# Bulk Trading SA *v* Pevensey Pte Ltd and another
# [2014] SGHC 236

**Case Number** : Suit No 571 of 2014 (Summons No 3899 of 2014)

**Decision Date** : 24 November 2014

**Tribunal/Court** : High Court

**Coram** : Steven Chong J

**Counsel Name(s)** : Soh Wei Chi (Kenneth Tan Partnership) for the plaintiff; The first and second defendants in person; Colin Liew (TSMP Law Corporation) as amicus curiae.

**Parties** : Bulk Trading SA — Pevensey Pte Ltd and another

*Civil Procedure – Representation of companies – Order 1 rule 9*

24 November 2014 Judgment reserved.

**Steven Chong J:**

**Introduction**

1 Until very recently, while any person (or defendant) could begin and carry on proceedings in court (or enter an appearance and defend) by a solicitor or in person, a body corporate could not do so otherwise than by a solicitor, except as expressly provided by any written law. This legal restriction was relaxed with the introduction of O 1 r 9(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") in 2011 to permit body corporates to be represented by their authorised officers with leave of court.

2 In this case, a director of the first defendant, Pevensey Pte Ltd ("Pevensey Singapore"), Mr Agus Salim ("Mr Salim"), seeks leave of court under this new rule to represent Pevensey Singapore in the present proceedings. As this is the first occasion for the new rule to be considered by the court, this judgment will trace the historical justifications for the restriction, the experience of other jurisdictions in dealing with the issue, the development of O 1 r 9 which led to its current form, the proper judicial approach to such applications, the factors which the court should consider in the exercise of its discretion and, finally, whether conditions can be imposed in granting leave and if so what those conditions should be.

3 Given the novelty of the issue, the fact that Pevensey Singapore is not represented by counsel, and the fact that the plaintiff, Bulk Trading SA ("Bulk Trading") is not objecting to the application in principle, I decided that the determination of this issue would benefit from the assistance of an *amicus curiae.* With these considerations in mind, the court appointed Mr Colin Liew as the *amicus curiae* for this case.

4 An appreciation of the background facts as well as an understanding of the underlying dispute between the parties out of which this application arises is essential for its proper determination.

**Background facts**

5 Pevensey Singapore was incorporated in Singapore on 29 August 2013. Its issued share capital comprises one share of S$1.00 which is held by Mr Salim, an Indonesian resident. [note: 1] The second

defendant, PT Pevensey Indonesia ("Pevensey Indonesia"), was incorporated in Indonesia on 23 March 2010. Mr Salim is also a director and shareholder of Pevensey Indonesia.

6 Bulk Trading alleged that Pevensey Singapore's current registered address at 10 Anson Road, #06-17 International Plaza, Singapore 079903 is occupied by Rockwills International Group, a corporate secretarial firm, and that Pevensey Singapore is a shell company. [note: 2]

7 Bulk Trading first commenced trading with Pevensey Indonesia in 2011. It dealt primarily with Mr Salim and Mr Carey Ticoalu, the principal trader of Pevensey Indonesia. Those transactions were relatively small. In mid-2013, Bulk Trading expressed interest to purchase coal on a larger scale from Pevensey Indonesia. However it was Bulk Trading's preference that payment should be made through Singapore in line with its practice with other suppliers. Pevensey Indonesia agreed to the proposal and, shortly thereafter, Pevensey Singapore was incorporated in order that Pevensey Indonesia "can establish a presence in Singapore and use Singapore banking channels". [note: 3] Accordingly, Bulk Trading asserts that Pevensey Singapore is nothing more than a front for Pevensey Indonesia.

8 Bulk Trading's claims arise out of several agreements ("the Contracts") entered into between Bulk Trading and Pevensey Singapore, [note: 4] including, *inter alia*:

(a) a Sale Purchase Agreement (Agreement Number BTPEV 5000 GAR 12/0913) ("the 1st SPA") concluded in September 2013; [note: 5] and

(b) a Sale Purchase Agreement (Agreement Number BTPEV 5000 GAR 13/2013) ("the 2nd SPA") concluded in December 2013. [note: 6]

9 Both the 1st SPA and the 2nd SPA are governed by English law and contain arbitration clauses stipulating that disputes thereunder are to be referred to arbitration in Singapore.

10 Bulk Trading filed its Statement of Claim on 25 July 2014, and this was served on Pevensey Singapore at its registered office on 29 July 2014. [note: 7] Its claims against Pevensey Singapore are essentially for short shipment, demurrage and failure to deliver the cargo of the contractual quality. As against Pevensey Indonesia, Bulk Trading's case appears to be that Pevensey Indonesia is likewise liable to it on the basis that Pevensey Singapore is a "mere extension" of Pevensey Indonesia. [note: 8] In this connection, Bulk Trading has averred, *inter alia*, that:

(a) Pevensey Singapore does not have any employees or staff of its own and that all of Pevensey Singapore's business dealings were in fact handled by Pevensey Indonesia;

(b) payments due to Pevensey Singapore were in fact remitted to Pevensey Indonesia's account with Bank of Central Asia, Jakarta Branch; and

(c) in its dealings with Pevensey Singapore and Pevensey Indonesia, it dealt with, *inter alia*, Mr Salim. [note: 9]

11 After disputes had arisen, the parties entered into settlement discussions. Bulk Trading raised several invoices to Pevensey Singapore and Pevensey Indonesia for payment of various settlement sums. This led to compensation being paid from Pevensey Singapore and/or Pevensey Indonesia to Bulk Trading in the sum of US$1,050,000. Bulk Trading's claim is for the balance sum of US$1,873,850.11. [note: 10] Significantly, Bulk Trading alleged in the Statement of Claim that

Pevensey Indonesia had admitted liability for the claims though it eventually refused to sign the settlement agreement. In its Defence filed on 8 August 2014 and signed by Mr Salim, Pevensey Singapore merely asserted that the dispute is required to be referred to arbitration in accordance with the provisions of the 1st SPA and the 2nd SPA and, accordingly, this court lacks jurisdiction. The Defence does not contain any substantive defence or denial to any of the averments asserted by Bulk Trading.

12 It is relevant to point out that prior to commencing the present proceedings, Bulk Trading did commence arbitration proceedings against Pevensey Singapore on or around 13 May 2014. [note: 11] However Pevensey Singapore failed to take any steps to participate in the arbitration, [note: 12] leading Bulk Trading to commence the present proceedings on or around 29 May 2014.

***The Worldwide Freezing Order***

13 On 29 May 2014, by Summons No 2653 of 2014, Bulk Trading applied for a Worldwide Freezing Order ("WFO") against Pevensey Singapore and Pevensey Indonesia. The WFO was granted the next day by Lee Seiu Kin J: [note: 13]

(a) prohibiting Pevensey Singapore and Pevensey Indonesia from, *inter alia*, dealing with any assets in or outside Singapore up to the value of approximately US$2.5m; and

(b) permitting each of Pevensey Singapore and Pevensey Indonesia to spend US$50,000 on legal advice and representation, with liberty to agree with Bulk Trading's solicitors that such spending limits should be increased.

14 Bulk Trading served the writ of summons and the WFO on Pevensey Singapore on 2 June 2014, [note: 14] followed by the service of an amended writ of summons [note: 15] on 4 June 2014. [note: 16] Pevensey Singapore entered an appearance on 9 June 2014 (represented by Kim & Co) [note: 17] and, on the same day, Mr Salim affirmed an affidavit ("Mr Salim's 1st Affidavit") in response to the WFO deposing that the only assets of Pevensey Singapore as at 31 May 2014 are the balances in the following two bank accounts: [note: 18]

(a) a debit balance of S$320 in OCBC Account No 6478-7123-5001; and

(b) a credit balance of US$2,107.59 in OCBC Account No 5031-7906-1301.

***Service out of jurisdiction on Pevensey Indonesia***

15 On or around 16 June 2014, Bulk Trading applied for leave under O 11, rr 1(*a*), (*c*) and (*d*) of the ROC to serve the amended writ of summons on Pevensey Indonesia out of jurisdiction. [note: 19] However, it is not at present clear whether the amended writ of summons has been successfully served on Pevensey Indonesia.

***Summons No 3899 of 2014***

16 On 8 August 2014, Pevensey Singapore filed the present application pursuant to O 1 r 9(2) of the ROC. [note: 20] The application was supported by an affidavit affirmed by Mr Salim ("Mr Salim's 2nd Affidavit"). Mr Salim's 2nd Affidavit merely repeated the relief sought in the application, namely, that leave be granted for Mr Salim to represent Pevensey Singapore in these proceedings. It was

otherwise bereft of any information or material as to why leave should be granted. [note: 21]

17 At a directions hearing on 16 September 2014, I directed Mr Salim to file and serve a *detailed* supplemental affidavit by 26 September 2014 [note: 22] to set out the reasons why *he* should be granted leave to represent Pevensey Singapore in the present proceedings. Mr Salim duly filed his supplemental affidavit ("Mr Salim's 3rd Affidavit") on 26 September 2014 which:

(a) deposed that Mr Salim is a director of Pevensey Singapore;

(b) referred to and exhibited a Warrant to Act dated 24 July 2014 [note: 23] addressed to the Registrar of the Supreme Court and signed by the directors of Pevensey Singapore, *ie*, Mr Salim and Ms Jaclyn Seow Choon Keng for and on behalf of Pevensey Singapore, authorising Mr Salim to act for Pevensey Singapore in the current proceedings;

(c) exhibited, *inter alia*, Pevensey Singapore's Memorandum and Articles of Association; and

(d) asserted that the dispute should be referred to arbitration.

18 It is apparent that Mr Salim's 3rd Affidavit, apart from exhibiting the formal documents authorising him to represent Pevensey Singapore and stating that the dispute should be referred to arbitration, does not explain why leave of court should be granted to authorise *him* to represent Pevensey Singapore. On the same day, Mr Salim also filed written submissions which to a large extent replicated the contents of Mr Salim's 3rd Affidavit.

***Default judgment***

19 Though Pevensey Singapore filed its Defence on or about 8 August 2014, it omitted to serve it on Bulk Trading within the timeframe required under the ROC. [note: 24] Consequently, on 14 August 2014, Bulk Trading applied for and obtained default judgment under O 19 r 3 of the ROC against Pevensey Singapore. [note: 25]

**The present application**

20 That is the context out of which the present application arises, pursuant to O 1 r 9(2) of the ROC.

21 Order 1 r 9 of the ROC [note: 26] confers a discretion upon the court to expand the concept of an "in person" party or litigant so as to include within it a corporate entity suing or represented by a duly-authorised officer. As such, it is intended to (and should) be read with:

(a) Order 5, r 6 of the ROC, [note: 27] which deals with the right to sue in person; and

(b) Order 12, r 1 of the ROC, [note: 28] which deals with entering an appearance and defending an action.

