the parties have not been able to agree on that.

Background

The genesis of the dispute

3 We first set out the background facts which led to the dispute and the consequent applications. In 2003, the Appellant's group of companies underwent a "Corporate Restructuring and Financing Arrangement" under which a $225m loan was obtained from a bank. This entire sum was returned to the bank on the same day through a series of transactions. From 2004 to 2006, the Appellant filed tax returns, showing that it had incurred interest expenses for the $225m loan, and accordingly claimed certain tax refunds. Based on these claims, the Comptroller awarded the Appellant tax refunds amounting in total to approximately $9.6m ("the Tax Refunds").

4 Around July 2007, the Comptroller reviewed cases in which significant amounts of tax refunds were paid out. As part of this review, an audit was conducted on the Appellant to determine the basis on which the Tax Refunds

were made to the Appellant and whether these claims were made under a tax avoidance arrangement. Following the completion of the audit in April 2008, the Comptroller came to the conclusion that the Appellant had indeed used a tax avoidance arrangement, and wrongly claimed the Tax Refunds. The Comptroller then invoked s 33 of the Income Tax Act (Cap 134, 2008 Rev Ed) and purported to issue notices of additional assessment. This was challenged by the Appellant before the Income Tax Board of Review. Eventually, following an appeal, this court agreed with the lower court's decision that although the Appellant had claimed the Tax Refunds under a tax avoidance arrangement, the Comptroller was not entitled to recover the Tax Refunds by way of additional assessment (see *Comptroller of Income Tax v AQQ and another appeal* [2014] 2 SLR 847 ("*AQQ*")). However, this court expressly left open the possibility of a common law action by the Comptroller in unjust enrichment to recover the Tax Refunds as moneys paid under a mistake (see *AQQ* at [162]). On 1 April 2014, the Comptroller accordingly commenced Suit No 350 of 2014 ("Suit 350") against the Appellant for the recovery of the Tax Refunds.

The Discovery Application and the Discovery Judgment

5 In Suit 350, the Appellant took out the Discovery Application on 31 March 2015 by way of Summons No 1465 of 2015, seeking specific discovery of certain categories of internal documents ("the Internal Documents") belonging to the Inland Revenue Authority of Singapore ("IRAS"). The Comptroller resisted the Discovery Application on grounds of irrelevance, lack of necessity, litigation privilege and legal advice privilege.

6 On 31 January 2017, the Judge granted the Discovery Application, finding the Internal Documents to be both relevant and necessary, and not protected by any legal professional privilege: see *Comptroller of Income Tax v*

ARW and another [2017] SGHC 16 ("the Discovery Judgment") at [19]. Pertinently, the Judge made an *obiter* observation in the Discovery Judgment that public interest privilege under s 126 of the Evidence Act (Cap 97, 1997 Rev Ed) ("the EA") could not be invoked by the Comptroller as follows (at [52]):

> The [Comptroller's] claim to privilege is fairly broad in ambit, and invokes protection for activities which do not fit readily into the usual mould of legal professional privilege. What the [Comptroller] wants to protect are the fruits of the audit, review and related internal discussions. Such a claim of privilege is in respect of general communications and discussions within an organisation. The involvement of lawyers is really secondary to the ambit of the claim of privilege. *But that type of situation is only conferred protection within the EA through public interest immunity and official communications privilege, under ss 125 and 126 of the EA respectively.* ***Neither, it would seem, could be invoked by the [Comptroller] here,*** *and neither is relied upon.* [emphasis added in italics and bold italics]

7 The Judge also stated that detailed directions as to the orders sought in the Discovery Application would be given separately (at [53]).

The consequent applications

8 Following the release of the Discovery Judgment, the Comptroller filed for leave to appeal against that judgment on 9 February 2017 by way of Summons No 661 of 2017 ("the Leave to Appeal Application"). On 27 February 2017, the Comptroller filed a Notice of Change of Solicitor, from WongPartnership LLP ("WongP") to Allen & Gledhill LLP ("A&G"). It was subsequently clarified that A&G would take over conduct of only the Discovery Application and all related applications and appeals, and that the substantive matter would remain in the conduct of WongP.

9 On 1 March 2017, the Comptroller filed the EOT Application and the Further Evidence Application by way of Summons No 940 of 2017, in which he sought leave to file his request for further arguments in the Discovery

Application out of time under s 28B(1) of the Supreme Court of Judicature Act (Cap 322, 2014 Rev Ed) ("the SCJA"), and to adduce two affidavits in support of the Discovery Application and the Leave to Appeal Application ("the Two Affidavits"). The further arguments sought to be made related to: (a) public interest privilege under s 126(2) of the EA ("s 126(2) EA"); (b) official secrecy under s 6(3) of the Income Tax Act (Cap 134, 2014 Rev Ed) ("the ITA" and "s 6(3) ITA"); and (c) legal professional privilege. The Two Affidavits were from: (a) Mr Tan Tee How, who was, at the time, the Commissioner of Inland Revenue, the Chief Executive Officer of IRAS and the Comptroller, deposing to the injury and prejudice that would be caused to the public interest if disclosure of the Internal Documents were to be ordered, and (b) Ms Christina Ng Sor Hua ("Ms Ng"), an IRAS officer, providing the background facts relating to the internal audits previously conducted by IRAS in relation to the Appellant's tax avoidance arrangements.

10 On 3 March 2017, the AG filed the Intervention Application by way of Summons No 987 of 2017 for leave to intervene in the Discovery Application, the Leave to Appeal Application, the EOT Application, the Further Evidence Application, and in any application or appeal with regard to the same (collectively referred to as the "Relevant Applications"). The main thrust of his application was that the AG, as the guardian of the public interest, is obliged and entitled to protect the public interest by intervening in the Relevant Applications to argue his position on the issue of public interest privilege.

The Judge's decision

11 The Judge allowed the Intervention Application, reasoning that the AG could be joined to the proceedings under either O 15 r 6(2)(*b*)(i), O 15 r

6(2)(*b*)(ii) or O 92 r 4 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the ROC"): see the Judgment at [52], [63] and [68].

12 The Judge also allowed the EOT Application and the Further Evidence Application. The latter was only allowed in so far as the new evidence related to the further arguments on public interest privilege under s 126(2) EA and official secrecy under s 6(3) ITA (see the Judgment at [116]). In other words, the Judge rejected the Comptroller's application to adduce further evidence in respect of the legal professional privilege argument – the Comptroller has not appealed against this part of the Judgment. The more specific findings of the Judge will be canvassed at the appropriate junctures below.

The issues for determination

13 There are three main issues for determination in the appeals before us:

(a) whether the AG was rightly joined to the Relevant Applications ("the Intervention Issue");

(b) whether the Judge erred in granting the Comptroller an extension of time to request for further arguments pursuant to s 28B(1) of the SCJA ("the EOT Issue"); and

(c) whether the Judge erred in admitting the Two Affidavits into evidence ("the Further Evidence Issue"), having regard to the following sub-issues:

(i) whether new evidence can be admitted in support of further arguments; and, if so,

(ii) whether the test to govern the admission of new evidence in such a situation was satisfied.

The Intervention Issue

The AG's standing to intervene

The AG as the guardian of the public interest

14 Beginning first with the Intervention Issue, the Judge determined that, as part of the AG's responsibilities contemplated by Art 35(7) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution" and "Art 35(7) Constitution"), the AG has a duty to intervene (even in private litigation) to state his position on the issue of public interest privilege (see the Judgment at [39]). Article 35(7) Constitution reads as follows:

> **Attorney-General**
>
> **35.**— …
>
> …
>
> (7) It shall be the duty of the Attorney-General to advise the Government upon such legal matters and to perform *such other duties of a legal character, as may from time to time be referred or assigned to him by the President or the Cabinet* and to discharge the functions conferred on him by or under this Constitution or any other written law. [emphasis added]

15 The Judge interpreted the emphasised words as follows: since there is no requirement for the referral or assignment to the AG to be in any particular form, the duties of the AG "can be inferred in the absence of any contrary intention either in *statute* or other Presidential or Governmental action" [emphasis added] (the Judgment at [37]). The Judge then appeared to find that the duty of the AG to intervene in matters concerning public interest privilege can be inferred from the existence of s 126 of the EA ("s 126 EA") (see the Judgment at [38]–[39]). For context, s 126 EA reads as follows:

> **Official communications**
>
> **126.**—(1) No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer by the disclosure.
>
> (2) No person who is a member, an officer or an employee of, or who is seconded to, any organisation specified in the Schedule to the Official Secrets Act (Cap. 213) shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer by the disclosure.

16 With respect, we are not able to agree with the Judge's reliance on Art 35(7) Constitution read with s 126 EA to ground the AG's duty to intervene in the Relevant Applications. Section 126 EA does not impose any duty on *the AG* to raise the issue of public interest privilege – the terms of s 126 EA make it clear that *only* public officers, or members, officers or employees of, or secondees to, the specified organisations who receive communications in official confidence are empowered to do so. Neither can it be said that intervening in private proceedings to raise the issue of public interest privilege is a matter "referred or assigned to [the AG] by the President or the Cabinet". For completeness, as evident from the analysis that follows, this is also not one of the "functions conferred on [the AG] by or under th[e] Constitution or any other written law" (Art 35(7) Constitution), given that "the common law" does not fall within the definition of "written law" in Art 2(1) of the Constitution.

