IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 21

Originating Summons No 4 of 2017

In the matter of Sections 94(1) and 98(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed)

And

In the matter of Chan Chun Hwee Allan, an Advocate and Solicitor of the Supreme Court of the Republic of Singapore

Between

THE LAW SOCIETY OF SINGAPORE

… *Applicant*

And

CHAN CHUN HWEE ALLAN

… *Respondent*

GROUNDS OF DECISION

[Legal Profession] — [Disciplinary Proceedings]
[Legal Profession] — [Professional Conduct] — [Breach]

Law Society of Singapore
v
Chan Chun Hwee Allan

[2018] SGHC 21

Court of Three Judges — Originating Summons No 4 of 2017
Sundaresh Menon CJ, Judith Prakash JA and Tay Yong Kwang JA
29 September 2017

30 January 2018

Judith Prakash JA (delivering the judgment of the court):

Introduction

1 This was an application by the Law Society of Singapore ("the Law Society") for an order pursuant to s 94(1) read with s 98(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA") that the respondent, Mr Chan Chun Hwee Allan ("the Respondent"), be sanctioned under s 83(1) of the LPA. The application arose from an anonymous complaint that the Respondent had aided and abetted in money laundering activities. The Law Society's eventual case against the Respondent was that he had failed to: (a) verify his clients' identities before accepting instructions as required under r 11D of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("the Rules"); and (b) obtain evidence as to his clients' business relationship in matters unusual in the ordinary course of business as required

under r 11F of the Rules. As each course of conduct related to two distinct clients, the Law Society preferred four charges against the Respondent. The charges were not contested by the Respondent.

2 At the end of the hearing, we found that due cause for disciplinary action had been shown. We imposed a two-year suspension and a fine of S$100,000 on the Respondent. We now set out the full reasons for our decision.

The charges

3 The four charges against the Respondent, which were framed in the alternative under ss 83(2)(*b*) and 83(2)(*h*) of the LPA, read as follows:

> (1) You, Chan Chun Hwee Allan, are charged that during or about that period between May and August 2008 you did accept instructions from a foreign entity purportedly known as the Institute of Business Management & Financial Services (IBMFS) and, before accepting the instructions, failed to take reasonable measures to ascertain the identities of the natural persons that have a controlling interest in or that exercise effective control over IBMFS, and you have thereby breached Rule 11D(1) read with 11D(3) of the Legal Profession (Professional Conduct) Rule [*sic*], such breach amounting to improper practice as an advocate and solicitor within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161, Rev Ed 2001).
>
> Alternative Charge
>
> You, Chan Chun Hwee Allan, are charged that during or about that period between May and August 2008 you did accept instructions from a foreign entity purportedly known as the Institute of Business Management & Financial Services (IBMFS) and, before accepting the instructions, failed to take reasonable measures to ascertain the identities of the natural persons that have a controlling interest in or that exercise effective control over IBMFS, and you have thereby breached Rule 11D(1) read with 11D(3) of the Legal Profession (Professional Conduct) Rule [*sic*], such breach amounting to misconduct unbefitting as an advocate and solicitor within the meaning of section 83(2)(h) of the Legal Profession Act (Cap. 161, Rev Ed 2001).

(2) That you, Chan Chun Hwee Allan, are charged that during or about the period between October and November 2011 you did accept instructions from a foreign entity purportedly known as Investment Suisse SA (ISSA) and, before accepting the instructions, failed to take reasonable measures to ascertain the identities of the natural persons that have a controlling interest in or that exercise effective control over ISSA, and you have thereby breached Rule 11D(1) read with Rule 11D(3) of the Legal Professional [*sic*] (Professional Conduct) Rules, such breach amounting to improper practice as an advocate and solicitor within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161, Rev Ed 2001).

Alternative Charge

That you, Chan Chun Hwee Allan, are charged that during or about the period between October and November 2011 you did accept instructions from a foreign entity purportedly known as Investment Suisse SA (ISSA) and, before accepting the instructions, failed to take reasonable measures to ascertain the identities of the natural persons that have a controlling interest in or that exercise effective control over ISSA, and you have thereby breached Rule 11D(1) read with Rule 11D(3) of the Legal Professional [*sic*] (Professional Conduct) Rules, such breach amounting to misconduct unbefitting as an advocate and solicitor within the meaning of section 83(2)(h) of the Legal Profession Act (Cap. 161, Rev Ed 2001).

(3) That you, Chan Chun Hwee Allan, are charged that during or about the period between May and August 2008 you did act for a foreign entity purportedly known as the Institute of Business Management & Financial Services (IBMFS) in transfers of substantial sums of money **amounting to US$172,850/-, AUD$55,000/- and EU$30,000/-**, which is a matter unusual in the ordinary course of business, and when accepting instructions in relation to the matter failed to obtain satisfactory evidence as to the nature and purpose of the business relationship with IBMFS in the matter, and the business relationship between IBMFS and any other party to the matter, and you have thereby breached Rule 11F(2) read with 11F(1)(e) of the Legal Professional [*sic*] (Professional Conduct) Rules, such breach amounting to improper practice as an advocate and solicitor within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161, Rev Ed 2001).

