The Attorney-General *v* The Aljunied-Hougang-Punggol East Town Council [2015] SGHC 137

Case Number	: Originating Summons No 250 of 2015 (Summons No 1299 of 2015)
Decision Date	: 27 May 2015
Tribunal/Court	: High Court
Coram	: Quentin Loh J
Counsel Name(s)	: Aurill Kam, Nathaniel Khng and Germaine Boey (Attorney-General's Chambers) for the plaintiff; Low Peter Cuthbert and Tan Li-Chern Terence (M/s Peter Low LLC) for the defendant.
Parties	: THE ATTORNEY-GENERAL — THE ALJUNIED-HOUGANG-PUNGGOL EAST TOWN COUNCIL

Statutory Interpretation – Construction of statute

Trusts – Quistclose trusts

Equity – Remedies – Appointment of receiver

Administrative Law – Remedies – Declaration

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 114 of 2015, Summons No 258 of 2015, Summons No 268 of 2015 and Summons No 269 of 2015 was allowed in part by the Court of Appeal on 27 November 2015. See [2015] SGCA 60.]

27 May 2015 Judgment reserved.

Quentin Loh J:

Introduction

1 The Attorney-General, on behalf of the Government, acting through the Ministry of National Development ("MND") filed Originating Summons No 250 of 2015 ("OS 250") on 20 March 2015. The Defendant is the Aljunied-Hougang-Punggol East Town Council ("AHPETC"), a body corporate under the Town Councils Act (Cap 329A, 2000 Rev Ed) ("TCA").

2 The MND seeks the following:

> 1. A declaration that the Government through the Ministry of National Development ("MND") has a legal or alternatively, equitable interest in the grants-in-aid disbursed or to be disbursed by MND ("the Grants") to the Defendant (and its predecessor, Aljunied-Hougang Town Council ("AHTC")) under section 42 of the [TCA];
>
> 2. A declaration that the Government through the MND has an interest:
>
> a. In ensuring that the Defendant does all things necessary:
>
> i. to administer and apply moneys held by the Defendant (and previously by AHTC) under

the [TCA] ("Town Council Moneys") (including but not limited to the Grants and service and conservancy charges) in accordance with law and the [TCA]; and

ii. so that all payments of Town Council Moneys are correctly made and properly authorised, adequate control is maintained over Town Council Moneys and over expenditure incurred by the Defendant and all payments of Town Council Moneys are lawfully made; and

b. In ensuring that:

i. if the Defendant (or AHTC) has made any payment of Town Council Moneys that is not correctly made, not properly authorised or not lawfully made, the Defendant takes all necessary steps to recover such Town Council Moneys; and

ii. if there has been any breach of duty or unlawful conduct by any person acting for the Defendant (or AHTC) or its agents, the Defendant takes appropriate action in respect of such breach(es) or conduct;

3. Independent accountant(s) of the Defendant be appointed for such period as may be ordered herein and/or pending the fulfilment of the conditions in Annex A hereto ("the Independent Accountant(s)") on terms *inter alia* that the Independent Accountant(s):

a. Shall co-authorise and co-sign all payments of the Defendant in excess of S$20,000 from segregated bank accounts (for sinking funds and operating funds respectively) to be established by the Defendant ("the Special Accounts") into which Grants payable for financial years 2014/15 and 2015/16 will be paid by MND to the Defendant;

b. May do all things necessary to ensure that proposed payments out of the Special Accounts are correctly made, properly authorised and lawfully made, and adequate control is maintained over Town Council Moneys and over the expenditure incurred by the Defendant, including but not limited to requiring the Defendant to produce satisfactory assurance and supporting evidence in respect of such payments;

c. May:

i. do all things necessary to identify whether payments of Town Council Moneys by the Defendant (or AHTC) have been correctly made, properly authorised and lawfully made (including but not limited to taking accounts and directing inquiries of payments made to any persons related to the Defendant (or AHTC)) and/or whether there has been any breach of duty or unlawful conduct by any person acting for the Defendant (or AHTC) or its agents; and

ii. with leave of Court, demand, collect, get in, receive (and if necessary commence legal proceedings for the recovery of) all Town Council Moneys incorrectly, improperly or unlawfully paid out and/or take appropriate action in respect of breach(es) of duties or unlawful conduct by person(s) acting for the Defendant (or AHTC) or its agents;

d. May disclose to MND (or such other persons as may be directed by the Court) information obtained by the Independent Accountant(s) in the course of their work;

e. May at any time seek such further directions or orders from this Honourable Court as the

Independent Accountant(s) consider appropriate or necessary;

f. May at any time appoint such other person(s) as the Independent Accountant(s) deem appropriate or necessary to assist in or facilitate the doing of such acts and things necessary for the purposes described in (a)–(e) above;

g. Whether, by themselves, their agents or servants or otherwise, be at liberty and be permitted to do all such acts and things necessary for the purposes described in (a)–(e) above; and

h. Shall have such other powers as ordered by this Honourable Court;

4. Such appropriate order as to the costs of and occasioned by this Originating Summons as this Honourable Court deems fit;

5. Such appropriate orders as to the costs and expenses of the Independent Accountant(s), including costs and expenses of any person appointed by the Independent Accountant(s), as this Honourable Court deems fit;

6. Liberty to apply; and

7. Such further or other orders as this Honourable Court deems fit.

3 The MND also filed Summons No 1299 of 2015 ("SUM 1299") on 20 March 2015 asking for the following orders:

1. Until after this Honourable Court has heard and determined the Originating Summons herein (including the hearing and determination of appeals thereto, if any), Mr Ong Chao Choon and Mr Chan Kheng Tek, both partners at PricewaterhouseCoopers Singapore, or in the alternative, such other person(s) as this Honourable Court deems fit and proper, be appointed as interim independent accountants of the Defendant ("the Interim Independent Accountant(s)") on terms inter alia that the Interim Independent Accountant(s):

a. Shall co-authorise and co-sign all payments of the Defendant in excess of S$20,000 from segregated bank accounts (for sinking funds and operating funds respectively) to be established by the Defendant ("the Special Accounts") into which grants-in-aid payable to the Defendant under section 42 of the [TCA] for financial years 2014/15 and 2015/16 will be paid by the Ministry of National Development ("MND");

b. May do all things necessary to ensure that proposed payments out of the Special Accounts are correctly made, properly authorised and lawfully made, and adequate control is maintained over moneys held by the Defendant (or its predecessor, Aljunied-Hougang Town Council ("AHTC")) under the [TCA] ("Town Council Moneys") and over the expenditure incurred by the Defendant, including but not limited to requiring the Defendant to produce satisfactory assurance and supporting evidence in respect of such payments;

c. May:

i. do all things necessary to identify whether (aa) payments of Town Council Moneys by the Defendant (or) have been correctly made, properly authorised and lawfully made (including but not limited to taking accounts and directing inquiries of payments made to

any person related to the Defendant (or AHTC); and/or (bb) whether there has been any breach of duty or unlawful conduct by any person acting for the Defendant (or AHTC) or its agents; and

ii. with leave of Court (aa) demand, collect, get in, receive (and if necessary commence legal proceedings for the recovery of) all Town Council Moneys incorrectly, improperly or unlawfully paid out; and/or (bb) take appropriate action in respect of breach(es) of duties or unlawful conduct by person(s) acting for the Defendant (or AHTC) or its agents;

d. May disclose to MND (or such other persons as may be directed by the Court) information obtained by the Interim Independent Accountant(s) in the course of their work;

e. May at any time seek such further directions or orders from this Honourable Court as the Interim Independent Accountant(s) consider appropriate or necessary;

f. May at any time appoint such other person(s) as the Interim Independent Accountant(s) deem appropriate or necessary to assist in or facilitate the doing of such acts and things necessary for the purposes described in (a)–(e) above;

g. Whether, by themselves, their agents or servants or otherwise, be at liberty and be permitted to do all such acts and things necessary for the purposes described in (a)–(e) above; and

h. Shall have such other powers as ordered by this Honourable Court;

2. Until after this Honourable Court has heard and determined the Originating Summons herein (including the hearing and determination of appeals thereto, if any), no payment in excess of S$20,000 from the Special Accounts shall be made by the Defendant to any person unless such payment is co-authorised and co-signed by at least one of the Interim Independent Accountants;

3. Such appropriate order as to the costs of and occasioned by this Summons as this Honourable Court deems fit;

4. Such appropriate orders as to the costs and expenses of the Interim Independent Accountant(s), including costs and expenses of any person appointed by the Interim Independent Accountant(s), as this Honourable Court deems fit;

5. Liberty to apply; and

6. Such further or other orders as this Honourable Court deems fit.

4 The parties have agreed to address me on both OS 250 and SUM 1299 and have further agreed that I decide both the OS and Summons at the same time as, except for the declarations, the same prayers are sought in both applications.

5 At the beginning of the hearing, counsel for AHPETC, Mr Peter Low ("Mr Low") applied for leave to file a supplementary affidavit by Ms Sylvia Lim ("Ms Lim"), the Chairman of AHPETC. Counsel for the MND, Ms Aurill Kam ("Ms Kam") had no objections to the application, but sought the right to respond to Ms Lim's supplementary affidavit. I granted leave to both parties to file their respective affidavits.

6 Further, Ms Kam sought leave towards the end of the first day of the hearing to amend OS 250

to include prayer 2A. Prayer 2A reads as follows:

> 2A. A declaration that the Defendant has failed to make timely transfers (in respect of the first and second quarters) or any transfer (in respect of the third and fourth quarters) to the bank account of the Defendant's sinking funds for FY 2014/15 as required by the Town Councils Financial Rules (Cap 329A, R 1, 1998 Rev Ed), Rule 4(2B)(*a*).

Mr Low had no objections to the application and I allowed the amendment accordingly.

The Facts

7 The relevant facts underlying this application are largely not in dispute. Following Singapore's General Elections on 7 May 2011, the Hougang Town Council and Aljunied Town Council merged to form the Aljunied-Hougang Town Council ("AHTC") on 27 May 2011. After the by-election for Punggol East Single Member Constituency, AHTC was reconstituted as AHPETC with effect from 22 February 2013.

8 Under the TCA, the financial year ("FY") runs from 1 April to 31 March and Town Councils are required to submit audited financial statements and auditor's observations report ("Audited Financial Statements and Reports") (if any) for each FY to the Minister for National Development ("the Minister") by 31 August and for the Minister to present the same to Parliament.

9 AHPETC (initially as AHTC) submitted its first Audited Financial Statements and Reports for FY 2011/2012 ("FY 11/12") to the Minister on 11 January 2013. They were late by four months and 11 days. More importantly, the FY 11/12 financial statements were disclaimed by their then auditors, M/s Foo Kon Tan Grant Thornton LLP ("FKT"). FKT issued a Disclaimer of Opinion in respect of AHPETC's (then AHTC) financial statements for FY 11/12, listing four areas as the bases for their disclaimers. [note: 1] These bases included the fact that $32,079,316 of AHPETC's (then AHTC) operating expenditure had been allocated between residential property, commercial property and car park without first identifying the expenditure relating to the rightful property type and the fact that FKT was unable to ascertain the accuracy of the cash and bank balances of AHPETC's (then AHTC) bank accounts as a sum of $67,589 remained irreconcilable.

10 AHPETC's Audited Financial Statements and Reports for its FY 2012/2013 ("FY 12/13"), which should have been submitted by 31 August 2013 to the Minister, were again late. This time it was submitted on 10 February 2014, five months ten days late. Rather alarmingly, FKT not only issued a Disclaimer of Opinion on AHPETC's financial statements for FY 12/13, but this time it did so on 13 grounds. [note: 2]

11 Three of these grounds were the same as those issued for the FY 11/12 financial statements. The remaining ten grounds included:

> (a) FKT's inability to obtain necessary documents to ascertain the collectability of the service and conservancy receivables;
>
> (b) FKT's inability to determine the accuracy of the lift upgrading expenses of $18,162,857;
>
> (c) FKT's inability to determine the validity and accuracy of advance receipt from residents in respect of service and conservancy charges ("S&CC") amounting to $507,809;
>
> (d) AHPETC's failure to comply with r 4(2B)(*a*) of the Town Council Financial Rules (Cap 329A,

R 1, 1998 Rev Ed) ("TCFR") which was in relation to the transfer of funds into the sinking fund; and

(e) FKT's inability to obtain details of the project management service fees AHPETC paid to a related party.

FKT eventually concluded that AHPETC "[had] not complied with the provisions of the [TCA] and the [TCFR]."

12 According to the Minister, the observations in the above two reports by FKT "raised[d] serious questions about the reliability and accuracy of AHPETC's financial and accounting systems." [note: 3] Hence, the Auditor-General ("AGO") was appointed on 19 February 2014 by the Deputy Prime Minister and the Minister for Finance to conduct an audit on AHPETC's FY 12/13 financial accounts, records and books ("the AGO Audit").

13 Pending completion of the AGO Audit, the MND withheld the grants-in-aid to AHPETC for FY 2014/2015 ("FY 14/15") because of its concerns surrounding the adequacy of AHPETC's financial and accounting systems and as to whether moneys held by AHPETC ("Town Council Moneys") were properly applied. [note: 4]

14 In response, AHPETC wrote to the MND on 16 June 2014 stating that the withholding of the grants-in-aid to AHPETC is "likely to critically and adversely affect the [Town Council's] cash flow position, resulting in a disruption of essential services to the town because the [Town Council] would not be able to pay its contractors". [note: 5] AHPETC also informed the MND in a another letter dated 30 July 2015 that it would not be able to make its first quarter sinking fund transfer due to the grants-in-aid being withheld and as it needed to pay for essential services for the town. [note: 6]

15 After further exchange of correspondence and receiving certain information from AHPETC, the MND offered in a letter dated 7 October 2014 to disburse half of the grants-in-aid to AHPETC, subject to the following conditions:

(a) That AHPETC explains the decrease in its cash and cash equivalent over a period of 16 months;

(b) That AHPETC's Chairman confirms and declares that the statements on AHPETC's financial accounts which were provided earlier were true;

(c) That AHPETC's Chairman gives an assurance of measures in place to account explicitly for the use of the FY 14/15 S&CC Grant if disbursed; and

(d) That AHPETC's Chairman ensures that AHPETC would make all necessary transfers to its sinking fund bank accounts for the entire FY.

16 However, AHPETC did not accept the MND's offer for half the grants-in-aid. It stated in an email dated 12 November 2014 that it would reply substantively "should [it] wish to take the option of the half-grant while awaiting the conclusion of the [AGO Audit]". [note: 7] AHPETC never took the MND up on its offer. At present, the grants-in-aid for FY 14/15 have not been disbursed, but it should be noted that the grants-in-aid for FY 2013/2014 ("FY 13/14") amounting to $6,021,285.05 were paid on or around 14 May 2013.

