

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

HC/S 668/2017)

Between
ALJUNIED-HOUGANG TOWN COUNCIL
(ID Unknown) ...Plaintiff

And

1. **SYLVIA LIM SWEE LIAN**
[REDACTED]
2. **LOW THIA KHIANG**
[REDACTED]
3. **PRITAM SINGH**
[REDACTED]
4. **CHUA ZHI HON**
[REDACTED]
5. **KENNETH FOO SECK GUAN**
[REDACTED]
6. **HOW WENG FAN**
[REDACTED]
7. **HOW WENG FAN**
[REDACTED]
(PERSONAL REPRESENTATIVE OF THE ESTATE OF DANNY LOH CHONG MENG, DECEASED, IN HIS PERSONAL CAPACITY AND TRADING AS FM SOLUTIONS & INTEGRATED SERVICES)
8. **FM SOLUTIONS & SERVICES PTE. LTD.**
[REDACTED] ...Defendants

HC/S 716/2017)

Between
PASIR RIS-PUNGGOL TOWN COUNCIL
[REDACTED] ...Plaintiff

And

1. **SYLVIA LIM SWEE LIAN**
[REDACTED]
2. **LOW THIA KHIANG**
[REDACTED]
3. **PRITAM SINGH**
[REDACTED]
4. **CHUA ZHI HON**
[REDACTED]
5. **KENNETH FOO SECK GUAN**
[REDACTED]
6. **HOW WENG FAN**
[REDACTED]
7. **THE PERSONAL REPRESENTATIVES OF DANNY LOH CHONG MENG, DECEASED**
(No ID. No. Exists)
8. **FM SOLUTIONS & SERVICES PTE. LTD.**
[REDACTED] ...Defendants

CLOSING SUBMISSIONS OF
THE 1ST TO 5TH DEFENDANTS

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A. BACKGROUND

1. At the General Elections (“**GE**”) on 7 May 2011, the Workers’ Party (“**WP**”) won Aljunied Group Representation Constituency (“**GRC**”) and Hougang Single Member Constituency (“**SMC**”). The 5 candidates from WP who won Aljunied GRC were Ms Sylvia Lim Swee Lian (“**Ms Sylvia Lim**”), Mr Low Thia Khiang (“**Mr Low**”), Mr Pritam Singh, Mr Muhamad Faisal bin Abdul Manap and Mr Chen Show Mao. The single candidate from WP who won Hougang SMC was Mr Yaw Shin Leong (“**Mr Yaw**”).¹
2. On 27 May 2011, Aljunied Town Council (“**ATC**”) and Hougang Town Council (“**HTC**”) were amalgamated to form Aljunied Hougang Town Council (“**AHTC**”).²
3. On 28 January 2013, WP won the by-election for Punggol East SMC (“**PE**”). On 22 February 2013, PE became part of AHTC which then became known as AHPETC.³
4. On 19 February 2014, the Deputy Prime Minister and Minister of Finance appointed the Auditor-General’s Office (“**AGO**”) to conduct an audit on AHPETC’s financial accounts, records and books for the financial year 2012/2013 (“**the AGO Audit**”).⁴ Following the AGO Audit, the AGO released a report on 9 February 2015 (“**the AGO Report**”) stating that it had found several lapses in governance and compliance with the Town Councils Act (Cap 329A, 2000 Rev Ed)⁵ (“**the TCA**”) and the Town Councils Financial Rules (Cap 329A, R1, 1998 Rev Ed)⁶ (“**the TCFR**”) by AHPETC.
5. On 20 March 2015, the Ministry of National Development (“**MND**”) commenced proceedings ⁷ in the High Court seeking various declarations, including the appointment of independent accountants. MND’s application was dismissed in its entirety by the High Court which, *inter alia*, held that MND was not entitled to seek relief under the TCA. The Attorney-General appealed the matter in Civil Appeal No. 114 of 2015 (“**CA 114**”) acting on behalf of the MND. The Housing and Development Board (“**HDB**”) applied for and was granted leave to join in CA 114 as a party.
6. On 27 November 2015, the Court of Appeal (“**CA**”) in CA 114 ordered, *inter alia*, AHPETC (as it then was) to appoint accountant(s) for the following specific purposes:

¹ Affidavit of Evidence-in-Chief (“**AEIC**”) of Ms Sylvia Lim at [4], 2 Bundle of Affidavits of Evidence-In-Chief (“**BA**”) 183, i.e. 2 BA 183.

² Pursuant to the Town Councils (Declaration of Towns) Order 2011 (No. S 263/2011).

³ All references to AHTC, unless the context otherwise requires, include AHPETC.

⁴ AGO Report at [1.1], Volume 25 of the Core Bundle of Documents (“**CB**”) 19279, i.e. 25 CB 19279.

⁵ Tab 4 of the 1st to 5th Defendants’ Bundle of Authorities (“**D1-D5BOA**”).

⁶ Tab 5 of the D1-D5BOA.

⁷ Originating Summons No. 250 of 2015, CA 114, at [17], Tab 9 of the D1-D5BOA.

- (a) To assist in identifying the outstanding non-compliances with Section 35(c) of the TCA;
 - (b) To advise on the steps that must be taken to remedy those outstanding non-compliances;
 - (c) To produce monthly progress reports until the accountant(s) is or are reasonably satisfied that AHPETC is fully compliant with Section 35(c) of the TCA;
 - (d) To ensure that the monthly progress reports, which are to be submitted to the HDB, provide sufficient details of:
 - (i) the outstanding non-compliances with Section 35(c) of the TCA; and,
 - (ii) the steps that AHPETC is taking to remedy those outstanding non-compliances.
 - (e) To establish whether any past payments made by AHPETC were improper and ought therefore to be recovered.
7. In the GE held on 11 September 2015 (**“the 2015 GE”**), the WP candidates were re-elected to Aljunied GRC and Hougang SMC. The People’s Action Party (**“PAP”**) won PE which then left AHPETC and became part of Pasir Ris-Punggol Town Council (**“PRPTC”**).
8. With effect from 1 October 2015⁸, all property, rights and liabilities of AHPETC that related to or were connected with PE were transferred to PRPTC (the **“Transferred Undertaking”**). Any proceedings or cause of action that related to the Transferred Undertaking and that were pending or existing immediately before that date may be continued and enforced by or against PRPTC.
9. Pursuant to the CA’s Order made on 27 November 2015, AHTC appointed KPMG LLP (**“KPMG”**) on 1 March 2016. KPMG produced its “Report on Improper Payments” on 31 October 2016 (**“the KPMG Report”**). The period of review was from 27 May 2011 to 27 November 2015 (**“the Review Period”**).
10. On 30 May 2016, PRPTC appointed PricewaterhouseCoopers LLP (**“PwC”**) as their accountants. PwC produced its “Past Review Payments Report” on 30 April 2017 (**“the PwC Report”**).