22 Notably, the present application is correctly made only in respect of Pevensey Singapore and not Pevensey Indonesia, as the definition of "company" in O 1 r 9(6) of the ROC refers only to a company incorporated under the Companies Act (Cap 50, 2006 Rev Ed).

***Historical reasons for the restriction on corporate representation***

23 At common law, a distinction had always been made between natural persons and body corporates in the conduct of court proceedings. Only litigants in person were allowed to represent themselves in court whereas body corporates could only do so by solicitors.

24 While different jurisdictions have adopted different approaches to address this issue, it is clear that legislative intervention in virtually all the common law jurisdictions was necessary to enable body corporates to conduct legal proceedings other than through solicitors.

25 Why was this distinction made in the first place? What were the justifications for the difference in the treatment of litigants in person and body corporates? Several reasons have been offered to rationalise the distinction – some obscure, some archaic but none particularly compelling in the current legal landscape.

26 First, the traditional support for the restriction lay in the understanding that a company, not being a natural person but a collection of directors and shareholders, could not appear in court "in person". However, such a view was already regarded as outdated or, in the words of Swinfen Eady LJ in *Charles P Kinnell & Co Limited v Harding, Wace & Co* [1918] 1 KB 405 [note: 29] at 413, as "ancient" almost a century ago. Modern companies are legal persons which, by the provisions of the Companies Act and their memorandum or articles of association, are usually conferred capacities, rights, powers and privileges equivalent to that of a natural person. Thus, there should be no real difficulty with the idea of a company participating in legal proceedings "in person" (see *Jonathan Alexander Ltd v Proctor* [1996] 1 WLR 518 [note: 30] at 527).

27 Second, it has been observed that allowing a lay officer of the company to represent it in litigation would in effect give the company an advantage not afforded to individual litigants who, if they do not represent themselves, must be represented by lawyers (see *Bay Marine Pty Ltd v Clayton Country Properties Pty Ltd* (1986) 11 ACLR 326 [note: 31] ("*Bay Marine*") at 332). However, this, in my view, merely restates the objection that a company cannot appear "in person": if the person appearing for the company is not regarded as a representative but as the embodiment of the company, the objection cannot be sustained (see *British Columbia Telephone Company v Rueben* (1982) 38 BCLR 392 [note: 32] at [14]).

28 Third, concerns have also been expressed that, as a result of the doctrine of limited liability, those who litigate with companies are in a disadvantaged position, as the company may not be able to compensate them and the company's shareholders' assets are not at risk. Consequently, it is in the interests of a corporate litigant's potential creditors and opponents that certain constraints be imposed on the company in litigation, such as having to act through lawyers (see *Radford v Freeway Classics Ltd* [1994] 1 BCLC 445 [note: 33] ("*Radford*") at 448, which is considered at [58] below). With respect, however, it is not obvious that a company is very different from an individual litigant in this respect. If the company is the plaintiff, the defendant can always seek an order for security for costs. If the company is the defendant, then the plaintiff takes its chances that the defendant cannot compensate it, just as any other plaintiff does. Either way, it is difficult to see how obliging the company to be legally represented would make a difference.

29 Fourth, some judges, in espousing the traditional rule, appear to have been influenced by the fear that if the company's chairman could appear on its behalf, so could its doorman (see *Re An Arbitration between the London County Council and the London Tramways Company* (1896–97) 13 TLR 254 [note: 34] ("*Re London Tramways*")). As a matter of principle, however, it is difficult to place

much weight on this objection, particularly in the case of "one-man" companies. In any event, such a concern is directly addressed by O 1 r 9(6) of the ROC by limiting the classes of persons who can act on behalf of the company to "any director or secretary of the company, or a person employed in an executive capacity by the company".

30 Fifth, another concern has been that those who act for a company must be in a position to cause the company to undertake obligations (see *Bay Marine* [note: 35] at 334). This sort of objection, however, is easily addressed by requiring (as O 1 r 9 of the ROC presently does) that the person who purports to act for the company furnish evidence of his authorisation by the company to do so.

31 Sixth, as an extension of the prohibition against corporations being represented by its officers in court proceedings, the position in the US is that to allow such officers to represent corporations would in effect permit a non-lawyer to practice law without a license. Such an objection becomes irrelevant when appropriate legislation permits such representation as is addressed in Singapore by O 1 r 9(2) read with s 34(1)(*ea*) of the Legal Profession Act (Cap 161, 2009 Rev Ed).

32 Seventh and finally, it is also frequently said that the rationale for the rule is that it secures for the court the services of professional advocates familiar with court procedure and governed by disciplinary rules (see *Tritonia, Limited, and others v Equity and Law Life Assurance Society* [1943] 1 AC 584 [note: 36] at 587). Related to this is the idea that allowing companies to represent themselves would be unfair and burdensome to the other party, by forcing them to confront an opponent who does not appreciate and hence fails to abide by the normal rules of litigation (see *Worldwide Enterprises Pty Ltd v Silberman and another* (2010) 237 FLR 292 [note: 37] at [44]). The delay and costs so occasioned, it is said, would also be unfair to the other parties in the court's docket, and is prejudicial to the administration of justice as a whole (see *Hubbard Association of Scientologists International v Anderson and Just* [1972] VR 340 [note: 38] at 343).

33 However, such objections apply with equal force to individual self-representation. Yet, it has never been seriously suggested that litigants in person should be prohibited from acting for themselves because it would be more helpful to their opponents and the court for them to be represented by counsel. Furthermore, there are existing safeguards which significantly attenuate the force of these concerns. For instance, if an unintelligible case is advanced, the result would almost certainly be summary judgment in favour of the other party, while a failure to meet timelines or comply with directions could easily be dealt with by peremptory orders. In addition, the court has sufficient powers under O 18 r 19 of the ROC or its inherent jurisdiction to deal with truly vexatious, frivolous or abusive proceedings. In any event, such concerns can also be adequately dealt with by imposing appropriate orders for the representative to be responsible for any adverse costs orders. This will be elaborated below at [122]–[125].

34 Once the objections are carefully analysed, it is not immediately apparent that the distinction between litigants in person and corporate litigants remains justifiable. It seems difficult, therefore, to resist the trenchant conclusion expressed by L C B Gower in *Gower's Principles of Modern Company Law* (Sweet & Maxwell, 5th Ed, 1992) at p 195 that the common law rule "appears to serve no purpose other than to protect the monopoly of the legal profession". [note: 39] It is therefore not surprising that many common law jurisdictions, including Singapore, have come round to the view that body corporates could and should in certain circumstances be permitted to represent itself through its duly authorized officers in legal proceedings. The difference in approaches is ultimately either a function of the differences in the wording of the relevant procedural rule or differing policy considerations as explained below.

***The proper construction of O 1 r 9(2)***

35 Order 1 r 9(2) of the ROC provides as follows:

> (2) For the purposes of section 34(1)(*ea*) of the Legal Profession Act (Cap. 161) and paragraph (1), the Court may, on an application by a company or a limited liability partnership, give leave for an officer of the company or limited liability partnership to act on behalf of the company or limited liability partnership in any relevant matter or proceeding to which the company or limited liability partnership is a party, *if the Court is satisfied that* —
>
> > (*a*) the officer has been duly authorised by the company or limited liability partnership to act on behalf of the company or limited liability partnership in that matter or proceeding; and
> >
> > (*b*) *it is appropriate to give such leave in the circumstances of the case*.
>
> [emphasis added]

36 This procedural rule plainly confers a wide discretion on the court to determine when leave should be granted for a company to be represented by an "officer" as defined in O 1 r 9(6). It neither circumscribes the circumstances in which it would be "appropriate" to grant leave nor does it specify the standard on which the court must be "satisfied" before doing so. The contours of this rule will therefore have to be shaped by the courts but given its relatively short existence in our legal landscape, it is not surprising that such an exercise has yet to be undertaken. The present application thus offers a timely opportunity for examining the proper construction of O 1 r 9(2) and I am fortunate in this respect to be able to tap on a wealth of authority from different jurisdictions which have considered when it is appropriate for companies to represent themselves in court proceedings. Before taking the analysis abroad, however, it is useful to first trace the history behind O 1 r 9(2) to appreciate how Singapore's approach towards this issue has evolved over time as well as to see whether it might point to a clear way forward.

*The historical development of O 1 r 9(2)*

(1) The position before 1 July 2007

37 Prior to 1 July 2007, the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the ROC 2006") did not contain anything to suggest that a company could seek representation by someone other than a solicitor in any legal proceedings. The combined effect of the then existing O 5 r 6(2) and O 12 r 1(2) was that, subject to any written law which provided to the contrary, a body corporate was completely prohibited from commencing or carrying on any action in court and, conversely, entering an appearance in or defending such action "otherwise than by a solicitor". Order 5 r 6(2) and O 12 r 1(2) of the ROC 2006 are respectively set out here for ease of reference:

> **Right to sue in person (O. 5, r 6)**
>
> (2) Except as expressly provided by or under any written law, a body corporate may not begin or carry on any such proceedings otherwise than by a solicitor.
>
> **Mode of entering appearance (O. 12, r 1)**
>
> (2) Except as expressly provided by any written law, a defendant to such an action who is a body corporate may not enter an appearance in the action or defend it otherwise than by a

solicitor.

38 Despite the apparently strict wording of these provisions, Lai Kew Chai J nevertheless took the view in *Lea Tool and Moulding Industries Pte Ltd (in liquidation) v CGU International Insurance plc (formerly known as Commer Union Assurance Co plc)* [2000] 3 SLR(R) 745 ("*Lea Tool*") at [16] that they did not lay down an "immutable rule of procedure" mandating that any step taken in any proceedings by a corporate litigant had always to be done by a solicitor. Lai J cited with approval the English authority of *A.L.I. Finance Ltd v Havelet Leasing Ltd and others* [1992] 1 WLR 455 ("*A.L.I. Finance*") (considered below at [51]) in recognising that courts had an "inherent power" to allow an officer of a company to appear on behalf of the company and take any step to continue with pending litigation. The learned judge was careful to state, however, that this power should be exercised only in sufficiently "exceptional cases".