17 However, that does not mean that the AG has no standing at all to raise the issue of public interest privilege. It is trite that the Constitution is "by no means exhaustive, nor is it always determinate"; among other sources, the powers and duties of the government are also located in the common law (Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Academy Publishing, 2012) at paras 1.175 and 1.184).

18 In our judgment, the AG's standing to intervene in the Relevant Applications arises by virtue of the AG's position as the *guardian* of the public interest. The AG's role as the guardian of public interest was inherited from the United Kingdom and preserved in Singapore – this role has been described as "a right which is vested in the Attorney-General under the common law" (see Kevin YL Tan & Thio-Li-ann, *Constitutional Law in Malaysia & Singapore* (LexisNexis, 3rd Ed, 2010) at p 450; see also s 3(1) of the Application of English Law Act (Cap 7A, 1994 Rev Ed)). The point was also noted by Mr Tan Boon Teik, the former and longest-serving Attorney-General of independent Singapore as follows (see Tan Boon Teik, "The Attorney-General" [1988] 2 MLJ at p lix RHC):

> Two of the great prerogative powers of the Crown have always been exercised through the office of the A.G. One is his position as the chief agent of the Crown in enforcing the criminal law as the Public Prosecutor and the second is his responsibility as guardian of the public interest. His role as the Public Prosecutor is codified in article 35(8), while ***his role as guardian of the public interest is a common law right that remains part of our constitutional arrangements*** [citing, among other things, Roland Braddell, *The Law of the Straits Settlements: A commentary* vol 1 (Kelly & Walsh, 2nd Ed, 1931) at p 132]. … [emphasis added]

19 In any event, the role of the AG as the guardian of the public interest is not a concept which the Appellant disputes. And indeed rightly so. As this court recently observed in *Deepak Sharma v Law Society of Singapore* [2017] 2 SLR 672 ("*Deepak Sharma*") (in the context of private judicial review proceedings):

> 35 … The AG's role as the 'guardian of the public interest' is enshrined not only in its mission statement – which is to act as 'Guardian of the Public Interest [and] Stewar[d] of the Rule of Law' – but has also been widely recognised as a core function of the AG. In a speech by Minister for Law Mr K Shanmugam … at the 4th Annual Event of the Attorney-General's Chambers of Brunei Darussalam, Malaysia and Singapore on 16 April 2009, the Minister described the AG as the 'guardian of the rule of law'. … In this capacity, the AG assists in maintaining 'political

> and social stability … [and] sustain[ing] the public confidence of the local and international community [which] in turn, is fundamental to economic growth and allows society to flourish when the rule of law is sacrosanct'.
>
> …
>
> 44 … As we have explained, the AG is the 'guardian of the public interest'. That role *requires* him to intervene in private judicial review proceedings to make submissions on issues of public interest where he considers it necessary and appropriate to do so. Therefore, it would be wholly inaccurate to say that the AG has a completely free hand in deciding whether to participate in such proceedings. On the contrary, if the AG does not intervene after the originating summons and supporting documents have been served on him despite taking the view that there are issues of public interest on which he ought to make submissions to the court, the AG *will not be performing his public function as the 'guardian of the public interest'*. He will in fact be in *dereliction of his public duty*.
>
> [emphasis in original]

20 Similar observations were likewise made by this court in *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 (at [35]):

> The overall basis for judicial review is very much tied up with democratic theory …, and especially the idea of the Government being often perceived as the guardian of 'public interests'. This can be seen in the way standing rules in relation to actions for injunctions to enforce public rights were developed by the English Court of Chancery. These principles arose in England during the 19th century from the need to restrain *ultra vires* activities, particularly the misuse of charitable funds. Where charitable trusts were concerned, the ground for equitable intervention was not the protection of any proprietary rights of a plaintiff, since these trusts were for *public* purposes, making their due administration a matter of *public* concern. … Subsequently the Attorney-General's role expanded beyond the context of charitable trusts to protecting the *public* interest generally whenever a public authority exceeded its statutory powers by some act that tended to interfere with public rights and so injure the public. … [emphasis in original]

21 Parliament has also expressly recognised the AG's role as guardian of the public interest on several occasions (see, *eg*, *Singapore Parliamentary Debates, Official Report* (3 March 2017) vol 94 (Ms Indranee Rajah, Senior

Minister of State for Law)). Some local statutes also codify some of the AG's functions as the guardian of the public interest (see, *eg*, ss 8 and 9 of the Government Proceedings Act (Cap 121, 1985 Rev Ed)).

Standing of the AG to raise public interest privilege

22 Notwithstanding the acknowledgement by counsel for the Appellant, Mr Davinder Singh s/o Amar Singh SC, of the role of the AG as the guardian of the public interest, his main argument on the Intervention Issue, as it became clear during the oral hearings before us, was that the AG has no standing to intervene in the Relevant Applications because the right to raise the issue of public interest privilege under s 126(2) EA resides exclusively with the Comptroller.

23 In our judgment, while s 126(2) EA (see [15] above) provides that public interest privilege may be invoked by the relevant officer in one of the specified organisations (*ie*, the Comptroller), that does not, however, necessarily mean that the AG cannot raise the public interest privilege in his own right under a different basis, *ie*, *the common law*. In this vein, it is well established in the common law that the Attorney-General for England and Wales, "as the guardian of the public interest", has a "unique responsibility" as regards the law of public interest privilege (see *R v Chief Constable of West Midlands Police, Ex parte Wiley* [1995] 1 AC 274 at 287H; see also generally, *R v Lewes Justices, Ex parte Secretary of State for Home Department* [1973] AC 388 ("*Lewes Justices*")).

24 In relation to these authorities, Mr Singh argues that unlike England, which does not have a statutory provision like s 126 EA, Singapore has "codified" the common law public interest privilege in s 126 EA. We are unable to accept this contention that s 126 EA has codified the common law position on public interest privilege to such an extent that it excludes any such privilege

which the AG might have in his capacity as the guardian of the public interest. First, we note that both subsections of s 126 EA (see [15] above) only concern public officers (s 126(1) EA) and members, officers or employees of, or secondees to, the specified organisations (s 126(2) EA) who are being compelled to disclose communications they have received in official confidence – no reference is made therein to the AG's *distinct right* to object to disclosure by the relevant officer. But it bears emphasis here that where the AG intervenes on grounds of public interest privilege, he is not confined to objecting to disclosure of communications that either he himself or his office has received in official confidence. On the contrary, he could also intervene where a person falling within s 126 EA is being asked to disclose such communications. Indeed, a similar factual matrix was present in *Lewes Justices*. There, the applicant unsuccessfully applied to the Gaming Board for Great Britain ("the Gaming Board") for gaming licenses. He suspected that his application was rejected because of a letter written about him to the Gaming Board by the assistant chief constable of Sussex, and thus sued the assistant chief constable in criminal libel. He obtained summonses against the chief constable of Sussex and representatives of the Gaming Board, requiring them to produce, *inter alia*, this letter. The Attorney-General for England and Wales intervened to set aside the summonses on the ground of public interest privilege. On its part, the Gaming Board also made a *separate* application that the documents were protected by public interest privilege. Not only did the House of Lords identify no difficulties with the participation of *both* the Gaming Board and the Attorney-General, but Lord Reid, in particular, also expressly noted that (*Lewes Justices* at 400F):

> ... [i]n the present case the question of public interest was raised by both the Attorney-General and the Gaming Board. In my judgment both were entitled to raise the matter. ...

25 Second, there is also nothing in the Parliamentary debates on the provisions which could be construed to indicate that Parliament intended by the enactment of the provisions to restrict or curtail this function of the AG as the guardian of public interest. Specifically, Parliament did not, when introducing s 126(2) EA, even refer to the AG's right in the common law to raise public interest privilege in his own right. It is hardly imaginable that Parliament had intended s 126 EA to be a complete codification of this aspect of the common law at the expense of the AG's common law right to raise public interest privilege when nothing was said about and no reference whatsoever was made to the position of the AG. In our opinion, by s 126 EA, Parliament intended no more than to make clear that public officers, and members, officers or employees of, or secondees to, the specified organisations can plead public interest privilege in *their own right*. This does not in any way derogate from or undermine the *separate* and *distinct* function of the AG to object to disclosure sought from the relevant officer.