17 On 9 February 2015, the AGO released its report on the AGO Audit ("the AGO Report"). In the overview of the AGO's Observations, the AGO stated that it had found several lapses in governance and compliance with the TCA and the TCFR. The major lapses include the following:

(a) Failure to transfer monies into the sinking fund bank accounts as required by the TCFR;

(b) Inadequate oversight of related party transactions involving ownership interests of key officers, hence risking the integrity of such payments;

(c) Not having a system to monitor arrears of S&CC accurately and hence there is no assurance that arrears are properly managed;

(d) Poor internal controls, hence risking the loss of valuables, unnecessary expenditure and wrong payments for goods and services; and

(e) Not having a proper system to safeguard documents and keep proper accounts and records as required by the TCA.

It is important to note the key conclusion and view of the AGO:

Unless the weaknesses are addressed, there can be no assurance that AHPETC's financial statements are accurate and reliable and that public funds are properly spent, accounted for and managed.

18 The serious lapses identified by the AGO merit setting out in some detail. If similar lapses occurred in the context of a public limited company or a Management Corporation Strata Title Committee ("MCST Committee"), there would have been severe consequences to the office holders. In relation to the lapses in the management of the sinking funds, r 4(2B)(*a*) of the TCFR mandated AHPETC to make the requisite payments into the sinking fund within one month from the end of each quarter of the financial year. AHPETC had failed to make the requisite transfers to sinking fund bank accounts for the last three quarters of FY 11/12 as required by r 4(2B)(*a*) of the TCFR. AHPETC did make some transfers for FY 12/13 but these were late and short of the required amounts. Most of the transfers were made only after the auditor's queried AHPETC on it. Additionally, there were other instances of non-compliance with the TCA involving the wrong use of monies in sinking fund bank accounts.

19 The setting aside of sinking funds of Town Councils, or MCST Committees for that matter, is a well-recognised, mandatory and prudent measure that must be complied with. Sinking funds represent sums in the nature of savings, set aside periodically to cater for major cyclical expenses of a long-term nature and which usually involves relatively large sums of money. Thus, blocks of flats have to be painted every five years or so; roofing systems, water tanks, pumps and water supply systems, electrical supply systems, lightning protection and lifts require periodic renewal or replacement. If money is not set aside regularly each FY, when the time comes to, *eg*, replace lifts, the funds collected during that financial year will be insufficient to pay for the same. The setting aside of funds for such periodic medium- to longer-term expenditure are covered under s 33(6) of the TCA. In addition, s 33(6) also caters for payments from the sinking fund for expenditure incurred in lift upgrading works, major repairs and maintenance of the common property, boundary walls of the Housing and Development Board ("HDB") and upgrading works. It is, amongst other things, the height of financial irresponsibility to ignore such obligations. They are not mere technicalities.

20 In relation to receivables from various stakeholders such as Sundry Debtors, the AGO found

that there was poor monitoring and lack of due diligence by AHPETC in following up on amounts due (*ie*, receivables) and monies received (*ie*, receipts) from external parties, to ensure that payments due were collected on a timely basis and that receipts were accurately captured in the accounting records. For example, the AGO found that as at 1 July 2014, $376,316 owed by various Sundry Debtors remained outstanding, and have been outstanding for 17.5 to 37.6 months. If these sundry debtors included owners of flats within AHPETC, then monies that are collected from those flat owners who dutifully pay their dues are used to fund those defaulting flat owners who have not paid their S&CC contributions.

21 More severely, AHPETC did not fully disclose its related party transactions in its financial statements. PricewaterhouseCoopers Consulting Pte Ltd ("PwC") (who was appointed by the AGO to carry out a review of selected areas of AHPETC's accounts) found that there was inadequate management of the conflicts of interests of related parties arising from ownership interests of its key officers. For example, FM Solutions and Integrated Services ("FMSI") and FM Solutions and Services Pte Ltd ("FMSS") were engaged by AHPETC to carry out managing agent services and essential maintenance and lift rescue services. The Secretary of AHPETC was the owner of FMSI, a sole proprietorship. The Secretary, General Manager and both Deputy General Managers of AHPETC were directors and shareholders of FMSS. AHPETC's General Manager and Secretary are spouses. To compound matters, some invoices issued by FMSS and FMSI were verified by AHPETC's General Manager and Deputy General Manager (both of whom are shareholder-directors of FMSS). The General Manager also approved the payment vouchers and/or cheques before they were handed over to the payment signatories for signing, one of whom is the Secretary of AHPETC (who is the owner of FMSI). According to the AGO Report, the total value of the related party transactions entered into between AHPETC and FMSS and FMSI is in excess of $25.9 million. There were also control gaps in processing 84 related-party transactions amounting to some $6.61 million. After the release of the AGO Report, AHPETC conducted a check on the amounts actually billed by FMSS for essential maintenance and lift rescue services for the period between October 2011 to June 2012 and discovered that it had computed the rates for FMSS's services incorrectly, thereby leading to AHPETC overpaying FMSS $122,411.98. This amount has since been credited back to AHPETC. This overpayment might have gone unnoticed if not for the AGO Report.

22 On 12 February 2015, Parliament convened to debate on the AGO Report and its findings. After two days of debate, AHPETC Members of Parliament unanimously supported the motion in Parliament that noted with concern, *inter alia*, the various deficiencies in AHPETC's financial and accounting systems, record-keeping and safeguards, the uncertain accuracy and reliability of AHPETC's accounts and the risk that AHPETC has not properly managed and spent public funds. During the Parliamentary Debate, there were also calls by various members of the House for AHPETC to be transparent about its affairs.

23 On 20 March 2015, the MND filed OS 250 and SUM 1299.

24 In addition to the above background, the parties also agree on the following facts and positions:

(a) AHPETC has been submitting disclaimed Audited Financial Statements and Reports since inception;

(b) There have been breaches by AHPETC of the TCA and the TCFR insofar as they are stated in the AGO Report; [note: 8]

(c) The accountants appointed by AHPETC to address the weaknesses identified in the AGO

Report, Business Assurance LLP, have yet to give any advice on how to improve the processes of AHPETC. AHPETC has simply stated it is still a "work in progress"; [note: 9]

(d) AHPETC has a duty to make sure that its payments are properly made and duly authorised. If a payment is not properly made or duly authorised (*eg*, there was overpayment for works), AHPETC has a duty to recover those sums; [note: 10] and

(e) The sinking fund transfers for the third and fourth quarter of FY 14/15 have not been made.

My Decision

25 The facts set out above are not really in contention. The related documents, like the AGO report and the Disclaimed Accounts by FKT, are also a matter of public record having been placed before and debated in Parliament over two days on 12 and 13 February 2015. Insofar as they are not agreed, the foregoing forms my findings of fact on the evidence before me as are the further facts that I refer to hereafter. There can be little doubt that AHPETC has breached several of its duties under the TCA and the TCFR, and continue to be in breach of some of them. I asked Mr Low over two days of oral submissions how far along the road AHPETC is to resolving the qualifications made by FKT and the only answer AHPETC could give was that "it's work in progress." Mr Low did, however, assure me that the 30 June 2015 deadline would be kept. I also asked whether AHPETC's consultant has advised them over their processes, as this was one of the major weaknesses pointed out by the AGO. Mr Terence Tan, second counsel for AHPETC said on the second day of oral submissions, "not as yet".

26 Given these facts, I now turn to the orders and declarations sought by the MND against AHPETC.

Prayer 3(a) and the first part of prayer 3(b)

27 Prayer 3(a) seeks to appoint independent accountants ("IAs") to co-authorise and co-sign all payments of AHPETC in excess of $20,000 from segregated bank accounts (for sinking funds and operating funds respectively) ("the Special Accounts") into which the grants-in-aid for FY 14/15 and FY 2015/2016 ("FY 15/16") will be paid by the MND to AHPETC. Prayer 3(b) can be divided into two parts. The first part relates to the IAs' power to do all things necessary to ensure proposed payments out of the Special Accounts are correctly made and properly authorized. The second part relates to the IAs' power to do all things necessary to ensure that adequate control is maintained over Town Council Moneys and the expenditure incurred by AHPETC. It therefore becomes clear that prayer 3(b) refers to two separate categories of AHPETC's moneys (though there is some degree of overlap). The first is the moneys in the Special Accounts (which comprises the grants-in-aid for FY 14/15 and FY 15/16), and the second is the Town Council Moneys (which comprises all moneys held by AHPETC including but not limited to the grants-in-aid and S&CC). In this portion of my decision, I deal only with prayer 3(a) and the first part of prayer 3(b), as those are the prayers which relate to the grants-in-aid that are to be disbursed by the MND.

28 Mr Low argues that s 42 of the TCA allows the Minister to impose such conditions as he determines on the grants-in-aid the MND makes to the Town Council. Section 42 of the TCA reads as follows:

Grants

42. For the purposes of enabling a Town Council to carry out its functions under this Act or any

other Act, the Minister may from time to time make grants-in-aid to the Town Council of such sums of money and subject to such conditions as the Minister may determine out of moneys to be provided by Parliament.

29 Mr Low accepts that the Minister may impose the very orders that are sought in prayer 3(a) as conditions, *ie*, that the grants-in-aid for FY 14/15 and FY 15/16 are to be paid into the Special Accounts, and payments in excess of $20,000 from the Special Accounts will have to be co-authorised and co-signed by IAs. In fact, Mr Low goes further to argue that the court should not grant prayer 3(a) because the Minister can simply impose the relevant conditions and an application to court for such an order is unnecessary. [note: 11]

30 I am in agreement with Mr Low that the orders sought in prayer 3(a) and the first part of prayer 3(b) are matters that are left to the Minister under s 42 of the TCA. That provision unambiguously provides the Minister with the power to subject the grants-in-aid to such conditions as he may determine. Should the Minister decide to impose conditions, it then falls on AHPETC to decide whether they would accept the conditions in order to receive the grants-in-aid. If they feel the conditions are unreasonable in the *Wednesbury* sense, then judicial review proceedings are always an option open to them.

31 Ms Kam argues that it was necessary to make this application to court because the MND imposed conditions for the release of half of the grants-in-aid in October 2014, but this was not accepted by AHPETC. [note: 12] As noted above at [16], AHPETC stated it would "reply substantively" should it decide to "take the option of the half-grant". Ms Kam asks the court to issue the order as otherwise it is only a matter of time before this matter came back to the court. There is some truth in this because, on the first day of oral arguments before me, Mr Low, in consultation with his client, indicated that the ceiling of $20,000 was much too low and it should be set at $100,000.

32 There was also some disagreement over the identity of the IAs and who should select the IAs. These two questions are related. Mr Low alleges that the two IAs proposed by the MND are inappropriate as they are from PwC, and PwC was engaged by the AGO to review selected areas of AHPETC's accounts during the AGO's Audit in 2014. He argues that the proposed IAs will come with "preconceived notions" that AHPETC has done wrong, and in any event, will have an appearance of bias. [note: 13] He suggests that the IAs should be appointed by a neutral third party, such as a retired judge or a senior counsel.

33 I must say that I fail to appreciate Mr Low's or AHPETC's objections to the proposed IAs. First, it is not at all clear that the proposed IAs are the very same accountants who had worked on the AGO Report. Secondly, even if they were, the proposed IAs are professionals who were exercising their professional judgment in the discharge of their duties. No allegations have been raised by AHPETC thus far as to the impartiality, expertise, or professionalism of the PwC accountants who worked on matters that were also set out in the AGO's Report. In fact, AHPETC even fully accepted the AGO's Report in Parliament, stating that the "AGO's work is thorough [and] fair". Since AHPETC accepts the professionalism and integrity of the AGO and its Report, it must accept the PwC Report and the work done by its accountants. At no point did AHPETC draw a distinction in terms of their overall satisfaction with the AGO Report between the portions done by the AGO and the portions done by PwC. It is unfair to the proposed IAs to say that they would come with preconceived notions, and it would be improper to allege that their appointment will lead to an appearance of bias as there is no basis for any such allegation.

34 In my view, if the Minister determines the identity of the IAs as part of the condition he

imposes under s 42 of the TCA and AHPETC has objections to the identity of the IAs, AHPETC can take it up with the Minister. If the Minister stands firm, it remains a condition the Minister has imposed under s 42 of the TCA. If AHPETC is of the view that the Minister is acting *ultra vires* by selecting the proposed IAs, or that there is otherwise something it wants to challenge, there is nothing preventing AHPETC from coming to court to challenge the Minister's conditions. Of course, whether they will succeed or not depends on the facts and issues raised in those proceedings.

35 I have stated my view that whether any and, if so, what conditions are imposed is a matter for the Minister to decide under s 42 of the TCA. That should ordinarily be the end of the matter and the court should not be involved in imposing such conditions. No order is required from the court. A possible challenge by way of judicial review after the conditions are made known is theoretically possible provided there are grounds for doing so.

36 However, as stated above, I have seen AHPETC's letter dated 29 April 2015 and Ms Kam has also shown me the MND's response dated 2 May 2015, (also handed up to me in the course of oral argument). I can see that Ms Kam is probably right in that any conditions imposed by the Minister will be unacceptable to AHPETC and this will result in further court proceedings. The letters referred to, however, show some effort by both parties to compromise. On the second day of oral argument, Mr Low also said his client agreed to the lower $20,000 ceiling as reasonable.

37 To assist the parties, and I must emphasise it is no more than that, and in an effort to obviate further court proceedings, I will say a few words regarding the conditions as reflected in prayers 3(a) and the first part of prayer 3(b). In my view, the imposition of these conditions are reasonable in the light of the findings of the AGO Report, which was also accepted without reservation by AHPETC. As indicated above, AHPETC's management of its funds and finances have been far from satisfactory, and the problems continue to remain unrectified. Controls and measures must be put in place to ensure that the grants-in-aid for FY 14/15 and FY 15/16 are adequately managed and payments out of those grants are correctly made and properly authorised in accordance with the law and the TCA. The Government, through the MND, have a responsibility to make payments of public money in accordance with the law and s 42 of the TCA reflects this responsibility.

38 In their letter of 2 May 2015, the MND has offered to try and reach consensus on these conditions and suggested a consent order be entered accordingly with appropriate amendments to the OS and Summons to reflect the agreement. I can only urge parties to do so as I see the remaining differences as minor and/or technical and can be overcome. A consent order will also assist the parties to lower the likelihood of subsequent disputes. I accordingly make no order on prayers 3(a) and the first part of prayer 3(b). The parties have liberty to apply in the event they have reached an agreement and wish to record a consent order.

The second part of prayer 3(b) and prayers 3(c)–(h)

39 I now turn to deal with the most heavily contested issue in these proceedings—the appointment of IAs to ensure that adequate control is maintained over Town Council Moneys and to do all things that are necessary to identify whether past payments of AHPETC have been correctly made, properly authorised and lawfully made. The latter includes taking accounts, directing inquiries of payments made to any persons related to AHPETC (or AHTC) and/or whether there has been any breach of duty or unlawful conduct by any person acting for AHPETC (or AHTC) or its agents and, where necessary, recovering such payments incorrectly, improperly or unlawfully paid out and taking appropriate action in respect of breaches of duties or unlawful conduct by persons acting for AHPETC (of AHTC) or its agents. There are also prayers asking that the IAs may disclose to the MND (or such other persons as directed by the court) information obtained by the IAs in the course of their work.