⁸ Pursuant to the Town Councils (Declaration of Towns) Order 2015 (S 577/2015).

11. On 17 February 2017, a 3-member Independent Panel (“IP”) comprising of Mr Philip Jeyaretnam SC (as Chairman), Mr N Sreenivasan SC, and Mr Ong Pang Thye, the Managing Partner of KPMG, were appointed under a consent order made by the CA.⁹ The IP was appointed to review the KPMG Report and “*take such action as the IP thinks is in the best interests of AHTC*”.¹⁰

B. THE SUITS

12. On 21 July 2017, AHTC (acting on the directions of the IP) commenced HC/S 688/2018 (“**Suit 668**”). PRPTC commenced HC/S 716/2018 (“**Suit 716**”) shortly thereafter on 3 August 2017. Both Suits were consolidated pursuant to an Order of Court dated 22 November 2017. AHTC and PRPTC are collectively referred to hereinafter as the “Plaintiffs” and the 2 Suits as the “Suits”.
13. Of the 12 Town Councillors comprising AHTC at the material time, the Plaintiffs sued 5 Town Councillors who are the 1st to 5th Defendants in both Suits, namely:
- (a) Ms Sylvia Lim
 - (b) Mr Low
 - (c) Mr Pritam Singh
 - (d) Mr Chua Zhi Hon (“**Mr David Chua**”)
 - (e) Mr Kenneth Foo Seck Guan (“**Mr Kenneth Foo**”)
14. Ms Sylvia Lim, Mr Low and Mr Pritam Singh are elected Town Councillors i.e. Town Councillors by virtue of being elected as MPs. Mr David Chua and Mr Kenneth Foo are non-elected Town Councillors i.e. they are residents who were appointed by the elected Town Councillors.

C. THE EVIDENCE

15. AHTC relies on the KPMG Report while PRPTC relies on both the KPMG Report and the PwC Report. Mr Owen Hawkes (“**Mr Hawkes**”) from KPMG testified as a factual witness¹¹ and was AHTC’s only witness in Suit 668. Mr Goh Thien Phong (“**Mr Goh**”) from PwC testified as an expert witness¹² and was PRPTC’s only witness in Suit 716.

⁹ Consent Order of Court in CA 114, 32 CB 24857.

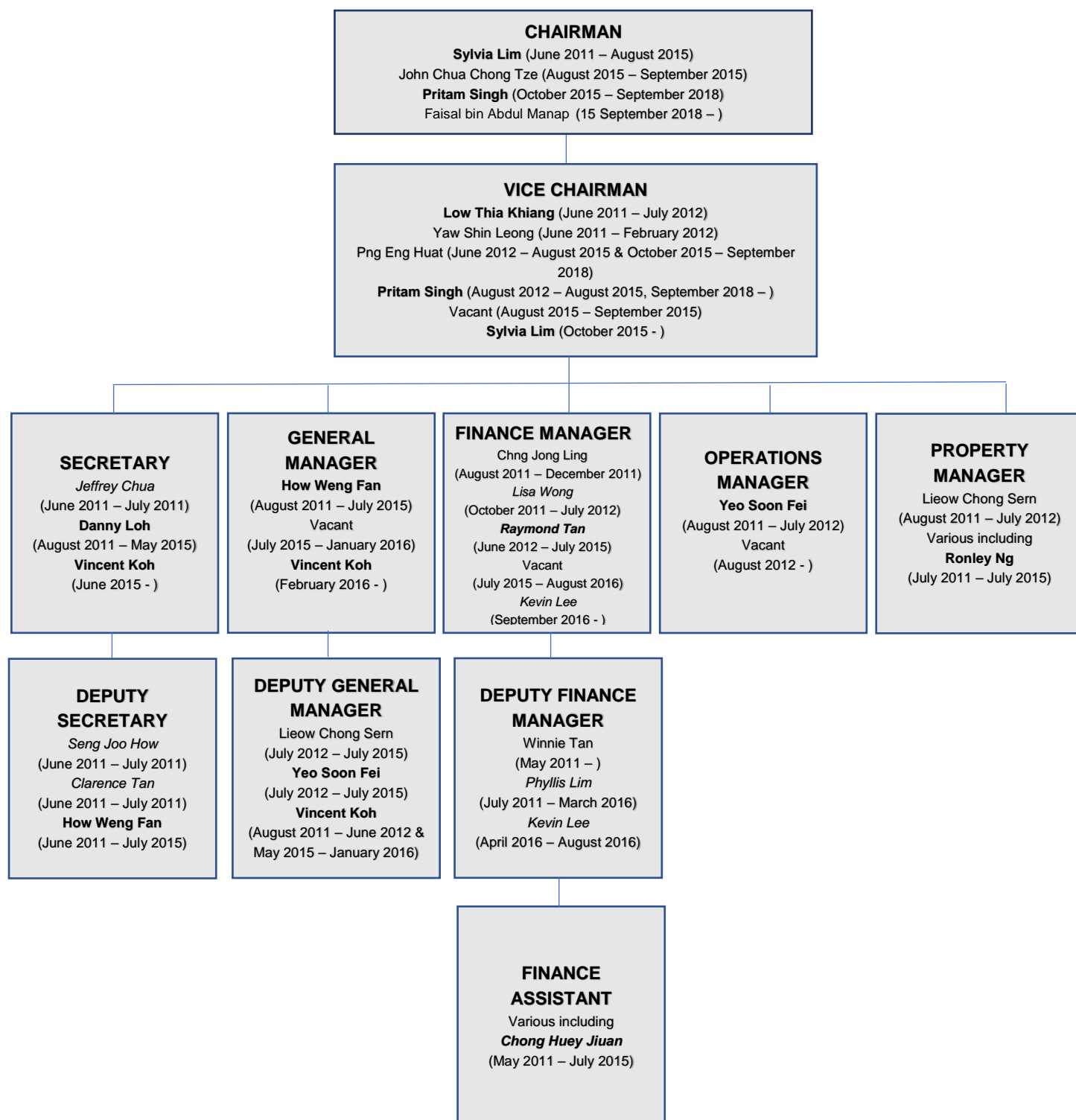
¹⁰ Terms of Reference of the Independent Panel at [2.1.1], 32 CB 24857 – 24862.