Alternative Charge

That you, Chan Chun Hwee Allan, are charged that during or about the period between May and August 2008 you did act for

a foreign entity purportedly known as the Institute of Business Management & Financial Services (IBMFS) in transfers of substantial sums of money **amounting to US$172,850/-, AUD$55,000/- and EU$30,000/-**, which is a matter unusual in the ordinary course of business, and when accepting instructions in relation to the matter failed to obtain satisfactory evidence as to the nature and purpose of the business relationship with IBMFS in the matter, and the business relationship between IBMFS and any other party to the matter, and you have thereby breached Rule 11F(2) read with 11F(1)(e) of the Legal Professional (Professional Conduct) Rules, such breach amounting to misconduct unbefitting as an advocate and solicitor within the meaning of section 83(2)(h) of the Legal Profession Act (Cap. 161, Rev Ed 2001).

(4) That you, Chan Chun Hwee Allan, are charged that during or about the period between October and November 2011 you did act for a foreign entity purportedly known as Investment Suisse SA (ISSA) in transfers of substantial sums of money **amounting to US$1,792,948/-**, which is a matter unusual in the ordinary course of business, and when accepting instructions in relation to the matter failed to obtain satisfactory evidence as to the nature and purpose of the business relationship with ISSA in the matter, and the business relationship between ISSA and any other party to the matter, and you have thereby breached Rule 11F(2) read with 11F(1)(e) of the Legal Professional [*sic*] (Professional Conduct) Rules, such breach amounting to improper practice as an advocate and solicitor within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161, Rev Ed 2001).

Alternative Charge

That you, Chan Chun Hwee Allan, are charged that during or about the period between October and November 2011 you did act for a foreign entity purportedly known as Investment Suisse SA (ISSA) in transfers of substantial sums of money **amounting to US$1,792,948/-**, which is a matter unusual in the ordinary course of business, and when accepting instructions in relation to the matter failed to obtain satisfactory evidence as to the nature and purpose of the business relationship with ISSA in the matter, and the business relationship between ISSA and any other party to the matter, and you have thereby breached Rule 11F(2) read with 11F(1)(e) of the Legal Professional [*sic*] (Professional Conduct) Rules, such breach amounting to misconduct unbefitting as an advocate and solicitor within the meaning of section 83(2)(h) of the Legal Profession Act (Cap. 161, Rev Ed 2001).

[emphasis in original]

The facts

4 The facts in support of the charges were essentially undisputed, and are summarised below.

Background

5 The Respondent is an advocate and solicitor who was admitted to the bar on 21 March 1998. At all material times, he was the sole proprietor of the law practice, M/s C H Chan & Co, which was located at Chinatown Point. This was also where the Respondent last practiced. For some time, the Respondent shared his office premises with someone named Peter Dornan ("Dornan") who was then running a Human Resources training company.

6 In or around late 2005, Dornan introduced the Respondent to an acquaintance who went by the name of Sir Robert Cowley ("Cowley"). The Respondent subsequently met Cowley at several dinners and developed a relationship with him. According to the Respondent, Cowley carried himself well. He was referred to by the title "Sir" by those around him. During one of those dinners, a former Australian tennis star, Pat Cash, was also present and this impressed the Respondent. Cowley paid for the expensive meal.

7 In June 2006, Cowley represented to the Respondent that two companies, of which he was the Chairman, were in need of certain legal services. The companies were the Institute of Business Management and Financial Services ("IBMFS") and Investment Suisse SA ("ISSA"). The nature of the legal services was allegedly twofold: (a) to give advice on Singapore law

and investment opportunities; and (b) to act as an escrow agent. As an escrow agent, the Respondent was to receive funds into his client accounts and then carry out onward transmissions of funds as directed by Cowley, IBMFS or ISSA.

Facts relating to the charges

8 The date on which the Respondent first started handling money for Cowley, IBMFS and/or ISSA is not known. The earliest transactions documented in the complaint were dated mid-2008. Given Cowley's apparent social standing, the Respondent was satisfied as to his identity and did not think it necessary to carry out any further background checks. In any event, instructions for the transfer of moneys in and out of the Respondent's client accounts came from someone he knew as Mr James Serry, who claimed to be the Treasurer of IBMFS, and another person he knew as Mr Paul Scribner ("Scribner"), who claimed to be the Chief Executive Officer of ISSA.

9 Between May and August 2008, IBMFS instructed the Respondent to receive money which it would remit to him and to transfer the said money on IBMFS's directions. Before accepting instructions from IBMFS, the Respondent did not take any measures to ascertain the identities of the natural persons who had a controlling interest in or who exercised effective control over the corporate entity. This omission formed the subject of the first charge. The Respondent proceeded to act for IBMFS as instructed in the transfers of substantial sums of money, which were unusual in the ordinary course of business. When accepting the said instructions, the Respondent also failed to obtain satisfactory evidence as to the nature and purpose of the business relationship with IBMFS in the matter and the business relationship between

IBMFS and any other party to the matter. This course of action formed the subject of the third charge.

10 A similar series of events occurred in relation to ISSA between October and November 2011, and they form the subject of the second and fourth disciplinary charges.

11 All in all, sums totalling AUD55,000, €30,000 and nearly US$2m were transferred by the Respondent in 2008 and 2011. According to the Respondent, he believed that the funds which he was handling as a fiduciary were remittances for work done by Cowley or by overseas solicitors for IBMFS and ISSA.