26 Third, there are sound policy reasons for allowing the AG to intervene, where necessary, to raise issues on public interest, in addition to placing the responsibility on the relevant officer or his organisation. In *Lewes Justices*, Lord Reid observed that "[the AG] is always an appropriate and often the most appropriate person to assert this public interest, and the evidence or advice which he gives to the court is always valuable and may sometimes be indispensable" (at 400E). In a similar vein, Lord Morris of Borth-y-Gest remarked that "[t]here will often be cases where [the AG] has very special knowledge concerning the public interest and a court can as a result be greatly helped if it is informed of the views of the [AG]" (at 405B). And Lord Simon

of Glaisdale too noted that "[i]n all these cases [the AG] is likely to be in a peculiarly favourable position to form a judgment as to the public prejudice of forensic publication; and the communication of his view is likely to be of assistance to the court in performing its duty of ruling on the admissibility of evidence" (at 407E). These observations make clear that the AG's non-partisan participation on the issue of the applicability of public interest privilege in a suitable case would be of immense help, perhaps even decisive, in assisting the court in reaching its decision. The decision one way or the other on the matter is particularly critical, especially when one notes that an imprudent disclosure of a privileged document could engender "very serious injury" to the wider public good (see *Burmah Oil Co Ltd v Governor and Company of the Bank of England and Another* [1980] AC 1090 at 1146H–1147A).

27 Indeed, in previous occasions where public interest privilege had been raised by a public officer under s 126(1) EA, the AG has traditionally appeared as counsel for the public officer's organisation (see, *eg*, *Zainal bin Kuning and others v Chan Sin Mian Michael and another* [1996] 2 SLR(R) 858 at [17] and [31]–[33], *Banque Nationale de Paris v Hew Keong Chan Gary* [2000] 3 SLR(R) 686 at [77] and *Chan Hiang Leng Colin and others v Public Prosecutor* [1994] 3 SLR(R) 209). This is by virtue of the AG's position as the legal adviser to the government. It is relevant to note here that s 126(1) EA has been part of our statute books since colonial days and it was adopted from India through s 124 of the Evidence Ordinance 1893 (SS Ord No 3 of 1893).

28 In 2003, when Parliament amended the EA to include s 126(2) EA, it was clear beyond peradventure that, for the reasons stated in [18]–[27], the AG, as the guardian of public interest, always had the standing to raise the issue of public interest privilege. It was said in Parliament that s 126(2) EA was necessary because, over the years, "many governmental functions have

increasingly been devolved to statutory bodies" such that officers and employees of statutory bodies "receive confidential communications in the course of discharging their functions", just like the public officers of government departments (see *Singapore Parliamentary Debates*, *Official Report* (2 September 2003) vol 76 (Assoc Prof Ho Peng Kee, Senior Minister of State for Law) ("*2003 Debates*") at cols 3068–3069). It thus made sense to extend the same privilege to officers of such statutory bodies. However, as we explain further below at [31], such statutory bodies, unlike government departments, are entitled to choose their own legal adviser with the effect that the AG may not be represented at all in proceedings brought under s 126(2), as opposed to s 126(1) EA. Given the similarity in the nature of the documents sought to be protected and the question of public interest raised, we do not see any principled reason why, where a statutory board is represented in proceedings by its own legal adviser, the AG should be prevented from exercising his duty as the guardian of the public interest to intervene in an appropriate case in a non-partisan basis and in the limited sense of stating his views on what the public interest requires (see also *Deepak Sharma* at [36]), even in a case falling under s 126(2) EA. We would reiterate that if Parliament had intended that where a case comes within s 126(2) EA, the AG's role would be curtailed, we would expect this to have been expressly alluded to.

Role of the AG vis-à-vis *the Comptroller*

29 The Appellant further contends that there is no need for the AG to be joined in the proceedings because the AG, as "the Comptroller's legal adviser", can make the arguments on public interest privilege which he wishes to make through the Comptroller.

30 With respect, we think this argument has proceeded on a mistaken assumption that the AG is the Comptroller's legal adviser. While the AG is the government's legal adviser, the IRAS, with the Comptroller as its head, is a *separate legal entity* from the government. In this regard, Ms Indranee Rajah, the Senior Minister of State for Law, had observed as follows (*Singapore Parliamentary Debates*, *Official Report* (5 August 2014) vol 92):

> … The AG is the Government's legal representative. In general, statutory boards are defined as separate legal entities from the Government. They are staffed by in-house legal counsel and, where necessary, they engage external counsel to represent them in legal proceedings. Consequently, the AG is not empowered to represent statutory boards.

31 While these observations were made before the introduction of the Attorney-General (Additional Functions) Act (Cap 16A, 2017 Rev Ed) ("the Additional Functions Act"), which confers on the AG additional powers to represent certain statutory boards in judicial review and other court proceedings, the position that these statutory boards are nevertheless entitled to choose their own legal adviser is still preserved in the Additional Functions Act. This is made clear in s 4(1) of the Additional Functions Act, which states as follows:

> **Representing relevant statutory boards in other court proceedings**
>
> **4.**—(1) The Attorney-General may represent a relevant statutory board in other proceedings in court (however instituted) not mentioned in section 3(1) [which deals with judicial review and related court proceedings], if —

> (*a*) *the relevant statutory board* ***makes a request*** *to the Attorney-General for such representation*;
>
> (*b*) the Minister charged with the responsibility for the relevant statutory board consents to such representation;
>
> (*c*) the Attorney-General is of the opinion that the Government and the relevant statutory board have no conflicting interests in the matter; and
>
> (*d*) the Attorney-General is of the opinion that the proceedings concern a matter of public importance.

[emphasis added in italics and bold italics]

32 It is clear from the above that in order for the AG to represent the Comptroller or IRAS in the Relevant Applications, the Comptroller must first make a request to the AG. It follows that the Comptroller is entitled to choose his own legal adviser, and the AG can neither force the Comptroller to accept the AG as his legal adviser nor direct the Comptroller's legal proceedings. It is pertinent here that the Comptroller did not make any such request to the AG, with the Comptroller preferring to engage external counsel instead. The AG has also clarified that he is *not* representing IRAS at all, whether in Suit 350 or in the Relevant Applications; he is only seeking to intervene in his *own capacity* in the Relevant Applications based on his common law right to do so as the guardian of the public interest. It also bears mention that under s 4(2) of the Additional Functions Act, the AG's decision "to, or not to, represent a relevant statutory board pursuant to [s 4(1)] is final and conclusive".

33 Notwithstanding the above framework, the Appellant argues that the AG has control over the Comptroller's conduct of the proceedings, relying on the fact that it was because of legal advice from the AG that the Comptroller decided to advance the public interest privilege argument. It is true that following the Discovery Judgment, the Comptroller had received the AG's view that the

Internal Documents were protected by public interest privilege. However, this does not necessarily mean that the AG has control over the Comptroller's conduct of the proceedings. Here, we must point out that the Comptroller had his own external legal adviser, which was also consulted before the Comptroller decided to advance the argument on public interest privilege. Most pertinently, what the Comptroller did in consulting the AG was merely in compliance with the procedure suggested by Parliament when the EA was amended to include s 126(2) EA. It was expressly noted in Parliament that, before invoking public interest privilege under s 126(2) EA, the relevant statutory board would likely first consult the AG to obtain his advice as he was the "custodian of public interest" (see *2003 Debates* at cols 3076–3078). After receiving the AG's advice however, the Comptroller was *entitled* to either agree or disagree with it. In other words, the AG cannot force the Comptroller to invoke s 126(2) EA – that *prerogative* remains with the Comptroller alone (see Jeffery Pinsler, SC, *Evidence and the Litigation Process* (LexisNexis, 6th Ed, 2017) at para 15.046).

Whether the issue of public interest privilege has arisen

34 Finally, on standing, the Appellant contends that the AG's joinder is premature because the issue of public interest privilege has not yet arisen; the issue would only arise for consideration if the EOT Application is granted or this court gives leave for the Comptroller to advance the argument. In our view, this argument is misconceived for several reasons.

35 First, it is not entirely accurate to say that the issue of public interest privilege has not yet arisen. The Judge had made an observation in the Discovery Judgment that the public interest privilege could not be invoked by the Comptroller (see [6] above). While it is true that the *ratio decidendi* of the

Discovery Judgment was not that the Internal Documents did not qualify for public interest privilege under s 126(2) EA, the Judge had expressly noted in *obiter* that public interest privilege could not in any event be invoked by the Comptroller (without providing any reasons). In the circumstances, the AG clearly has sufficient reason to intervene in the EOT Application and the Further Evidence Application to convince the Judge that he should hear full arguments from the parties before deciding the issue.

36 Second and in any event, as noted below at [67] and [76], the merits of the argument based on public interest privilege is a relevant consideration in the exercise of the discretion of the court to grant the EOT Application. The AG thus has a role to play, even as early as in the EOT Application, to show that public interest privilege could potentially apply to bar discovery of the Internal Documents.

37 Third, even if we had accepted the Appellant's argument that the AG should not have been joined in the EOT Application and the Further Evidence Application, that would make no difference to the outcome given our conclusion below that the appeal in CA 191 should be dismissed – with the dismissal of CA 191, the Judge would then proceed to hear the further arguments during which the issue of public interest privilege would unquestionably play centre stage.