There is also a prayer that these IAs may make applications to court from time to time to seek further directions and that they may appoint such other persons as they deem appropriate to assist them in their work. These have been fully set out at [1] above as are the further ancillary prayers in prayer 3.

40 The legal bases on which the MND relies on to seek those prayers are:

(a) a statutory mandate pursuant to the TCA;

(b) a beneficial interest under a *Quistclose* trust;

(c) a legal interest pursuant to a contractual mandate; and

(d) alternatively, a statutory right under s 21(2) of the TCA.

41 I propose to deal with basis (d), followed by bases (a), (b) and (c), before addressing whether it is possible to appoint IAs in the abstract. However, before I proceed to do so, it will be helpful to examine the nature of a Town Council.

The nature of a Town Council

42 Town Councils were born out of a pilot Town Council project that was first started in Ang Mo Kio New Town some 20 months before the second reading of the Town Councils Bill on 28 June 1988 (*Singapore Parliamentary Debates, Official Report* (28 June 1988) vol 51 ("Second Reading of the Town Councils Bill") at cols 373–374 (S Dhanabalan, Minister for National Development)). The Government wanted to see how residents could participate in the management of public housing estates, which was then being carried out by the HDB across Singapore. The HDB was, *inter alia*, looking after the management and upkeep of public housing estates which housed some 80% of the population of Singapore. The HDB had to provide the same amenities and have the same rules and regulations in all estates. There was no room for variation to suit individual housing estates and neighbourhoods. The idea of a Town Council was to allow residents to have a say and decide for themselves what kind of living environment they wanted and each Town could develop its own distinctive character according to local conditions and the desires of its residents. The pilot project showed that self-management was a workable concept for public housing estates and the residents in the project participated with enthusiasm. The Government accordingly decided to extend the Town Council to all constituencies with HDB estates.

43 During the Second Reading of the Town Councils Bill, the then Minister for National Development, Mr S Dhanabalan ("Mr Dhanabalan") briefed Members of Parliament ("MPs") on the salient features of Town Councils, their constitution, their functions and the financial provisions therefor. I highlight some of the matters mentioned by Mr Dhanabalan:

(a) The Town Councils were to control, manage, maintain and improve the common areas of the residential and commercial property in the housing estates of the HDB within the Town;

(b) The Government may make grants-in-aid to Town Councils;

(c) Town Councils were required to set up and maintain sinking funds to enable the carrying out of cyclical repair works; contributions to the funds must not be lower than the prescribed rates;

(d) For estate management, the Government will provide the Town Councils with the same

financing as that provided to the HDB and worked out based on the HDB's current rate of service and conservancy expenditure; households in the Town Council will be subsidised at levels no less than that of households in estates which come directly under the HDB's management; the quantum will vary according to flat types and with the age of the flats;

(e) Town Councils will be given certain powers to levy and recover unpaid S&CC;

(f) It was up to the residents of the Town Council to determine for themselves how they wanted to shape the environment of their Town, what kind of additional facilities they wanted to put in and how well they wanted to maintain their surroundings; and

(g) The framework in the Bill incorporates the necessary powers and latitudes for the effective functioning of Town Councils with sufficient built-in safeguards to protect the interest of the residents.

Mr Dhanabalan also stated that there were very important reasons for the setting up of Town Councils. It had to do with Singapore's survival under the system of representative government and that it was crucial to understand the philosophy and arguments for this approach.

44 The then First Deputy Prime Minister and Minister for Defence Mr Goh Chok Tong stated that the Town Councils Bill was meant to contribute to the attainment of two philosophical objectives, the first being the increased participation of Singaporeans in building an even better Singapore, and the second being the need to provide stabilisers to our democratic political system (at cols 379–381).

45 To achieve these twin objectives, the Bill sought, first, to transfer some power from the HDB to the MPs and grassroots leaders by giving the latter, and the residents, greater power and responsibility to manage their own affairs and to participate in their estate's development. Hence, the Town Councils Bill intended for Town Councils and their MPs to take over certain powers, duties and responsibilities in relation to the public housing estates within the Town from the HDB. As Mr Goh Chok Tong pointed out, all public housing estates at that time were centrally managed by the HDB and this was viewed as undesirable. The Town Council scheme was created in order to achieve greater flexibility and efficiency in decision-making, and to confer upon the residents a sense of ownership and the right to make choices.

46 Secondly, it was perceived at that time that MPs had no direct responsibility for and accountability to their constituencies. The Bill sought to increase the authority and responsibility of MPs, thereby encouraging voters to vote more carefully and sincerely to choose honest and effective MPs. Town Councils were thus to be allowed to run with a much lesser degree of supervisory control from the Government. Mr Dhanabalan stated:

… The intention [of the Town Councils Bill] is to give the Town Councils as much latitude as possible for them to manage their areas. Broad principles, of course, will have to be laid down, as the Bill itself now stipulates, in terms of how they manage their finances, publication of accounts and so on. But the Town Councils will be given a lot of latitude to employ the kind of people who are necessary, to pay them the kind of fees that are necessary to get the work done. …

…

The whole idea of this exercise is for people to be careful in the choice of their MPs as well as in the choice of the Councillors, in the sense that if the MP is good, he could choose good, honest, competent Councillors to help him. It is important that people realize that they have to live with

the consequences of their choice. …

47 With the passing of the TCA, Town Councils came into being. They were, by statute, bodies corporate with perpetual succession and may sue or be sued in the corporate name of that Town Council. The relevant MP or MPs for that constituency or constituencies would head the Town Councils and they could appoint members to that Town Council. Under s 18 of the TCA, the function of Town Councils are to control, manage, maintain and improve the common property of the residential and commercial property in the housing estates of the HDB within the Town and to keep them in a state of good and serviceable repair and in a proper and clean condition. They were to exercise such powers and perform such duties as may from time to time be conferred on a Town Council by or under written law. Their functions include the conservancy and landscaping of the common property of the residential and commercial property in the housing estates of the HDB within the Town. They are also subject to the TCFR, which was made pursuant to s 57 of the TCA.

The various legal bases argued

48 I will now turn to the legal bases that the MND relied on.

Basis (d): Statutory right under s 21(2) of the Act

49 Having dealt with the rationale and purpose behind Town Councils, and having referred to some of the provisions of the TCA, I now turn to deal with the MND's claim to a right to seek the orders and declarations prayed for under s 21(2) of the TCA.

50 Ms Kam argues that the MND has a statutory right under s 21(2) read with s 21(1)(*f*) of the TCA to seek an appropriate order from the High Court to compel AHPETC to comply with s 35(*c*) of the TCA. Section 21(1)(*f*) imposes a duty on AHPETC to "comply with the provisions of [the TCA] and the rules made thereunder", and this includes s 35(*c*), which requires AHPETC to "do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorised" and "adequate control is maintained over" its "assets" and "expenditure incurred". Ms Kam argues that the MND is a "person for whose benefit" AHPETC's duty to comply with, *inter alia*, s 35(*c*), is imposed.

51 It would be apposite to set out ss 21 and 35(*c*) of the TCA:

> **Duties of Town Council**
>
> **21.**—(1) A Town Council shall, for the purposes of the residential and commercial property in the housing estates of the [HDB] within the Town —
>
> (*a*) control, manage and administer the common property of the residential and commercial property for the benefit of the residents of those estates;
>
> (*b*) properly maintain and keep in a state of good and serviceable repair the common property of the residential and commercial property;
>
> (*c*) contribute such sum towards the premiums to be paid by the [HDB] for the insurance of the common property of the residential and commercial property against damage by fire as the Minister may, by notice in writing to the Town Council, determine;
>
> (*d*) where necessary, renew or replace any fixtures or fittings comprised in the common

property of the residential and commercial property;

(*e*) provide essential maintenance and lift rescue services to the residents of the residential and commercial property;

(*ea*) properly maintain and keep in a good and serviceable repair (including landscaping of) the facilities within the Town that is outside the common property of the residential and commercial property in the housing estates of the [HDB] within the Town, where the facilities are erected, installed or planted by the Town Council with the approval of the Minister and the consent of the owner of the property on which the facilities are erected, installed or planted;

(*f*) comply with the provisions of this Act and the rules made thereunder; and

(*g*) comply with any notice or order served on it by any competent, public or statutory authority requiring the abatement of any nuisance on the common property of the residential and commercial property or ordering repairs or other work to be done in respect of the common property.

(2) Where a requirement or duty is imposed on a Town Council by this section, the [HDB] or any person for whose benefit, or for the benefit of whose flat that requirement or duty is imposed on the Town Council, may apply to the High Court for an order compelling the Town Council to carry out the requirement or perform the duty, as the case may be.

(3) On an application being made under subsection (2), the High Court may make such order as it thinks proper.

...

Accounts

35. A Town Council shall —

...

(*c*) do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorised and that adequate control is maintained over the assets of, or in custody of, the Town Council and over the expenditure incurred by the Town Council.

52 Mr Low on the other hand contends that only the HDB or a resident voter may take advantage of s 21(2) of the TCA, and that the phrase "any person for whose benefit" does not include the MND. [note: 14] He relies on two authorities to support his contention.

53 The first is that under s 2(1) of the Interpretation Act (Cap 1, 2002 Rev Ed), both "person" and "government" have been defined separately, and by virtue of the legal maxim *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of the other), the express definition of "government" excludes it from the definition of "person". [note: 15] I have little hesitation in dismissing this argument as misconceived. If Mr Low is correct, then a "police officer" which is also separately defined under s 2(1) of the Interpretation Act cannot be a "person". In any event, s 2 of the Interpretation Act provides that the words stated therein are to have the meanings respectively assigned to them *unless there is something in the subject or context inconsistent with such*

construction. Notwithstanding s 2 of the Interpretation Act, the word "person" in s 21(2) of the TCA must still be construed in its context.

54 The second authority Mr Low relies on is the decision of the High Court in *Chee Soon Juan and others v Public Prosecutor* [2011] 3 SLR 50 ("*Chee Soon Juan*"). [note: 16] With respect, this authority does not take Mr Low very far. In *Chee Soon Juan*, the appellants were charged under r 5 of the Miscellaneous Offences (Public Order and Nuisance) (Assemblies and Processions) Rules (Cap 184, R 1, 2000 Rev Ed) ("MOR") for participating in an assembly intended to demonstrate opposition to the actions of the Government where they ought reasonably to have known that the assembly was held without a permit. One of the issues was whether the Government was a "person" within the meaning of r 2(1)(*a*) of the MOR, which required, *inter alia*, that the assembly was intended "to demonstrate support for or opposition to the views or actions of any *person*" [emphasis added]. In making certain observations about how the judge below dealt with this issue, Woo Bih Li J held that he would prefer to define "person" in r 2(1)(*a*) with "specific regard to its evidently broad scope" and came to the conclusion that "person" amounted to "any identifiable entity, whether or not a legal person *stricto sensu*", and this included the Government (at [13] and [20]). *Chee Soon Juan* stands for the principle that when defining the word "person" in a particular provision, regard must be given to the purpose and scope of that provision. This principle is axiomatic.

55 During oral argument, Ms Kam made an additional argument relying on ss 3 and 36 of the Government Proceedings Act (Cap 121, 1985 Rev Ed) ("GPA"). Mr Low responded with an "Aide Memiore 1". Section 3 of the GPA provides that the Government may make a claim against any person if such a claim would have afforded grounds for civil proceedings between private persons. Section 36 of the GPA provides that the Government's right to take advantage of the provisions of any written law, although not named therein, is not prejudiced. Section 3 of the GPA essentially sets out the right of the Government to sue as if it were a private person; *eg*, where the driver of a vehicle negligently collides into a military vehicle and s 36 makes it clear that the Government is entitled to take advantage of legislation which does not specifically name the Government. However, the onus is still on the Government to show that the legislation in question was intended to extend to it. Therefore, despite ss 3 and 36 of the GPA, the MND must still show that Parliament had intended for it to be able to take advantage of that provision, in this case, s 21(2) of the TCA.

56 Section 21(2) is preceded by s 21(1)(*a*) to (*g*) which lays down certain requirements and duties upon a Town Council. I agree with Ms Kam that under s 21(1)(*f*) the Town Council is duty bound to comply with the provisions of the TCA. These provisions include s 35(*c*), which requires AHPETC to "do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorised" and "adequate control is maintained" over its assets and expenditure incurred. It is also indisputable that AHPETC must make quarterly payments into a sinking fund no later than one month after the end of each quarter under the TCFR.

57 But if there is a breach of or non-compliance with these duties and requirements, who can complain? The TCA is not silent. Section 21(2) provides that where a requirement or duty is imposed on a Town Council "by this section", certain parties or persons may apply to court for an order compelling the Town Council to carry out the requirement or perform the duty as the case may be. The last mentioned words point to mandatory orders being made by the court.

58 Section 21(2) of the TCA first names the HDB as an entity that is entitled to seek redress from the court, and there is no qualification that the duty or requirement imposed on the Town Council must be for the HDB's benefit. There are very obvious and sound reasons for this. The HDB remains the lessor and owner of the HDB estates and buildings. Sections 53(2) and (3) of the TCA makes it clear that, except as is otherwise provided for in the TCA, the HDB shall be entitled to enforce the

performance of the terms, covenants and conditions in its leases as if the Act had not been enacted. What was transferred from the HDB to the Town Councils was the power, duty and responsibility to control, manage, maintain and improve the HDB's housing estates, which also included other facilities like car parks, markets, hawker centres *etc* within the Towns. After the transfer of such duties and obligations to the Town Councils, s 54 of the TCA provides that the HDB is no longer liable in respect of any action, claim or proceedings arising out of any repairs, maintenance, improvements or other works carried out by the Town Council or for charges paid to a Town Council by any person under the TCA to meet the costs of such repairs, maintenance, improvements or other works.

59 However it is important to emphasise, as I have said above, that the HDB remains the lessor. Moneys that would have been given to the HDB to maintain and upkeep these estates and buildings within the Town Council are now given to the Town Council to do so. The HDB's interests are directly affected if a Town Council does not make payments into a sinking fund resulting in a lack for funds for cyclical maintenance and upgrading works. If Town Councils do not properly upkeep the estates and buildings and allow decay and deterioration, it directly affects the lessor's property in the medium and longer term. It is therefore not surprising that s 21(2) names the HDB as an entity that is entitled to take action if a Town Council does not comply with its duties and obligations under s 21(1).