(2) The 2007 Amendment

39 On 1 July 2007, the Rules of Court (Amendment) Rules 2007 (S 228/2007) ("the 2007 Amendment") came into effect and amended O 5 r 6(2) and O 12 r 1(2) of the ROC 2006 by specifically empowering the Registrar to issue Practice Directions which could allow a body corporate to begin or carry on proceedings, or enter an appearance in or defend an action, otherwise than by a solicitor. The amended provisions respectively read as follows:

> **Right to sue in person (O. 5, r 6)**
>
> (2) Except as expressly provided under any written law *or any Practice Directions for the time being issued by the Registrar*, a body corporate may not begin or carry on any such proceedings otherwise than by a solicitor.
>
> **Mode of entering appearance (O. 12, r 1)**
>
> (2) Except as expressly provided by any written law *or any Practice Directions for the time being issued by the Registrar*, a defendant to such an action who is a body corporate may not enter an appearance in the action or defend it otherwise than by a solicitor.
>
> [emphasis added]

40 The 2007 Amendment no doubt hinted at the possibility that the restrictions on corporate self-representation might be relaxed. However, until any Practice Directions to that effect had actually been issued, the early suggestion that corporate self-representation would henceforth be permitted unless "a particular and sufficient countervailing reason" was shown to the contrary (see *Singapore Civil Procedure 2007* (GP Selvam gen ed) (Sweet & Maxwell Asia, 2007) at para 5/6/1) appeared to be somewhat premature. Indeed, no such Practice Directions were ever issued in the years subsequent to the 2007 Amendment and this dormancy led Quentin Loh J to observe in *Van Der Laan Elisabeth Maria Everarda v Billionaires Management Worldwide (BMW) Pte Ltd and others* [2010] SGHC 180 at [57] that "the position must be that a corporation can only carry on proceedings at trial by an advocate and solicitor and any suggestion to the contrary ... cannot, with respect, be right".

(3) The 2011 Amendment

41 On 3 May 2011, the Rules of Court (Amendment No 3) Rules 2011 (S 224/2011) ("the 2011 Amendment") introduced O 1 r 9(2) in its present form as set out at [35] above. The significance of this should be clear from the history that preceded the 2011 Amendment – this was the first time in

Singapore where *express* provision allowing companies to seek representation by persons other than solicitors had been made. As O 1 r 9(2) clearly interfaced with the long-standing prohibitory rules in O 5 r 6(2) and O 12 r 1(2), it was a natural consequence that both these provisions also had to undergo change as part of the 2011 Amendment. They are respectively worded in the current ROC as follows:

> **Right to sue in person (O. 5, r. 6)**
>
> (2) *Subject to Order 1, Rule 9(2)* and any other written law, and except in accordance with any practice directions for the time being issued by the Registrar, a body corporate may not begin or carry on any proceedings in Court otherwise than by a solicitor.
>
> **Mode of entering appearance (O. 12, r. 1)**
>
> (2) *Subject to Order 1, Rule 9(2)* and any other written law, and except in accordance with any practice directions for the time being issued by the Registrar, a defendant to an action begun by writ which is a body corporate may not enter an appearance in the action or defend it otherwise than by a solicitor.
>
> [emphasis added]

42 It should be mentioned that, under the 2011 Amendment, all references to the "Court" in O 1 r 9 were confined specifically to the District Court and the Magistrate's Court by virtue of the definition provided in O 1 r 9(6). In a similar vein, O 1 r 9(5) also limited the "relevant matter or proceeding" for which corporate self-representation could be sought solely to matters or proceedings before these courts. The overall consequence was that a company could only apply to be represented by someone other than a solicitor under O 1 r 9(2) if it was a party to proceedings before the District Court or Magistrate's Court. It has been suggested in a fairly recent publication that this limitation on the scope of O 1 r 9 was justified since shareholders and other interested parties may have much more to lose if a company was not properly represented in proceedings in the High Court and Court of Appeal where higher sums were generally involved (see *Supreme Court Practice 2014* vol 1 (Jeffrey Pinsler SC gen ed) (LexisNexis, 2014) at para 5/6/1B). However, that commentary must now be seen in light of an even more recent amendment to the ROC made by the Rules of Court (Amendment) Rules 2014 (S 299/2014) ("the 2014 Amendment").

(4) The 2014 Amendment

43 The 2014 Amendment came into operation on 1 May 2014. To be clear, it did not make any direct amendments to the actual wording of O 1 r 9(2) itself. What the 2014 Amendment did, however, was to amend the scope of O 1 r 9(2) indirectly by widening the definition of "Court" in O 1 r 9(6) and the definition of "relevant matter or proceeding" in O 1 r 9(5) so that, now, it is possible for a company to apply for leave to be represented by its own officer even in proceedings before the High Court and Court of Appeal (see *Ho Pak Kim Realty Co Pte Ltd v Attorney-General* [2014] SGHC 176 at [9]).

*A broad outline of the possible approaches to O 1 r 9(2)*

44 It may be noticed from the foregoing account on the historical development of O 1 r 9(2) that each amendment leading up to its current form appears, unfortunately, to be unaccompanied by any sort of explanatory material which might shed light on the policy intention behind the progressive shifts. While there has been some external commentary on these amendments, I have noted that they do not assist greatly – one source was slightly hasty in its assessment (see [40] above) while

the other has since been overtaken by events (see [42] above). In these circumstances, one has essentially to interpret the series of amendments unaided and, at this juncture, it may be preliminarily observed that, depending on where one places the emphasis in the historical development of O 1 r 9(2), it can arguably support three different possible approaches:

(a) First, one might take the view that the historical development of O 1 r 9(2) illustrates that there has been a gradual and considered expansion of the court's power to permit corporate self-representation and that the 2014 Amendment represents merely the latest development in this overarching trend. Where once the court's power was unarticulated and thus had to be drawn from its inherent jurisdiction, it now finds clear expression in the ROC and may be exercised even in respect of proceedings in the High Court and Court of Appeal. When viewed from this perspective, it might be argued that a *liberal* construction of O 1 r 9(2) is warranted. Applications for leave under this provision should, accordingly, be treated with a light touch.

(b) A second and directly opposing view, however, may be preferred by those who lay emphasis on O 5 r 6(2) and O 12 r 1(2). For proponents of this view, the amendments should not distract from the fact that, ultimately, these two provisions continue to prescribe the default position of prohibiting corporate self-representation whereas O 1 r 9(2) takes its place in the wider statutory scheme merely as an exception to the general rule. From this perspective, one may argue that a *restrictive* stance requiring exceptional or special reasons for obtaining leave should therefore be favoured instead.

(c) A third possible approach, however, is that the court should adopt a *neutral* starting position towards applications under O 1 r 9(2) without necessarily being predisposed one way or the other. This is especially so since the historical development of O 1 r 9(2) appears (as the two contrasting approaches above show) to be equivocal on this issue. On this third view, the court's true focus should be on a judicious balancing of the relevant factors surrounding each application before deciding whether or not to grant leave. Given the neutrality of the court's starting position, applicants are not required to demonstrate exceptionality in their circumstances but, by the same token, cannot expect that their applications will be routinely allowed and must therefore furnish sufficient reasons.

45 As mentioned earlier at [24], practically all the common law jurisdictions have introduced legislation to allow for corporate self-representation and their respective judicial stances on this subject may broadly be said to range on a spectrum that reflects the approaches outlined above. The authorities originating from these jurisdictions therefore provide much grist for the mill but, in the course of considering them, it will become clear that the different judicial approaches are each a function of the particular wording of each jurisdiction's relevant legislation and their specific policy concerns. As the wording of O 1 r 9(2) is neither an exact reproduction of another foreign statute nor is its underlying policy motivation entirely clear, one has necessarily to proceed with a degree of caution when attempting to derive guidance from the experiences abroad. Nevertheless, having said that, a survey of the relevant foreign authorities remains a productive exercise because it equips one with an understanding of why some jurisdictions may have adopted a more restrictive or liberal approach. That insight should, in turn, inform us of how best to construe O 1 r 9(2).

*The judicial approaches abroad*

(1) A general consensus: litigants in person versus corporate litigants

46 Before canvassing the authorities in these different jurisdictions, I should highlight that they all begin from a common platform which provides a useful starting point to the analysis. This commonality

lies in the differential treatment accorded by the courts to a litigant in person on the one hand and to a corporate litigant on the other. The former is generally able to represent himself in court proceedings *as of right*, whereas the latter generally does not enjoy such an entitlement (see [63] and [66] below for limited exceptions to this general rule in New Zealand and New South Wales respectively).

47 There are sound reasons for requiring a corporate litigant to first seek leave of court before being able to represent itself in proceedings. In *Winn v Stewart Bros Constructions Pty Ltd* [2012] SASC 150 ("*Winn*"), Blue J identified three such rationales at [38] which can all be linked to the court's inherent desire to ensure that justice is administered both fairly and efficiently in the interests of the immediate parties and the wider public:

> 1. The opposite party may be disadvantaged by the time and cost of the proceeding being extended due to the company not being represented by a legally qualified advocate.
>
> 2. The public interest in the efficient and timely administration of justice may be prejudiced by the time and cost of the proceeding being extended due to the company not being represented by a legally qualified advocate.
>
> 3. The public interest in the fair administration of justice may be prejudiced by the fact that a lay advocate (unlike a legally qualified advocate) does not owe a duty to the court and to the parties in the litigation to ensure that the court is properly informed and not misled.

48 In light of these real and practical concerns, it is not difficult to see why the general prohibition against the lay representation of companies in O 5 r 6(2) and O 12 r 1(2) of the ROC has not been completely abolished by recent amendments. If such a course had been adopted, it would, in my view, tilt the balance too heavily in favour of considerations of access to justice while at the same time neglecting the abovementioned concerns. Instead, as with the overwhelming majority of common law jurisdictions, Singapore has elected to take a more calibrated approach by imposing the requirement of obtaining leave under O 1 r 9(2). That is crucial in allowing the court to scrutinise, *inter alia*, the competency of the representative with reference to the complexity of the underlying factual and legal issues (see also [105] below). Having conducted such an assessment, the court can then arrive at an informed view on whether it would, on a whole, be unduly prejudicial to the administration of justice if the lay representative is allowed to have carriage of the proceedings. Viewed in this way, the court can be said to perform an important sieving function under O 1 r 9(2).

49 Moving away from this common starting point, however, one begins to see a divergence in the judicial approaches towards the issue of corporate self-representation. Some are more robust in upholding the general prohibition, while others may be less so. I turn now to examine these different approaches.

(2) A diversity of judicial approaches

(A) The United Kingdom

50 My survey of the foreign authorities begins in the UK because, in my view, the development of the law on corporate self-representation within the UK itself provides a neat microcosm of how starkly different approaches can be taken on the same subject owing to a shift in policy focus.

51 In the UK, a firm rule of practice was established early on at common law that companies were to be distinguished from litigants in person and could only conduct litigation and be represented in

court by a solicitor or attorney (see *Re London Tramways* and *Scriven v Jescott (Leeds) Ltd* (1908) 53 Sol Jol 101). This strict common law position continued to prevail after the enactment of the Rules of the Supreme Court 1883 (UK) (see *Frinton and Walton Urban District Council v Walton and District Sand and Mineral Co Ltd and another* [1938] 1 All ER 649) and also while its subsequent version, *viz*, the Rules of the Supreme Court 1965 (UK) ("RSC"), was in force. As the RSC contained provisions that were substantively similar to O 5 r 6(2) and O 12 r 1(2) of the 2006 ROC, it too did not contain any specific provision allowing leave for corporate self-representation to be sought. Nevertheless, Scott J recognised in *A.L.I. Finance* at 462 that the court could exercise its inherent power to permit any advocate (lay or professional) to appear for a corporate litigant "if the exceptional circumstances of the case so warrant". This, as will be recalled, was also the position in Singapore under the 2006 ROC (see [38] above).