The Respondent's legal fees in respect of the transactions

12 For his services, the Respondent was authorised to deduct a fixed amount from the outgoing transfers of funds as his legal fees. In June 2008, he was entitled to a fixed rate of 5% of the transferred funds. It is not known what the rate was in 2011. Based on the documentary evidence provided, it was also unclear whether this fixed fee was agreed upon for only certain transactions or for all of the transactions which formed the subject of the charges preferred against the Respondent. The Respondent subsequently confirmed, but only at the hearing before us, that the revenue he had received from the transactions in 2011 would have been in the order of US$90,000.

Circumstances leading up to the termination of the transactions

13 On 4 November 2011, the Respondent sent Scribner an e-mail in which he quoted the following question posed to him by his banker: "Mr Chan, why

must your client [*ie,* ISSA] send funds to you for your onward transmission when surely they can do it from their account directly?"

14 The Respondent then proceeded to ask Scribner for a response to the above question by stating as follows:

> As an escrow agent, my firm will always act as instructed. However, if you could assist to address the above issue, it would make our collaboration a smoother and long-term venture.

15 The Respondent never received an answer to this query. In addition, following the transfers that took place on or around 4 November 2011, no further instructions were received by him from ISSA or IBMFS. It would therefore appear that the transactions came to an end at that point.

The proceedings before the Disciplinary Tribunal

16 In the proceedings before the Disciplinary Tribunal ("the Tribunal"), the Respondent pleaded guilty to all four of the primary charges against him and admitted to the Statement of Facts.

17 The main issue for the Tribunal was whether cause of sufficient gravity for disciplinary action existed under s 83 of the LPA. The Tribunal noted that the Respondent did not knowingly participate in illegal money laundering activities nor did he have any intent to act dishonestly. It was also observed that he had since implemented changes to his firm's procedures on client identity verification. Nevertheless, the Tribunal answered the question in the affirmative, taking into account the following facts:

(a) The Respondent had demonstrated a lack of interest in knowing about his clients or the work he was being asked to do – in particular, he

could not adequately explain the purposes of the individual transactions in which he was asked to participate.

(b) The Respondent did not carry out any background checks on Cowley, IBMFS or ISSA.

(c) The fact that the banks did not raise concerns about any transactions prior to 4 November 2011 did not lessen the Respondent's duty to inquire.

(d) The aggregate value of the transactions was large – Cowley's e-mail of 21 July 2008 stated that transactions of up to €5m could take place.

(e) The Respondent stood to gain from fees for which no or very little legal work was provided, which appeared to also raise red flags in his mind as evidenced by his concession during the Tribunal hearing that "I admit that easy work easy money. But at one point in time I decided that this should not be the way".

(f) The transactions ceased because the Respondent stopped receiving instructions, and not because he decided to stop acting for his clients of his own accord.

(g) The principles underpinning the Rules in question were not new, and, contrary to what the Respondent sought to argue, the fact that the relevant rules came into force only after he was introduced to Cowley was not a strong mitigating factor.

18 The Law Society therefore applied to this court for an order that the Respondent be sanctioned under s 83(1) of the LPA.

The application before the Court

Preliminary issues

19 Three preliminary issues were brought to our attention during the proceedings and we should explain how we dealt with them.

Other disciplinary proceedings against the Respondent

20 The first issue related to the fact that this was the second set of disciplinary proceedings, out of a total of three, against the Respondent. The other disciplinary proceedings against him assumed importance in so far as they could have had a bearing on the sanction imposed by this court, or could have persuaded this court to adjourn the hearing to a later date to provide an opportunity to have a single hearing of all matters then pending against the Respondent: see *Law Society of Singapore v Ng Bock Hoh Dixon* [2012] 1 SLR 348 at [38].

21 The first set of proceedings against the Respondent was disposed of on 26 October 2016: he was found culpable and sentenced to a 15-month suspension with effect from 1 January 2017. Since the first set of proceedings had been completed before the present hearing, the issue was whether those proceedings could influence the sanction imposed in this case.

22 The charges which the Respondent faced in October 2016 arose from a completely distinct set of facts that had no relation to those supporting the charges with which we had to deal. The facts supporting the first set of

proceedings related to the Respondent's entry into a contingency fee agreement, his failure to return a security deposit to his client despite repeated reminders and his act of rendering a further bill to his client after it had been agreed that a previous payment by his client was in full and final settlement of his professional fees. While this was not a case where the respondent-solicitor had committed *similar* offences in the past, which would demonstrate a propensity for contraventions of this nature, we took the view that these convictions nevertheless formed a record of the Respondent's past conduct which the court could properly take into account in determining the order to be made (see s 83(5) of the LPA). In any case such as the one before us such antecedents would be relevant in so far as they might demonstrate a respondent-solicitor's penchant for flouting the rules of professional conduct, and could be therefore treated as an aggravating factor in arriving at the appropriate sanction to be imposed. In addition to that, there was the further issue of whether the term of suspension imposed on the Respondent in the first set of proceedings should run concurrently or consecutively with any suspension imposed for the charges in respect of the second set of proceedings. We return to these issues later in our judgment.