60 The second group specifically named in s 21(2) is "any person for whose benefit, or for the benefit of whose flat that requirement or duty is imposed on the Town Council". On a plain reading, bearing in mind the requirements and duties imposed on a Town Council under s 21(1), (which includes compliance with s 35(*c*) and the TCFR), the persons for whose benefit such requirements and duties are imposed on a Town Council are clearly the residents of those towns, whether they own a flat (which is defined to include units for the purpose of business) or not, and those persons who own a flat within the town but might live elsewhere. The inclusion of the latter group is based on the fact that these persons are liable to pay the S&CC levied on the flat within the Town Council and are correspondingly entitled to the benefits of that town under the TCA. It is thus made clear that persons who are interested only as flat owners are also entitled to avail themselves of s 21(2).

61 However, to avail themselves of a right under s 21(2) to bring an action against the Town Council, this person or group of persons must be able to show that the breach they complain of was a duty or requirement that was imposed on the Town Council for his or their benefit.

62 Ms Kam however, contends that "any person for whose benefit … that requirement or duty is imposed" is wide enough to include the MND. Ms Kam submits that under s 21(1)(*f*), the Town Council has to comply with the provisions of the TCA and the TCFR. Town Council moneys, which include the grants-in-aid and S&CC, are held by Town Councils for the purposes of the TCA and for the benefit of residents in the town under the Town Council's purview and subject to the MND's regulatory oversight. She argues that Town Councils are therefore subject to a stringent statutory regime of accountability to the MND and residents and the MND has a duty to ensure that public funds are safeguarded at all times and that residents' interests are not compromised. The MND is thus a "person" for whose benefit the requirements of s 35(*c*) of the TCA are imposed on AHPETC so as to protect Town Council moneys in the interests of residents and the MND.

63 With respect, I cannot agree. Section 21(2) clearly names one entity, the HDB, and a group, *viz*, any person for whose benefit, or for the benefit of whose flat that requirement or duty is imposed on the Town Council. On a true construction, the latter is read as one and not two independent groups. They can, in one sense, refer to two groups of persons, but what they have in common is the determining factor of staying within the town, whether they own a flat or not, or owning a flat (which as noted earlier is defined to include a strata unit for business) within the town but who may stay outside the town. If the Minister or the MND was meant to be within s 21(2), nothing would have

been easier than to draft it so and to expressly include the Minister within s 21(2). In contrast, the word "Minister" is used liberally within other provisions of the TCA (see, *eg*, ss 9, 24I, 38, 42 and 43 of the TCA).

64 If we go back to the intention of Parliament when the Town Council Bill was proposed, it is clear that the responsibility of running the Town Councils was laid squarely on the shoulders of the MPs of those constituencies and their chosen Town Councillors. Self-management, de-centralising local decision-making in respect of the HDB housing estates within a town to Town Councils, the right to choose how they want to shape their environment, what kind of additional facilities they want to put in and how well they want to maintain their surroundings, were all matters in which they were given the freedom to choose and with it came the responsibility therefor. Mr Dhanabalan said: "The Members of Parliament and their appointed councillors will be fully accountable to the residents for their actions and decisions." Mr Goh Chok Tong said this was because they were responsible for "managing the social and physical environment of their constituencies." As noted above, one of the key philosophies was that voters had to choose their MPs carefully as they would have to abide by the consequences of their choice. Mr Goh Chok Tong also said: "If they run their Town Councils efficiently, their constituencies will be safe, clean and green. If they do not, they only have themselves to blame."

65 This intention and philosophy behind the TCA was further debated on 29 June 1988. The then Member of Parliament for Bo Wen SMC asked what would happen in the event of errant town councillors and managers and whether the HDB would step in to help if there is a need to do so. Mr Dhanabalan's reply was as follows:

> The Member for Bo Wen made an important point. Who will monitor the Town Councils and whether, in the course of monitoring, the Town Councils will be closely controlled by the Government?
>
> That is not the intention. The intention is to give the Town Councils as much latitude as possible for them to manage their areas. Broad principles, of course, will have to be laid down, as the Bill itself now stipulates, in terms of how they manage their finances, publication of accounts and so on. But the Town Councils will be given a lot of latitude to employ the kind of people who are necessary, to pay them the kind of fees that are necessary to get the work done. The allowances for Chairman and for Town Councillors may be prescribed by the Minister. But if the full-time workers, for example, if the Chairman of a Town Council or a Town Councillor becomes a full-time Councillor, then I think it is up to the Town Council to work out what is necessary. We would not intervene in it. …
>
> …
>
> When the Town Councils are set up, the *whole idea* is to *rest the responsibility of the management of the funds as well as the estate with the Town Council*. If a Town is mismanaged and HDB as the lessor finds that it has to move in, *then there are provisions in the law for HDB to move in.* But there is no question of the Government coming in to bail the Town Council out, in the sense that if funds are mis-spent, or if there is mismanagement, or people have lent to Town Councils and these borrowings have been mis-spent and the lender cannot recover, that the Government will come in and make good. If the Government is going to stand here as a safety net, then that will only encourage more mismanagement.
>
> … If they elect an MP who chooses a bunch of crooks to help him and together they run through the coffers in no time and leave the constituents in the lurch, well, they have to take the

consequences. The Government is not going to come in and say, "We will take over now and make good all the losses." At the time when the HDB comes in, of course, whatever they collect from that point on will have to be used to manage the constituency, to provide the services in the constituency. And what has been mis-spent in the past, well, it is a loss. I think the responsibility and the onus must be very clear, and very clearly laid on the Chairman as well as on the Town Council as a whole. I think that is an important principle that we should not deviate from. If the Government holds out that this is an experiment, if you make a mess of it, we are going to come in and pick up the pieces, then I think we are not going to start off this whole project on the right basis. …

[emphasis added]

66 It is fairly clear from these speeches that the intent of the TCA was to allow Town Councils latitude to operate and manage their funds, operate with the necessary powers, impose the necessary duties, obligations and requirements and to put in sufficient safeguards.

67 The framing of the question by the then Member of Parliament for Bo Wen SMC and the answer quoted above is telling. To the question "Who will monitor the Town Councils and whether, in the course of monitoring, the Town Councils will be closely controlled by the Government?", the Minister said: "That is not the intention." Hence, two other principles emerge. First, there is the safeguard of the HDB moving in if it has to in the event of mismanagement. In that event, the HDB will start to collect monies to manage and provide the services in the constituency; what has been misspent in the past remains a loss, *ie*, the HDB in stepping in is not going to make good any losses suffered before it moved in. Hence if the S&CC have to be increased to make up for the loss, then the constituents have to bear that increase. Secondly, if the funds are misspent, or mismanaged or the Town Councillors turn rogue and run off with funds, there will be no bail-out by the Government. The Government will not come in and make good the losses.

68 Given these principles of granting latitude to Town Councils to run their towns with freedom subject to the requirements, obligations and duties set out in the TCA, not closely controlling them and not coming in to bail the constituents out in the event there is mismanagement or defalcation, it is unlikely that Parliament had intended for the Government or the MND to be able to take advantage of the remedy in s 21(2) of the TCA.

69 There are other safeguards within the TCA. As noted above, based on the Town Council's accountability to its constituents, s 21(2) of the TCA provides those with a direct interest the right to come to court. Where there are breaches of a by-law, the owner or tenant of a flat could apply to court for an order to enforce the performance of or restrain the breach of any by-law or recover damages for loss or injury arising out of the breach (see s 24(3) of the TCA). Where the Town Council breaches ss 33(6)(*a*) or (*b*), then ss 33(6A) and (6B), which were introduced in August 2008, provides for penal sanctions.

70 Another safeguard is found in s 50 of the TCA which specifies two instances where the Minister is expressly empowered to intervene. The first is where the Minister is satisfied that a Town Council has failed to keep or maintain any part of the common property of any residential or commercial property in the housing estates of the HDB within the town in a state of good and serviceable repair or in a proper and clean condition. The second is where any duty of a Town Council must be carried out urgently in order to remove any imminent danger to the health or safety of residents of the housing estates of the HDB within the town.

71 Given this background and the statutory scheme in the TCA and the TCFR, I find that the

omission of the Minister in s 21(2) of the TCA is intentional. The words "any person for whose benefit … that requirement or duty is imposed on the Town Council" does not and cannot include the Minister or the Government. The extent of the MND's intervention in the affairs of a Town Council under the TCA are clearly delineated.

72 Ms Kam forcefully argues that reading the MND out of "any person" under s 21(2) would lead to an "absurd outcome". She paints the following hypothetical to illustrate her argument. Suppose an errant Town Council fails to make its sinking fund transfers as required under r 4(2B) of the TCFR. A disgruntled resident may then apply to the High Court under s 21(2) to compel the Town Council to comply with its duty under r 4(2B). The court can, and will, make an order compelling the Town Council to make the necessary transfers. However, the Town Council will say it is unable to comply with the order because the MND will not give them the grants-in-aid for the financial year. The MND will in turn reply that it is more than willing to give the grants-in-aid, but subject to such conditions (as permitted under s 42 of the TCA). The Town Council may find these conditions unreasonable and refuse to accept them, thus leaving us right where we began, *ie*, the necessary sinking fund transfers are still not made. Ms Kam argues that this "paper order" given by the court to the residents will not "help the situation". At the very worst, it is only the Town Council's officers that may be held in contempt. She submits that this is what will occur should "person" under s 21(2) be "read to exclude someone like the government in this case" and this is an "absurd outcome". [note: 17]

73 With respect, I do not see how excluding the MND from taking advantage of s 21(2) will necessarily lead to an "absurd outcome". First, even if the MND was to come within "any person" under s 21(2), there is no order or remedy that the MND can seek that the HDB or a resident cannot already seek. For example, a resident can equally seek the orders which the MND are currently seeking in this OS (the appropriateness of such orders is discussed below at [145]–[152]). In my view, reading "any person" to include the MND will not "help the situation" either.

74 Secondly, the outcome predicted by Ms Kam may not be as "absurd" as she puts it. The Minister is entitled under s 42 of the TCA to impose conditions on the grants-in-aid. If the Town Council decides not to accept the conditions and the grants-in-aid are not disbursed as a result, this is a decision of the Town Council that the constituents of the Town will have to live with. This is consistent with what was said by Mr Dhanabalan during the Second Reading of the Town Councils Bill (at col 443), which I have quoted above and I set out again for convenience:

> It is important that people realize that they have to live with the consequences of their choice. If they elect an MP who chooses a bunch of crooks to help him and together they run through the coffers in no time and leave the constituents in the lurch, well, they have to take the consequences. The Government is not going to come in and say, "We will take over now and make good all the losses."

75 While Mr Dhanabalan was speaking in relation to a different situation where the Town Council's officers have gone rogue, the principle of his message is that residents must live with the choices made by their Town Councils. Of course, if the Town Council is of the view that the Minister is acting outside his powers or jurisdiction by imposing such conditions, the Town Council is entitled to come before the courts to challenge the conditions imposed by the Minister. But as noted above, whether they will succeed or not will depend on the conditions imposed, the merits of their case and the applicable principles of law. Short of that, the Town Council will then have to find some other means of raising the funds to make the necessary sinking fund transfers, or risk being held in contempt for non-compliance of the court's order. There is nothing absurd about such an outcome. In the event that the sinking fund transfers remain unfulfilled, the resident may then come to court to seek an alternative remedy, if any. It must be remembered that under s 21(3) of the TCA, the court has the

wide power to make "such order as it thinks proper". Depending on the circumstances of the case, the court can tailor its order to achieve the most appropriate and just outcome.

76 I emphasise, however, that Mr Dhanabalan's statement above at [74] cannot, and must not, be construed as indicating that a Town Council can breach the duties imposed on it by the TCA with impunity, and remain only answerable to the electorate at the next general elections, an outcome Mr Low submitted was inevitable in law. While a constituent must live with the consequences of the choice he or she made, it does not mean that a Town Council cannot be compelled by the court to comply with its duties, and if it fails to do so, to be punished in accordance with the law. Indeed, that is the whole point of provisions like ss 21(2), 33(6A) and 33(6B) of the TCA.

77 In any event, if a resident does not come forward to bring an application under s 21(2) of the TCA or is unable to show that the duty imposed on the Town Council was for his benefit or for the benefit of his flat, the HDB can always do so. As mentioned above at [58]–[59], s 21(2) provides that the HDB may apply to the High Court to compel a Town Council to comply with *any* of its duties under the TCA.

78 For completeness, I note that there are two other statutes that contain similar provisions to ss 21(2) and (3) of the TCA. The first is the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("BMSMA"). Section 88(3) provides that:

> **Breaches of this Part**
>
> …
>
> (3) Where a requirement or duty is imposed on a management corporation or subsidiary management corporation by this Part, any person for whose benefit, or for the benefit of whose lot that requirement or duty is imposed on the management corporation or subsidiary management corporation, as the case may be, may apply to the court for an order compelling the management corporation or subsidiary management corporation, as the case may be, to carry out the requirement or perform the duty and, on such an application being made, the court may make such order as it thinks proper.

79 The "Part" referred to in s 88(3) refers to Part V of the BMSMA, which sets out the duties owed by a management corporation, ranging from financial duties (such as mandatory sinking fund transfers) to duties to maintain the common property. "Any person" under s 88(3) of the BMSMA has been interpreted to include a subsidiary proprietor (see *Management Corporation Strata Title Plan No 1272 v Ocean Front Pte Ltd (Ssangyong Engineering and Construction Co Ltd and others, third parties)* [1994] 3 SLR(R) 787 at [17], interpreting s 120 of the Land Titles (Strata) Act (Cap 158, 1988 Rev Ed), the predecessor of s 88 of the BMSMA). In Teo Keang Sood, *Strata Title in Singapore and Malaysia* (LexisNexis, 4th Ed, 2012), the author opined that "any person" under s 88(3) of the BMSMA would include "a tenant, resident or occupier" (at p 274).

80 The other statute is the HUDC Housing Estates Act (Cap 131, 1985 Rev Ed) ("HUDCA"). Section 38(2) provides that:

> **Breaches of provisions of this Part**
>
> …
>
> (2) Where a requirement or duty is imposed on the body corporate or any person by this Part,

> any person for whose benefit, or for the benefit of whose flat that requirement or duty is imposed on the body corporate or first-mentioned person may apply to the court for an order compelling the body corporate or that person to carry out the requirement or perform the duty, as the case may be, and, on such an application being made, the court may make such order as it thinks proper.

Section 38(2), however, has not been the subject of a dispute before the court.

81 The commonality that runs through the TCA, BMSMA and HUDCA is that they all deal with an entity that is independent of the Government, and has been provided with certain powers, functions, duties and responsibilities in relation to the common property of a particular estate (see s 19 of the TCA, s 29 of the BMSMA and s 4 of the HUDCA). Provisions such as s 21(2) of the TCA, s 88(3) of the BMSMA and s 38(2) of the HUDCA are thus necessary in order to allow the constituents of the estate to protect their interests. However, each statute must ultimately be interpreted in accordance with its own purpose, structure and scheme. The BMSMA and HUDCA thus provide little assistance in determining whether the MND has the right to apply under s 21(2) of the TCA.