¹¹ Notes of Evidence (“NE”) of Judge Pre-Trial Conference (“JPTC”) hearing on 1 October 2018, Pg 4 L 30 – 31.

¹² 01.10.2018 NE of JPTC, Pg 5 L 1 to 2, Tab 49 of the D1-D5BOA.

16. The 1st to 5th Defendants (hereinafter referred to as “**Town Councillors**”) testified as factual witnesses, having been personally involved in the impugned appointments and payments during the Review Period. In addition, the Town Councillors also relied on the evidence of AHTC’s Secretary and General Manager, Mr Koh Weng Kong (also known as “**Vincent Koh**”) who had been involved in AHTC from August 2011 to June 2012 and from May 2015 onwards.
17. The 6th Defendant, Ms How Weng Fan (“**Ms How**”) was the General Manager/Secretary of HTC and subsequently General Manager/Deputy Secretary of AHTC. Ms How is also the personal representative of the Estate of her husband, the late Mr Danny Loh Chong Meng (“**Mr Danny Loh**”). Mr Danny Loh was the Secretary of AHTC until 31 May 2015. He passed away on 27 June 2015. Both Ms How and Mr Danny Loh were the directors and shareholders of FM Solutions & Services Pte Ltd (“**FMSS**”) at all material times. The Personal Representative of the Estate of Mr Danny Loh and FMSS have been sued as the 7th and 8th Defendants respectively.
18. The 6th to 8th Defendants called the following factual witnesses: (a) Mr Yeo Soon Fei, AHTC’s Operations Manager; (b) Mr Tan Han Hoe (also known as Raymond Tan); AHTC’s Finance Manager; (c) Ms Chong Huey Jiu, AHTC’s Finance Assistant; (d) Mr Ng Wai Loon (also known as Ronley Ng), AHTC’s Executive Manager, who had also performed the role of Property Manager; and, (e) Ms Loi Cheng Keng Serene, Computer Programmer from S & I Systems Pte Ltd which provided the computer systems for AHTC after Action Information Management Pte Ltd (“**AIM**”) terminated the contract to provide the computer system known as “Town Council Management System” (“**TCMS**”).
19. The following chart¹³ sets out the organisational structure of AHTC and its key appointment holders. The appointment holders who are **parties and/or witnesses** in the 2 Suits are **highlighted in bold**.

¹³ Adapted from the chart in the KPMG Report, 26 CB 19880.



20. The relevant Sub-Committee of AHTC which is referred to in the Suits is AHTC's Tenders and Contracts Committee ("**T&C Committee**"). At the material time, its members were:¹⁴

¹⁴ AEIC of Mr Pritam Singh at [28], 2 BA 883.

- (a) Chairman, Mr Pritam Singh;
- (b) Member, Ms Sylvia Lim.
- (c) Member, Mr David Chua (until 1 December 2016);
- (d) Member, Mr Kenneth Foo; and,

D. SUMMARY OF THE TOWN COUNCILLORS' RESPONSE

- 21. In both Suits, the Plaintiffs call into question the appointments and payments made by AHTC to its Managing Agent ("**MA**") and various third party contractors that AHTC had engaged to manage the estate and/or perform various services for its residents during the Review Period.
- 22. The Plaintiffs' respective claims and the key observations in the KPMG Report and the PwC Report are summarised in the Opening Statement of the 1st to 5th Defendants.¹⁵
- 23. The Town Councillors deny the allegations of improper payments and alleged loss suffered by AHTC and PRPTC. At all material times, the Town Councillors discharged their statutory duties to act in good faith and for the proper purposes of the TCA.
- 24. The following is a summary of the Town Councillors' response which will be elaborated on later in these submissions:
 - (a) In making the initial decisions after the 2011 General Elections ("**2011 GE**"), the Town Councillors accorded significant weight to the long experience that Mr Low had in town council management, having managed HTC for about 20 years since 1991. They agreed with Mr Low's assessment that it was necessary to have a contingency plan for the management of the estate and other essential services.
 - (b) The contingency plan involved using the experienced staff from HTC to be a part of a new MA to step in as MA for AHTC in the event the incumbent MA, CPG Facilities Management Pte Ltd ("**CPG**") did not wish to continue. The proposed new MA under this contingency plan was FMSS led by Mr Danny Loh and Ms How.

¹⁵ 1st to 5th Defendant's Opening Statement dated 1 October 2018, at [37] to [43].

- (c) All the Town Councillors were aware that Mr Danny Loh and Ms How were husband and wife,¹⁶ and that they were directors and owners of FMSS.¹⁷
- (d) The Town Councillors believed that any potential conflict of interest arising from the key appointment holders in FMSS working in key appointments in AHTC could be managed.¹⁸ Such appointments were a necessary part of the “outsourcing” of the management of the TC to a MA. This was also the past practice of the previous ATC and all other PAP-run TCs which used MAs.¹⁹
- (e) After CPG had confirmed that it wished to be released, the Town Councillors were of the view that it would not be prudent to compel CPG to carry on and that they should put into effect the contingency plan. Mr Low’s concerns therefore came to pass.
- (f) The Town Councillors considered and unanimously agreed that the waiver of the tender requirement for the 1st MA Contract was justified due to the urgency for the handover of ATC²⁰ and to ensure that there were no disruptions to the services provided to residents.²¹
- (g) The appointment of FMSS was only for a 1-year interim period under the 1st MA Contract and was based on the agreement that its rates were the same as that of CPG.²²
- (h) After 1 year, AHTC duly called a public tender for the 2nd MA Contract. However, apart from FMSS, there were no other bidders.
- (i) A tender was also called for the 2nd EMSU Contract. For the 2nd MA Contract, the Town Councillors appointed RSM Ethos Pte Ltd (“**RSM**”) to audit the tender process and sought the views of Kelly Services, a human resources company,

¹⁶ AEIC of Mr Low at [40], [75], 2 BA 352, 365; AEIC of Mr David Chua at [13], 3 BA 933; AEIC of Mr Kenneth Foo at [17], 3 BA 974; AEIC of Vincent Koh at [23], 3 BA 1030.

¹⁷ AEIC of Mr Low at [77], 2 BA 366; AEIC of Mr David Chua at [13], 3 BA 933; AEIC of Mr Kenneth Foo at [22], 3 BA 974.

¹⁸ AEIC of Ms Sylvia Lim at [41], [47] to [49], [187] to [190], 2 BA 196, 198 - 199, 247 - 248.