38 We turn now to briefly deal with the mechanism for joinder, a point which is not seriously disputed by the Appellant.

Joinder under O 15 r 6(2)(b) of the ROC

39 The Judge was of the view that in this case both grounds for joinder of parties specified in O 15 r 6(2)(*b*) of the ROC were met (see the Judgment at [52] and [63]). The material portion of that provision reads as follows:

> **Misjoinder and nonjoinder of parties (O. 15, r. 6)**
>
> **6.**— …
>
> (2) Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter, the Court may, on such terms as it thinks just and either of its own motion or on application —
>
> …
>
> (*b*) order any of the following persons to be added as a party, namely:
>
> (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon;
>
> (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

40 We held recently in *Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA and others and other appeals* [2018] 1 SLR 894 ("*Ernest*") that the question of whether joinder should be allowed under either or both limbs of O 15 r 6(2)(*b*) of the ROC should be approached in a two-part inquiry. The first part of the inquiry is entirely non-discretionary whilst the second part is discretionary (at [203]–[205]).

*"Necessity" limb: O 15 r 6(2)(*b*)(i) of the ROC*

41 For the "necessity" limb in O 15 r 6(2)(*b*)(i) of the ROC, the non-discretionary inquiry is whether "it is *necessary*, and not merely desirable, to order joinder. The question is, in essence, whether 'there [is anything] to prevent the action … as originally drawn, from being effectually and completely

determined'" [emphasis in original] (*Ernest* at [203], citing *Abdul Gaffer bin Fathil v Chua Kwang Yong* [1994] 3 SLR(R) 1056 at [16]). If the non-discretionary requirement is satisfied, the court turns next to a discretionary assessment to consider whether joinder should be ordered (at [204]). This discretionary inquiry applies equally to both limbs in O 15 r 6(2)(*b*); the court "will consider all the factors which are relevant to the balance of justice in a particular case" (at [205]).

42 Applying this test, we agree with the Judge that given the AG's role as the guardian of the public interest, it is *necessary* for the AG to be joined in the proceedings. Since the court's decision on public interest privilege must necessarily involve public interest considerations, the "AG's function as the guardian of the public interest would allow him to present a perspective that is distinct from that of either party" on the question of public interest privilege (the Judgment at [54]). Further, as the AG highlights, in performing his "public duty", he takes into account confidential information and considerations to which other persons (including the Comptroller) are not privy. In the circumstances, in the language of O 15 r 6(2)(*b*)(i) of the ROC, the matter cannot be "effectually and completely determined" without the AG's participation.

43 The Appellant contends that it is not necessary for the AG to intervene in the proceedings since the AG's and Comptroller's interests "are one and the same". First and foremost, this is inaccurate because, as the Judge had rightly noted, the public interest represented by the AG cannot be equated with the Comptroller's interest (the Judgment at [43]):

> … While statutory bodies may have their own rights and interests, the AG would have the responsibility of protecting the overall interest, and any separate interest, of the Government. Even where there is an assertion of such an interest by the statutory body, the Government would have, at the very least, a broader interest than that of the statutory body in question.

> This stems from the fact that the Government is responsible for the position of all the government departments, as well as all statutory bodies ultimately answerable to it.

44 In any event, the mere fact that two parties have similar interests does not prevent either of them from being joined to the proceedings (see, *eg*, *Family Food Court (a firm) v Seah Boon Lock and another (trading as Boon Lock Duck and Noodle House)* [2008] 4 SLR(R) 272 at [62]–[66]); the test remains that of necessity.

45 Turning now to the second stage of discretionary inquiry, the most relevant factor to consider here is the question of prejudice to the Appellant (see *Ernest* at [210]). In our judgment, the Appellant is unable to identify any relevant material prejudice that it would suffer as a result of the AG's joinder; the Appellant would be fully entitled to respond to the AG's arguments. The Appellant's argument that if the joinder is allowed, it would have to face two parties as opposed to one and that it would be "exposed to two sets of *costs* to two different parties" [emphasis added] cannot possibly qualify as relevant prejudice that cannot be adequately compensated by *costs*.

*"Just and convenient" limb: O 15 r 6(2)(*b*)(ii) of the ROC*

46 Turning to the "just and convenient" limb, the non-discretionary inquiry mandates that there must be a question or issue involving the AG which "relate[s] to *an* ***existing question or issue*** *between the* ***existing parties***" [emphasis in original] (*Ernest* at [204]).

47 This requirement is plainly satisfied here as there is an existing question on the availability of public interest privilege under s 126(2) EA between the existing parties (*ie*, the Comptroller and the Appellant in the Relevant

Applications), which involves the AG, who is the guardian of the public interest.

48 Here, the Appellant repeats again its argument that there is no existing question on public interest privilege in the proceedings until after the EOT Application is granted (see [34] above). For the reasons noted above at [35]–[36], this argument is untenable.

49 For similar reasons as those given in respect of the "necessity" limb (at [45] above), there is also no good reason under the second stage of discretionary inquiry to interfere with the Judge's discretion to allow joinder under the "just and convenient" limb.

50 Given our decision that the AG was rightly joined to the proceedings under the ROC, there is no need for us to consider the alternative basis of joinder, namely, in exercise of the court's inherent jurisdiction.

51 For the foregoing reasons, there is no basis to disturb the Judge's exercise of discretion in ordering the AG to be joined in the Relevant Applications and we accordingly dismiss the appeal in CA 192.

52 We turn next to the appeal in CA 191, dealing first with the EOT Issue.

The EOT Issue

53 It is not in dispute that the Comptroller had the right to request for further arguments before the Judge in respect of the Discovery Judgment. This right is statutorily enshrined in s 28B(1) of the SCJA ("s 28B(1) SCJA"), but is subject to various timelines as follows:

> **Further arguments before Judge exercising civil jurisdiction of High Court**
>
> **28B.**—(1) Before any notice of appeal is filed in respect of any judgment or order made by a Judge, in the exercise of the civil jurisdiction of the High Court, after any hearing other than a trial of an action, the Judge may hear further arguments in respect of the judgment or order, if any party to the hearing, or the Judge, requests for further arguments before the earlier of —
>
> (*a*) the time the judgment or order is extracted; or
>
> (*b*) the expiration of 14 days after the date the judgment or order is made.

54 Since the order made by the Judge in the Discovery Judgment has yet to be extracted, the relevant timeline is that prescribed in s 28B(1)(*b*), *ie*, 14 days after the date of the Discovery Judgment (see [6] above), which is no later than 14 February 2017. The Comptroller failed to request for further arguments within this stipulated timeframe as he only filed the EOT Application on 1 March 2017, which was 15 days after the prescribed deadline for any request for further arguments to be made.

Jurisdiction to extend time under s 28B(1) SCJA

55 As a preliminary matter, the Appellant contends that the court has no jurisdiction to extend the 14-day time period prescribed under s 28B(1)(*b*) of the SCJA for three main reasons. First, the statutory jurisdiction to hear further arguments is conditional on the circumstances stipulated in sub-ss (*a*) and (*b*) being met; it is not based on the doing of an act or taking of any proceeding. Second, a request for further arguments should be made on a timely basis as this could otherwise affect the finality of proceedings. Third, the fact that the High Court judge can also independently request for further arguments under s 28B(1) SCJA militates against a jurisdiction to extend time.

56 While we agree that requests for further arguments should be made expeditiously, we are unable to accept the Appellant's suggestion that the court has no jurisdiction whatsoever to extend this prescribed time. Section 18(2) of the SCJA ("s 18(2) SCJA") read with para 7 of the First Schedule to the SCJA ("the First Schedule") does not provide the suggested limitation on the power of the High Court to extend time. Paragraph 7 of the First Schedule states as follows:

> **Time**
>
> 7. Power to enlarge or abridge the time prescribed by any written law for *doing any act or taking any proceeding*, whether the application therefor is made before or after the expiration of the time prescribed, but this provision shall be without prejudice to any written law relating to limitation [emphasis added]

57 Under s 28B(1)(*b*) of the SCJA (see [53] above), so long as the order has not been extracted, a party has 14 days to request for further arguments, *ie*, to do *the act* of applying for further arguments. This situation clearly falls within the ambit of the power of the court to extend time as provided in s 18(2) SCJA.

58 The fact that the judge can, on his own accord, invoke s 28B of the SCJA ("s 28B SCJA") to hear further arguments does not necessarily mean that the time-limit has to be immutable. Nothing in that fact can in any way be construed to mean that the general power to extend time accorded to the court under s 18(2) SCJA is thereby in any way affected. Indeed, this has always been the position under the common law as the judge retains the inherent jurisdiction to hear further arguments at ***any time*** before the order has been extracted (see this court's decision in *Thomson Plaza (Pte) Ltd v Liquidators of Yaohan Department Store Singapore Pte Ltd (in liquidation)* [2001] 2 SLR(R) 246 at [6]):

> … It is settled law that even in respect of a final order, the judge has an inherent jurisdiction to recall his decision and to hear further arguments, so long as the order is not yet perfected: *In re Harrison's Share under a Settlement; Harrison v Harrison* [1955] Ch 260; [1955] 1 All ER 185. …

59 The same point was made by the learned authors in the *Singapore Civil Procedure 2018* vol I (Foo Chee Hock JC gen ed) (Sweet & Maxwell, 2018) ("*White Book*") at para 56/2/4:

> There is nothing in the wording of s.28B to suggest that the High Court has no jurisdiction to hear further arguments before an interlocutory order is extracted. There is no logical reason why the jurisdiction to hear further arguments should be fettered in the absence of clear words stating so. If a judge is prepared to hear further arguments, it must mean he is prepared to consider changing his mind. If he is prepared to consider changing his mind, he should not be constrained unless finality kicks in and finality is achieved only when the order is extracted. The judge's order remains binding unless and until it is reversed, whether by a subsequent order from him or on an appeal. (*Downeredi Works Pte. Ltd. (formerly known as Works Infrastructure Pte Ltd) v Holcim (Singapore) Pte. Ltd.* [2009] 1 S.L.R.(R.) 1070).