82 It remains for me to deal with the case of *Attorney-General v Lee Kwai Hou Howard* [2015] SGDC 114 ("*Lee Kwai Hou*"), which Ms Kam tendered to the court via fax after the hearing for OS 250 and SUM 1299 ended. The interpretation of "person" under s 21(2) of the TCA is to be distinguished from the interpretation adopted in *Lee Kwai Hou*. In *Lee Kwai Hou*, the learned district judge had to consider the issue of whether the word "person" under s 15(1) of the Protection from Harassment Act 2014 (Act 17 of 2014) ("PHA") included the Ministry of Defence. Section 15(1) of the PHA provides:

> **False statements of fact**
>
> **15.**—(1) Where any statement of fact about any person (referred to in this section as the subject) which is false in any particular about the subject has been published by any means, the subject may apply to the District Court for an order under subsection (2) in respect of the statement complained of.

83 The district judge found that the Government is not precluded from taking out an application under s 15 of the PHA because ss 3 and 36 of the GPA allows the Government to take advantage of s 15(1) of the PHA, though not expressly named therein (at [32]–[39]). More importantly, the district judge found that Parliament had not intended for s 15(1) to apply to "natural persons" only because "it would lead to a situation where companies and other non-natural persons will be deprived of this remedy under section 15 of [the PHA] to correct falsehoods about themselves" (at [40]). This position was also confirmed by the Parliamentary Debates and there was no contrary intention indicated in the PHA (at [41]–[43]). It is clear from the district judge's decision, and as I have alluded to above at [52]–[53], that, in the final analysis, each statute must be interpreted in its own context and according to what Parliament had intended. In contrast to *Lee Kwai Hou*, for all the reasons I have indicated above at [56]–[77], I find that Parliament had not intended for "any person" under s 21(2) of the TCA to include the Government. The TCA and the PHA have vastly different purposes—the former is a statute which governs the relationship between the Government, the HDB, the Town Councils and the residents, while the latter aims at protecting persons that have been the subject of falsehoods and harassment. It is pursuant to this latter purpose that s 15 of the PHA may be broad enough for the Government to take advantage of (I use the word "may" because I stress that I am not making any decision or finding as to the interpretation of s 15 of the PHA). The same, however, cannot be said of s 21(2) of the TCA, which carefully delineates which parties may take advantage of the remedy provided therein.

84 Nonetheless, for all the reasons set out above, I am of the view that the MND does not have a right to make an application under s 21(2) of the TCA for a court order compelling AHPETC to comply with its duty under s 35(*c*) read with s 21(1)(*f*) of the TCA.

Applicability of the common law

85 Before going into the other legal bases the MND relies on, I address the issue of whether Parliament, through specifically providing for certain limited remedies for breaches of the provisions of the Act, intended to exclude the application of general common law or equitable remedies for the same. This point was taken quite strongly by Mr Low and Ms Kam also addressed it extensively. [note: 18]

86 Mr Low's argument, as I understand it, is that the TCA clearly spells out the duties and responsibilities of a Town Council, and specifically provides for what may be done and who may do it should the Town Council breach its duties and responsibilities under the TCA. I have already referred to some of the remedies encompassed within the TCA. If there is a breach in any of the duties of the Town Council under s 21(1) of the TCA, and this includes complying with the provisions of the TCA and the rules made thereunder pursuant to s 21(1)(*f*), there is the relief provided under s 21(2). If there are circumstances that require the MND to intervene, such as the health or safety of the residents being endangered or the common property of the Town is not kept in a state of good and serviceable repair or in a proper and clean condition, the Minister has powers under s 50 of the TCA to rectify the situation. Finally, if a Town Council has contravened its duty not to disburse any moneys from the sinking fund and the Town Council Fund other than for the purposes stipulated under s 33(6) of the TCA, ss 33(6A) and (6B) provide for penal sanctions against that Town Council and its officers. Mr Low argues that these statutory provisions, when viewed in the light of the statements made by Mr Dhanabalan during the Second Reading of the Town Councils Bill to the effect that the Government will not bail a Town Council out in the event of mismanagement and that residents must live with the consequences of their choices, mean that there is therefore an exclusion of the application of general common law remedies.

87 In response, Ms Kam relies on the case of *Goldring Timothy Nicholas and others v Public Prosecutor* [2013] 3 SLR 487 ("*Goldring*"). In *Goldring*, the Commercial Affairs Department had seized certain documents from a company pursuant to an order under s 58 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed). The officers of the company ("the applicants") were subsequently charged for abetment by conspiracy to cheat. Prior to the trial, the applicants applied for an order for production of some of these documents on the basis that, *inter alia*, there is a common law right of access to documents seized by law enforcement authorities that an accused person had ownership or legal custody or a legal right to control immediately before the lawful seizure. The Prosecution argued that the criminal disclosure framework found in Part IX of the Criminal Procedure Code 2010 (Act 15 of 2010) ("CPC 2010") had curtailed the applicants' common law right of access to the documents prior to the applicants serving their Case for the Defence. In rejecting the Prosecution's argument, V K Rajah JA held that it is a fundamental presumption of statutory interpretation that Parliament would not have removed rights pre-existing in common law if there was no express provision or clearly evinced intention to that effect. The learned judge found that the Prosecution had not rebutted this presumption because, first, there was no mention in the legislative debates of the common law right of access in relation to the relevant documents, let alone how it was intended to be affected by the CPC 2010; secondly, there was no provision in the CPC 2010 which were expressly inconsistent with the common law right of access to the documents; and thirdly, there was in fact positive signposts indicating why Parliament could not have intended for the CPC 2010 to exclude or restrict an individual's common law right of access to the relevant documents (at [50]–[55]).

88 I entirely agree with the presumption of statutory interpretation articulated by the learned judge in *Goldring*. Like the facts in *Goldring*, there was no reference made to the TCA being a self-contained statute or to common law rights and remedies during the Second Reading of the Town Councils Bill. There are only the statements made by Mr Dhanabalan referred to at [65] above. These statements are equivocal and do not clearly evince that Parliament had intended for the MND's common law rights and remedies, if any, to be curtailed. Mr Dhanabalan's statement as to the Government not bailing the Town Council out in the event that funds are misspent or mismanaged could simply be referring to financial bailout, *ie*, the Government will not be acting as a guarantor for the Town Council. Mr Low also relies heavily on the current Minister for National Development Mr Khaw Boon Wan's recent statement in Parliament that "the Town Councils Act deliberately takes a light touch approach to regulation and enforcement" (*Singapore Parliamentary Debates, Official Report* (12 February 2015) vol 93 (Khaw Boon Wan, Minister for National Development and MP for Sembawang GRC)). With respect, the recent comments of the current Minister in Parliament do not go very far in elucidating what Parliament had intended *at the time* the Town Councils Bill was passed.

89 Further, there are no provisions in the TCA that are expressly inconsistent with other common law remedies continuing to exist outside of the TCA. Section 21(2) of the TCA, which enables the HDB or a constituent to apply for certain remedies when the duties stipulated in s 21(1) have been breached or not complied with by the Town Council, can operate in conjunction with common law rights and remedies. In *Diora-Ace Ltd and others v Management Corporation Strata Title Plan No 3661 and another* [2015] SGHC 88, Hoo Sheau Peng JC had to consider the question of whether a subsidiary proprietor could apply for declaratory relief outside s 88 of the BMSMA. Section 88(3) of the BMSMA (set out above at [77]) is similar to s 21(2) of the TCA. Hoo JC held (at [40]):

> … s 88 of the BMSMA enables a subsidiary proprietor to apply for certain remedies when a provision of Part V of the BMSMA has been breached or not complied with. *However, there is nothing within s 88 which suggests that the court only has jurisdiction to hear disputes about the breaches of the BMSMA under the provision.* It is also noteworthy that the provision does not restrict the power of the court to order any relief. In the absence of express wording, s 88 of the BMSMA does not oust the court's jurisdiction and powers under the SCJA and ROC to hear the dispute and order the appropriate relief, including bare declaratory relief. [emphasis added]

90 Similarly, I find that there is nothing within s 21(2) of the TCA which suggests that the court cannot hear disputes about a Town Council's breaches of the TCA that are brought outside of s 21(2). I am reinforced in my view by s 58(3) of the TCA, a savings provision which provides that "[n]othing in [the TCA] shall affect any rights or remedies that the [HDB] or an owner or tenant of a flat in any residential or commercial property may have in relation to the flat or the common property … apart from [the TCA]". Although s 58(3) only applies to the HDB or an owner or tenant of a flat, it indicates that Parliament was alive to the issue of common law rights and remedies and had wanted to preserve it. Bearing in mind the statutory presumption in *Goldring*, if Parliament had wanted to exclude the application of common law rights and remedies, it would have expressly provided so.

91 The present case is also distinguishable from situations such as those in *Tan Ah Tee and another (administrators of the estate of Tan Kiam Poh (alias Tan Gna Chua), deceased) v Lim Soo Foong* [2009] 3 SLR(R) 957 ("*Tan Ah Tee*"). In *Tan Ah Tee*, one of the issues the court considered was whether the court had the power to declare a marriage void due to lack of consent, which prior to 1981, rendered a purported marriage void. Judith Prakash J held that by introducing s 105 of the Women's Charter (Cap 353, 1997 Rev Ed), which provided an exhaustive list of grounds on which a marriage may be declared void, the operative words being "shall be void on the following grounds only", Parliament had intended to classify lack of valid consent as a ground to hold a marriage *voidable* only. The court is bound by this change in the law and no longer has the power to hold or

declare a marriage void on the basis of lack of valid consent (at [38]–[39]). The learned judge further found a second reason for her conclusion – that the Women's Charter is a complete code on the law of civil marriage in Singapore. Marriages celebrated in Singapore therefore cannot be declared void on any ground that is not reflected in s 105 (at [43]). In contrast, nowhere in the Parliamentary Debates leading up to the passing of the Town Councils Bill has it been mentioned that the TCA was meant to be a "complete code". Neither does the TCA contain provisions like s 105 of the Women's Charter.

92 Lastly, I refer to some examples of statutes (which Ms Kam has helpfully pointed me to) that have expressly abrogated the application of common law rules. For example, s 8 of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA") provides that the "rule of law known as the rule in Bain v Fothergill is abolished in relation to contracts made on or after 1st January 1999". Another example is s 47(1)(*c*) of the Land Titles Act (Cap 157, 2004 Rev Ed), which provides that a person dealing with a proprietor shall not be required "to be affected by notice (actual or constructive) of any trust or other unregistered interest, *any rule of law or equity to the contrary notwithstanding*" [emphasis added]. These are unequivocal expressions that certain rules of the common law or equity are not to apply and such expressions are not to be found in the TCA.

93 In summary, I am of the view that the TCA does not exclude the application of common law rights and remedies. The more important question, however, is what rights and remedies the MND is entitled to in relation to the present case. I will now deal with the common law grounds which the MND relies on.

Basis (a): Statutory mandate pursuant to the TCA

94 The MND argues that it has "regulatory oversight" of the TCA and, since AHPETC holds the Town Council Moneys for the purposes of the TCA, the MND has an interest in ensuring that, first, Town Council Moneys are correctly, properly and lawfully applied and, secondly, any Town Council Moneys wrongfully paid out are recovered. The MND then goes on to assert that it must thus have a remedy to require AHPETC to take appropriate steps to safeguard Town Council Moneys and pursue recovery of any Town Council Moneys wrongfully paid out.

95 With respect, I do not agree. I have already addressed the nature and purpose of Town Councils and I have referred to some of the provisions in the TCA which provide specific remedies to particular entities or persons. The word "oversight" means and connotes supervision or superintendence, having charge or care of, control, management and direction over something or body. That word is inapt to describe the relationship between the Government and a Town Council. This was made very clear by the Parliamentary Debates during the Second Reading of the Town Councils Bill.

96 While it is true that a Town Council holds its moneys for the purposes of the TCA and that the MND has some interest in a loose sense in ensuring that a Town Council complies with its statutory duties, I am of the view that this does not give rise to a *right* on the part of the MND to come to court to enforce a Town Council's duty *simpliciter*. Once the grants-in-aid by the Government are made, how it is allocated and spent on the various projects or purposes within the TCA is no longer under the control of the Government but the Town Council. If more of the funds are spent on one type of project like landscaping, instead of say sheltered walkways, that is up to the Town Council. If the funds are embezzled or a criminal breach of trust has occurred, then the full weight of the criminal law and its processes can be brought to bear. If moneys are not set aside as prescribed under the Act, then as noted above, the HDB or persons entitled to under s 21(2) can seek redress, including seeking a mandatory order.

97 Ms Kam refers to ss 33(1), (2), (6)(*b*), (6A) and (6B), 35, 36 and 38(1), (6), (11), (13) and (14) of the TCA to show that the Minister has "regulatory oversight". [note: 19] In relation to the sub-sections Ms Kam relies on under s 33, there is no mention of the Minister or the role that he is to play. All those provisions do is mandate the constitution of the Town Council Fund and prescribe the purposes for which the funds may be used. Section 35 similarly makes no mention of the Minister. It simply sets out the duties of a Town Council in relation to its accounts and finances. Section 36 provides for the duty of a Town Council to prepare and submit its financial statements for the year to the AGO and it too makes no mention of the Minister. Section 38 does, however, make reference to the Minister. Under s 38(1), the accounts of the Town Council is to be audited by the AGO or such other auditor as may be appointed by the Minister in consultation with the AGO. Under s 38(6), the auditor is to submit periodical and special reports to the Minister and the Town Council upon any matter arising out of the audit. Section 38(11) states that the audited financial statements are to be submitted to the Minister and displayed in public. Sections 38(13) and (14) provide that the Minister is to be given a copy of the audited financial statements and annual report and is to present them in Parliament.

98 While these provisions may show some semblance of oversight by the Minister over the TCA, it is not oversight in the true meaning of the word. Administratively asking for accounts to be submitted and then presented to Parliament, with or without comment, is not "oversight". There are specific provisions like s 43 and s 50 which set out instances when the Minister can intervene. However, such functions and powers of the Minister under the TCA were meant to, in the words of Professor Craig, "strike the balance between enabling the [M]inister to fulfil his or her responsibilities to Parliament, and giving the public body the desired degree of independence" (Paul Craig, *Administrative Law* (Sweet & Maxwell, 7th Ed, 2012) at p 85). Simply because the TCA delineates certain functions to the Minister does not mean that the MND has an unfettered right to come to court to seek a Town Council's compliance with its duties. Ms Kam has not shown me a single authority, other than the provisions of the TCA, in support of her statutory mandate argument that the MND has a right to seek a remedy to require a Town Council to comply with its duties under the TCA *simpliciter*.