52 The existence of "exceptional circumstances" was not lightly found by the English courts and this is exemplified by the outcome in *Radford*. There, the sole director and 99% shareholder of the defendant company had argued at 449, *inter alia*, that the company lacked the means to instruct legal advisors, that the company had a good defence on the merits to the plaintiff's claim, that the company's case would go by default if it was unable to be heard, and that an adverse judgment would be damaging to him personally and to his business reputation. None of these factors, however, were regarded as exceptional by Sir Thomas Bingham MR (with whom Leggatt LJ and Roch LJ agreed) who affirmed at 449 that the ordinary rule prohibiting the lay representation of corporate litigants was one that would be "rarely waived".

53 This highly guarded stance, however, created much dissatisfaction at the time, and this is perhaps best encapsulated in the following remark by Scott J in *A.L.I. Finance* at 463:

> … I can see no sound reason of practice, procedure or policy which obliges the court to say to the director who desires to make such an application, "Your only remedy is to put your hand into your pocket and instruct solicitors and counsel to appear on the company's behalf." I repeat, I see no reason why an individual should be forced to incur the horrendous cost of commercial litigation if he is willing to appear in person.

54 Such unhappiness over the unnecessary inconvenience and additional expense engendered by the prohibitory rule were duly noted by Lord Woolf in his final report to the Lord Chancellor on the civil justice system in England and Wales titled *Access to Justice* (July 1996). Lord Woolf observed at Chapter 12, para 62 that the strictures of this rule could be "particularly irksome" in relation to routine procedural steps which required no special skills and was thus prompted to examine the traditional arguments made in favour of the rule. These arguments could not, in Lord Woolf's analysis, withstand scrutiny and his Lordship thus concluded at para 71 in the same chapter with the recommendation that, subject to the court's discretion, a duly authorised employee of a company should "*normally*" be permitted to act on its behalf in court proceedings.

55 Lord Woolf's recommendation was subsequently accepted when the English RSC was replaced by the Civil Procedure Rules 1998 (SI 1998 No 3132) (UK) ("CPR") and, as Pumfrey J observed in *Tracto Teknik GMBH and another v LKL International Pty Ltd and others* [2003] 2 BCLC 519 ("*Tracto Teknik*") at [10], this has certainly brought about "a major change in the rules". Presently, r 39.6 of the CPR provides that a company may be represented at trial by an employee if that employee has been so authorised by the company and "the court gives permission". Rule 39.6, however, must further be read with Part 39A of the CPR Practice Directions which, crucially, provides explicit guidance to the court as to how it should exercise its discretion when deciding to grant permission. In this regard, para 5.3 of Part 39A specifically explains that r 39.6 is "intended to enable" a company to represent itself as a litigant in person; hence permission should generally be given by the court

"unless there is some particular and sufficient reason why it should be withheld". As may readily be observed from this, the default position of the English courts has experienced a complete reversal. While it still remains the case that a company cannot represent itself as a matter of right, it appears from the clear direction in the CPR Practice Directions that leave applications will now generally be allowed as a matter of course, *unless* there is shown to be some particular and sufficient reason to the contrary. In the absence of such clear guidelines in the ROC, one cannot say with the same confidence that O 1 r 9(2) should be approached in as liberal a manner as now prevails in the UK.

56 To sum up the analysis on the UK's position, it is apparent that the pendulum has swung from one end of the spectrum of possible approaches to the other. Instead of insisting on "exceptional reasons" to be furnished to justify corporate self-representation, the English courts are now focused on the reasons why a corporate litigant should *not* be allowed to represent itself. That is certainly a fundamental shift of the analytical paradigm and one which has been motivated by clearly articulated policy concerns. However, these policy concerns do not necessarily hold sway elsewhere and this is amply borne out by the respective judicial approaches in Hong Kong and New Zealand which are very much restrictive in nature.

(B) Hong Kong

57 In Hong Kong, the statutory regime on the subject of corporate self-representation is contained in O 5 rr 6(2) and (3) of the Rules of the High Court (Cap 4A) (HK) ("RHC") which provide, respectively, as follows:

> (2) A body corporate may not begin or carry on any such proceedings in the Court otherwise than by a solicitor except –
>
> (a) (a) as expressly provided by or under any enactment; or
>
> (c) (b) where leave is given under paragraph (3) for it to be represented by one of its directors.
>
> (3) (a) An application by a body corporate for leave to be represented by one of its directors shall be made ex parte to a Registrar and supported by an affidavit, made by the director and filed with the application, stating and verifying the reason why leave should be given for the body corporate to be represented by the director.
>
> …

58 The broad architecture of the relevant provisions in the RHC may fairly be said to be somewhat similar to that in our ROC. Like Singapore, the general rule in Hong Kong is that a body corporate may not begin or carry on proceedings in court (O 5 r 6(2)), but, as with O 1 r 9(2) of the ROC, specific provision is made in the RHC which allows the body corporate to apply for leave to be represented by one of its directors (O 5 r 6(3)(a)). Further, it may also be noted that the broad wording of O 5 r 6(3)(a) of the RHC also does not elaborate on the circumstances in which leave should be granted. It is crucial to note in this connection, however, that the courts in Hong Kong have gone on to clarify that the general prohibition against corporate self-representation rests on the policy rationale of protecting potential creditors of the company and those who litigate against it. This policy rationale finds its clearest articulation in a passage of Bingham MR's judgment in *Radford* at 448 which was cited with approval by Maria Yuen JA in *Hondon Development Limited and another v Powerise Investments Limited and another* [2003] HKCA 323 ("*Hondon*") at [19]:

> … A limited company, by virtue of the limitation of the liabilities of those who own it, is in a very privileged position because those who are owed money by it, or obtain orders against it, must go empty away if the corporate cupboard is bare. The assets of the directors and shareholders are not at risk. That is an enormous benefit to a limited company but it is a benefit bought at a price. Part of the price is that in certain circumstances security for costs can be obtained against a limited company in cases where it could not be obtained against an individual, and another part of the price is the rule … that a corporation cannot act without legal advisors. The sense of these rules plainly is that limited companies, which may not be able to compensate parties who litigate with them, should be subject to certain constraints in the interests of their potential creditors.

59 Given the above policy concern, Yuen JA naturally came to the view in *Hondon* at [21] that the "normal rule" would be for a company to pursue litigation through lawyers. The learned judge recognised that there could be exceptions to this rule but, citing *Radford*, stated at [19] that it would not be enough for a company to show that it lacked resources or plead that it had a good cause of action. On this basis, Yuen JA revoked the leave which had been granted by the master below to the company in *Hondon* since the only reason which had been offered in support of the company's application was that its "stringent financial condition" prevented it from instructing lawyers (see [18]).

60 The policy rationale identified in *Hondon* continues to guide the Hong Kong judiciary's approach towards leave applications under O 5 r 6(3) of the RHC. This is clear from a response by the Hong Kong Judiciary Administration in LC Paper No CB(2)2543/08-09(01), which was issued in September 2009, to a request for clarification on O 5 r 6 of the RHC by the Legislative Council Panel on Administration of Justice and Legal Services. In this response, the Hong Kong Judiciary Administration reaffirmed that the general prohibition against corporate self-representation was justified because "[t]o permit a limited company to pursue proceedings without legal representation, at no financial risk to its shareholders and directors, is inherently unfair to the other parties to the litigation". This policy rationale, however, is no longer considered persuasive in the UK and, for my part, I have explained at [28] above why I do not find it particularly satisfactory either. Therefore, while it might appear attractive to draw from Hong Kong's jurisprudence on this subject given the broad similarities shared by the RHC and the ROC, the divergence in judicial philosophies means that one must tread very carefully in doing so.

(C) New Zealand

61 In New Zealand, there is no statutory prohibition against corporate self-representation in proceedings in the High Court and Court of Appeal but neither is there any clear rule which permits it. Nevertheless, it was authoritatively settled early on by the Court of Appeal in the leading case of *Re G J Mannix Ltd* [1984] 1 NZLR 309 [note: 40] ("*Mannix*") that the rule which allowed litigants in person to represent themselves should not be extended by analogy to allow laymen to represent a company as of right in litigation in New Zealand's superior courts. The Court of Appeal went on to recognise, however, that the courts retained a residuary discretion to waive this prohibition but it was envisaged that this would not be a frequent occurrence. As Cooke J stated at 314:

> In general, and without attempting to work out hard-and-fast rules, discretionary audience should be regarded, in my opinion, as a reserve or occasional expedient, for use primarily in emergency situations when counsel is not available or in straightforward matters where the assistance of counsel is not needed by the Court or where it would be unduly technical or burdensome to insist on counsel. …

62 This was echoed by Somers J at 316–317 in the following terms:

> … I consider the superior Courts have a residual discretion in this matter arising from the inherent power to regulate their own proceedings. Cases will arise where the due administration of justice may require some relaxation of the general rule. Their occurrence is likely to be rare, their circumstances exceptional or at least unusual, and their content modest. …

63 It is pertinent to point out at this juncture that the position reached in *Mannix* appears to have partly been a product of New Zealand's bifurcated treatment of proceedings in its superior courts and in the District Courts. Section 57(2) of New Zealand's District Courts Act 1947 (No 16 of 1947) (NZ) specifically provides that a corporation "may appear by any officer, attorney, or agent of the corporation" but, as has been mentioned, there is no express equivalent insofar as proceedings in the High Court and Court of Appeal are concerned. In *Mannix*, Somers J noted at 316 the absence of such "special legislation" for proceedings in the superior courts and this appears to have influenced his view that the court's discretion to allow corporate self-representation in these proceedings should therefore only be exercised sparingly in exceptional circumstances. This distinction also appears to have had a bearing on the decision of Cooke J who, in the first place, doubted at 313 whether the statutory exemption from the general common law prohibition remained appropriate in light of the District Court's increased jurisdiction and the greater complexity of cases. Given this observation by Cooke J, it appears that he was convinced that the circumstances for relaxing this prohibition should *a fortiori* be stricter in respect of proceedings in the superior courts.

64 The statutory regime for corporate self-representation in Singapore under O 1 r 9 of the ROC is clearly distinguishable from that which subsists in New Zealand. As highlighted above at [43], the defining feature of the 2014 Amendment to the ROC was to widen the definition of "Court" to cover proceedings in the High Court as well as the Court of Appeal. Accordingly, the particular court in which an action is commenced or defended is not *in itself* a material or even relevant consideration which affects the assessment of whether leave should be granted under O 1 r 9(2). This is therefore yet another illustration of my earlier observation that each jurisdiction's approach to the question of corporate self-representation is necessarily tied to their respective statutory frameworks and underlying policies.