23 The third set of proceedings against the Respondent was heard by the Tribunal over April and May 2017 and was pending determination at the time of the hearing before us. Since it was confirmed during the hearing that the third set of proceedings involved a different matter and was wholly unrelated to the charges before us, we were satisfied that the present application could be dealt with on its own, without the need to adjourn for all pending matters against the Respondent to be heard collectively.

The alternative charges against the Respondent

24 The second issue related to the alternative charges against the Respondent. As we noted above, for each of the four primary charges under s 83(2)(*b*) of the LPA preferred against him, the Law Society had framed four charges in the alternative under s 83(2)(*h*) of the LPA on the same set of facts. This is well-established as a matter of practice; in a case against a respondent-solicitor, the Law Society may, on the same alleged facts, frame a charge under both general and specific grounds (for example, ss 83(2)(*h*) and 83(2)(*b*) as in the instant case): see also *Law Society of Singapore v Singham Dennis Mahendran* [2001] 1 SLR(R) 1, *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239, *Law Society of Singapore v Chiong Chin May Selena* [2013] SGHC 5 and *The Law Society of Singapore v Kangatharan Kandavellu* [2017] SGDT 9. In the event that the charge on the more specific ground, which could describe a more serious type of wrongdoing, was not made out, the Tribunal may nevertheless find that the more general charge, which was framed in the alternative, was established and convict the respondent-solicitor on that basis (see, *eg*, *The Law Society of Singapore v Ong Teck Ghee* [2014] SGDT 7 at [39]–[40]).

25 In the present case, the result of the Respondent's guilty plea to the four primary charges was that the four alternative charges fell away as a matter of course. There was no necessity, therefore, for the Tribunal or this court to consider the application of s 83(2)(*h*) of the LPA under the alternative charges. While in some instances where a respondent-solicitor had admitted to the charge against him, the Law Society had withdrawn the alternative charge framed on the same facts alleged (see, *eg, The Law Society of Singapore v Ong Cheong Wei* [2017] SGDT 4 at [17]; *The Law Society of Singapore v Christopher Yap*

Bock Heng [2013] SGDT 7 at [13]; *The Law Society of Singapore v Kurubalan s/o Manickam Rengaraju* [2012] SGDT 7 at [7]; and *The Law Society of Singapore v Wan Hui Hong James* [2012] SGDT 5 at [4]), the Law Society did not do so in the present case. Indeed, there does not appear to be a consistent practice as to whether alternative charges would be withdrawn in the event that a respondent-solicitor pleads guilty to the primary charges against him. In our view, to avoid any doubt as to the status of proceedings, the practice of withdrawing alternative charges based on the same conduct as those to which a solicitor-respondent has pleaded guilty, is to be encouraged. Strictly speaking, however, where one charge has been admitted to, the effect is the same whether the alternative charge is withdrawn or not. The court, in the course of its inquiry, will simply proceed on the basis of the admitted charge. This was the course of action that we took in the present case.

The time lapse between the date of the conduct complained of and the date of the complaint

26 The third, and most significant, preliminary issue pertained to the lapse of time between the date of the conduct complained of and the date on which the complaint was first made to the Law Society.

27 Under ss 85(4A)(*a*) and 85(4C) of the LPA, should a complaint of a solicitor's conduct be made after six years from the date of the conduct in question, the Council of the Law Society ("the Council") may only refer the complaint to the Chairman of the Inquiry Panel with the leave of the court. The relevant sections are as follows:

> **Complaints against regulated legal practitioners**
>
> **85.—**
>
> …
>
> (4A) Subject to subsection (4C), the Council shall not refer a complaint of the conduct of a regulated legal practitioner to the Chairman of the Inquiry Panel under subsection (1A) if the complaint is first made to the Society after the expiration of the period of —
>
> (*a*) 6 years from the date of the conduct; …
>
> …
>
> (4C) The Council may, with the leave of the court —
>
> (*a*) refer a complaint of the conduct of a regulated legal practitioner to the Chairman of the Inquiry Panel under subsection (1A) after the expiration of the period referred to in subsection (4A); or
>
> (*b*) refer any information touching upon the conduct of a regulated legal practitioner to the Chairman of the Inquiry Panel under subsection (2) after the expiration of the period referred to in subsection (4B).

28 In this case, out of 16 transactions complained of, half of them involving a total amount of around US$200,000, were effected from May to August 2008, while the remaining eight transactions involving a total sum of around US$1.8m were effected in 2011. In respect of the first set of transactions, therefore, more than six years had elapsed between the occurrence of the conduct complained of and the date the complaint was first made to the Law Society, *viz*, 17 December 2014. It thus seemed to us that for the Council to refer the complaint to the Chairman of the Inquiry Panel, leave of court would have been required pursuant to s 85(4C) of the LPA. Since this was not obtained, the first and third charges, which were based on the transactions in 2008, should not have been brought against the Respondent. This was because, at the end of the day, the failure to obtain leave of court to refer the complaint to the Inquiry

Panel called into question the very basis of the disciplinary inquiry. We therefore approached the matter on the basis that since the court's leave was not obtained in respect of the conduct complained of in 2008, we could only consider the transactions that were carried out in 2011 and the charges arising from the same.