99 I have already cited passages from the Parliamentary Debates when the Town Councils Bill was presented in Parliament. The whole tenor of the speeches showed a clear intention to transfer power from the HDB to the MPs and Town Councillors. With that power came responsibility and accountability to the constituents. If things went wrong then there would be no bail out and no safety net provided by the Government. The constituents would have to bear any loss or consequences in such an event. This philosophy behind the Town Councils Bill does not sit well with the "statutory oversight" argued for by Ms Kam. Specific safeguards were articulated. Mr Dhanabalan said: "This Bill, therefore, has been very thoroughly considered and it is not just something drafted by legal draftsmen. It has the benefit of very high level consideration and the actual experience that we have had so far in Ang Mo Kio" (Second Reading of the Town Councils Bill at col 375).

100 I have also already stated if there is wrongdoing, then the state has powers of investigation and if warranted, to bring criminal charges. However that is another matter altogether.

101 I agree that it seems counterintuitive that Town Councils have to comply with certain obligations and duties laid down in the TCA and the TCFR and yet if it appears that there is non-compliance, and public funds are involved, the MND, under whose administrative sphere Town Councils fall, cannot bring an action such as this to appoint forensic accountants to investigate the expenditure of such funds by a Town Council and to recover any moneys which have been improperly paid or paid without proper authority and approvals. However, as I have stated above, Town Councils were created by statute, set up with specific aims and based on a philosophy that was thought to be for the good of the country.

102 Nonetheless, the MND strongly asserts that it "would not comport with logic or justice if MND were to have no remedy". This may not necessarily be true and it suffices for me point to the following instructive passages from H W R Wade and C F Forsyth, *Administrative Law* (Oxford University Press, 11th Ed, 2014) at pp 520–521:

> The prerogative remedy of mandatory order has long provided the normal means of enforcing the performance of public duties by public authorities of all kinds. Like the other prerogative remedies, it is normally granted on the application of a private litigant, though it may equally well be used by one public authority against another. …
>
> Mandamus reached the zenith of its utility in the eighteenth century, when as well as protecting the citizen it played a conspicuous part in the machinery of government. It proved to be one of the few effective instruments of public policy in the era between the abolition of the Star Chamber in 1640 and the creation of the modern system of local government in the nineteenth century. During that interregnum the business of administration was mainly in the hands of local magistrates and other authorities who enjoyed an extraordinary measure of independence. A mandamus from the King's Bench was virtually the only effective means of forcing some such body to carry out its duties under common law or Acts of Parliament. …
>
> The essence of a mandatory order is that it is a royal command, issued in the name of the Crown from the Court of King's Bench (now the Queen's Bench Division of the High Court), ordering the performance of a public legal duty. … It has never lost the wide scope which the courts gave it in the eighteenth and early nineteenth centuries, when it was so vital a part of the mechanism of the state. But in the highly organised administrative system of the modern state it has no longer this prominent role to play. Governmental bodies today respond more naturally to the political stimulus, and the ultimate legal sanction has to be invoked only in a handful of stubborn cases.

103 However the proceedings before me are not for judicial review and I say no more on that score.

Basis (b): Beneficial interest under a Quistclose trust

104 The MND relies on the eponymous case of *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567 ("the *Quistclose* case") and *Twinsectra Ltd v Yardley and others* ("*Twinsectra*") [2002] 2 AC 164 for the proposition that it has a beneficial interest under a *Quistclose* trust, which arises where a sum of money is advanced with the mutual intention that it would be used for a specific purpose.

105 More specifically, the MND cites Lord Wilberforce's speech in the *Quistclose* case (at 581–582), which in turn was cited with approval by Belinda Ang Saw Ean J in *Pacific Rim Palm Oil Ltd v PT Asiatic Persada and others* [2003] 4 SLR(R) 731 (at [17]):

> [W]hen the money is advanced, the lender acquires an equitable right to see that it is applied for the primary designated purpose … if the primary purpose cannot be carried out, the question arises if a secondary purpose (i.e. repayment to the lender) has been agreed, expressly or by implication: if it has, the remedies of equity may be invoked to give effect to it … In the present case the intention to create a secondary trust for the benefit of the lender, to arise if the primary trust … could not be carried out, is clear and I can find no reason why the law should not give effect to it.

106 The MND also cites Lord Millett's speech in *Twinsectra* (at [100]–[101]):

> 100 … the *Quistclose* trust [is] an entirely orthodox example of the kind of default trust known as a resulting trust. The lender pays the money to the borrower by way of loan, but he does not part with the entire beneficial interest in the money, and in so far as he does not it is held on a resulting trust for the lender from the outset. … [I]t is the borrower who … [is] obliged to apply it for the stated purpose or return it. He has no beneficial interest in the money, which remains throughout in the lender subject only to the borrower's power or duty to apply the money in accordance with the lender's instructions. …
>
> 101 … The borrower is authorised (or directed) to apply the money for a stated purpose, but this is a mere power and does not constitute a purpose trust. Provided the power is stated with sufficient clarity for the court to be able to determine whether it is still capable of being carried out or whether the money has been misapplied, it is sufficiently certain to be enforced. …

107 Lord Wilberforce's model in the *Quistclose* case is inconsistent with Lord Millett's model in *Twinsectra*. Lord Wilberforce envisaged two trusts (at 581–582): a primary trust, and a secondary trust in favour of the donor if the primary trust fails. Lord Millett (at [100]–[101]) propounded a model whereby there is only one trust in favour of the donor, but that trust is subject to a power or duty to apply the trust money in accordance with the donor's stated purpose or instructions. The differences between the two models are not merely jurisprudential in nature, and have practical implications for when a *Quistclose* trust can be found.

The nature of a *Quistclose* trust

108 Before embarking on the question of whether there is an extant *Quistclose* trust, it is necessary to first enquire into the nature of a *Quistclose* trust. No Singapore court has, as of yet, definitively pronounced on this issue. *Pacific Rim* cited both the *Quistclose* case (at [16]–[17]) and *Twinsectra* (at [18]) but did not endorse either model. *Singapore Tourism Board v Children's Media Ltd and others* [2008] 3 SLR(R) 981 ("*STB*") likewise cited both the *Quistclose* case (at [88]) and *Twinsectra* (at [89]) without approving either model. *Sitt Tatt Bhd v Goh Tai Hock* [2009] 2 SLR(R) 44 cited only the *Quistclose* case, but did not consider which model was right and merely stated that balance money would be held on a resulting trust for the funder (at [58]). *Tee Yok Kiat and another v Pang Min Seng and another* [2012] SGHC 85 cited both cases, but did not distinguish between the two models and stated that, "on one view, at least, a *Quistclose* trust may be rationalised as a resulting trust…" (at [28]; the Court of Appeal in *Tee Yok Kiat v Pang Min Seng* [2013] SGCA 9 did not add to this analysis). *Aero-Gate Pte Ltd v Engen Marine Engineering Pte Ltd* [2013] 4 SLR 409 noted that the classification of the *Quistclose* trust within the taxonomy of trusts is not free from controversy (at [58]), but did not take a definitive view.

109 In *Twinsectra*, Lord Millett noted that Lord Wilberforce's analysis in the *Quistclose* case had formidable difficulties and had hitherto garnered little academic support. In particular, where the primary trust is not for identifiable persons, but to carry out an abstract purpose, there are uncertainties over where the beneficial interest lay pending the application of the money for the stated purpose or the failure of the purpose (at [79]). Lord Millett proceeded to analyse where the beneficial interest could lie. It could not lie with the recipient, because if it were so vested, the recipient would have unconditional use of the money (at [82]). It could not lie with a contemplated beneficiary, because this cannot accommodate gifts and loans for an abstract purpose (at [89]). The beneficial interest could not be in suspense, because a resulting trust would arise to fill the gap and leave no room for any part to be in suspense (at [92]). There are yet other difficulties. If the primary trust were a pure purpose trust, it would be void *ab initio* due to the prohibition in *Morice v Bishop of Durham* (1805) 10 Ves Jr 522 against non-charitable purpose trusts. If the primary trust is in favour of a contemplated beneficiary, the primary trust would prevent any subsequent variation of the

arrangement between the donor and the recipient of funds without the beneficiary's consent; this is because the funds would belong to that contemplated beneficiary in equity and it would be a breach of trust for the funds to be used in a way that is inconsistent with that vested beneficial interest (see Zhuang WenXiong, "The (*Quistclose*) Resulting Trust as a Proprietary Response to Unjust Enrichment: A Bridge Too Far?" (2014) 26 SAcLJ 649 at para 14).

110 Lord Millett therefore concluded that the beneficial interest is held on a resulting trust for the donor from the outset (at [100]). Lord Millett's model has been cited in preference to Lord Wilberforce's model in subsequent English cases (see, *eg*, *Freeman v HM Commissioners of Customs and Excise* [2005] BCC 506 ("*Freeman*") at [11]–[19]; *Challinor v Juliet Bellis & Co and another* [2013] All ER (D) 6 (Mar) ("*Challinor*") at [543]; and *Bieber and others v Teathers Ltd (in liquidation)* [2013] 1 BCLC 248 at [14]–[15]). On the weight of both principle and authority, I am of the view that Lord Millett's model in *Twinsectra* should be adopted as the law in Singapore.

111 There remain three loose ends to tie up. First, although Lord Millett characterised the *Quistclose* trust as a resulting trust for the transferor with a mandate to the transferee to apply the money for a stated purpose (*Twinsectra* at [92]), there is nothing in principle that prevents the constitution of an express trust that operates in the same manner as a resulting *Quistclose* trust. Lord Millett himself said at [99]:

> … I do not think that subtle distinctions should be made between "true" *Quistclose* trusts and trusts which are merely analogous to them … there is clearly a wide range of situations in which … one party [has] a limited use of the other's money for a stated purpose, is not free to apply it for any other purpose, and must return it if for any reason the purpose cannot be carried out.

Indeed, in *Latimer and others v Commissioner of Inland Revenue* [2004] 1 WLR 1466, the *Quistclose* trust found "in favour of the settlor is express; whereas it is more usually implied" (at [41]).

112 Secondly, and with respect to *Quistclose* trusts, there is a marked distinction between contract and trust. In all *Quistclose* trusts, only the intention (or lack thereof) of the donor is relevant. In an express trust, the donor's intention is to constitute the legal recipient as trustee and thereby impose the full panoply of duties incident to trusteeship (*Knight v Knight* (1840) 3 Beav 148 ("*Knight*") at 172). This intention must be sufficiently certain (*Knight* at 173). Resulting *Quistclose* trusts arise in response to the donor's lack of intention to pass the entire beneficial interest to the recipient (*Twinsectra* at [92] and [100]). Contracts, in contrast, arise from the bilateral intentions of both the donor and recipient and are subject to their own rules on formation. Thus a trust may arise even if, on the facts, a contract does not. The facts of *Challinor* are particularly apposite. The second defendant ran investment schemes that entitled investors to control special purpose vehicles ("SPVs"). It was a common feature of the investment schemes that the investors would rely on the solicitors advising the SPVs to ensure that their subscription monies would not be released unless and until the investors' participation and control was safely arranged. The first defendant was a firm of solicitors which so acted. The first defendant, however, released investor monies before the claimants' participation in and control of one particular SPV was secured. The court declined to find that there was a valid and enforceable escrow agreement between the investor-claimants and the solicitor-defendant because, first, there was nothing to signify any objective intention to establish a contractual relationship (at [528]) and, secondly, there were no terms of sufficient certainty to found a contract (at [530]). Despite this, the court found that a resulting *Quistclose* trust had arisen, as the solicitor-defendant received the investor monies on terms that were sufficiently certain to negate any intention that the monies were to belong beneficially to the second defendant (at [554] and [561]–[563]).

113 Thirdly, for both express and resulting *Quistclose* trusts, the certainties of subject matter and objects must be present (*Knight* at 173). With regard to subject matter, a trust cannot be duly executed if it was uncertain what property is or is not subject to the trust (see, *eg*, *Palmer v Simmonds* (1854) 2 Drew 221). With regard to objects, the settlor of the *Quistclose* trust would certainly be a sufficiently certain beneficiary. However the requirement for certainty of objects also extends to the recipient's power or duty to apply trust money for stipulated purposes: this must be sufficiently certain for a court to determine if the purposes are still capable of being carried out or if the money has been misapplied (*Twinsectra* at [101]).

114 Bearing the above in mind, the propositions of law which can be gleamed are as follows:

(a) Whenever a donor transfers money to a recipient for a specified purpose, a *Quistclose* trust may arise. In a *Quistclose* trust, the donor possesses the beneficial interest in the money, but this is subject to a power or duty on the recipient's part to use the money for the specified purpose. If the recipient is unwilling or unable to use the money for the specified purpose, the money is to be returned to the donor. Such a trust may be either express or resulting.

(b) For a *Quistclose* trust to arise, the twin certainties of subject matter and objects must be present. In particular, the purpose must be stated with sufficient clarity for a court to determine if it is still capable of being carried out or if the money has been misapplied.

(c) For an express *Quistclose* trust, the settlor-donor must intend to constitute the recipient as a trustee, and confer a power or duty on the recipient-trustee to apply the money exclusively in accordance with the stated purpose.

(d) For a resulting *Quistclose* trust to arise, the donor must have a lack of intention to part with the entire beneficial interest in the transferred money. The recipient must not have free disposal of the money (*Twinsectra* at [73]) and must be under a power or duty to apply the money exclusively in accordance with the stated purpose (*Twinsectra* at [74]).

Is there an express or resulting *Quistclose* trust?

115 Neither an express nor a resulting *Quistclose* trust arises on the facts. In my judgment, there is insufficient certainty of intention to found an express *Quistclose* trust. Grants-in-aid were intended to be at the disposal of AHPETC, albeit for the purposes set out in the TCA. However, their freedom to allocate that sum on the very many kinds of projects with the purposes set-out in the TCA, which can include a project that could be very expensive with not much utility and on which not all their constituents would agree upon, shows that no resulting *Quistclose* trust can arise. In respect of objects, s 33(6) of the TCA would have no bite whatsoever if AHPETC residents or the MND held beneficial ownership of disbursed grants-in-aid. Further, in respect of subject matter, any *Quistclose* trust cannot extend to all monies held by Town Councils.

Insufficient certainty of intention to found express *Quistclose* trust

116 I deal first with certainty of intention. As has been mentioned, s 42 of the TCA explicitly allows the Minister to impose conditions on grants-in-aid. The MND sent letters accompanying the grants-in-aid in 2011, 2012 and 2013. All these letters did not impose any conditions, and merely set out the total amount payable to AHPETC based on fixed quanta for different flat types, including adjustments for changes to the number of dwelling units managed in the previous year.

117 The lack of express documentary evidence is, of course, not determinative of this issue; a

trust may be inferred from the surrounding circumstances and structure of the transactions. The AGC also relied on the provisions of the TCA to found the requisite intention for the constitution of a *Quistclose* trust.