¹⁹ AEIC of Mr Low at [61] to [63], 2 BA 361; AEIC of Mr David Chua at [22], 3 BA 936; AEIC of Mr Kenneth Foo at [26], 3 BA 976; AEIC of Vincent Koh at [24] 3 BA 1091.

²⁰ AEIC of Mr David Chua at [12(d)] and [16], 3 BA 933, 934; AEIC of Mr Kenneth Foo at [13(d)] and [13(f)], 3 BA 973.

²¹ AEIC of Ms Sylvia Lim at [53] to [59], 2 BA 200 - 201; AEIC of Mr Low at [53], [81], [82], [90] to [97], 3 BA 357, 370, 374 - 376; AEIC of Mr Kenneth Foo at [19] and [20], 3 BA 974 - 975; 16.10.2018 NE, Pg 106 L 2 - 25, Pg 107 L 1.

²² AEIC of Ms Sylvia Lim at [67] and [68], [102], 2 BA 204, 205, 217; AEIC of Mr Low at [56] to [58], 2 BA 358, 359.

on the salaries of the FMSS staff.²³ The Town Councillors sought clarifications on the rates of FMSS where necessary.²⁴

- (j) As far as payments were concerned, the Chairman or Vice-Chairman of AHTC or any other designated signatories signed on cheques only after reviewing the supporting documents and satisfying themselves that the work or services have been carried out. This is after several layers of separate and independent checks by the full time staff of the TC, including Property Officers, the Finance Department, Property Officers, Property Managers and the Deputy General Manager/General Manager.²⁵
- (k) There is no basis to suggest that FMSS had not carried out its work as the MA. Apart from first-hand assessment of their work through inspections of the estates by the MPs, the MPs also had the following systems in place:
 - (i) The Integrated Maintenance Management System (“**IMMS**”) which was a computer system for tracking feedback from residents and monitoring the resolution of the issues highlighted by the residents;
 - (ii) Meetings with residents;
 - (iii) Sub-committee meetings and Chairman’s weekly meetings with MA staff;²⁶ and,
 - (iv) Quarterly Town Council (“**TC**”) meetings attended by MA staff.²⁷
- (l) A public tender was called to appoint consultants onto a panel for 3 years for projects for the estates under the management of AHTC. The use of a panel was in accordance with the past practice of ATC under its previous management.
- (m) LST Architects (“**LST**”) and Design Metabolists (“**DM**”) were the only firms to put in their bids in the public tender and they were both selected to be in the panel. The tender requirements under the TCFR were therefore fully complied with.

²³ AEIC of Mr Low at [99], 2 BA 375; AEIC of Mr Chua Zhi Hon at [27] to [32], 3 BA 937 - 939.

²⁴ AEIC of Ms Sylvia Lim at [141], 2 BA 235, 236.

²⁵ AEIC of Mr Vincent Koh at [29] to [38], 2 BA 1032 - 1036.

²⁶ AEIC of Mr Low at [107], [109] to [116], 2 BA 380, 381; AEIC of Ms Sylvia Lim at [84], [195], [200], 2 BA 209, 250, 253.

²⁷ AEIC of Mr Low at [112], 2 BA 382.

- (n) The MA had full time professional staff who selected the appropriate consultant from the panel for the projects.²⁸ The Plaintiffs allege that LST was more expensive than DM for 7 projects. However, LST was selected as it was the better consultant and the Plaintiffs produced no evidence that DM would have carried out these projects at a lower cost than LST.
 - (o) The appointments and payments of the third party contractors such as Red-Power Electrical Engineering Pte Ltd ("**Red-Power**"), Rentokil Initial Singapore Pte Ltd ("**Rentokil**"), Titan Facilities Management Pte Ltd ("**Titan**") and J Keart Alliances Pte Ltd ("**J Keart**") were in the best interests of the residents.
 - (p) The payment of 12 invoices made in November 2015 by AHTC was based on sufficient supporting documents and/or evidence of work done. All relevant documents had been handed over to PRPTC which had confirmed receipt of the same at the material time.
 - (q) 55 out of the 56 invoices paid in November 2015 by AHTC were approved by the relevant Head of Department ("**HOD**") who had endorsed on the Voucher Journal Report which is the relevant document. The one invoice that was not signed by the HOD was nevertheless approved by the Assistant Finance Manager who was at the material time, effectively the Head of the Finance Department as there was no Finance Manager in AHTC's employ then. The TCFR was therefore complied with.
25. The MND, the Executive arm of the Government responsible for TCs, has stated the following about TCs:²⁹
- (a) TCs are of a political nature. They were set up to enable elected politicians, i.e. MPs who were elected by constituents, to be given authority and responsibility to take charge of their constituents' estates and allow each Town to develop its own distinctive character under the MPs' leadership.
 - (b) The MPs would be accountable directly to their voters for the running of their estates, as these voters can take into account the MPs' performance in running the TC when they go to the polls.

²⁸ 6 CB 3466; 08.10.2018 NE, Pg 52 L 21 - 25 to Pg 53 L 1 - 9.

²⁹ MND Town Council Review Report ("**MND Report**") at [4], 24 CB 18530 – 18531.

- (c) The intent is to give the MPs as much latitude as possible to run the TCs within the broad and general rules laid down in the TCA and TCFR;
 - (d) The TCA does not prohibit transactions with persons or entities associated with political parties;
 - (e) MPs have the latitude to exercise autonomy in their judgment on how best to achieve their agenda and serve their residents' interests; and
 - (f) The regulatory approach of MND is one of a light touch "*in order to respect the autonomy of and to provide flexibility to MPs running their TCs and be directly accountable to residents, without excessive intervention by the Government*".
26. On 29 June 1988 when the Town Councils Bill was read for the second time in Parliament, Mr S. Dhanabalan, the then Minister for National Development, had stated that TCs were to be run with little intervention from the Government. They were to be given as much latitude as possible to manage their areas, including the people they employ and the salaries and fees that the TC paid to its employees and service providers respectively:
- "The Member for Bo Wen made an important point. **Who will monitor the Town Councils and whether, in the course of monitoring, the Town Councils will be closely controlled by the Government?***
- That is not the intention. The intention is to give the Town Councils as much latitude as possible for them to manage their areas...the Town Councils will be given a lot of latitude to employ the kind of people who are necessary, to pay them the kind of fees that are necessary to get the work done...***
- The allowances for Chairman and for Town Councillors may be prescribed by the Minister. But if the full-time workers, for example, if the Chairman of a Town Council or a Town Councillor becomes a full-time Councillor, then I think it is up to the Town Council to work out what is necessary. We would not intervene in it. And if disparities arise, it will arise because of the Town Councils themselves making the decision... **If the Government intervenes too much to fix the salaries and fees in every respect, then the Government will be accused of interfering and controlling the Town Councils too much. If you allow Town Councils to decide these things for themselves, of course, some disparities may arise. But I think we should take the risk of allowing such disparities to arise rather than be too close in our control of Town Councils. Basically, the idea is to allow Town Councils to make the decisions as to the kind of services they should buy and what they should pay for these services, whether the payments are to companies or to individuals.***³⁰ (emphasis added)
27. In this framework where TCs were designed to operate with as much latitude as possible, ultimately, it is for the electorate to bear the responsibility of their choice in