(D) Australia

65 Australia has a rich panoply of case law on the subject of corporate self-representation but, when considered as a whole, it will be noticed that they do not disclose a single uniform approach to this issue. That is largely because Australia is a federal jurisdiction where different states and territories have adopted distinct rules to govern their respective court proceedings (see *Miorada and another v Miorada and others* [2005] WASC 105 at [29]). In my view, this makes it unproductive to embark on either a comprehensive or granular analysis of the authorities in all the different states and territories. Instead, I find that the analysis achieves greater clarity when one takes a macroscopic view of the Australian jurisprudence because, once this is done, one sees the emergence of two broad lines of authorities – one requires a company to show *special or exceptional* reasons before it will be allowed to represent itself, while the other sets the threshold lower by requiring only proof of *sufficient* reasons.

66 Before illustrating these distinct judicial approaches with some cases, it is beneficial to first identify Australian legislation which bears some similarity to the ROC on the point of corporate self-representation. In this regard, it merits pointing out that in the South Australian case of *Winn*, Blue J has most helpfully conducted a comparative review of the different legislative schemes in Australia which he prefaces with the observation at [28] that they "range from one extreme … to the other extreme". As regards the more restrictive extreme, Blue J had in mind the Western Australian Rules of

the Supreme Court 1971 (WA) which essentially follows the English RSC in containing only a general prohibition against corporate self-representation without making explicit any provision for obtaining leave to act otherwise. At the more liberal extreme, however, are the procedural rules in New South Wales. Here, the position differs between the District Court and the Supreme Court and, in the latter, between plaintiff and defendant. Rule 7.1(2)(b) of the Uniform Civil Procedure Rules 2005 (NSW) provides that, unless the court orders otherwise, a company may commence and carry on proceedings in the District Court by a duly authorised officer. As for proceedings in the Supreme Court, r 7.1(2)(a) read with r 7.1(3) essentially permits a director who is a co-plaintiff with the company to represent it in the same manner as proceedings in the District Court.

67 The legislative scheme in Singapore is clearly positioned at neither extreme. Unlike the position in Western Australia, O 1 r 9(2) of the ROC specifically provides that leave may be obtained by a company to represent itself and, unlike the position in New South Wales, the ROC certainly does not go so far as to permit a company to represent itself *as of right* in proceedings at any court level. One therefore has to move inwards from the two extremes to find Australian legislation that more closely resembles the scheme under the ROC. The procedural rules which formerly existed in New South Wales provide a reference point in this regard, as do the current procedural rules in the Northern Territory. Much like the scheme under the ROC, both these sets of rules have a general provision prohibiting corporate self-representation. However, these rules differ from the ROC in that they do not contain a similar provision in the mould of O 1 r 9(2) which specifically allows for leave for corporate self-representation to be sought. Nevertheless, these procedural rules do expressly confer on the Australian courts a general power to dispense with the prohibition against corporate self-representation, though without specifying the circumstances when this would be appropriate. The manner in which this dispensing power should be exercised therefore forms the crux of the issue under these Australian rules, although different outcomes have been reached by the courts in the following two cases.

68 In *Bay Marine*, the Supreme Court of New South Wales had to determine the proper interaction between Pt 1 r 12 and Pt 4 r 4(2) of the Supreme Court Rules 1970 (NSW) which were respectively worded as follows:

> **Pt 1 r 12**
>
> … [T]he court may dispense with compliance with any of the requirements of a rule.
>
> **Pt 4 r 4(2)**
>
> Except as provided by or under any Act, a corporation may not commence or carry on any proceedings otherwise than by a solicitor.

69 The court in *Bay Marine* was unanimous in its view that the normal rule was provided for in Pt 4 r 4(2) – a company could not represent itself "otherwise than by a solicitor". There was a divergence, however, between Kirby P on the one hand and Samuels and Mahoney JJA on the other as to whether or not this prohibition could be dispensed with under Pt 1 r 12. However that is not of material concern here since the latter two judges, who considered such dispensation to be impermissible, were nevertheless prepared to assume the contrary. Ultimately, what is of importance is that all the judges were on the same page that the prohibition in Pt 4 r 4(2) could only be dispensed with in "very exceptional circumstances" (Kirby P at 329) and that such dispensing power had to be exercised "only with the most meticulous care" (Samuels JA at 333).

70 In the subsequent case of *Alice Springs Abattoirs Pty Ltd v Northern Territory of Australia*

(1996) 134 FLR 440 ("*Alice Springs*"), the Supreme Court of the Northern Territory had to consider rr 1.13 and 2.04 of the Supreme Court Rules 1987 (NT) which are, respectively, as follows:

> **Rule 1.13**
>
> Except where otherwise provided … a corporation … shall not take a step in the proceeding except by a solicitor.
>
> **Rule 2.04**
>
> The Court may dispense with compliance with a requirement of [Chapter 1 of the Rules], either before or after the occasion for compliance arises.

71 The general structure of these provisions is largely similar to that which was considered in *Bay Marine* but, in *Alice Springs*, Kearney A-CJ declined to follow the position adopted by the Supreme Court of New South Wales. The learned judge was of the view at 454 that r 2.04 "imported a general discretion to be exercised in the interests of justice on 'sufficient reason' being shown, rather than only when 'exceptional circumstances' were established". He also stated that r 2.04 "should not be narrowly construed" and that imposing the criterion of "exceptional circumstances" would inappropriately "set too high a standard".

72 Another piece of Australian legislation which falls between the two extremes identified by Blue J is that which was considered in *Winn* itself, *viz*, the South Australian District Court Civil Rules 2006 (SA). Rules 27(1) and (2) provide as follows:

> **27—Representation of company**
>
> (1) The Court may, on application by a director of the company, authorise representation of a company by the applicant or some other director of the company.
>
> (2) The Court must be satisfied that a director who is to represent the company has power to bind the company in relation to the conduct of the proceeding.

73 In *Winn*, the court had to consider the circumstances in which it would be proper to grant authorisation under r 27(1). The plaintiff resisted the application of the defendant company's director by contending that such authorisation should only be granted in "exceptional circumstances" (see [22]) but this approach was rejected. Blue J paid close attention to the language of, and relationship between, rr 27(1) and (2) in reasoning as follows at [33]–[34]:

> The wording of rule 27(1) of the District Court Civil Rules … is not expressed in negative terms of a prohibition subject to leave. It is expressed in positive terms empowering the Court to authorise representation of a company by a director. Rule 27 contains an express prerequisite that the Court must be satisfied that the director has power to bind the company in relation to the conduct of the proceeding but no other prerequisite.
>
> I consider that rule 27 confers upon the Court a broad discretion to be exercised judicially but not fettered by specific rules such as the "exceptional circumstances" criterion in England and Wales. … In deciding whether to grant authorisation under rule 27, the Court needs to consider all relevant factors including not only the respective interests of the parties but also the public interest in the administration of justice. At the end of its consideration, the Court will need to be satisfied that the overall balancing of factors favours authorisation in order to make an order. …

74 It is evident from the foregoing discussion that, in Australia, a wide range of legislation exists to govern the permissibility of corporate self-representation and the courts rightly place due emphasis on the different wording and structure of the provisions before them to inform their respective approaches to this issue. *Bay Marine* and *Alice Springs* further illustrate, however, that different courts may not even arrive at the same conclusion when interpreting quite similar provisions. Ultimately, this means that the lessons which can be drawn from the Australian authorities are not altogether clear. Having said that, however, I find that cases such as *Alice Springs* and *Winn* are useful in demonstrating that the courts do not invariably gravitate to either a restrictive or liberal default position when considering whether or not to allow a company to be represented otherwise than by a solicitor. The requirement that sufficient reason be shown for this purpose by reference to all relevant factors strikes a middle ground and is an approach which has not been seen up to this point in the analysis of foreign authorities. In this regard, it may be recalled that the preference for a neutral starting position in construing O 1 r 9(2) of the ROC was also one of the possible approaches which I had broadly outlined at [44] and this is a point to which I shall return shortly.

(E) Canada

75 The fifth and final common law jurisdiction which I propose to briefly consider is Canada. As Canada is a federal jurisdiction like Australia, there is also no consistent judicial approach to the question of corporate self-representation. Much inevitably turns on the specific wording of the different governing statutory provisions and that, again, is something to be borne in mind when extracting lessons for Singapore. For example, r 120 of the Federal Court Rules (SOR/98-106) specifically states that a court shall be represented by a solicitor in all proceedings unless the court "*in special circumstances*" grants leave for it to be represented otherwise. In light of such explicit wording, it is unsurprising that the Federal Court of Canada has adopted a very strict approach to granting leave. Thus, in *Belarus Tractor of Canada v Advantage Trade Group Inc* [2004] FC 946, the court affirmed at [7] that the onus of "special circumstances" in r 120 is "a high onus which requires that clear and unambiguous evidence be before the Court" and, further, that such circumstances must be "unusual, uncommon and exceptional and the result of external forces". It should also be added that the impecuniosity of a company was recognised as being a pre-condition to the grant of leave. The position in Ontario, however, provides something of a contrast. In the absence of any threshold standard for granting leave being prescribed in r 15.01(2) of its Rules of Civil Procedure (RRO 1990, Regulation 194), the Ontario Superior Court of Justice has held that, at least in the case of small one-man companies, there is no reason why the grant of leave should be discouraged (see *Thomas Lamond and another v Ray Smith and another (No 2)* [2004] OTC 707 ("*Thomas Lamond*") at [9]). In that sense, the position in Ontario may be regarded as being somewhat more liberal.

*The position in Singapore*

76 With this variety of judicial approaches in mind, I return to consider what the position in Singapore should be and, in this connection, I shall take each of the three possibilities outlined at [44] in turn.

77 First, I am not convinced that it is proper to adopt a liberal attitude towards construing O 1 r 9(2) of the ROC. While that is no doubt the position which currently prevails in the UK in respect of their equivalent legislation, there is little basis for Singapore to follow in those steps. As the discussion above shows, the present position in the UK not only resulted from a growing dissatisfaction with the common law rule which was seen as unduly impeding access to justice, but it is also mandated by the unambiguous language of the CPR Practice Directions. By contrast, one can only speculate as to the policy rationale underlying our introduction and subsequent expansion of O 1 r 9(2) and, more importantly, there is a complete absence of anything on the face of this rule to

suggest that applications for leave should be treated more favourably than not. Looking beyond O 1 r 9(2), one also finds that, despite the recent rounds of amendments, O 5 r 6(2) and O 12 r 1(2) of the ROC are still part of the wider legislative framework governing corporate representation and the essence of these rules remains unchanged. They continue to prohibit corporate self-representation as a general rule whereas O 1 r 9(2) has been introduced as a special statutory carve out. When the relationship between the procedural rules is seen in this way, one will appreciate that approaching O 1 r 9(2) too liberally would effectively transform it into a wide gateway for bypassing the general prohibition with ease. That is an incongruous outcome which unsettles the entire statutory regime and, accordingly, I find that there is sound reason for rejecting a liberal approach.