29 We would like to make some further observations on this issue as it may recur in the future. We are of the view that leave of court for the purpose of s 85(4C) of the LPA should be obtained *before* the complaint is referred to the Chairman of the Inquiry Panel, especially considering the fact that disciplinary proceedings are invariably brought by the Law Society, which would be expected to possess the relevant institutional expertise to prosecute disciplinary matters according to proper procedure. Considerations that the court would take into account in determining whether leave should be granted at that stage would include the length of, and reasons for, the delay in prosecuting the matter.

30 Be that as it may, in cases such as the present where leave was not obtained, we considered that it might well have been within our disciplinary jurisdiction to *retrospectively* grant leave to the Council to refer the complaint to the Inquiry Panel, and ratify the disciplinary proceedings that were already on foot. While it was not necessary for us to decide the point in this case because the bulk of the remittances took place within the six-year period prior to the complaint being made, we think it would be useful to set out our current thinking on this matter.

31 In our judgment, since the court's disciplinary jurisdiction has been vested in it to enable it to discipline officers of the court in order to uphold the proper administration of justice, such jurisdiction should not be unduly limited

by procedural irregularities of this nature. In this regard, we note that there is nothing within the legislative scheme of the LPA which prevents the court from granting leave after the fact for the purposes of s 85(4C) of the LPA. Should an application be made at that late stage, however, the Law Society would have to anticipate a close scrutiny of considerations such as whether the further passage of time has meant that the respondent-solicitor has lost the ability to defend himself effectively and the reasons why either the leave application or the complaint itself was not brought earlier. This is in addition to the factors that would usually be considered in cases where the court's leave is sought *before the complaint is referred*, some of which we have set out in the preceding paragraph. In our judgment, such an approach is necessary so as not to blunt the teeth of these provisions. Regardless of whether the application is made before or after the complaint is referred to the Inquiry Panel, however, the court's decision to grant leave would ultimately involve an exercise of discretion that would be fact-sensitive and attuned to the circumstances before the court.

32 Had an application for the court's leave been made pursuant to s 85(4C) of the LPA at the hearing before us, this might well have been one such case where we would have granted leave retrospectively to ratify the disciplinary action against the Respondent in respect of the 2008 transactions. The complaint was first made to the Law Society in December 2014 which was some six years after the 2008 transactions, and the Law Society had followed up on the matter without undue delay. While it would appear that the failure to seek the court's leave *before* the complaint was referred stemmed from an unfortunate procedural oversight, there was (and this is significant) little to indicate that the Respondent had been seriously prejudiced in the conduct of his defence to the proceedings on account of the overall lapse of time. Even though the

Respondent had mentioned in the course of proceedings that he had over time lost documents which might have been relevant to the proceedings, this was ultimately immaterial because he had voluntarily admitted to his failures in conducting the relevant client checks and there was ample documentary evidence supporting the occurrence of the relevant transactions. Furthermore, given the seriousness of the offences, it was evidently in the public interest for the Law Society to take the Respondent to task for his professional misconduct in spite of the time lapse. The court would generally be more inclined to exercise its power to cure a procedural irregularity in cases where the misconduct alleged is serious and/or prolonged. In the present case, since no application for leave was made at the hearing before us, we considered only the transactions that were carried out in 2011 and formed the subject of the second and fourth charges against the Respondent. As we mention above, these 2011 transactions, in any event, formed the bulk (in terms of monetary value) of the remittances that were effected.

33 In concluding this discussion, we would also emphasise that any power to retrospectively grant leave for the purposes of s 85(4C) should not be seen as a mere "rubber stamp" for legitimising procedural irregularities. There will be a number of situations in which the court might decline to exercise such a power. An example would be the case where the respondent-solicitor disputes the charges and where the passage of time has irreparably compromised his ability to defend himself. It is conceivable that substantial injustice would be occasioned to the respondent-solicitor who has to run the gauntlet of a disciplinary action, and the hazards and prejudice of being tried for the charges against him, when the proceedings should not have been commenced against him in the first place without leave.

Whether due cause was shown

34 We now turn to the substantive issues in the application before us. The first question that we had to consider was whether due cause for disciplinary action was shown.

35 In this case, the Respondent had pleaded guilty to all four of the main charges against him and admitted to the Statement of Facts before the Tribunal. That the Respondent's conduct fell within s 83(2)(*b*) of the LPA, for breach of the Rules that would amount to improper practice, was thus not in serious dispute. A finding that a solicitor's conduct fell within s 83(2) of the LPA, however, is a necessary but not a sufficient condition for a finding of due cause; the court must also be satisfied that on the totality of the facts and circumstances of the case, the solicitor's conduct was sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA (see *Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 ("*Udeh Kumar*") at [30]). At the hearing, the Respondent did not dispute that due cause was made out.

36 On the facts before us, it was obvious that the Respondent had failed to perform even the most basic background checks into his clients' identities before accepting instructions as required under r 11D of the Rules, and to obtain evidence as to his clients' business relationship in matters unusual in the ordinary course of business as required under r 11F of the Rules. He was also unable to adequately explain the purposes of the individual transactions. The transactions involved large sums of money and it appeared that he was given a relatively sizeable cut of those funds for services that required little or no legal work; this was something that the Respondent himself admitted was "easy work

easy money" and "should not be the way", yet he did not cease acting for those clients on his own accord and continued performing those transactions until he received no further instructions from the clients.