The applicable test for granting extension of time under s 28B(1) SCJA

60 The more pertinent legal question to the EOT Issue is the appropriate test to apply in deciding whether an extension of time should be granted under s 28B(1) SCJA.

61 The Appellant agrees with the Judge that the test in *Denko-HLB Sdn Bhd v Fagerdala Singapore Pte Ltd* [2002] 2 SLR(R) 336 ("*Denko*") should apply, namely a consideration of: (a) the length of the delay; (b) the reasons for the delay; (c) the merits of the further arguments; and (d) the degree of prejudice to the other party (see the Judgment at [100], citing *Denko* at [11]). This test mirrors that of the test for an extension of time to file a notice of appeal (see,

eg, *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2008] 1 SLR(R) 757 ("*Lee Hsien Loong*") at [18]).

62 The Comptroller, on the other hand, argues for the more lenient test in *The Tokai Maru* [1998] 2 SLR(R) 646 ("*The Tokai Maru*"), which applies to extensions of time *generally*, namely: (a) whether the delay was justified; (b) whether any prejudice was caused; and (c) whether there were exceptional circumstances to justify the refusal of an extension of time (at [24]).

63 In our view, the Judge was right to find that the test in *Denko* applies to applications for an extension of time to request for further arguments under s 28B SCJA. In *Denko*, this court found that the stricter test for applications for an extension of time to appeal applies to applications to extend time to request further arguments. In doing so, the court expressly rejected the applicability of the less stringent test in *The Tokai Maru* (see *Denko* at [10]).

64 The Comptroller attempts to distinguish *Denko* on the basis that the decision was "premised on the fact" that under the then s 34(1)(*c*) of the SCJA (which dealt with requests for further arguments and which was the relevant provision considered in *Denko*), requests for further arguments was a precondition to filing an appeal. Since the SCJA was subsequently amended in 2010 to replace s 34(1)(*c*) with s 28B SCJA, under which a request for further arguments is no longer a precondition to the filing of an appeal (see s 28B(4) of the SCJA), the rationale in *Denko* for applying the same test for extension of time to appeal in cases of extension of time to request further arguments is no longer valid.

65 The Comptroller's attempt to distinguish *Denko*, while factually accurate, does not necessarily lead to the conclusion that the rationale for

applying the same test in both scenarios is no longer valid. In this regard, we agree with the Judge's observation that (the Judgment at [96]):

> … [w]hile there have been legislative amendments to the further arguments regime under the SCJA …, the crux of the matter is not whether such further arguments are mandatory or voluntary, but the fact that when the requests for further arguments are made, the time for filing a notice of appeal is suspended and there is significantly less clarity as to when and whether the initial judgment would continue to stand (see s 28B(3) of the SCJA). …

66 Since under s 28B(3)(*b*) of the SCJA, a request for further arguments has the effect of restarting the clock on the timelines for filing a notice of appeal, if the test for an extension of time to request further arguments is *any less strict* than that for filing a notice of appeal, it becomes possible to circumvent the stricter test for filing an appeal by applying instead for an extension of time to file further arguments under the less stringent test. This would effectively give a party an extension of time to file a notice of appeal without having to satisfy the stricter test. For this reason, the tests for granting an extension of time in both scenarios have to be the same.

67 It follows, therefore, in considering the EOT Application, the factors to be considered are: (a) the length of the delay; (b) the reasons for the delay; (c) the merits of the further arguments; and (d) the prejudice to the Appellant if the extension of time were to be granted. However, these factors should not be applied mechanically. In the words of this court in *Sun Jin Engineering Pte Ltd v Hwang Jae Woo* [2011] 2 SLR 196 (at [30]):

> … [T]he court, in deciding whether to extend the prescribed timeline for an act to be done, has to balance the competing interests of the parties concerned. … In determining how the balance of interests should be struck and in applying the four factors mentioned … above, *it is the overall picture that emerges to the court as to where the justice of the case lies which will ultimately be decisive*. [emphasis added]

Application of the test to the facts

68 The Judge considered the same four factors enumerated and reasoned that (see the Judgment at [102]–[105]):

(a) the delay of 15 days, when viewed in the context of a 14-day timeline to request further arguments, "[did] not show such dilatoriness that the extension should not be given because of the length of the delay alone";

(b) the delay was not inordinate or inexplicable given that some time would reasonably have been required for preparation before making a request for further arguments, particularly given the involvement of external parties and the relative novelty of the issue of public interest privilege;

(c) the merits of the arguments on s 126(2) EA and s 6(3) ITA were not hopeless and were also not challenged; and

(d) there was no material prejudice arising from the delay as the matter was still at the interlocutory stage and the suit was "not yet so far advanced that further arguments would prolong matters disproportionately", and in any case, any prejudice caused by the delay can be compensated by costs.

69 Accordingly, the Judge exercised his discretion to grant the extension of time sought. We turn now to analyse his consideration of these factors.

Length of the delay

70 Considering, first, the length of the delay, the Appellant contends that the delay was "a long one" because, amongst other things:

(a) given that the previous period of one week for requesting further arguments had already been extended to two weeks with the introduction of s 28B SCJA, the Comptroller had already been permitted more time to apply for further arguments, and yet he failed to do so; and

(b) the delay meant that finality of the Discovery Judgment was delayed by close to one month, compared to the 21 days' delay in *Denko* (the applicant in that case had filed its request 14 days late) which was found to not be relatively short.

71 We find that the Appellant's reference to the previous statutory timeline that existed before s 28B SCJA (which applied in a different legal landscape where litigation was less complex and court judgments much shorter) is misplaced because what is pertinent to the issue at hand is the present framework. In so far as the Appellant contends that "finality" of the Discovery Judgment was unduly delayed, this assertion ignores the fact that, at that material time when the EOT Application was made, the Judge's further directions on the orders sought in the Discovery Application (as required to perfect the order) had yet to be given (see [7] above) and in any event, the Leave to Appeal Application had already been filed. Furthermore, whilst 14 days' delay in the context of a one-week timeline in *Denko* might be considered long, the same may not be said for 15 days' delay in the context of a 14-day timeline. As such, whilst the delay was not short, the Judge rightly considered the delay to be not so long as to justify, on its own, a refusal of extension of time.

Reasons for delay

72 Turning to the next factor, the Comptroller had relied on the following reasons before the Judge to account for his delay: (a) time was taken in considering the Discovery Judgment; (b) advice was required from the AG; (c) new counsel had to be instructed; and (d) voluminous documents sought in the discovery had to be reviewed by the relevant parties in order for a position to be taken and the necessary affidavits to be drafted.

73 On this factor, the Judge reasoned as follows (the Judgment at [103]):

> … In the circumstances, while there was probably some room for expedition, I do not find that the delay was inordinate or inexplicable. Some time would reasonably have to be consumed for the preparatory stages prior to making a request for further arguments, particularly given the involvement of external parties and the relative novelty of the issue of public interest privilege raised in the [Discovery] Judgment.

74 We agree with the Judge that in the circumstances of this case, the Comptroller needed more time to come to a concluded view before requesting for further arguments. However, what troubles us is that notwithstanding the Comptroller's need for more time, the Comptroller was at all times aware that the law permitted him only 14 days to request for further arguments. Yet, he did nothing and let the time lapse. It was also never the Comptroller's position that he did not know about the existence of public interest privilege under s 126(2) EA. It is clear from the record that the Comptroller was made aware of the argument on public interest privilege under s 126(2) EA on as early as 31 January 2017 when the Discovery Judgment was issued (see [6] above). Further, Ms Ng, in her supporting affidavit for the Leave Application, had noted that the Comptroller was considering whether public interest privilege applies and that he "may seek to rely on the same" at the leave to appeal hearing. This affidavit

was filed on 9 February 2017, which was five days before the expiry of the 14-day period under s 28B SCJA.

75 In the circumstances, the proper course of action for the Comptroller to have taken would have been, *before* the expiry of the prescribed period, to write to the court for more time to put in his request for further arguments. While it is true that under s 18(2) SCJA read with para 7 of the First Schedule, the court has the power to grant extension even after the prescribed period has expired (see [56] above), this is not a situation where the party had forgotten to apply for the extension in time or could not reasonably have asked for an extension before the expiry of the period, necessitating a request for extension of time after the prescribed period. Here, as we have noted, despite being aware of the 14-day time period, the Comptroller just stood idly by. To be fair, the Appellant did not take this specific point before the Judge; neither did the Appellant take this point before us. While we raised it in oral argument, no serious submission was made as to the weight or significance, if any, which ought to be placed on such a lapse. If the point had been raised earlier by the Appellant, the court would perhaps have the benefit of evidence from the Comptroller explaining why he did not take the more appropriate step which we have indicated above and the extent to which para 7 of the First Schedule (specifically, the court's power to extend time even after the prescribed period had lapsed) had affected his actions in this regard. In the circumstances, we shall say no more. We raise it only to underscore the point that prescribed timelines are to be observed and not disregarded. In an appropriate case in the future, this point will no doubt be revisited.