78 A necessarily restrictive posture towards O 1 r 9(2) also appears to me to be unattractive. As my discussion at [26]–[34] shows, the arguments which are often cited in support of the rule against corporate self-representation are neither particularly convincing nor sound. There thus seems to be no pressing reason for requiring the prohibition to be strictly observed and for limiting its waiver to only truly exceptional circumstances. Accordingly, as I have alluded to at [60] above, I am reluctant to follow the approach adopted in Hong Kong which is predicated on the policy rationale articulated in *Radford*. The restrictive approaches which have been preferred in New Zealand and the Federal Court in Canada are also the product of the specific wording or structure of their own respective legislation which are readily distinguishable from ours. In any event, I find that a strong reason militating against a restrictive approach is the fact that O 1 r 9(2) does not appear to be a mere statutory crystallisation of the position which existed in Singapore prior to the 2011 Amendment. During this time, the position as recognised in *Lea Tool* was that the court could permit corporate self-representation only in "exceptional circumstances" and that would be pursuant to the exercise of its inherent powers (see [38] above) and not under a particular provision of the ROC 2006 which was completely silent on this issue. However, with the introduction of O 1 r 9(2) *via* the 2011 Amendment, the courts are now vested with a wide discretion to grant leave and that appears to be inconsistent with, and hence a departure from, the previous position. If the drafters had intended for O 1 r 9(2) to be a statutory endorsement of *Lea Tool*, then one might have expected the use of explicit language to this effect, a good example of which would be r 120 of the Federal Court Rules in Canada which I have noted above at [75]. In the absence of such clear wording, however, I do not think that O 1 r 9(2) should be approached in an unduly restrictive manner; hence I also reject the second of the three possible approaches.

79 In my view, the third approach which promotes a neutral outlook of O 1 r 9(2) is to be preferred because there is plainly nothing in the language used which suggests that the court must necessarily be inclined one way or the other. While the survey of other jurisdictions shows that many courts elsewhere have articulated a particular tendency on the subject of corporate self-representation, doing so in the local context only serves to place an unnecessary gloss over O 1 r 9(2) and should, accordingly, be resisted. In this regard, I find support in those Australian decisions which have also refrained from articulating a particular predisposition on this issue. The approach advocated by Hallen J in *Tanamerah Estates Pty Ltd and Another v Tibra Capital Pty Ltd* (2013) 272 FLR 365 [note: 41] ("*Tanamerah Estates*") for determining when the court should exercise its general dispensing power in s 14 of the Civil Procedure Act 2005 (NSW) to permit corporate self-representation is instructive for present purposes (see [147]–[149]):

> In relation to dispensing with the rules to allow Mr Tydeman to appear by dispensing with the rules under s 14 of the Civil Procedure Act, the court must be satisfied that it is "appropriate to do so in the circumstances of the case".
>
> The power granted to the court by s 14 is a broad one … *The discretion is unfettered but is to be exercised judicially and according to the requirements of justice.*

*Importantly, there is nothing in s 14 that now requires "special" or "exceptional" circumstances. Nor should the section be given a narrow construction.*

[emphasis added]

80 This de-emphasis on the struggle to identify the proper default position under O 1 r 9(2) naturally shifts the analytical focus to how the court's discretion is to be "exercised judicially and according to the requirements of justice". In my view, that requires the court to recognise and closely consider all relevant factors which impact upon the merits of an application for leave and come to a reasoned determination on whether or not there is *sufficient reason* to grant it. With that being the case, I will go on to undertake a detailed (though not exhaustive) review of what such relevant factors may constitute in a later segment of this judgment. For now, I intend to wrap up the discussion on the proper construction of O 1 r 9(2) with a brief consideration of the specific class of persons who may be granted leave to represent a company.

*The class of possible representatives*

81 Under O 1 r 9(2) of the ROC, the court may give leave for an "officer" of a company to act on behalf of the company in any relevant matter or proceeding if it is satisfied that it is appropriate in the circumstances to do so. An "officer", in turn, is specifically defined in O 1 r 9(6) to mean, in relation to a company, "any director or secretary of the company, or a person employed in an executive capacity by the company". This makes it clear that it is not merely any "officer" of a company, in the loose and ordinary sense of the word, who can be conferred with standing to represent a company. This term has been restrictively defined to encompass only a specific class of persons and it may further be observed from the statutory use of the word "means" (as opposed to "includes") that such definition is intended to be exhaustive in nature. Potential applicants should be careful to note this.

82 I should also mention for completeness that, given the express statutory definition of "officer" in O 1 r 9(6), there is little to be gained from trying to expand or restrict the permissible class of corporate representatives by reference to foreign statutory provisions which may be differently worded. For example, in line with its liberal approach to corporate self-representation, r 39.6 of the UK's CPR simply provides that the court may grant permission to an "employee" to represent a company at trial. As has been judicially observed, this rule deliberately introduced a greater measure of flexibility into the ability of companies to choose their representative who need not be a director of a company (see *Watson v Bluemoor Properties Ltd* [2002] All ER 117). The RHC in Hong Kong, on the other hand, specifically states in O 5 r 6(2)(b) (see [57] above) that the court may only grant leave for a company to be represented by "one of its directors". This evidently reduces the pool of permissible representatives. These foreign provisions stipulating who may have *locus standi* to represent a company clearly differ from the carefully-worded definition of "officer" in O 1 r 9(2) of the ROC. Accordingly, in construing this particular aspect of O 1 r 9(2), one should pay close heed to the wording of our home-grown definition rather than drawing inspiration from elsewhere.

***Factors for the exercise of discretion***

83 Order 1 r 9(2) of the ROC does not on its face expressly identify the relevant factors for consideration by the court in the exercise of its discretion. As noted earlier, the discretion appears to be wide and unfettered. In this section of the judgment, I will examine how the discretion should be exercised with reference to a range of factors and, in so doing, authorities from other jurisdictions will once again be reviewed for their suitable application to Singapore, though always bearing in mind the

differences in both the wording of the procedural rule as well as the differing policy priorities.

84 In general, the experiences of other jurisdictions demonstrate a recurring and ultimately inevitable tension between two policy concerns.

85 First, there is a laudable desire to secure greater access to justice by allowing persons (including legal persons) more latitude to represent themselves in legal proceedings. Liberalising the rules on corporate self-representation can allow many small and medium enterprises to have their day in court when the often prohibitive costs of engaging lawyers might otherwise mean that litigation is simply not an option. Second, however, there is the countervailing desire to ensure that the administration of justice is not impeded or prejudiced by allowing untrained and undisciplined persons to conduct litigation on behalf of companies.

86 In my view, the key guiding principle which informs the exercise of the court's discretion is succinctly set out in *Tanamerah Estates* at [151]: [note: 42]

> … The court should take into account not just the interests of the party seeking dispensation, but also the interests of the other party or parties, as well as the proper and efficient administration of justice.

87 With these considerations in mind, I now turn my attention to examine the applicable factors to decide whether it is "appropriate" to grant leave for Mr Salim to represent Pevensey Singapore in the circumstances.

*Compliance with the ROC*

88 Perhaps the starting point to be considered is whether the application seeking leave has been properly made pursuant to the ROC.

89 The schema of the relevant provisions of the ROC is clear. A company cannot, without being represented by a solicitor, "carry on" (O 5 r 6(2)) or "defend" (O 12, r 1(2)) the proceedings, unless the leave of court is obtained under O 1 r 9(2) of the ROC. In this regard, I pause to observe that the Defence filed by Mr Salim without first obtaining leave is irregular to begin with. Further, must such a leave application be filed by a solicitor? It appears that this is not necessary because, under O 1 r 9(2), the Court may, "*on an application by a company*", give leave for an officer of the company to act on behalf of the company.

90 The formal requirements for seeking leave are set out in O 1 r 9(4) which provides as follows:

> (4) An application under paragraph (2) or (3) shall be supported by an affidavit —
>
> (e) (*a*) stating —
>
> (i) the position or office in the company, limited liability partnership or unincorporated association held by the officer;
>
> (ii) the date on which, and the manner by which, the officer was authorised to act on behalf of the company, limited liability partnership or unincorporated association in that matter or proceeding; and
>
> (iii) the reasons why leave should be given for the officer to act on behalf of the

company, limited liability partnership or unincorporated association in that matter or proceeding;

(g) (*b*) exhibiting a copy of any document of the company, limited liability partnership or unincorporated association by which the officer was authorised to act on behalf of the company, limited liability partnership or unincorporated association in that matter or proceeding; and

(i) (*c*) made by any other officer of the company, limited liability partnership or unincorporated association.

91 Mr Salim has filed two affidavits in support of the application. In Mr Salim's 2nd Affidavit filed on 8 August 2014, he deposed to his status as a director and enclosed a Warrant to Act on behalf of Pevensey Singapore while in Mr Salim's 3rd Affidavit filed on 26 September 2014, he exhibited the Memorandum and Articles of Association of Pevensey Singapore thereby satisfying O 1 rr 9(4)(*a*)(i) and (ii). Strictly speaking, under O 1 r 9(4)(*c*), the affidavits were required to be "made by any *other* officer of the company" [emphasis added]. In this case this was not complied with since both affidavits were filed by Mr Salim himself. This requirement is to ensure that the application is made objectively with the authority of the company. This concern does not arise here given that a warrant to act has been produced and Mr Salim is the sole shareholder. The only other officer of Pevensey Singapore, Ms Jaclyn Seow Choon Keng, is a nominee director from Rockwills International Group who provides corporate secretarial services to Pevensey Singapore. Such non-compliance is therefore not fatal to the application. However recognising that Mr Salim's 2nd Affidavit did not deal with the reasons why leave should be granted as is required under O 1 r 9(4)(*a*)(iii), at the directions hearing, I specifically directed Mr Salim to file a more detailed affidavit to set out the reasons why he should be granted leave to represent Pevensey Singapore. Mr Salim's 3rd Affidavit filed on 26 September 2014 purportedly to comply with the court's direction, as explained at [18] above, does no more than state that the dispute should be referred to arbitration. No reason whatsoever has been put forward as to why Mr Salim should be granted leave to represent Pevensey Singapore in the present proceedings. As noted by Smithers J in *Re Molnar Engineering Pty Ltd v E J Burns Vj* [1984] FCA 232 [note: 43], "[i]n an application of this kind the applicant should take the Court fully into its confidence".

92 The failure to comply with O 1 r 9(4)(*a*)(iii) is a serious defect in the circumstances of this application for the following reasons:

(a) There is consequently no material before the court to consider whether the discretion should be exercised in favour of granting leave.