37 Further, the Respondent's conduct must be considered in light of the vulnerability of the legal profession to being made use of by money launderers and the added imperative on lawyers to be particularly vigilant as to the provenance and the objective of remittances made through their firms. Legal practitioners are often, for good and legitimate reasons, the holders of large sums of money involved in commercial transactions and this means that fewer questions are liable to be asked when the lawyers pay out such sums to their clients or to third parties on their clients' instructions. Lawyers are also subject to confidentiality obligations which appeal to those who engage in money laundering activities and wish to hide their identities and activities under the cloak of legal privilege. There is thus a real risk that proceeds of crime could flow into Singapore via local law firms under the pretence of being moneys from legitimate transactions with the remitters wishing to give an appearance of legitimacy to any activity that the money is used for after being "cleansed" through the lawyer's client accounts. Given Singapore's reputation as a jurisdiction with strict controls aimed at eliminating illicit activities, it is all the more important for our solicitors, as potential fiduciary recipients of large sums of money, to understand and comply with obligations that aim to avoid exposing the profession to the risk of unintentionally assisting in the conduct of criminal activity.

38 In our judgment, therefore, the conduct complained of was not merely a technical breach but a substantial breach by a solicitor who allowed his client to

abuse the position of the solicitor and take advantage of the cloak of respectability that was afforded by having the solicitor effect those transfers. Incidents such as these tend to cast a shadow over Singapore's standing as a clean and trusted global financial hub, and undercut the substantial efforts that Singapore has invested in maintaining its reputation. In the circumstances, we had no hesitation in finding that due cause for the imposition of sanctions was shown.

The appropriate sanction

39 The next question we had to consider was the appropriate penalty to be imposed on the Respondent.

Sentencing considerations in disciplinary proceedings

40 It is useful for us, first, to set out the sentencing considerations which apply in disciplinary proceedings. In this context, it is well established that the imposition of sanctions is guided by the following considerations (see *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR(R) 266 at [11]–[13], and the observations of Professor Jeffrey Pinsler in *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (Academy Publishing, 2007) at para 01-078):

(a) the protection of members of the public who are dependent on solicitors in the administration of justice;

(b) the upholding of public confidence in the integrity of the legal profession;

(c) deterrence of similar defaults by the same solicitor and other solicitors in the future; and

(d) the punishment of the solicitor who is guilty of misconduct.

As we observed in *Law Society of Singapore v Chiong Chin May Selena* [2005] 4 SLR(R) 320 (at [26]), however, where the particular interests pull the court in different directions in any given case, it is the *interest of the public* that will be paramount and that must therefore prevail.

41 The emphasis on considerations which extend beyond the specific circumstances of the offender means that mitigating factors would carry less weight in disciplinary proceedings than in criminal proceedings. As we explained in *Law Society of Singapore v Kurubalan s/o Manickam Rengaraju* [2013] 4 SLR 91 at [49]:

> 49 The point simply is that even if a mitigating circumstance might be found that could weaken the case for *punishment* in a criminal case, **this circumstance may often not avail an Advocate and Solicitor in disciplinary proceedings because an equally, if not more, important consideration is the protection of public confidence in the administration of justice. This interest can legitimately trump the individual offender's interest in having his punishment finely calibrated according to his precise degree of culpability.** …
>
> [emphasis in original in italics; emphasis added in bold italics]

We drew attention to this point once again in our recent decision of *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141, where we stated (at [40]) that:

> 40 … in disciplinary proceedings against solicitors, personal mitigating circumstances that diminish the culpability of the solicitor who has misconducted himself will have less

> weight than would be the case in criminal proceedings. This is so because in the criminal context, the search for an appropriate punishment is driven by the usual sentencing considerations including deterrence and retribution, and in that context, the personal culpability of the offender will often have a direct bearing.

42 That is not to say, however, that mitigating factors would be inconsequential in every case. While we have observed previously that the weight to be attached to a plea in mitigation would be negligible where the case is one involving proven dishonesty (see *Law Society of Singapore v Wee Wei Fen* [1999] 3 SLR(R) 559 at [39]), in other circumstances mitigating factors will figure in the court's deliberations albeit in the context of the priorities mentioned above. That a respondent-solicitor pleaded guilty to his charges at an early opportunity, for example, may be seen as a sign of repentance and could be significant to the court in deciding the appropriate sentence to be meted out (see, *eg*, in *Law Society of Singapore v Tan Buck Chye Dave* [2007] 1 SLR(R) 581 ("*Tan Buck Chye*") at [22]). Conversely, and as we noted also in *Tan Buck Chye* (at [27]), a respondent-solicitor who vigorously contests the allegations against him in the face of clearly established objective facts (and therefore wastes the court's time without any conceivable purpose) is less likely to be treated leniently than one who properly admits his guilt.

Application to the present case

43 In light of the sentencing considerations above, we turn to explain our decision to impose on the Respondent a two-year suspension and a fine of S$100,000, the maximum fine that could be imposed under the LPA.