³⁰ Parliamentary Debates, Official Report (29 June 1988) vol 51 at col 441–444, Tab 48 of the D1-D5BOA.

electing the MPs who would represent them. This is simply a manifestation of the design of TCs serving as an indicator of the elected MPs' effectiveness. Parliament's purposive intent behind the TCA was also articulated by Mr S. Dhanabalan as follows:

*"The whole idea of this exercise is for people to be careful in the choice of their MPs as well as in the choice of the Councillors, in the sense that if the MP is good, he could choose good, honest, competent Councillors to help him. It is important that people realize that they have to live with the consequences of their choice. If they elect an MP who chooses a bunch of crooks to help him and together they run through the coffers in no time and leave the constituents in the lurch, well, they have to take the consequences. The Government is not going to come in and say, "We will take over now and make good all the losses." At the time when the HDB comes in, of course, whatever they collect from that point on will have to be used to manage the constituency, to provide the services in the constituency. And what has been mispent in the past, well, it is a loss. I think the responsibility and the onus must be very clear, and very clearly laid on the Chairman as well as on the Town Council as a whole. I think that is an important principle that we should not deviate from. If the Government holds out that this is an experiment, if you make a mess of it, we are going to come in and pick up the pieces, then I think we are not going to start off this whole project on the right basis. We should make the responsibility very clear."*³¹ (emphasis added)

28. The above passage was referred to in CA 114 where the CA concluded as follows:

"50 ... In our judgment, it is evident from the debates that the Town Council was seen as a political measure that would deepen the connection between Members of Parliament (especially in their capacity as town councillors ("Town Councillors")) and the residents they were elected to serve in their constituency. What was unquestionably clear from the debates was that neither the Town Councils nor the residents could expect that either the Government or the HDB would bail them out with financial assistance of any sort in the event a given Town Council sustained financial or other losses due to mismanagement. To this extent, it was contemplated that the residents would have to bear the consequences, even the adverse ones, of electing, as their representatives in Parliament and as those who would oversee the operations of their Town Council, persons who discharged their duties in such a way that it caused financial and other losses to their Town Council.

51 In our judgment, the broad philosophical thrust of the legislation was to emphasise that Town Councils would enjoy a measure of independence in the manner in which they discharged their duties but on no analysis could it be said that such latitude or independence extended to permitting them to act unlawfully or contrary to the many stipulations imposed by the TCA and the TCFR without any recourse at law. It is one thing to say that the Town Councils would have latitude in developing their plans and operations. It is entirely another thing to say on this basis that there is either no duty to comply with the TCA and the TCFR, or, which in substance comes to the same thing, that there is no remedy to speak of in the event of a breach of such a duty. Section 21(1)(f) of the TCA casts upon Town Councils the duty to comply with the provisions of the TCA and the rules made thereunder, and the TCA is replete with provisions that impose obligations of proper governance on the Town Council. Brief reference may be made in this connection to ss 21 and 33–38 of the TCA which set out the obligations of a Town Council to manage its funds as well as the estate under its charge properly. Indeed, taken together with the provisions of the TCFR, it is simply unarguable that there is nothing to constrain the governance of the Town Councils.

³¹ Parliamentary Debates, Official Report (29 June 1988) vol 51 at col 443-444, Tab 48 of the D1-D5BOA.

52 In our judgment, it is clear from this that such latitude or independence was to be exercised subject to the safeguards that were incorporated in the TCA and the TCFR. But having accorded this degree of independence and latitude on the Town Council, the residents would have to bear the consequences of this. What this means in particular, as we have already noted, is that they would not be entitled to expect the Government to bail them out in the event of mismanagement.”³²
(emphasis added)

29. It is against this backdrop that the present suits have been commenced.

E. ISSUES

30. As set out in their Opening Statement, the 1st to 5th Defendants will deal with the issues raised in the Suits under the following 7 headings:³³

- (I) Whether the 1st to 5th Defendants as Town Councillors owe fiduciary duties to the Town Council.
- (II) Whether the appointments of FMSS and FMSI and the payments totalling \$33.7 million to FMSS and FMSI were improper.
- (III) Whether the appointment of LST Architects for 7 projects and the payments made to LST Architects were improper.
- (IV) Whether the appointments and payments made to third party contractors were improper.
- (V) If any of the appointments and/or payments were improper as alleged, whether the 1st to 5th Defendants had acted in good faith and are therefore not liable.
- (VI) Whether any of the Plaintiffs’ claims are time-barred under the Limitation Act.
- (VII) Whether the Plaintiffs are entitled in law to the reliefs pleaded.

³² CA 114 at [50] – [52], Tab 9 of the D1-D5BOA.

³³ The issues in this matter are generally set out in the respective “List of Agreed /Non-Agreed Issues in HC/S 668/2017” and “List of Agreed/Non-Agreed Issues in HC/S 716/2017” both filed on 23 May 2018 by the Plaintiffs.

ISSUE (I) WHETHER THE 1ST TO 5TH DEFENDANTS AS TOWN COUNCILLORS OWE FIDUCIARY DUTIES TO THE TOWN COUNCIL.