(b) The omission or failure to state the reasons (despite the court's clear direction to Mr Salim personally) also reflects the court's concerns as to whether Mr Salim will be of any assistance to the court or will understand the obligations attendant to his right to represent Pevensey Singapore. This point will be separately elaborated below at [113]–[114].

(c) The repeated reprise by Mr Salim that the dispute should be referred to arbitration in accordance with the Contracts, without more, has a significant bearing on the *bona fides* of the application as explained below at [97]–[98].

*The financial position of Pevensey Singapore and/or its shareholders*

93 Pevensey Singapore has filed an affidavit in response to the WFO in which it disclosed its assets in Singapore. Two bank accounts were disclosed showing a credit balance of US$2,107.59 in

one account and a debit balance of S$320 in the other. Although the financial position of Pevensey Singapore does not appear to be healthy, it bears mention that Mr Salim has not explicitly stated in either of his two affidavits that the reason for the application is driven by the fact that Pevensey Singapore does not have access to financial resources to engage legal representation.

94 This omission is not a mere oversight because it appears from the assertions in the Statement of Claim (which has not been expressly controverted), as well as the documentary evidence adduced for the WFO, that the financial resources of Pevensey Singapore and Pevensey Indonesia are co-mingled. After all, according to Bulk Trading, sums due to Pevensey Singapore were in fact remitted to Pevensey Indonesia's bank account. Further, compensation of Bulk Trading's claims in the sum of US$1,050,000 was paid by Pevensey Singapore and/or Pevensey Indonesia.

95 Given the facts as asserted by Bulk Trading, I am not satisfied that Pevensey Singapore necessarily does not have access to funds to engage a solicitor. This becomes even clearer when the *bona fides* of the application is examined below.

96 I should mention in passing that it ought not to be relevant that Pevensey Singapore's shareholders could, if they so desired, inject additional funds into the company to enable it to engage legal assistance *to defend the claim*. The position may well be different in the present case if Pevensey Singapore is the claimant and any favourable outcome of the proceedings would enure to the benefit of Mr Salim. It may also be different if Bulk Trading is additionally seeking to lift the corporate veil to make Mr Salim personally liable for the claims. However this is not the case here. As such, I have not thought it necessary to consider Mr Salim's own financial resources for the purpose of engaging solicitors to represent Pevensey Singapore.

Bona fides *of the application*

97 The primary "defence" to Bulk Trading's claims (based on the Defence filed) which Mr Salim has repeatedly indicated is simply that the dispute should be referred to arbitration. Other than a bare assertion, no particulars or information whatsoever has been provided by Mr Salim as to what the substantive defence might be. This should also be viewed in the context of Bulk Trading's assertion in the Statement of Claim that Pevensey Singapore and Pevensey Indonesia have admitted liability to its claims and have in fact paid compensation to Bulk Trading in excess of US$1m.

98 It is also pertinent to highlight that Bulk Trading had initially commenced arbitration proceedings against Pevensey Singapore on or around 13 May 2014. The present proceedings were only brought after Pevensey Singapore had ignored the notice of arbitration. So this being the case, the *bona fides* of the application for Mr Salim to represent Pevensey Singapore in order to apply, *inter alia*, for a stay of the current proceedings is at the very least questionable. Further, if Pevensey Singapore could not afford legal representation for the present proceedings (though it has not been *expressly* raised), it could hardly afford the more expensive option of arbitration where monetary deposits will have to be put up by the parties for the arbitrators' fees and arbitration expenses.

99 For the reasons stated above, I am not satisfied that it is appropriate for leave to be granted in the circumstances of the case. Although this is sufficient to dispose of the present application, I will nevertheless go on to examine other factors which may be relevant for consideration for future applications under O 1 r 9(2).

*Role of the company in the proceedings*

100 A number of cases have suggested that the court should be more willing to grant leave where

the company is the defendant, since in such a situation the company is effectively before the court involuntarily (see *Winn* at [39]).

101 Such an approach makes sense, although care should be taken to ensure that it does not conversely mean that the court is reluctant to grant leave simply because the company is the plaintiff.

102 As rightly observed in *Winn* at [62], "[t]his is not a factor which points in favour of authorisation, but does represent an important context in which the other factors are to be considered".

*Structure of the company*

103 It should be relevant that the proposed representative is the sole shareholder or is effectively the embodiment of the company. In such a situation, the analogy with an individual litigant in person is particularly compelling (see *Thomas Lamond* at [9]).

104 Admittedly, however, this consideration may run directly contrary to some of the other relevant factors to be weighed in the balance. For instance, where the officer seeking to represent the company is its *alter ego*, it will be almost inevitable that he will also have to be a witness, which may be a factor weighing against the grant of leave. This point is further elaborated when I examine the importance of the representative's credibility. In such circumstances, the court will simply have to decide which factor is to be given greater weight.

*Complexity of the factual and legal issues*

105 In deciding the leave question, the court must necessarily consider whether the company representative would be able to offer assistance in the determination of the issues. This would invariably require an examination of the issues before the court and whether the representative is sufficiently competent to understand and comply with the obligations attendant to such representation. This inquiry has a significant bearing on the assessment of the degree to which costs and time will be extended arising from the lay representation.

106 Based on the Statement of Claim, the issues appear to be largely factual in nature – whether there was short shipment, delay resulting in demurrage and failure to deliver cargo of the contractual quality. These are matters which Mr Salim *should* be able to provide Pevensey Singapore's version of events to prove its defence. This may therefore be a point in Mr Salim's favour if he is seeking leave to represent Pevensey Singapore to defend the claim against it in the current proceedings. However, it should be borne in mind that Pevensey Singapore's focus is to apply for a stay of the present proceedings in favour of arbitration. Given the procedural history of the case thus far, Mr Salim must be equipped to deal with the following immediate interlocutory applications:

(a) First, he will be required to set aside the default judgment before he can even apply for a stay. Based on the Court of Appeal's decision in *Mercurine Pte Ltd v Canberra Development Pte Ltd* [2008] 4 SLR(R) 907 at [60], Pevensey Singapore needs to demonstrate a *prima facie* defence to the claim "in the sense of showing that there were triable or arguable issues". To date, there is no inkling what that defence to the claims might be though the Defence has purportedly been filed.

(b) Second, in applying for a stay of the proceedings, he will have to explain away the compensation already paid to Bulk Trading and why that did not amount to an admission of

liability. Although the Defence has been filed, owing to the sheer brevity of the pleading which in essence seeks to stay the present proceedings, *fortuitously* for Pevensey Singapore, it does not constitute a step in the proceedings to debar the stay application. Pevensey Singapore has not raised any substantive defence which might indicate an intention to defend the claims such as to constitute a step in the present proceedings. In *Chong Long Hak Kee Construction Trading Co v IEC Global Pte Ltd* [2003] 4 SLR(R) 499, Tay Yong Kwang J made the following observation at [11] and [13]:

> (k) On the present facts, the 48-hour notice by the plaintiff's solicitors was given only after the period for the service of the Defence had lapsed and no application for a stay had been taken out despite what was said at the PTC. The 48-hour notice was therefore entirely justifiable. Section 6(1) Arbitration Act implies that an application for stay should be filed before the time for serving a Defence has lapsed, failing which judgment in default of Defence may be entered by the plaintiff. *What the defendant ought to have done was to file its application for a stay immediately and not file such an application and the Defence at the same time.* ***Nevertheless, the defendant did make it clear in its Defence that it was not intending to defend the claim in court.***
>
> (m) …
>
> (o) The defendant was careful enough to reserve its right to apply for a stay in its Counterclaim by incorporating para 1 of the Defence. … In a Counterclaim, the defendant takes on the mantle of a plaintiff. *The defendant here would therefore be evincing an intention to sue on the subject matter covered by the arbitration clause if no reservation to apply for a stay had been stated in its Counterclaim as well*.
>
> (q) [emphasis added in italics and bold italics]

For completeness, I should also add that an application to set aside a default judgment in order to apply for a stay similarly does not constitute a step in the proceedings (see *Australian Timber Products Pte Ltd v Koh Brothers Building & Civil Engineering Contractor (Pte) Ltd* [2005] 1 SLR(R) 168 at [24]).

(c) Third, he will have to deal with the WFO. This is more complex as non-compliance has serious consequences including contempt of court. I am not convinced that Mr Salim has sufficient understanding of court procedures to ensure compliance given that he has not been able to comply with the court's earlier clear direction to set out the reasons for the application in his affidavit and his failure to comprehend the relatively clear requirements under O 1 r 9.

107 I am not convinced that Mr Salim has even thought through the above procedural obstacles let alone whether he will be able to assist the court in the conduct of the interlocutory applications as identified above. This would therefore afford an additional reason why it is not appropriate to grant leave in this case.

*The merits of the company's case*

108 While the court should be wary of prejudging the merits of the underlying action or defence, some assessment of whether the company has an arguable case would be relevant in deciding whether the company should be permitted to represent itself otherwise than by a solicitor.

109 For instance, if it is clear that the company's case is *clearly* unarguable, there would seem little

point in allowing the company to act through an officer, solely for the purpose of having its (ultimately futile) day in court. Having said that, the threshold to satisfy this requirement should be low for both liability and quantum issues.

*The amount of the claim*

110 Whether the claim is for a large or small amount should not in itself be a relevant consideration. Ultimately this is a policy call and is reflected in the relevant rules and legislation. For instance under the Small Claims Tribunals Act (Cap 308, 1998 Rev Ed), s 23(2)(*c*) specifically permits body corporates to be represented by its officers before the tribunal. In fact, advocates and solicitors are not permitted to appear for hearings before a tribunal whose jurisdiction is limited to claims not exceeding S$10,000. As I have stated at [42] above, the grant of leave under O 1 r 9(2) of the ROC was previously restricted to cases in the Magistrate's Court and the District Courts which by definition limits the claims to less than S$250,000. This was amended recently by the 2014 Amendment which now permits companies to act through its officers in cases before the Supreme Court.

111 However, such a factor may be relevant when considered in conjunction with other factors, such as the role of the company in the proceedings, the company's financial position and the complexity of the issues. Such issues may have a bearing as to what is at stake for the company. But, standing by itself, it should not be a material factor in the overall exercise of the court's discretion.

*Competence and credibility of the proposed representative*

112 Inevitably, a lay representative's lack of familiarity with the ROC, substantive law and legal proceedings in general will lead to some additional delay and inconvenience to the other party and to the court should leave be granted. That, however, is a natural consequence of allowing litigation to be conducted in person, and should not, within reason, be held against the applicant.

113 The competence of the representative cannot be examined in a vacuum. It must necessarily be weighed in the context of the complexity of the issues before the court. The more complex the issues are, particularly if they are legal issues, the less likely the representative would have the competence to assist the court. Having said that, the exercise of discretion should always be considered with reference to the quality of the candidate – for example, the representative could be an in-house counsel or be legally qualified though no longer in practice and therefore is able to be of assistance despite the complexity of the issues. Concerns about the suitability of the representative should also be balanced against the safeguards inherent within the ROC to ensure that a self-represented litigant who conducts proceedings in a misguided or unsuitable manner will naturally face certain adverse consequences.