118 The starting point is that the courts have a general disinclination to see the intricacies and doctrines connected with trusts introduced into the non-familial context (*Neste Oy v Lloyds Banks Plc* [1983] 2 Lloyds Rep 658 ("*Neste Oy*") at 665; *Westdeutsche Bank Girozentrale v Islington London Borough Council* [1996] AC 669 at 704–705). This is all the more so where the government is concerned. The judgment of Megarry VC in *Tito and others v Waddell and others (No 2)* [1977] 1 Ch 106 ("*Tito*") at 211 is instructive in this regard:

> When it is alleged that the Crown is a trustee, an element which is of especial importance consists of the governmental powers and obligations of the Crown; for these readily provide an explanation which is an alternative to a trust. … Another explanation can be that, without holding the property on a true trust, the Crown is nevertheless administering that property in the exercise of the Crown's governmental functions. This latter possible explanation, which does not exist in the case of an ordinary individual, makes it necessary to scrutinise with greater care the words and circumstances which are alleged to impose a trust.

While the Town Council is not, *stricto sensu*, a government body, it is nevertheless a special body created by statute that carries out functions which were previously carried out by the HDB, a statutory body which carries out government functions and whose board members are appointed by the Minister (see s 6 of the Housing and Development Act (Cap 129, 2004 Rev Ed)). Town Councils are sufficiently analogous to the Crown in *Tito* for heightened care to be warranted.

119 In the absence of an explicit term creating a trust, the fact that funds were segregated has been held to be crucial to constituting the funds as trust property (*Hinckley Singapore Trading Pte Ltd v Sogo Department Stores (S) Pte Ltd (under judicial management)* [2001] 3 SLR(R) 119 ("*Hinckley*") at [22]). The converse proposition also holds true: where an alleged trustee has the right to mix a fund with other funds, this is incompatible with the existence of a trust relationship in regard to that fund (*Hinckley* at [22], in turn citing Slade J in *Re Bond Worth Ltd* [1980] Ch 228 at 261). Section 42 of the TCA is silent on whether grants-in-aid need to be segregated. Section 33(1) of the TCA and r 3(1) of the TCFR mandate the creation of separate funds for residential and commercial property while s 33(4) of the TCA and r 4 of the TCFR mandate separate sinking funds. However none of the foregoing provisions mandate the separation of grants-in-aid from S&CC. Grants-in-aid were in fact not segregated in special accounts: the letters from the MND accompanying the grants in 2011 and 2013 state that "[t]he Accountant-General has [been advised to credit a sum of money] into your Town Council's account" while the letter accompanying the grant in 2012 states that "[t]he Accountant-General has credited [a sum of money] into your Town Council's account."

120 More fundamentally a *Quistclose* trust does not arise simply because money is paid for a particular purpose. As Lord Millett pointed out, commercial life would be impossible if payments ordinarily create a trust (*Twinsectra* at [73]). Although those comments were made in the context of the resulting *Quistclose* trust, the position is *a fortiori* for express *Quistclose* trusts. Under s 42 of the TCA, grants-in-aid are made "for the purposes of enabling a Town Council to carry out its functions under this Act or any other Act." But this is neither here nor there. A purpose can be readily discerned for all payments: a buyer could be said to pay money in advance to a seller for the purpose of obtaining goods; a lender could be said to lend money to a borrower for the purpose of earning interest. But, tellingly, we do not speak of express trusts arising over the money in these sorts of situations; the default position is that the recipient enjoys full beneficial ownership (see, *eg*, *In Re Stapylton Fletcher Ltd* [1994] 1 WLR 1181 which concerned advance payment for undelivered wine).

The crux is the requisite intention to create an express trust by bifurcating the legal and equitable interests, and imposing trust duties on the part of the recipient to manage trust property on behalf of beneficiaries. It would be a leap to infer all of this from the plain text of s 42 of the TCA. This is all the more so where Town Councils, which carry out government functions previously within the purview of the HDB, are concerned.

121 There is therefore insufficient certainty of intention to found an express *Quistclose* trust.

No absence of intention to part with entire beneficial interest to found resulting *Quistclose* trust

122 As I have already stated, there are two starting points: the courts are reluctant to introduce equitable doctrines into non-familial matters (at [118]); and commerce would be impossible if payments ordinarily create a trust (at [120]).

123 The "intention" that is relevant to the founding of a resulting *Quistclose* trust is not an extant intention, but an absence of intention to pass the entire beneficial interest to the recipient. A finding that there was an intention to pass the entire beneficial interest would therefore foreclose a resulting *Quistclose* trust from arising, and in this regard "[t]he question in every case is whether the parties intended the money to be at the free disposal of the recipient" (*Twinsectra* at [74]). Lord Millett in turn cited *In re Goldcorp Exchange Ltd* [1995] 1 AC 74 ("*Goldcorp*") at 100, where Lord Mustill said that "the moneys should not fall within the general fund of the company's assets but should be applied for a special designated purpose".

124 At the bottom-line, money is at the free disposal of the recipient if it falls within the recipient's general funds; and if the money is to be applied for a special designated purpose it cannot fall within the general funds.

125 I have already pointed out that the TCA and TCFR do not mandate the segregation of grants-in-aid; neither did the Minister impose any conditions for the grants disbursed in 2011, 2012 and 2013 (above at [119]). The grants-in-aid were in fact not segregated in special accounts and were directly deposited into AHPETC's general account. Upon mixture with a pre-existing fund (which in all probability included S&CC collected from its constituents and funds from sources other than Government moneys), the grants-in-aid were spent and the beneficial interest in the grants-in-aid passed to AHPETC. The grants-in-aid were thus ultimately at the free disposal of AHPETC. This raises the more fundamental point that the MND cannot assert a beneficial interest over all the monies held by AHPETC to ground the relief sought, a point I deal with more comprehensively later at [134]–[136].

126 It is true that AHPETC is constrained to spend its general funds in accordance with the provisions in the TCA and TCFR. Ms Kam contended that these provisions suffice to found the requisite purpose. I have already said that all payments could in a sense be said to be made with purposes in mind (at [120]). The facts of *Goldcorp* are particularly apposite, and demonstrate that purpose cannot be looked at in isolation from free disposal. The eponymous company sold unascertained bullion to the claimants for future delivery. Lord Mustill held that a *Quistclose* trust did not arise despite the fact that the claimants "paid the purchase price for one purpose alone, namely to perform his side of the bargain under which he would in due course be entitled to obtain delivery" because "nothing … can be implied, which constrained in any way the company's freedom to spend the purchase money as it chose" (at 101). As I have noted above, the grants-in-aid were credited directly into AHPETC's general account and were immediately mixed into a pre-existing pool of funds. The most that can be said is that the grants-in-aid were in fact used for a purpose, that purpose being to increase the quantity of funds available to AHPETC for it to discharge its duties under the TCA and TCFR. But, analogous to the facts in *Goldcorp*, this purpose is insufficient to found a

Quistclose trust.

127 All the facts point towards the conclusion that there was an intention to fully pass the beneficial interest to AHPETC.

The MND cannot be beneficial owners

128 Ms Kam also contended that the MND had a beneficial interest in grants-in-aid disbursed. The TCA does not assist Ms Kam. Section 33(6) of the TCA imposes limitations on the use of funds: s 33(6)(*a*) states that moneys shall not be disbursed from sinking funds otherwise than for what can be described cyclical work with an as infrastructural element; while s 33(6)(*b*) states that moneys shall not be disbursed from the Town Council Fund except for the purpose of exercising its powers or carrying out its duties and functions or the payment of a fine. The duties of a Town Council are in turn defined by s 21(1) of the TCA, and these largely pertain to the maintenance of common property (with the exception of s 21(1)(*f*) of the same, a catch-all provision which mandates compliance with the provisions of the TCA and all rules made thereunder). The benefits of carrying out major cyclical work and maintaining common property redound to the benefit of town council residents and, as noted above, to the HDB. It would be strange, to say the least, for the MND to be said to be the beneficial owner if the proper administration and expenditure of the aforementioned funds would directly benefit residents or the HDB.

129 However, holding that the residents are beneficially entitled to the grants-in-aid would lead to a *reductio ad absurdum* due to the operation of the rule in *Saunders v Vautier* (1841) 4 Beav 115. In modern times, the rule in *Saunders v Vautier* has been held to entail (*Goulding v James* [1997] 2 All ER 239 at 247):

> [recognising] the rights of beneficiaries, who are sui juris and together absolutely entitled to the trust property, to exercise their proprietary rights *to overbear and defeat the intention of a testator or settlor to subject property to the continuing trusts, powers and limitations of a will or trust instrument*. [emphasis added]

130 If all the residents of a Town Council were to be the beneficial owners of grants-in-aid, they could theoretically come together and call for the disbursement of the monies in contravention of the listed purposes in s 33(6) of the TCA. Indeed, exactly the same problem would arise if the MND were to be the beneficial owner of the grants-in-aid.

131 Quite apart from s 33(6) of the TCA, the overall statutory scheme cannot countenance a *Saunders v Vautier* call by either the MND or the Town Council residents. Section 37 of the TCA mandates the public display of estimates not later than one month before the end of each financial year whereby, amongst other things, there is a projection of revenue. There are three revenue sources: grants-in-aid, S&CC, and interest (I leave to one side fund raised through other means like community activities for obvious reasons). It stands to reason that S&CC rates are set with reference to the expected amount of grants-in-aid that will be received.

132 Additionally, if either the MND or Town Council residents were to be the beneficial owners of grants-in-aid, the grants-in-aid would not be payable to the general creditors of a Town Council in the event of insolvency, but to the beneficial owners. It is highly doubtful if this was an intended outcome of the statutory scheme. Even outside of an actual insolvency, the fact that general creditors would be subordinated to either the MND or Town Council residents would adversely impact the creditworthiness of Town Councils: this would also lead to the anomalous situation where S&CC funds would be payable to the general creditors, while grants-in-aid are not and will be refunded to

the government. If anything one would expect the situation to be reversed, and for residents' money to be refunded to them in the event of insolvency.

133 The ineluctable conclusion is that AHPETC is the beneficial owner of the grants-in-aid. There is therefore no bifurcation of the legal and equitable interests, and no subsisting *Quistclose* trust. AHPETC has full legal and equitable ownership over grants-in-aid, subject only to the express statutory requirements and duties imposed by the TCA and TCFR.

The subject matter of the *Quistclose* trust cannot extend to all Town Council monies

134 The final obstacle to the existence of a *Quistclose* trust is the fact that any such trust would necessarily only extend to money transferred by the government, that is, grants-in-aid, and not all monies held by AHPETC.

135 This in itself would not be fatal if there were a concomitant duty to segregate. But on the facts before me there is none, and grants-in-aid were in fact not segregated (at [119]). This would lead to grave difficulties over trust administration because money would have to be followed into comingled funds. The beneficiary would be entitled to a proportionate part of the comingled fund only if the comingling was unauthorised (*Foskett v McKeown and others* [2001] 1 AC 102 at 130). If the comingling was authorised, the beneficiary's proprietary rights are extinguished and there is nothing to trace (*Space Investments Ltd v Trust Co (Bahamas Ltd) and others* [1986] 1 WLR 1072).

136 The TCA and the TCFR do not prohibit the comingling of grants-in-aid with S&CC funds, and grants-in-aid were in fact so comingled. Any *Quistclose* trust found must countenance such comingling; it would be absurd to suggest that AHPETC had committed a breach of trust merely by mixing grants-in-aid with S&CC funds. Any beneficial interest in grants-in-aid would pass to AHPETC once the grants-in-aid are comingled with S&CC funds and mixed funds from previous years. Therefore, even if there were a *Quistclose* trust, any beneficial interest in the grants-in-aid cannot be followed into mixed funds. The MND cannot rely on any such *Quistclose* trust to appoint an independent accountant for all of AHPETC's funds.

Basis (c): Legal interest pursuant to a contractual mandate

137 Ms Kam also relies on *Conservative and Unionist Central Office v Burrell (Inspector of Taxes)* [1982] WLR 522 ("*Burrell*") for the proposition that it had a legal interest in disbursed grants-in-aid pursuant to a contractual mandate.

138 Ms Kam argues that the MND retains a legal interest in the S&CC grants disbursed to AHPETC, and as recipient-agent, AHPETC owes a duty to act with due skill and care as would be reasonably expected by an agent. With respect, I cannot agree. Such a mandate does not arise. In the first place, grants-in-aid were disbursed unconditionally by the MND (at [119]). It is true that this is not in itself conclusive, because the use of the disbursed funds remains subject to the duties and conditions imposed by the TCA. But I have already shown how Town Councils are unique legal entities established by statute. The TCA is a comprehensive regime that *inter alia* regulates the quadripartite relationship between the Government, the Town Councils, its constituents within the purview of those Town Councils and the HDB. Absent a transfer of money accompanied by an explicit contractual mandate, any bilateral principal-agent relationship rooted in the provisions of the TCA would be far too nebulous and uncertain. Take for instance the s 21(1)(*f*) duty to comply with the provisions of the TCA and the rules made thereunder. Assuming that the town council owes that duty in the capacity of an agent, it is not clear if the principal is the government or the residents of the town council. Another example would be the s 19(1)(*aa*) power to deal with facilities outside of common

property, which expressly stipulates that the approval of the Minister and the consent of the owner of the property is required. Again it is unclear if the principal is the government or the owner of that property.

139 There are also grave difficulties with the very notion of a principal-agent relationship where the "agent" has a mandate to spend a sum for stipulated purposes. An agent is oft defined as one who has the capacity to directly affect the legal relations of his principal *vis-à-vis* third parties (see, *eg*, *Scott and others v Davis* (2000) 204 CLR 333 at [227], cited with approval in *Fact 2006 Pte Ltd v First Alverstone Capital Ltd and another* [2015] SGHCR 5 at [1]). The recipient in a *Burrell*-type situation does not have the capacity to affect the legal relations of his principal in the classic sense, and would be more accurately described as having the capacity to use the donor's money for stipulated purposes.

140 Tellingly, Brightman LJ himself admitted in *Burrell* that his discussion of mandates was "all very remote and theoretical" (at 530), and conceded that donors to the Conservative party would believe that they are making out and out gifts. Emery has criticised the artificiality of the analysis, and pointed out that title to the money remains with the donor. The donor would find that he would need to pay taxes on his "gift", and he would be able to demand his money back at any time if it remains unspent (C T Emery, "The Party Treasurer as Agent" (1983) NLJ 87 at p 88).

141 I agree with Emery's conclusion that the government must be able to call for grants-in-aid back if it were to be legal owner. But I have already explained how the general statutory scheme of the TCA and s 33(6) of the TCA in particular must exclude the government's beneficial ownership of grants-in-aid; otherwise s 33(6) would have no bite (at [130]) and s 37 estimates would be otiose (at [131]). Analogously, the general statutory scheme of the TCA and s 33(6) must exclude the government from retaining legal ownership of the grants-in-aid.