Statutory Duties

31. It is not in dispute that the Town Councillors owe statutory duties under the TCA and TCFR³⁴ and that these statutory duties require the Town Councillors to act in good faith and in execution of the Act. PRPTC's allegation in its Opening Statement that the Town Councillors have denied that they owed such duties is a clear misrepresentation of the Town Councillors' case.³⁵

32. The role of TCs was summarized by the CA:

*"Town councils are a somewhat unique feature of our system of local government, established to control, manage, maintain and improve the common property of our public housing estates. Almost 80% of the population of Singapore reside in or own homes in housing estates built and managed by the Housing and Development Board ("HDB"), a statutory board established in 1960 and charged with the responsibility of addressing and meeting the housing needs of the general population of Singapore. Historically, the HDB was also responsible for the maintenance and management of the common property of these housing estates. By common property, in broad terms, we refer to those parts of the estate that are not encompassed within each individual unit, such as corridors, stairs and lifts. Town councils were formed in 1989 to take over these functions from the HDB..."*³⁶

33. The TCA is a self-contained legislation that lays out broad and general rules to ensure proper governance and safeguard public interest. As set out in [28] above, the CA had highlighted that the TCA is replete with provisions that impose proper governance and the latitude or independence that TCs enjoy are subject to those safeguards incorporated in the TCA and the TCFR.³⁷

34. The self-contained nature of the TCA and the TCFR is evident in the provisions setting out the duties owed by the Town Councillors and the remedies for the breach of such duties.

35. In the TCA:

- (a) Section 10 sets out the duties of the Chairman and Vice-Chairman in presiding at meetings and performing such other duties as are prescribed in this Act.

³⁴ 1st to 5th Defendants' Defence (Amendment No. 2) at [18].

³⁵ PRPTC's Opening Statement at [12] to [13].

³⁶ CA 114 at [1], Tab 9 of the D1-D5BOA.

³⁷ CA 114 at [50] to [52], Tab 9 of the D1-D5BOA.

- (b) Section 20 states that a Secretary shall be responsible to the TC for the proper administration and management of the functions and affairs of the TC in accordance with this Act.
 - (c) Section 28, titled "*Acts of Town Council*", provides that all questions coming or arising before a meeting of a TC or a committee thereof shall be decided by a majority of the Council members present and voting thereon.
 - (d) Section 33(6A) states that where a TC is guilty of an offence under subsection (6)(a) or (b) relating to the disbursement of moneys from any sinking fund or the Town Council Fund, it shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000. Section 33(6B) goes on to state that where that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of its chairman or secretary, or any person who was purporting to act in any such capacity, he, as well as the TC, shall also be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
 - (e) Section 52 states that no suit or other legal proceedings shall lie personally against any member, officer or employee of a TC or other person acting under the direction of a TC for anything which is in good faith done or intended to be done in the execution or purported execution of this Act or any other Act.
36. In the TCFR, officers are held liable for breaches of the rules under the following provisions:
- (a) Rule 21(1) states that all collections received by authorised officers must be deposited as soon as possible in the safe or vault provided for the purpose, or paid into a bank account of the TC; and negligence in this respect will place the entire responsibility for any loss upon the officer concerned.
 - (b) Rules 56(1) and (2) state that any officer allowing or directing any disbursement without proper authority shall be responsible for the amount. Further, in the event of any wrongful payment being made in consequence of an incorrect certification on a voucher, the certifying officer shall be responsible for the wrongful payment.
 - (c) Rules 104(1) and 105 state that if any loss is due to the negligence or fault of any officer or Committee authorised by the TC, that officer or Committee may

be liable, upon such negligence or fault being reported, to be surcharged with all or any part of the loss. Where there is no negligence or fault, the amount lost may be written-off.

37. Contrary to AHTC's assertions,³⁸ the application of common law rights and remedies is precluded because the entire relationship between the Town Councillors and the TC is one that arises out of the TCA. As this relationship is founded in and regulated by statute, it can only be analysed by reference to the TCA as there is no pre-existing common law relationship between them. It is not appropriate to add private law overlays to this statutory relationship. There is nothing in the TCA to suggest otherwise. In CA 114, the CA adopted this reasoning in reversing the High Court's finding that the TCA did not preclude the application of common law rights and remedies:

"In the proceedings below, the Judge agreed with the MND that the TCA does not preclude the application of common law rights and remedies, relying on the case of Goldring Timothy Nicholas v PP [2013] 3 SLR 487 ("Goldring"). In our judgment, Goldring does not support the MND's contention. In that case, V K Rajah JA (as he then was) found that the Criminal Procedure Code 2010 (Act 15 of 2010), which included a criminal disclosure framework, did not exclude the common law right of access to documents. This is because Rajah JA acknowledged that, as a matter of statutory interpretation, it is presumed that Parliament would not have removed rights pre-existing in common law if there is no provision or clearly evinced intention to that effect. We do not see how this proposition, even if it were accepted as correct, would apply here.

*Goldring deals with a situation where there was a pre-existing common law right of access to documents and a new statutory framework governing disclosure in criminal cases was overlaid upon it. Importantly, both were meant to apply to the same relationship between the prosecution and the accused. That is not the case here. The entire relationship between the MND and AHPETC arises out of the TCA, and can only be analysed by reference to the TCA. There may be recourse available to the MND as provided in the statute, such as pursuant to s 50 of the TCA. The MND may also be able to apply for judicial review, subject to the usual legal prerequisites that apply in the context of such applications. But we do not think that it can fundamentally alter the very basis of the relationship from one founded in and regulated by statute to one in trust, agency or any other private law concept. It is not appropriate, on the facts of the present case, to add such private law overlays to the statutory relationship between the Minister and the Town Councils. Indeed, there is nothing at all in the TCA to suggest otherwise. This also forecloses the MND's alternative contention based on a legal interest pursuant to a contractual mandate and a beneficial interest under a Quistclose trust."*³⁹

(emphasis added)

38. CA 114 also addressed the issues of what remedies avail an interested party when the TC fails to act in accordance with the TCA and TCFR, who may apply for relief in such circumstances and the limits of the Court's power to act.⁴⁰ In this regard, the CA

³⁸ AHTC's Opening Statement at [3.4.1].

³⁹ CA 114 at [122] and [123], Tab 9 of the D1-D5BOA.