Merits of the further arguments

76 On the third factor, in the analogous context of assessing the chances of succeeding on appeal for the purposes of an application for an extension of time to appeal, the court adopts a very low threshold: the test is whether the appeal is "hopeless" (*Nomura Regionalisation Venture Fund Ltd v Ethical Investments Ltd* [2000] 2 SLR(R) 926 ("*Nomura*") at [32]). Further, as long as it cannot be said that there are *no prospects* of the applicant succeeding on the appeal, this factor ought to be considered neutral rather than against the applicant (see *Aberdeen Asset Management Asia Ltd and another v Fraser & Neave Ltd and others* [2001] 3 SLR(R) 355 ("*Aberdeen*") at [43]).

77 The Judge applied this low threshold to the Comptroller's request for further arguments by considering whether the further arguments were "hopeless"; the Appellant did not dispute this threshold in the proceedings below (see the Judgment at [104]). The Appellant contends that the merits of the Comptroller's further arguments are hopeless without the Two Affidavits and since the Further Evidence Application should be dismissed, the EOT Application should likewise be dismissed. Given our decision as set out later in this judgment that the Two Affidavits were rightly admitted (see [109] below), this argument automatically falls away.

Prejudice to the Appellant

78 Considering lastly the question of prejudice to the Appellant, we find that granting the EOT Application will not result in any prejudice to the Appellant that cannot be compensated by costs.

79 The Appellant submits that the extension of time would "cause grave prejudice" to it because it would further delay the proceedings which has

"dragged on for more than three years and [yet] is still at the interlocutory stage". As was noted by this court in *Aberdeen* at [44], this is, in and of itself, insufficient in law to amount to prejudice:

> … The 'prejudice' cannot possibly refer to the fact that the appeal would thereby be continued, if the extension is granted. Otherwise, it would mean that in every case where the court considers the question of an extension of time to file notice of appeal, there is prejudice. … The 'prejudice' here must refer to some other factors, *eg* change of position on the part of the respondent pursuant to judgment.

Given the fact that the order for the Discovery Judgment has yet to be extracted and the Leave to Appeal Application against that judgment, the 15-day delay in the Comptroller making the request for further arguments is unlikely to have changed the Appellant's position in any material way.

80 Conversely, by refusing the extension of time sought, there may be uncompensable prejudice not only to the Comptroller but also, more importantly, to the *public interest*. Here, the Appellant contends that, even if the EOT Application is denied, the public interest may still be protected because the Comptroller can seek leave from this court pursuant to O 57 r 9A(4)(*b*) of the ROC (if the Leave to Appeal Application is granted) to make its argument on public interest privilege. It is not clear to us why this option is preferable to allowing the Judge to reconsider his decision in light of the arguments raised on public interest privilege; the latter option would greatly benefit this court as it would then have, if there is a consequent appeal, the benefit of the Judge's *findings of fact* and considered views on the question of public interest privilege. Further, as noted by the Law Reform Committee in its recommendation to retain the right to request for further arguments in Singapore (see Law Reform Committee, Singapore Academy of Law, *Report of the Sub-Committee on the*

Rationalisation of Legislation Relating to Leave to Appeal (October 2008) (Chairman: Cavinder Bull) ("*LRC Report*") at paras 97 and 104):

> 97 … the rule requiring further arguments … acts, in a way, as a filtration process to limit the volume of appeals to the Court of Appeal, such that the Court of Appeal is less likely to encounter frivolous or unmeritorious appeals. A party who has applied for further arguments to be heard, or who has even had the advantage of a second hearing before the judge, and still fails to convince the judge of his position may well be discouraged from appealing if it becomes apparent in the process that his case is weak.
>
> …
>
> 104 It is recommended that parties should continue to be allowed to make further arguments. The making of further arguments ensures that the order against which an appeal is filed was made upon due consideration by the judge of all the relevant arguments and issues.

Holistic consideration of all the factors

81 As noted above, the four factors are not to be weighed mechanically; instead they are "to be balanced amongst one another, having regard to all the facts and circumstances of the case concerned" (*Lee Hsien Loong* at [28]).

82 In this case, while the Comptroller had good reasons for requiring more time before making his request for further arguments and there was a point which troubled us but in respect of which little assistance has been rendered to us (see [74]–[75] above), we do not think we should, in the circumstances, disturb the discretion exercised by the Judge, who had carefully weighed all the pertinent factors and the parties' arguments.

83 In any event, it is trite that even if we, as members of the appellate court, would have reached a different conclusion from that of the court below, that is in itself insufficient to warrant appellate intervention. In this regard, we consider

it useful to reproduce the following observations of this court in *Nomura* (at [35]–[36]):

> 35 The judge below having judiciously exercised her discretion, it is not for an appellate court to substitute its own decision for that of the court below unless it is shown that the judge below in exercising his discretion had applied the wrong principle or that the decision has caused a miscarriage of justice in that he had taken into account matters which he ought not to have done or failed to take into account matters which he ought to have done or that the decision was plainly wrong. That is trite law. In *Ratnam v Cumarasamy* [1965] 1 MLJ 228 the Privy Council said at 229:
>
> > There is a presumption that the judge has rightly exercised his discretion … The court will not interfere unless it is clearly satisfied that the discretion has been exercised on a wrong principle and should have been exercised in a contrary way or that there has been a miscarriage of justice.
>
> 36 In *The Abidin Daver* [1984] AC 398; [1984] 1 Lloyd's Rep 339 Lord Brandon [of Oakbrook] further elucidated the principle as follows:
>
> > … where the judge of first instance has exercised his discretion in one way or the other, the grounds on which an appellate court is entitled to interfere with the decision which he had made are of a limited character. It cannot interfere simply because its members consider that they would, if themselves sitting at first instance, have reached a different conclusion. It can only interfere in three cases: (1) where the judge has misdirected himself with regard to the principles in accordance with which his discretion had to be exercised; (2) where the judge, in exercising his discretion, has taken into account matters which he ought not to have done or failed to take into account matters which he ought to have done; or (3) where his decision is plainly wrong.

84 For the foregoing reasons, bearing in mind the higher threshold for appellate intervention in matters involving the lower court's exercise of discretion, we decline to interfere with the Judge's exercise of discretion in granting the EOT Application. We turn next to consider the Further Evidence Issue.

The Further Evidence Issue

85 The Appellant does not disagree with the Judge that *new arguments* can be made in a request for further arguments. Rather, its primary contention is that the new arguments must nevertheless be confined to the *existing evidence*.

Whether further evidence can be admitted in the course of further arguments

86 In support of the Appellant's contention that further evidence cannot be admitted in the course of further arguments, Mr Singh primarily relies on the High Court decision in *Travista Development Pte Ltd v Tan Kim Swee Augustine and others* [2007] 3 SLR(R) 628 ("*Travista*"), in which it was held that a party who wishes to introduce further evidence after a decision by a High Court judge can only do so on appeal and not before the judge in further arguments. According to the Appellant, *Travista* laid down "the principle that further evidence cannot be adduced in *any situation*" in further arguments [emphasis added]. The Appellant relies in particular on the following observation made by Judith Prakash J (as she then was) in *Travista* (at [38]):

> … In any case, as the defendants submitted, the purpose of further arguments is to highlight to the court an argument which was not made, or not made properly previously, but *the new argument must be* ***based on the existing evidence***. Otherwise, *a party after having had the benefit of hearing the grounds of the court's decision will simply adduce evidence to* ***address flaws or gaps in its evidence*** *and ask for the matter to be reheard.* This will affect the finality of the court's decision. … [emphasis added in italics and bold italics]

87 We reject the Appellant's position that further evidence cannot be admitted whatsoever for the purpose of further arguments, and instead affirm the approach adopted by the Judge (see the Judgment at [111]). In our judgment, further evidence may be allowed in support of *new* arguments, but should *not* be allowed where the evidence is sought to support or strengthen *previously*

raised arguments. In other words, where a litigant seeks to make further arguments, he may adduce further evidence as long as the further arguments have not previously been raised; where the further arguments raised are not in fact new, the litigant would not be permitted to adduce further evidence as that would otherwise be an abuse of process. In our view, the specific limitation raised by Prakash J in *Travista* that a new argument must be based on existing evidence was premised on her concern that allowing new evidence to be admitted in further arguments would permit litigants, after learning of the judge's grounds of decision, to plug the gaps in the evidence that were identified by the judge (indeed this was what happened on the facts of *Travista* – see [91] below). This concern simply *does not arise* in the case of *new* arguments – by virtue of them being made for the first time, there would yet to be any reasons provided by the judge.