142 Although not a major factor, it bears mentioning that if title to the money remains with the Minister, one would expect the Minister to be entitled to the interest earned from grants-in-aid before they are spent. But this is not so. Rule 89(2) of the TCFR mandates interest and investment income to be credited back to the respective funds from which the principal or capital amount originated, rather than to a separate account, while r 4(2B)(*a*) of the same mandates interest to be transferred to sinking funds within one month from the end of each quarter of each financial year (and comingled with *inter alia* interest earned from S&CC funds).

143 It is also unlikely for grants-in-aid to remain segregated: r 4(2B)(*a*) of the Financial Rules mandates the transfer of S&CC funds and grants-in-aid to sinking funds within one month from the end of each quarter of each financial year while r 89 of the same allows the investment of funds not required for immediate use, without any requirement for segregating S&CC funds from grants-in-aid. Once a grant-in-aid is comingled with S&CC funds, the Minister would be unable to call for the comingled fund to be unscrambled for his benefit (Burrell at 529H). I have already established that grants-in-aid were in fact comingled with S&CC funds and mixed funds from previous years. Analogous to the analysis in the trust section above (at [134]-[136]), assuming *arguendo* that the MND did have a legal interest in grants-in-aid, any such legal interest would pass entirely to AHPETC once the grants-in-aid are comingled with other funds. The MND cannot thereby rely on a legal interest over the entirety of the AHPETC funds which are those of a body corporate with perpetual succession (s 5 of the TCA), with a power to borrow (s 40 of the TCA) and make investments (s 41 of the TCA).

144 All of this indicates that the entire legal interest in a grant-in-aid passes to the town council upon disbursement. It would be implausible and artificial for the MND to retain a legal interest in disbursed grants-in-aid.

Court's power to appoint the IAs

145 Having addressed the various legal bases upon which the MND has brought OS 250, it remains for me to deal with the issue of the court's power to appoint the IAs. Since parties have agreed for me to decide both OS 250 and SUM 1299 at the same time, it is no longer unnecessary for me to consider the issue of the Interim Independent Accountants (under prayer 1 of SUM 1299). Any decision I make on OS 250 will obviate the need for a decision on SUM 1299. I hence limit my discussion to the appointment of the IAs only.

146 Ms Kam submits that the court has a general power in equity to appoint a receiver, and since the powers envisaged for the IAs are "limited, focused and less intrusive than those of a receiver and manager", the court must therefore, *a fortiori*, have the power to appoint the IAs with the powers as contemplated. [note: 20] Insofar as Ms Kam is stating that the court has a general power to appoint a receiver with powers more limited than what an ordinary receiver would possess, I agree. If Ms Kam is envisioning some other "independent officer" that is not a receiver but exercises some of the powers that a receiver usually enjoys, [note: 21] I am of the view that whatever requirements or circumstances that must ordinarily be satisfied before the court will appoint a receiver must similarly be satisfied presently for the court to appoint the IAs as envisioned. In the case of *Don King Productions Inc v Warren & Ors* [2000] BCC 263 ("*Don King*") which Ms Kam relies on, Neuberger J had appointed independent accountants to the partnership in dispute instead of appointing a receiver. However, the learned judge first found on the facts that it was an appropriate case to appoint a receiver before he saw fit to adopt the regime of appointing independent accountants. It must be noted that in *Don King*, the regime of appointing independent accountants was a proposal *by the defendants* to avoid the appointment of a receiver. The learned judge then found that on balance, the regime proposed by the defendant would be more appropriate than appointing a receiver. In contrast, it is the MND in the present case that is seeking to impose the IAs on AHPETC.

147 I turn to the law on appointing receivers. The jurisdiction of the court to appoint a receiver is contained in s 4(10) of the CLA, which provides as follows:

> ***Injunctions and receivers granted or appointed by interlocutory orders***
>
> (10) A Mandatory Order or an injunction may be granted or a receiver appointed by an interlocutory order of the court, either unconditionally or upon such terms and conditions as the court thinks just, in all cases in which it appears to the court to be just or convenient that such order should be made.

148 I accept Ms Kam's submission that s 4(10) of the CLA does not limit the court's power to appoint a receiver only on an interlocutory basis. [note: 22] The court has the power to appoint a receiver on both an interlocutory and final basis. However, there are limits to when such a receiver may be appointed. In *Channel Tunnel Group Ltd and Another v Balfour Beatty Construction Ltd and Others* [1993] 2 WLR 262 ("*Channel Tunnel Group*"), the then House of Lords had the occasion to consider s 37(1) of the Supreme Court Act 1981 (c 54) (UK), which is phrased in very similar language to s 4(10) of the CLA. Section 37(1) of the Supreme Court Act 1981 (UK) reads:

> **Powers of High Court with respect to injunctions and receivers.**
>
> **37.**—(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases where it appears to the court to be just and convenient to do so.

149 In *Channel Tunnel Group*, Lord Mustill held at 284:

> … Although the words of section 37(1) and its forebears are very wide it is firmly established by a long history of judicial self-denial that they are not to be taken at their face value and that their application is subject to severe constraints. …

Referring to a principle previously laid down by the House of Lords in *Siskina (Owners of cargo lately laden on board) v Distos Compania Naviera SA* [1979] AC 210, Lord Mustill went on to hold at 285 that:

> … the right to an interlocutory injunction cannot exist in isolation, but is always incidental to and dependent on the enforcement of a substantive right, which usually although not invariably takes the shape of a cause of action. …

150 Although *Channel Tunnel Group* dealt with an interlocutory injunction, the learned authors in *Kerr & Hunter on Receivers and Administrators* (Sandra Frisby and Malcom Davis-White QC eds) (Sweet & Maxwell, 19th Ed, 2010) are of the view that the limitation extends equally to the appointment of receivers. They state at para 1-5:

> … The jurisdiction to appoint a receiver, like the jurisdiction to grant an injunction, is only exercisable for the purpose of protecting, or enforcing, a legal or equitable right, which will usually need to be represented by, or identifiable as, a cause of action.

151 In other words, the court's power to appoint a receiver is merely a remedy used to protect or enforce a legal or equitable right, and is not a cause of action in itself (see *Bank of Commerce v Tanjung Petri Enterprise* [1992] 2 MLJ 322 and *Suppiah Chettiar v Ong Pee Koi and Another* [1951] MLJ 49). If the right to appoint a receiver is provided by statute, that is another matter altogether. But the court cannot simply appoint a receiver because it is "just or convenient", "necessary" or "in the interest of justice" to do so. [note: 23] In the present case, the legal or equitable rights that the MND claims are their rights pursuant to a statutory mandate, a *Quistclose* trust and a contractual mandate (as indicated above at [39]). I have already dealt with these arguments above and found that no such rights exist. Ms Kam has also not argued that AHPETC owed fiduciary duties of any kind to the MND, which I find in any event is an argument that will be difficult for Ms Kam to mount seriously. Accordingly, it is not open to the court to appoint a receiver or the IAs as envisioned.

152 I make some observations about *The City of Sunderland v PS (by her litigation friend the Official Solicitor) and another* [2007] EWHC 263 (Fam) ("*City of Sunderland*"), another case relied on by Ms Kam. In *City of Sunderland*, an elderly lady, PS, lost the mental capacity to manage her financial affairs. The Official Solicitor, who was PS's litigation friend, sought the appointment of a receiver to manage PS's property for fear that they would be dissipated by CA, PS's daughter, who had practical control of the property. The court, in the exercise of its inherent jurisdiction with respect to incapacitated or vulnerable adults, appointed the receiver. The court held at [31] that it should do so because it was the most appropriate way of protecting the incapacitated adult's interest and promoting his welfare. It would appear from *City of Sunderland* that there was no property in dispute or any legal or equitable rights being protected or enforced, yet the court went on to appoint a receiver. However, *City of Sunderland* deals with a very exceptional circumstance where the court was exercising its "'protective jurisdiction' in relation to vulnerable adults just as it does in relation to wards of court" (at [12]). It is only in the exercise of this protective jurisdiction that the court finds that it has "no limits to [its] powers" (at [15]). The same jurisdiction, however, is not being exercised in the present case and I am not prepared to extend it. Furthermore, the situation is not as dire in the present case as it is in *City of Sunderland*. In that case, the elderly lady was at the mercy of her

daughter who had control over her property and there was no one that could have done anything about it. In contrast, AHPETC owe duties under the TCA to manage its funds properly, and there is an existing regime under the TCA to ensure that AHPETC complies with its duties.

153 Accordingly, I dismiss the second part of prayer 3(b) and prayers 3(c)–(h).

Prayers 1 and 2

154 The MND premises their entitlement to prayers 1 and 2 on the MND having a "statutory, legal and beneficial interest in the Town Council Moneys". [note: 24] Since I have found that the MND has not established any of its legal bases, I dismiss prayers 1 and 2.

Prayer 2A

155 Under prayer 2A, the MND seeks a bare declaration that AHPETC has not complied with r 4(2B)(*a*) of the TCFR because AHPETC has either failed to make timely transfers or any transfers to its sinking funds account. Pursuant to r 4(2B)(*a*) of the TCFR, AHPETC was supposed to make four quarterly transfers to the sinking funds bank account for FY14/15. The four quarterly transfers were to have taken place on 31 July 2014, 31 October 2014, 31 January 2015 and 31 April 2015 respectively. The first transfer of approximately $4,413,692.83 that was due on 31 July 2014 was only made on 6 November 2014. [note: 25] The second transfer of approximately $4,372,905.54 that was due on 31 October 2014 was only made on 11 February 2015. [note: 26] Both transfers were hence more than three months late. The third and fourth transfers that were due on 31 January 2015 and 31 April 2015 have not been made to date. AHPETC does not dispute any of these facts. AHPETC argues that it informed the MND on 30 July 2014 that it was unable to make the first transfer on time due to the grants-in-aid being withheld by the MND. I have noted above that the MND had informed AHPETC that the MND was willing to consider releasing half of the FY 14/15 grants-in-aids, subject to conditions. However, AHPETC never accepted this offer. If AHPETC has anyone to blame for failing to make the transfers on time, it was itself.

156 Against the backdrop of these undisputed facts, it is curious that Ms Lim made the following statement in Parliament on 12 February 2015, just one day after it made the late second transfer and 12 days after the third transfer was due:

> The Town Council accepts that it should have transferred the full amounts due to the sinking funds each quarter and should have paid sinking fund expenses directly from the sinking fund accounts. *We have taken steps and made good the transfers. For [FY 11/12] and [FY 12/13], the necessary transfers have been done. We have also done the transfers for [FY 13/14] and have been making transfers for [FY 14/15]*. … [emphasis added]

157 Ms Lim, however, insists that her statement in Parliament on 12 February 2015 was "true and correct". While it may be "true and correct" that AHPETC had been making transfers for FY 14/15 (since they have made two out of the four transfers for that financial year), Ms Lim failed to mention that both of these transfers were late, one of which was only made the day before her said statement in Parliament. She also failed to mention that the third transfer was already due at that time but AHPETC has yet to make it. I find the Latin phrase *suppressio veri, suggestio falsi* (suppression of the truth is equivalent to the suggestion of what is false) particularly apt to this statement of Ms Lim's.

158 Despite the above facts, the court's power to make a binding declaration under O 15 r 16 of

the Rules of Court (Cap 322, R 5, 2014 Rev Ed) is discretionary in nature. The court need not in all cases where a declaration is asked for, if it finds the facts on which the application is based to be correct, grant the declaration requested. Specifically, the court will not make a binding declaration if it "would not give [the plaintiff] 'relief' in any real sense, *ie* relieve him from any liability or disadvantage or difficulty" (*Salijah bte Ab Latef v Mohd Irwan bin Abdullah Teo* [1995] 3 SLR(R) 233 at [17]). Further, the court will also not grant a binding declaration if the declaration will not serve any useful or practical purpose (*Latham Scott v Credit Suisse First Boston* [2000] 2 SLR(R) 30 at [74]). Having dismissed prayers 1, 2 and 3 of OS 250, I fail to see how the declaration in prayer 2A will serve any useful purpose to the MND. AHPETC has also accepted that the first two quarterly sinking fund transfers for FY 14/15 were late and that the last two quarterly transfers have not been made. Additionally, Ms Kam has not pointed out any such purpose to me. I therefore make no order as to prayer 2A.

Prayers 4, 5, 6 and 7

159 The remaining prayers are consequential prayers and I dismiss them accordingly.

Conclusion

160 It is clear that there are grave and serious questions that have been raised regarding the state of AHPETC's accounts and the validity and propriety of payments previously made by AHPETC to related parties or otherwise. There have also been numerous breaches of the provisions of the TCA and the TCFR. If AHPETC was a managing corporation subject to the BMSMA, I have no doubt that AHPETC or its officers will be exposed to the possibility of civil liability (under ss 88(1) and (2) of the BMSMA) or, in an extreme scenario, criminal liability (for example, under s 60 of the BMSMA). I can only say it is a travesty for AHPETC to have ignored their duties and obligations imposed on them by the TCA and TCFR. They owe a duty and a heavy responsibility to their constituents to run AHPETC properly and it is incumbent on them to put their house and finances in order.

161 Nevertheless, for the reasons set out above I am unable to grant the prayers that the MND is seeking. I emphasise, *ex abundanti cautela*, that nothing I have held in this judgment can be the basis for any form of estoppel against any resident or the HDB from bringing an action against AHPETC if they wish to do so.

162 I will hear the parties on costs.

[note: 1] Han's 1st Affidavit at pp 49–50.

[note: 2] Han's 1st Affidavit at pp 89–95.

[note: 3] Han's 1st Affidavit at p 149.

[note: 4] Han's 1st Affidavit at para 43.

[note: 5] Han's 1st Affidavit at p 420.

[note: 6] Han's 1st Affidavit at p 423.

[note: 7] Han's 1st Affidavit at p 436.

[note: 8] Transcript (4 May 2015) at p 133–134.

[note: 9] Transcript (5 May 2015) at pp 72–73.

[note: 10] Transcript (5 May 2015) at p 40, lines 15–22.

[note: 11] Transcript (5 May 2015 at pp 2–4.

[note: 12] Han's 1st Affidavit at p 436.

[note: 13] Transcript (5 May 2015) at pp 5–16.

[note: 14] Transcript (4 May 2015) at p 137, line 10–11.

[note: 15] DRS at para 109.

[note: 16] DRS at para 110.

[note: 17] Transcript (5 May 2015) at pp 110-112.

[note: 18] Transcript (5 May 2015) at pp 101–109.

[note: 19] MND's Main Submissions at para 26; MND's Counsel Note at para 2.

[note: 20] MND's Main Submissions at paras 58 and 59.

[note: 21] MND's Main Submissions at para 51; Transcript (4 May 2015) at p 101, line 24.

[note: 22] Transcript (5 May 2015 at p 100, line 18–22.

[note: 23] MND's Main Submissions at para 60.

[note: 24] MND's Main Submissions at para 113.

[note: 25] Han's 3rd Affidavit at para 5(c).

[note: 26] Han's 3rd Affidavit at para 5(c).