⁴⁰ CA 114 at [1], Tab 9 of the D1-D5BOA.

affirmed the House of Lord's decision in Swain v The Law Society [1983] 1 AC 598⁴¹ ("**Swain**"), which concerned the Law Society, acting on behalf of all solicitors required to be insured, took out insurance to provide indemnity against loss arising from claims made against solicitors in respect of liability for professional negligence. The plaintiffs, who were solicitors, argued that the Law Society was accountable for the share of the commission it secured from the brokers. The argument turned on whether the Law Society was a trustee for the solicitors in respect of their share of the commission. In rejecting the submission that the Law Society was a trustee for the solicitors in respect of their share of the commission, the House of Lords said that the Law Society was performing a public duty in exercising the power conferred on it by the statute, for which there was no remedy in breach of trust or equitable account. The CA held as follows:

"126 Lord Diplock emphasised the importance of bearing in mind that the Law Society has both private and public capacities. When the Law Society is acting in its private capacity, it is subject to private law alone. But when the Law Society is acting in its public capacity, the principal purpose of which is to protect the public, it is governed by public law. This fundamental distinction, according to Lord Brightman, had important consequences because (at 618):

*... the nature of a public duty and the remedies of those who seek to challenge the manner in which it is performed differ markedly from the nature of a private duty and the remedies of those who say that the private duty has been breached. If a public duty is breached, there is the remedy of judicial review. There is no remedy in breach of trust or equitable account. The latter remedies are available, and available only, when a private trust has been created ... The duty imposed on the possessor of a statutory power for public purposes is not accurately described as fiduciary because there is no beneficiary in the equitable sense."*⁴² (emphasis added)

39. Accordingly, the CA applied Swain and concluded that "*any remedy for any failure to apply any such money in accordance with the TCA must rest in the TCA as a matter of public law and be based upon it.*"⁴³
40. Given the policy rationale for the introduction of the TCA, the self-contained nature of the legislation and the CA's holdings in CA 114, it is submitted that the Plaintiffs, as TCs, have not established that the Town Councillors owe fiduciary duties to the TC in addition to their statutory duties. The relief of equitable compensation sought by the Plaintiffs in the Suits is only available to claimants whose rights in equity have been breached: Quality Assurance Management Asia Pte Ltd v. Zhang Qing [2013] 3 SLR 631.⁴⁴ Since the Plaintiffs have no equitable rights against the Town Councillors, they

⁴¹ Tab 29 of the D1-D5BOA.

⁴² CA 114 at [126], Tab 9 of the D1-D5BOA.

⁴³ CA 114 at [128], Tab 9 of the D1-D5BOA.

⁴⁴ Quality Assurance, at [31] and [34], Tab 28 of the D1-D5BOA.

are not entitled to the equitable remedy of equitable compensation for breaches by the Town Councillors, if any. This issue of relief is elaborated upon in Issue (VII) below.

Fiduciary Duties

41. We set out below each of the alleged basis relied upon by the Plaintiffs in their pleadings to claim that the Town Councillors owe fiduciary duties.

Statutory Duties as an Alleged Basis

42. The Plaintiffs allege that the Town Councillors owe fiduciary duties to the TC.⁴⁵ One of the purported basis is the statutory duties imposed by the TCA relating to the administration and management of the TC's affairs. However, the fact that Town Councillors owe such statutory duties under the TCA does not give rise to a fiduciary obligation unless Parliament clearly intended otherwise.
43. In *Tito v Waddell* [1977] WLR 496⁴⁶ ("***Tito v Waddell***"), a Resident Commissioner had a statutory duty under a Mining Ordinance to receive royalties from a company that had exclusive licenses from the Crown to mine phosphate from the Banaba island, a British settlement. This colony had a Resident Commissioner who administered it under the High Commissioner for the Western Pacific. Under the said Ordinance, the Resident Commissioner was to apply the royalties as the High Commissioner directed for the benefit of the natives of the Banabans. Eventually, the Council of Leaders, a Banaban body, was incorporated by a Fiji Ordinance which provided that all royalties that accrued to the Banaban community be paid into a fund under the Council's control. The Council and another Banaban landowner sued the Crown in relation to transactions that occurred in 1931 and 1947. The plaintiffs alleged that the rates of royalty payable under these transactions were less than the proper rates and that in relation to those transactions, the Crown had been subject to a trust or fiduciary duty for the benefit of the plaintiffs or their predecessors. Accordingly, the plaintiffs sought the Crown to make up the difference between the amount of royalty actually paid and the amounts that ought to have been paid. The Plaintiffs argued that the Resident Commissioner's statutory duty to apply the monies for the benefit of the Banabans gave rise to a fiduciary obligation. Megarry VC rejected this argument:

"... In their context, the provisions of section 6(2) and section 7 of the Ordinance of 1928, despite the use of the words "in trust," are far more consonant with a

⁴⁵ AHTC's Statement of Claim at [2.1.1] - [2.1.2], Tab 1 of the Set Down Bundle in Suit 668, PRPTC's Statement of Claim (Amendment No. 1) at [17(a)].

⁴⁶ *Tito v. Waddell*, Tab 32 of the D1-D5BOA.

governmental obligation than a true trust or fiduciary duty enforceable in the courts. *The resident commissioner for the time being, in his official capacity, was to receive the moneys, and, subject to the directions of the Secretary of State, he was under a governmental obligation to use the moneys for those named. The Ordinance gave ample authority to the resident commissioner for him to expend the money only in this manner, and to resist any claim that it should be diverted to other uses: and no doubt that Ordinance imposed on him a duty to apply the money in this way. But in my judgment, in this respect the Ordinance operates only in the sphere of government, and not by way of imposing any justiciable true trust or fiduciary obligation. I do not think that a statutory duty to administer money in a particular way can be said necessarily or even probably to impose a fiduciary obligation upon the person subjected to the duty. Many statutory duties exist without giving rise to any fiduciary obligation, and before such obligation can arise I think that there must be something to show that the imposition of such an obligation was a matter of intention or implication.*⁴⁷ (emphasis added)

44. Applying Tito v Waddell, the statutory duties owed by the Town Councillors does not make them fiduciaries of the TC. The main statutory function of the Town Councillors can be found under Section 28 of the TCA which provides that all questions coming or arising before a meeting of a TC or a committee thereof shall be decided by a majority of the Council members present and voting thereon. These questions would include decisions that impact on the way in which the Town Council Fund is being expended. However, there is nothing in the TCA to suggest that Parliament intended for this statutory function to give rise to a fiduciary obligation.

Custodial Fiduciaries and/or Trustees as the Alleged Basis

45. PRPTC alleges that all Town Councillors (both elected and appointed members alike) and officers of the TC such as the 6th and 7th Defendants are trustees and/or custodial fiduciaries of AHTC and AHPETC's assets and property which were entrusted to them by the residents.⁴⁸ Where AHTC is concerned, its allegations of custodial fiduciaries are limited to Ms Sylvia Lim and Mr Low only.⁴⁹ AHTC alleges that Ms Sylvia Lim and Mr Low are custodial fiduciaries because they were authorised bank signatories of AHTC and hence had charge or custody of AHTC's funds.⁵⁰ This position is both inconsistent and unsustainable. If in fact the custodial fiduciary relationship arose by way of Ms Sylvia Lim and Mr Low being authorised bank signatories of AHTC such that they allegedly had charge or custody of AHTC's funds, this would render Mr Pritam Singh a custodial fiduciary too. Needless to say, being a bank signatory does not necessarily mean that the person has control over how the funds are being disbursed.