114 The court should examine whether the representative is able to understand and comply with the court's orders and directions. In this connection, I have noted at [91] above that Mr Salim was not able to comply with a relatively straightforward direction to file an affidavit to explain why leave should be granted for him to represent Pevensey Singapore. This criterion is particularly important in the context of discovery obligations otherwise, it can have an extremely prejudicial impact on the ability of the other party to conduct the proceedings fairly which would in turn unacceptably compromise "the due administration of justice". In the words of Pumfrey J in *Tracto Teknik* at [12], the representative must be "at least in principle capable of understanding the obligation of disclosure and is capable of discharging it".

115 Conversely, a representative is unlikely to be a suitable candidate if, for instance, he is an

undischarged bankrupt, experiences language difficulties, or is ordinarily resident in a different jurisdiction thus making it difficult for him to attend or assist the court. In such circumstances, the due administration of justice is likely to be impeded and the court is unlikely to receive any assistance from such a representative. In the case of Mr Salim, although he could speak in the English language when he appeared before me for directions, it was clear to me that he does not possess sufficient command of the language for the proper conduct of the proceedings. Further, as he is ordinarily resident in Indonesia, the fair and efficient conduct of the proceedings may well be impaired.

116 In granting leave for the representative to act on behalf of the company, that representative should function effectively as *an officer of the court*. Accordingly if the representative has shown himself incapable or unwilling of behaving in a manner which is befitting of any litigant, for instance, by being rude or uncooperative, or prone to making scandalous submissions, then it would not be appropriate to grant leave.

117 Linked to this is the situation where the credibility of the proposed representative has been or is likely to be called into question. For instance, adverse findings may have been made against the proposed representative by a foreign or a lower court.

118 The credibility of the representative assumes a different significance if the proposed representative is required to act both as a witness and as counsel in the proceedings, and has been considered to be a weighty factor against granting leave in Australia (see *Bay Marine* at 334 and *Evajade Pty Ltd v National Australia Bank Ltd (No 2)* [2005] SASC 229 [note: 44] at [29] and [31]).

119 Whether the proposed representative of the company is also a party to the proceedings is a relevant factor for consideration. It would be appropriate to grant leave if a common or substantially similar stand is adopted by the representative in his personal capacity as well as on behalf of the company. On the other hand if differing or contradictory positions are adopted, it would generally be inappropriate to grant leave as it would place the representative in an untenably irreconcilable conflict of interest.

*Stage of the proceedings*

120 Order 1 r 9(2) does not limit the application to any particular stage of the proceedings. It could be made at the commencement or at any stage in the course of the proceedings. Different considerations may apply depending on the stage at which the application is filed.

121 The fact that an action has proceeded to an advanced stage can be a material factor in favour of granting leave. In *Winn*, the action had been proceeding for five years before the application was filed by the sole director to represent the company just two weeks prior to the commencement of the trial. The company was previously represented by lawyers and had already expended significant costs in defending the claim. The application was filed because the company ceased trading and ran out of funds to expend on further legal representation. To refuse leave would adversely impact on the company's access to justice.

*Imposition of conditions when granting leave*

122 In the event that leave should be granted, Bulk Trading submitted that the court should impose conditions to maintain the integrity of the proceedings and to ensure that the due administration of justice is not compromised by Mr Salim's representation of Pevensey Singapore.

123 Order 1 r 9 does not expressly empower the court to impose conditions when granting leave.

However I am satisfied that in deciding whether it is "appropriate" for leave to be granted, the court must bear in mind the key guiding principle which I had highlighted at [86] above, *ie*, to take into account the interest not only of the applicant but also the interest of the other party so as to ensure "the proper and efficient administration of justice." Conditions which are fit for imposition must therefore be informed by this principle. This has also been the experience of other jurisdictions in granting leave (see the decision of the Scottish House of Lords in *Apollo Engineering Limited (in liquidation) v James Scott Limited* [2012] CSIH 4 at [17] and *Lakeway Heights Development Inc and others v Royal Bank of Canada* 65 BCLR (2d) 132 at [29]–[30]).

124 Bulk Trading sought the imposition of three conditions, namely:

(a) To ensure that Mr Salim can be contacted on all matters in relation to the present proceedings as well as to facilitate service of court papers, he should be ordered to provide his contact details such as his residential addresses in both Singapore and Indonesia, his Singapore and Indonesia mobile and office/residential phone numbers and his email addresses.

(b) Mr Salim as sole shareholder and controlling director of Pevensey Singapore should provide an undertaking to be responsible for the payment of legal costs should it be ordered against Pevensey Singapore. Such an order is entirely consistent with the court's power under O 59 r 2 of the ROC to award costs against non-parties which would include Mr Salim if the court was minded to grant leave.

(c) In order for the costs undertaking to be effective, Mr Salim should disclose his assets in Singapore sufficient to meet his potential exposure to any adverse cost orders.

125 In my view the proposed conditions are fair and reasonable and would be consistent with the need to take into account the interests of the other party. In addition, the court may consider, in appropriate circumstances, to limit the representation up to a certain stage of the proceedings particularly when the court is not sure about the level of the representative's competence to assist the court in the conduct of the proceedings. This form of "interim" order would give both the court and the representative opportunities to evaluate and review the utility and value of the representative's input.

**Conclusion**

126 In the result, the application is dismissed. Costs should follow the event which I fix at $3,000 to be paid by Pevensey Singapore to Bulk Trading.

127 It remains for me to record my appreciation to Ms Soh for her well-researched and helpful submissions in spite of Bulk Trading's stand *vis-à-vis* the application and to Mr Liew for agreeing to assist the court as *amicus curiae*. Several of the points covered in this judgment are the result of the able and diligent assistance provided by Mr Liew.

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[note: 1] Bundle of Documents ("BOD"), Tab 3, pages 40 to 43 (2nd Affidavit of Christopher James Grieveson dated 5 June 2014, CJG2/25-28).

[note: 2] BOD, Tab 1, pages 4 to 5 (1st Affidavit of Christopher James Grieveson dated 28 May 2014 at paragraphs 12 and 13) and Tab 3, page 38 (2nd Affidavit of Christopher James Grieveson dated 5 June 2014 at paragraph 13).

[note: 3] BOD, Tab 7, page 73 (Statement of Claim dated 25 July 2014 at paragraph 4).

[note: 4] BOD, Tab 7, pages 76 to 89 (Statement of Claim dated 25 July 2014 at paragraphs 7, 11, 12, 16, 21 and 28).

[note: 5] BOD, Tab 1, page 6 (1st Affidavit of Christopher James Grieveson dated 28 May 2014 at paragraph 16).

[note: 6] BOD, Tab 1, page 10 (1st Affidavit of Christopher James Grieveson dated 28 May 2014 at paragraph 29).

[note: 7] BOD, Tab 13, page 108 (1st Affidavit of Soh Wei Chi dated 25 August 2014 at paragraph 3).

[note: 8] BOD, Tab 7, pages 89, 90 and 96 (Statement of Claim dated 25 July 2014 at paragraphs 27, 30 and 41).

[note: 9] BOD, Tab 1, pages 3, 5, 6, 19, 20, 27 and 28 (1st Affidavit of Christopher James Grieveson dated 28 May 2014 at paragraphs 8, 14, 15, 21, 61(a), 61(b), 72(d)(ii) and 72(d)(iii)).

[note: 10] BOD, Tab 7, pages 79, 87, 93 to 94 (Statement of Claim dated 25 July 2014 at paragraphs 11, 21 and 37).

[note: 11] BOD, Tab 1, page 24 (1st Affidavit of Christopher James Grieveson dated 28 May 2014 at paragraph 67).

[note: 12] *Ibid*, page 24 (1st Affidavit of Christopher James Grieveson dated 16 June 2014 at paragraph 67) and BOD, Tab 6, page 53 (3rd Affidavit of Christopher James Grieveson dated 16 June 2014 at paragraph 4).

[note: 13] BOD, Tab 6, pages 58 to 71 (3rd Affidavit of Christopher James Grieveson dated 16 June 2014, CJG3/1).

[note: 14] BOD, Tab 6, page 53 (3rd Affidavit of Christopher James Grieveson dated 16 June 2014 at paragraph 5).

[note: 15] BOD, Tab 2, pages 33 to 34 (Writ of Summons (Amendment No 1) filed on 3 June 2014).

[note: 16] BOD, Tab 6, page 53 (3rd Affidavit of Christopher James Grieveson dated 16 June 2014 at paragraph 5).

[note: 17] BOD, Tab 4, pages 44 to 45 (1st Defendant's Memorandum of Appearance filed on 9 June 2014).

[note: 18] BOD, Tab 5, page 47 (1st Affidavit of Agus Salim dated 9 June 2014 at paragraphs 6 and 7).

[note: 19] BOD, Tab 6, pages 52 to 71 (3rd Affidavit of Christopher James Grieveson dated 16 June 2014).

[note: 20] BOD, Tab 9, pages 102 to 103 (Summons No 3899 of 2014 filed on 8 August 2014).

[note: 21] BOD, Tab 10, page 104 (2nd Affidavit of Agus Salim dated 8 August 2014).

[note: 22] BOD, Tab 14, pages 115 to 155 (3rd Affidavit of Agus Salim dated 26 September 2014).

[note: 23] BOD, Tab 14, pages 115 to 155 (3rd Affidavit of Agus Salim dated 26 September 2014, Exhibit D1-06).

[note: 24] BOD, Tab 13, page 109 (1st Affidavit of Soh Wei Chi dated 25 August 2014 at paragraph 5).

[note: 25] BOD, Tab 12, page 106 (Judgment under O 19 (Doc No JUD 477 of 2014)).

[note: 26] Bundle of Authorities ("BOA"), Volume 1, Tab 5.

[note: 27] *Ibid*.

[note: 28] *Ibid*.

[note: 29] BOA, Volume 1, Tab 17.

[note: 30] BOA, Volume 2, Tab 3.

[note: 31] BOA, Volume 2, Tab 14.

[note: 32] BOA, Volume 3, Tab 18.

[note: 33] BOA, Volume 2, Tab 2.

[note: 34] BOA, Volume 1, Tab 15.

[note: 35] BOA, Volume 2, Tab 14.

[note: 36] BOA, Volume 1, Tab 19.

[note: 37] BOA, Volume 3, Tab 3.

[note: 38] BOA, Volume 3, Tab 2.

[note: 39] BOA, Volume 2, Tab 7.

[note: 40] BOA, Volume 3, Tab 4.

[note: 41] BOA, Volume 2, Tab 16.

[note: 42] BOA, Volume 2, Tab 16.

[note: 43] BOA, Volume 2, Tab 9.

[note: 44] BOA, Volume 2, Tab 20.