The two-year suspension

44 In this case, it is true that there was no finding that the Respondent had acted dishonestly. That, however, only meant that striking off was not the presumptive sentence (*cf*, *Udeh Kumar* at [101]–[102]). In our judgment, a period of suspension was warranted and it should commence after the expiry of the period of suspension that was being served by the Respondent as a result of the first proceedings (see above at [21]). The offences at hand were serious ones, and in any event there was no justification in principle for the terms of suspension to run concurrently with each other. The present and earlier convictions related to an entirely different set of offences which occurred at different times.

45 As to the length of the period of suspension, we considered that this should be substantial because: (a) the Respondent undertook no due diligence of any sort; (b) he carried out the transactions without asking any question as to why he was being asked to effect these transfers when this question cried out to be answered; (c) he was paid on a percentage basis, which meant that he was earning fees that bore no relationship whatsoever to the effort he was putting into effecting the transfers; and (d) the sums involved were substantial. We also considered the Respondent's past convictions (see above at [21]) to be a material aggravating factor, and his repeated transgressions were indicative of a cavalier disregard for the rules of professional conduct.

46 Having regard to all the circumstances, we were of the view that a period of suspension of two-and-a-half years would have been warranted. We reduced this to a term of two years on account of the sole mitigating circumstance, which was that the Respondent had pleaded guilty and did not contest the charges in

any real sense. When he appeared at the hearing, his main argument was a plea for leniency. But, as we have said, in the context of professional disciplinary proceedings, there is no basis for the court to take a lenient stance when it comes to punishing an errant professional and, in particular, a solicitor. Finally, although it was submitted that there was no evidence of the Respondent knowingly assisting in money laundering transactions, and that he had only been alive to the potentially illicit nature of the remittances after being alerted to it by the bank (see above at [13]),we were not inclined to take a favourable view of the situation. In so far as a solicitor thinks he has been caught up unwittingly in money laundering, there is an obligation on him to report his suspicions to the relevant authorities, including the Law Society, or at least seek independent legal advice, so that proper investigations may be undertaken. If, in the aftermath of the bank's inquiry, the Respondent had taken this course of action, that would have been a very substantial demonstration of remorse. In this case, however, the Respondent remained silent and his transgressions only came to light after an anonymous complaint was made against him. It was also relevant that the transactions had only ceased because his client was not heard from again following the bank's inquiry. In fact, the manner in which the Respondent dealt with the bank's inquiry (see above at [13]–[14]) suggested that he remained open to continue acting for his client in those transactions despite their unusual nature as was pointed out to him by the bank. We were therefore not inclined to place too much weight on the cessation of the transactions.

47 The length of suspension which we imposed on the Respondent was broadly in line with the precedents. We observe parenthetically that there were no reported cases involving charges similar to those faced by the Respondent in these proceedings. Even the case of *The Law Society of Singapore v Mustaffa*

bin Abu Bakar [2011] SGDT 1, on which the Law Society sought to rely as a guiding precedent before the Tribunal, did not offer a straightforward comparison due to the very different nature of conduct involved (*ie,* failing to allow an inspection to check the solicitor's compliance with the anti-money laundering measures, as compared to failing to inquire into a client's background and business relationship in this case). Nevertheless, we derived assistance from the following cases, in which there had been contraventions of a broadly similar nature, in determining the appropriate length of suspension on these facts.

48 We begin with the decision in *Law Society of Singapore v Leong Pek Gan* [2016] 5 SLR 1131 ("*Leong Pek Gan*"). The facts of *Leong Pek Gan* centred on a transaction which was, on its face, for the sale and purchase of a property. The complaint against the respondent-solicitor was that she had acted for the parties on both sides of what was essentially an unlicensed moneylending transaction and had preferred the interests of the moneylender in the process. Four disciplinary charges were subsequently brought against her for: (a) failing to advise the vendors of the potential conflict of interests arising from her acting for them as well as for the purchaser in respect of the transaction, and of her duty as an advocate and solicitor in the event that such conflict materialised; (b) preferring the interests of the purchaser over those of the vendors; (c) tendering advice to the parties when she knew or had reasonable grounds to believe that they were requesting the advice to advance an illegal purpose; and (d) failing to report the transaction, which she knew or had reasonable grounds to suspect involved unlicensed moneylending, a form of criminal conduct reportable under s 39(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed). In that case,

the court found that the respondent-solicitor had ignored glaring red flags and proceeded with the transaction without probing further, even when she thought that the transaction (in her own words) "seemed strange" (at [10]). Having regard to all the circumstances, the court held that a two-and-a-half-year suspension would sufficiently express the court's disapprobation of the respondent-solicitor's conduct and deter like-minded solicitors from similar offences. In determining the term of suspension, the court took into account the gravity and the number of charges that the respondent-solicitor had been found guilty of, the sanctions imposed in comparable cases as well as the respondent-solicitor's otherwise unblemished record as an advocate and solicitor (at [16] and [19]).