88 This approach is sound for two main reasons. First, as a matter of principle, allowing further evidence in respect of *new* arguments is consistent with the rationale for permitting further arguments – namely, to prescribe a procedure to "give the judge another opportunity to review his decision" in the light of further arguments as may be put forward (see *Aberdeen* at [23]). If further evidence is disallowed in *all* instances, new arguments that may require further evidence can ***never*** be made. Such an extreme position is supported by neither the language of s 28B(1) SCJA (see [53] above) nor its rationale. This would also unduly restrict the scope and utility of the procedure for further arguments. If the judge is satisfied that the further evidence may make a difference to his decision and is inclined to consider the evidence, he should be allowed to do so subject to meeting the applicable test: see [105] below. Any inconvenience caused to the opposing party by such an untimely move could be addressed by way of costs.

89 We disagree with the Appellant's contention that the sole rationale of further arguments is to make up for the "'shortness of time' to argue" in the proceedings before the Judge. The Appellant submits that the further arguments regime assumes that all necessary evidence has already been filed and it is only because of "inadequate time to argue" that further arguments become necessary. With respect, the inadequacy of time to complete one's submissions in a hearing is but merely ***one*** of the reasons why the procedure for further arguments exists (see also *Singapore Press Holdings Ltd v Brown Noel Trading Pte Ltd and others* [1994] 3 SLR(R) 114 at [40]). Most pertinently, as noted in the *LRC Report*, an additional reason why the further arguments procedure is justified is due to the *acute time constraints* counsel face in *preparing* for such applications (at para 94):

> Counsel may … have inadvertently left out some relevant arguments. This is likely to occur where there is an urgent application to be heard and the time for preparation is short, when certain issues become apparent only at the hearing, or when a particular issue is simply not raised or addressed at the hearing due to a lack of time.

As such, due to shortness of time for preparation, counsel may fail to identify a potential legal argument (which concomitantly requires new evidence to prove) – an eventuality the further arguments regime ought to cater for. Moreover, the further evidence may also consist of new evidence that only surfaces after the conclusion of the hearing; there is no good reason why this should not be considered by the judge. It follows that there cannot be a blanket prohibition against the admission of further evidence in further arguments.

90 Second, as a matter of efficiency and expedience in court processes, allowing the new evidence to be first considered by the High Court would generally assist in saving the Court of Appeal's valuable time and resources (see also [80] above, citing the *LRC Report*). The High Court judge, who would

already have been well acquainted with the other evidence presented in the case, would be best placed to make a finding of fact on the new evidence.

91 Finally, we consider the Appellant's reliance on the *dictum* in *Travista* at [38] (see [86] above) to be misplaced. In our judgment, Prakash J's suggestion therein that further evidence cannot be admitted even when *new* arguments are made ought to be read restrictively, and in the light of the facts of *Travista*. That case concerned an originating summons for a declaration that the plaintiff shall be at liberty to complete the purchase of a property under a sale and purchase agreement. The issue in question was whether the plaintiff had breached the sale and purchase agreement by failing to use "best endeavours" to obtain a Qualifying Certificate from the Singapore Land Authority, and was thus not entitled to insist on late completion. Prakash J had earlier found that: (a) the plaintiff *had not given any explanation as to what steps it had taken to secure a banker's guarantee* (which was the only condition attached to obtaining the Qualifying Certificate); and (b) the plaintiff had thus failed to satisfy the court that it had exercised its "best endeavours" to procure the guarantee. After this decision, the plaintiff requested further arguments and filed another affidavit to put further evidence before the court *on the plaintiff's efforts to procure the banker's guarantee*. From the above, it becomes immediately clear why the attempt to adduce further evidence was abjectly objectionable in *Travista* – the further arguments brought by the plaintiff were *not new arguments*, and the plaintiff was in fact attempting to adduce further evidence *in support of arguments that had previously been made*. Therefore, on the facts, Prakash J was correct to reject the plaintiff's attempt to adduce further evidence. As for her observation (at [38]) that "the new argument must be based on the existing evidence", this must be read in the light of the fact that *no new arguments* were in fact raised in *Travista*.

92 For these reasons, we hold that further evidence may, as a matter of law, in appropriate circumstances be admitted for the purposes of new arguments.

The applicable test for admitting further evidence

93 The Judge held that further evidence can be admitted in support of new arguments if *sufficient reason* exists (see the Judgment at [111]). In determining whether sufficient reasons exist to justify the admission of such evidence, the Judge opined that the well-established three factors set out in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") would be a useful starting point (see the Judgment at [114]). These factors are, namely:

(a) whether the new evidence could have been obtained at the time of the original hearing, with reasonable diligence, by the party seeking to introduce it ("the Reasonable Diligence Factor");

(b) whether the new evidence is such that it would probably have an important influence on the result of the case, even though it need not be decisive ("the Relevance Factor"); and

(c) whether the evidence is such as is presumably to be believed ("the Reliability Factor").

The Judge also considered two other factors to be relevant: the likelihood of *further* delay to the proceedings as a result of such admission ("the Delay Factor"), and the prejudice that may be caused to the respondent ("the Prejudice Factor") (see the Judgment at [115]).

94 Mr Singh contends that the test for admitting further evidence in further arguments ought to be the same as that for admitting further evidence on an interlocutory appeal because if it were otherwise, "[n]o litigant would ever

choose the option of seeking to adduce further evidence on appeal and, as a consequence, be subject to a stricter test".

95 On the other hand, the Comptroller argues that the applicable test is that which applies in the case of a *de novo* rehearing in a Registrar's Appeal (where the Judge has the full discretion to admit any evidence) on the basis that the Judge had heard an interlocutory application (*ie*, the Discovery Application) at first instance and "had remained seised of the matter when [the EOT Application] was filed".

96 In our view, there are difficulties with both parties' submissions. Mr Singh's submission is too simplistic for two reasons. First, the discretion to allow a request for further arguments rests with the Judge (at [53] above) and if the request is refused, the only option would be to adduce the evidence on appeal. Second, given our earlier qualification that further evidence can only be admitted in respect of new arguments but not previously made arguments (at [87] above), further evidence in respect of the latter can only be admitted on appeal.

97 The Comptroller's arguments are also not free from difficulty. The test to admit evidence cannot be that which applies in the case of a *de novo* rehearing. For, as the Judge had noted (the Judgment at [110]):

> … [I]n a Registrar's Appeal, which is a hearing *de novo*[,] [t]he Judge in chambers may … allow the admission of fresh evidence in the absence of contrary reasons because he is 'entitled to treat the matter as though it came before him for the first time … [and] is in no way fettered by the decision below' … That is, however, not the case when further arguments are allowed. While the Judge's agreement to hear further arguments may in some sense mean that the original decision is 'tentative' … that tentativeness does not by itself mean that the doors are opened to all matters: the original decision is not readily departed from, and the findings are not revisited *de*

> *novo*. As opposed to a further arguments hearing, a *de novo* Registrar's Appeal also does not involve the policy considerations of finality and abuse of process to the same extent. …

98 Upon closer consideration, we think it is not necessary for us to express a conclusive view on the applicable test to be met in this case. This is because, even taking the Appellant's case at its highest that the test for admitting further evidence ought to be the same as that in an interlocutory appeal, the Two Affidavits would have met the test for admission.

99 The starting position for the admission of further evidence is provided for under s 37(4) of the SCJA, which states that, in appeals to the Court of Appeal from a judgment "after trial or hearing of any cause of matters upon the merits, such further evidence … shall be admitted on *special grounds* only, and not without leave of the Court of Appeal" [emphasis added]. It is beyond dispute that the *Ladd v Marshall* factors apply as the criteria for determining whether there exist "special grounds" warranting the admission of further evidence (see *BNX v BOE and another appeal* [2018] 2 SLR 215 at [1] and [74]).

100 But the position differs for the admission of further evidence in an interlocutory appeal. It is trite that the relevant test in this situation is not that stated in *Ladd v Marshall* because that test, as just established, only applies in an appeal from a judgment after trial or a hearing upon the merits. The High Court in *Park Regis Hospitality Management Sdn Bhd v British Malayan Trustees Ltd and others* [2014] 1 SLR 1175 succinctly summarised the position in law as follows (at [28]):

> (a) First, there is a distinction to be drawn between appeals from trials and appeals from other matters. Only in the former would the *Ladd v Marshall* Test … apply strictly.
>
> (b) Second, there is a distinction to be drawn between matters which had characteristics of a full trial or where oral evidence

> had been recorded, and matters which were generally 'interlocutory' in nature. As a result of the decision in *Lassiter* [*Ann Masters v To Keng Lam* [2004] 2 SLR(R) 392], in the former situations the second and third conditions of the *Ladd v Marshall* Test would apply.
>
> (c) Third, in matters which were generally interlocutory in nature, the court was entitled, though not obliged, to employ the conditions of the *Ladd v Marshall* Test to help decide whether or not to exercise the discretion to admit or reject the further evidence.

101 Notwithstanding the clear position set out above, the Appellant maintains that the Reasonable Diligence Factor must be applied strictly here, and submits that this factor is not met on the facts because the Comptroller is unable to provide good reasons for not adducing the Two Affidavits earlier. To this end, the Appellants relies on the following observation made by this court in *Jurong Town Corp v Wishing Star Ltd* [2004] 2 SLR(R) 427 ("*Wishing Star*") (at [27]):

> …. As the present appeal was not one against 'a judgment after trial or hearing of any cause or matter on the merits', it was clear that this court was entitled, if it thought it appropriate, to admit the fresh evidence. The strict principles in *Ladd v Marshall* [1954] 1 WLR 1489 would not be applicable. But this is not to say that in such an appeal a party is entitled as of right to have the fresh matter admitted. The discretion rests with the court. *The court should guard against attempts by a disappointed party seeking to 'retrieve lost ground in interlocutory appeals' by relying on evidence which he could or should have put before the court below*: see *Electra Private Equity Partners v KPMG Peat Marwick* [2001] 1 BCLC 589 at 620. [emphasis added]

102 In our judgment, the Reasonable Diligence Factor is *not* a relevant consideration in admitting further evidence in further arguments for two reasons. First, contrary to the Appellant's suggestion, *Wishing Star* does not even stand for the mandatory application of the Reasonable Diligence Factor in the context of admitting further evidence in interlocutory appeals – although

this court did allude to the Reasonable Diligence Factor in its reasoning in *Wishing Star* (at [27]), it did not state that this factor is to be applied strictly.

103 Second and in any event, while the Reasonable Diligence Factor can be a relevant consideration in most situations to guard against abuse of process, it cannot *conceptually* feature in the context of admitting further evidence in further arguments. In the recent decision of this court in *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2018] 1 SLR 544, we had the opportunity to clarify the ambit of the Reasonable Diligence Factor (albeit in the context of an appeal from a criminal trial) (at [68]) as follows:

> … As a matter of law, … we consider that when the court determines whether the requirement of non-availability has been satisfied, it should also turn its mind to the issue of *whether the evidence sought to be admitted on appeal was reasonably not thought to be necessary at trial*. If a party ought reasonably to have been aware, either prior to or in the course of trial, that the evidence would have a bearing on its case, and that party fails to make a sufficient attempt to adduce the evidence at trial, this should militate against permitting the party to subsequently have that evidence admitted on appeal. But where it was reasonably not apprehended that the evidence would or could have a bearing on the case at hand, a different result should ensue. Counsel cannot be expected to consider things that, objectively and reasonably, would not have been thought to be relevant to the case. The determination of whether a party would reasonably not have thought the evidence to be necessary at trial naturally requires consideration of the issues that the party would reasonably have become aware of either before or during the course of trial. [emphasis added]

104 Given that the key determination in the consideration of the Reasonable Diligence Factor is whether the evidence in question was "reasonably not thought to be necessary" for the purposes of the initial hearing, we find that the Reasonable Diligence Factor is conceptually incongruent with the rationale of permitting further arguments. Consistent with the rationale of the further arguments procedure discussed above at [88]–[90], the right to request for further arguments cannot be precluded solely on the basis that the further

arguments *ought reasonably to have been made earlier*. Indeed, it is accepted practice that parties can make arguments on points that they only discovered after the order or judgment was made (including on points that they ought reasonably to have made earlier). To put it another way, since one of the purposes of the further arguments regime is to enable the *judge* to reconsider his decision, it exists also for the benefit of the judge. Hence, it is irrelevant that the argument sought to be considered in further arguments could have been made earlier. In this case, the only reason why the Comptroller was put in a position to explain his delay in his request to make further arguments was because he did not comply with the 14 days' statutory timeline in s 28B(1) SCJA – if he had made the same request within this stipulated period, there would have been no question of his entitlement to raise the further arguments (unless the Judge certifies that he requires no further arguments, although even then, the Judge would not be able to say that he *requires* no further arguments because the Comptroller ought to have raised the point earlier). For this reason, we respectfully differ from the Appellant as well as the Judge that the Reasonable Diligence Factor is a relevant factor to be considered in assessing the inquiry of whether further evidence should be admitted in further arguments.

105 Having said that, we agree with the other four factors identified by the Judge that ought to guide the court's exercise of discretion in admitting further evidence in further arguments, with the caveat that, given the ultimate inquiry is at the court's discretion (see *Wishing Star* at [27], cited at [101] above), none of these factors are to be applied strictly and the final analysis must depend on the justice of the case.

Whether the Two Affidavits were rightly admitted

106 In considering the admissibility of the further evidence sought by the Comptroller, the Judge allowed the Two Affidavits to be admitted in so far as they related to the further arguments on public interest privilege under s 126(2) EA and official secrecy under s 6(3) ITA, but he disallowed the part of the further evidence in respect of the argument based on legal professional privilege as this was not a new argument (see the Judgment at [116]–[117]).

107 In our judgment, the Appellant is unable to demonstrate how the Judge erred in the exercise of his discretion in admitting the Two Affidavits to the said extent. Mr Singh does not take issue with both the Relevance Factor and Reliability Factor. We therefore consider only the remaining two factors as follows:

(a) Delay Factor: The Appellant highlights that even though the proceedings were commenced in 2014, the parties still "remain embroiled in the discovery process" more than three years later. We do not think this is immediately relevant to the present inquiry; rather, the germane question is whether admitting the Two Affidavits would cause inordinate *further* delay to the proceedings (see [93] above). Given that the reliability of the further evidence is not in issue and the contents of the Two Affidavits "relate to largely undisputed facts" (the Judgment at [116]), admitting the Two Affidavits is unlikely to result in several rounds of further affidavits being exchanged. Instead, any delay to the proceedings would likely arise as a result of the *legal* dispute between the parties on the law of public interest privilege; given the substantive nature of the arguments, this factor should not militate against admitting the Two Affidavits.

(b) Prejudice Factor: We agree with the Judge that admitting the Two Affidavits poses no prejudice to the Appellant that cannot be compensated by costs (see the Judgment at [116]).

108 In any case, looking at the circumstances as a whole, it seems to us only right that the Two Affidavits should be admitted into evidence. Indeed, disallowing their admission into evidence could potentially lead to a wrongful disclosure of the Internal Documents, risking injury to the public interest.

109 Overall, we find no basis to disturb the Judge's exercise of discretion to admit the Two Affidavits into evidence in connection with the EOT Application. We therefore dismiss CA 191 in its entirety.

Conclusion and Postscript

110 In the result, we dismiss both appeals in CA 191 and 192. On the question of the costs of these appeals, unless parties are able to come to an agreement, they are to furnish submissions (not exceeding five pages each) to this court within 14 days of the date of this judgment.

111 As a postscript, we make the following observations. Following our dismissal of the two appeals, parties will, together with the AG, appear before the Judge to make further submissions in relation to the Discovery Application. As mentioned at [2] above, we had in the course of the hearing indicated to parties that there was probably a more expedient, sensible and practical course available to them in relation to this matter, that is, to suitably redact the Internal Documents in respect of which discovery is sought. We also think that taking that course would enhance transparency and justice. As we have understood it, the critical issue in the main action in Suit 350 relates to the defence of limitation. The Appellant is not concerned with matters of policy, official

secrets or practices that may be contained in the Internal Documents. All it wants to know is the date on which the IRAS had received relevant information showing that it had a cause of action to recover the Tax Refunds which it had made to the Appellant. With appropriate redactions, it seems to us that the objectives of (1) the Appellant in obtaining the information that it seeks and (2) of the Comptroller in ensuring that official secrets are not divulged in the process, could both be achieved.

112 If the parties had agreed to the suggestion on redaction which this court had then made, the Discovery Application would have become academic, rendering moot these appeals and the need for this judgment. This series of satellite litigation, including the appeal against the Discovery Judgment, would have come to an end. Towards that end, if there were difficulties in relation to specific redactions, this court was prepared to assist the parties. Alas, with this judgment, the matter will be referred to the Judge for further arguments to be heard. Even at this stage, we think that redaction not only remains the most expedient and practical option, but it would also, more importantly, advance justice and reduce litigation costs by obviating the need for another round of appeal to this court in respect of these satellite proceedings. We are confident that if this option were adopted, the Judge would be more than able to resolve specific redaction difficulties, if any. We hope good sense will prevail.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Chao Hick Tin Senior Judge

Davinder Singh s/o Amar Singh SC, Fong Cheng Yee, David, Shirleen Low and Srruthi Ilankathir (Drew & Napier LLC) for the appellant in Civil Appeals Nos 191 and 192 of 2017;
Toby Landau QC and Colin Liew (Essex Court Chambers Duxton (Singapore Group Practice), instructed), Tan Xeauwei and Mak Sushan, Melissa (Allen & Gledhill LLP) for the first respondent in Civil Appeal No 191 of 2017;
Kwek Mean Luck SC, Khoo Boo Jin, Ng Shi Zheng Louis and Sivakumar s/o Ramasamy (Attorney-General's Chambers) for the second respondent in Civil Appeal No 191 of 2017 and the respondent in Civil Appeal No 192 of 2017.