49 We turn next to the case of *The Law Society of Singapore v Yoong Tat Choy Joseph* [1993] SGDSC 9 ("*Joseph Yoong*"). In that case, the respondent-solicitor was found guilty of facilitating an illegal moneylending transaction by preparing documents that he knew or ought reasonably to have known constituted the security for the transaction. The transaction in *Joseph Yoong* was also structured in the form of a sale and purchase of property, and bore many similarities to the transaction in *Leong Pek Gan*. Likewise, the respondent-solicitor asked no questions, recorded no instructions and kept no attendance notes (at [121]). He was found to be sufficiently experienced to appreciate that the transaction was highly unusual, given the numerous red flags (at [120]), and was accordingly convicted of facilitating an illegal moneylending transaction. The court imposed a two-year suspension on those facts (see *Leong Pek Gan* at [8]).

50 Finally, in the case of *Law Society of Singapore v Ng Cher Yeow* [1999] 3 SLR(R) 596 ("*Ng Cher Yeow*"), the respondent-solicitor acted for both the vendors (a couple who had divorced) and the purchaser in a sale and purchase of property. The proceeds of the property were to be shared equally between the vendors. One of the vendors (the ex-wife), however, made an "under the table" arrangement with the purchaser for the sale of the property at a higher price, and did not want to state the actual selling price in the option to purchase so that she would not need to share the extra money with the ex-husband. In the course of facilitating the fraudulent scheme, the respondent-solicitor prepared two options to purchase and failed to inform the ex-husband of the true sale price of the property and the "under the table" arrangement. Although the court accepted that the respondent-solicitor had not been dishonest in his actions, he was fully aware that the transactions documented in the options were non-existent and of the fraudulent purpose underlying those documents (at [22]–[24]). In this regard, we observed also that, in terms of the state of knowledge, the Respondent would appear to be less culpable than the respondent-solicitor in *Ng Cher Yeow*. In that case, the court determined that a three-year suspension was warranted on those facts.

51 Having regard to the sanctions imposed in the comparable cases set out above and to the particular facts at hand, therefore, we were satisfied that a two-year suspension was appropriate in all the circumstances.

The maximum fine of S$100,000 under the LPA

52 Under ss 83(1)(*c*) read with 83(1)(*e*) of the LPA, a respondent-solicitor may be asked, on due cause shown, to pay a penalty of not more than S$100,000 in addition to being suspended from practice.

53 Taking only the events of 2011 into account for the reasons which we mention above at [27]–[28], we noted that the Respondent had, through those transactions, earned fees in the order of US$90,000. This was confirmed by the Respondent during the hearing. He confirmed also that no criminal investigations had been initiated against him, in the course of which the revenues obtained might have been confiscated as having been derived from criminal activity. We were of the view that the sanctions imposed should include a fine as it would be wrong to allow the Respondent to profit from his misconduct in any way. In our judgment, the maximum fine of S$100,000 under the LPA had to be imposed so as to make the Respondent disgorge as much of the profits he earned on those transactions as it was possible to do. The monetary penalty would also serve as a general deterrent against similar breaches in the future, especially in view of the potentially significant financial rewards in store for lawyers who are prepared to commit such transgressions. We must also emphasise that should a respondent-solicitor's revenues from inappropriate transactions far exceed the maximum fine that could be imposed under the LPA, such that the penalty of S$100,000 would be a totally inadequate punishment, the court would have to consider imposing an even longer term of suspension on, or even striking off, the respondent-solicitor who is found guilty on such charges so as to achieve the necessary deterrent effect.

54 In closing, we take this opportunity to exhort members of the legal profession to be vigilant to the threat of criminals seeking to take advantage of lawyers in the pursuit of money laundering activities. Should a client be eager to use the solicitor as a financial intermediary for transactions involving little or no connection to any legal work, this should send alarm bells ringing and it would be important for that solicitor to conduct client due diligence and

establish the nature and purposes of a transaction before proceeding with the engagement. In this connection, our observations in *Leong Pek Gan* (at [21]) bear reiteration: "[a]n advocate and solicitor is not a mere legal mercenary; neither is he an unthinking conduit". As Singapore grows in scale, sophistication and connectivity as a financial centre, equally its exposure to criminals on the hunt for opportunities to wash their dirty money clean will increase. It is all the more important for lawyers, who have a high chance of crossing paths with those dealing with illicit funds, to maintain a healthy scepticism when faced with unusual transactions during the course of their work. The legal profession must take a rigorous approach in supporting the effort to combat money laundering activities, lest they be allowed to demolish Singapore's hard-earned reputation as a clean and trusted global financial centre.

Conclusion

55 For the reasons above, we made the following orders:

(a) that the Respondent be suspended for two years from the expiry of his existing suspension and he be fined a sum of S$100,000;

(b) that the Respondent bear the costs of the application, fixed at S$12,000 (all-in); and

(c) that the Respondent pay the Law Society the sum of S$5,000 as ordered by the Tribunal, being the costs of the proceedings before the Tribunal.

56 At the Respondent's request and in view of his reduced ability to earn a living, we deferred the date for the payment of the fine by 12 months from the

date of the hearing. We also gave liberty to apply to vary the order for deferment should the Respondent come to an agreement with the Government, within those 12 months, on an alternative timeline for the payment of the fine.

Sundaresh Menon	Judith Prakash	Tay Yong Kwang
Chief Justice	Judge of Appeal	Judge of Appeal

Hassan Esa Almenoar and Liane Yong (R Ramason & Almenoar)
for the applicant;
The respondent in person.