⁴⁷ Tito v. Waddell, at pg. 608B, Tab 32 of the D1-D5BOA.

⁴⁸ PRPTC's Opening Statement at [9], [17], [27], and [59].

⁴⁹ AHTC's Opening Statement at [3.3.1] – [3.3.4].

⁵⁰ AHTC's Opening Statement at [3.3.4(a)].

46. The Plaintiffs assert that the assets and property of AHTC were “trust property”⁵¹ and PRPTC augments this position by stating that the Town Councillors and officers of the TC “were obliged to apply those asserts and property strictly in accordance with the terms of their trust, which included the TCA and the TCFR”.⁵² PRPTC claims to be a beneficiary under this trust.⁵³ So does AHTC.⁵⁴ This is plainly wrong in law.
47. Firstly, the Town Councillors are not custodial fiduciaries simply because they described themselves as “custodians” or “guardians” of public funds.⁵⁵ In Tito v Waddell, even when the phrase “in trust for” featured in a formal document such as the Royal Warrant, Megarry VC did not find that a justiciable trust was created as there is no magic in the word ‘trust’.⁵⁶ The force of this logic must apply in relation to expressions such as “custodians” or “guardians” as they are not terms of art through which enforceable rights attach simply because the Town Councillors adopt such expressions in their language.
48. In situations involving the performance of governmental obligations relating to funds, monies or property where the concept of a “trust” is alleged to be relevant, the Court must determine whether the “trust” in question is one that should be classified as a “true trust” that is enforceable in the Court or as a “trust in the higher sense” which describe governmental obligations that are not enforceable in Court. This issue arose in Tito v Waddell and Megarry VC held as follows:

“... Second, the term “trust” is one which may properly be used to describe, not only relationships which are enforceable by the courts in their equitable jurisdiction, but also other relationships such as the discharge, under the direction of the Crown, of the duties or functions belonging to the prerogative and the authority of the Crown. Trusts of the former kind, so familiar in this Division, are described by Lord Selborne L.C. as being “trusts in the lower sense”; trusts of the latter kind, so unfamiliar in this Division, he called “trusts in the higher sense.”

*I pause at that point. This classification of trusts seems to have made little impact upon the books: see, e.g., Lewin, Trusts, 16th ed. (1964), pp. 10, 13; Underhill’s Law of Trusts and Trustees, 12th ed. (1970), p. 51; Halsbury’s Laws of England, 3rd ed., vol. 38 (1962), p. 810. There is, indeed, a certain awkwardness in describing as a trust a relationship which is not enforceable by the courts, though the so-called trusts of imperfect obligation perhaps provide some sort of parallel. Certainly in common speech in legal circles “trust” is normally used to mean an equitable relationship enforceable in the courts and not a governmental relationship which is not thus enforceable. **I propose to use the word “trust” simpliciter (or for emphasis the phrase “true trust”) to describe what in the conventional sense***

⁵¹ AHTC’s Opening Statement at [5.2.1] and PRPTC’s Opening Statement at [27] and [58].

⁵² PRPTC’s Opening Statement at [9].

⁵³ PRPTC’s Opening Statement at [8], [14], [59], [60], [61], and [91].

⁵⁴ AHTC’s Opening Statement at [4.2.1].

⁵⁵ AHTC’s Opening Statement at [3.3.4] and PRPTC’s Opening Statement at [17].

⁵⁶ Tito v. Waddell, at pg. 596H to 597C, Tab 32 of the D1-D5BOA.

is a trust enforceable in the courts, and to use Lord Selborne's compound phrase "trust in the higher sense" to express the governmental obligation that he describes."⁵⁷ (emphasis added)

49. Even if the Court finds that a "trust in the higher sense" was created in this matter, this does not give rise to a fiduciary relationship between the Town Councillors and the TC. As Megarry VC held in Tito v Waddell, if the primary obligation under the trust in the higher sense is one which the courts will not enforce, it cannot then give rise to a secondary obligation which will be enforceable by the courts:

*"Suppose, then, that these rules, or either of them, apply not only to trusts but also to other cases where there is a fiduciary relationship, springing perhaps from agency, or partnership or membership of a committee of inspection in bankruptcy (on which see In re Bulmer [1937] Ch. 499), does a trusteeship in the higher sense, or governmental obligation, also give rise to a fiduciary relationship which invokes those rules? I think that the answer must be No. The fiduciary obligations all arise from relationships which are justiciable in the courts. The relationship from which the fiduciary obligations arise may itself be equitable, or it may be legal, or it may have its origin in statute: but it is a relationship with enforceable legal consequences. A trust in the higher sense, or governmental obligation, on the other hand, lacks this characteristic; and where the primary obligation itself is one that the courts will not enforce, then I do not think that it can of itself give rise to a secondary obligation which will be enforceable by the courts. To hold otherwise would be to give some legal force or effect to a relationship which had none. I therefore hold that the 1913 transaction did not put the Crown, or any officer of the Crown, into any fiduciary position in relation to the Banabans or any of them."*⁵⁸ (emphasis added)

50. In elaborating on the elasticity of the word "trust", Megarry VC also established that expressions such as "trust" or "trust property" could be used to mean that the property in question is not to be used or disposed of by the legal owner for his own benefit but must be used or disposed of for the benefit of other persons:

"I have already considered the way in which "trust" may be used to describe on the one hand a true trust, and on the other hand a trust in the higher sense, or mere governmental obligation. The Ayerst case shows how distinguished equity judges may use the word to describe a relationship which is not a trust in the full sense of the word, with the trustee owing to the beneficiaries all the duties that a trustee in equity owes to his cestui que trust, but is something less than that. In the words of Lord Diplock in the Qyerst case, at p. 180, all that may be intended to be conveyed by the use of the expression "trust property" and "trust" in such cases is that

"the effect of the statute was to give to the property of a company in liquidation that essential characteristic which distinguished trust property from other property, viz, that it could not be used or disposed of by the legal owner for his own benefit, but must be used or disposed of for the benefit of other persons."

One cannot seize upon the word "trust" and say that this shows that there must therefore be a true trust; the first question is the sense in which that protean word

⁵⁷ Tito v. Waddell, at pg. 596H to 597C, Tab 32 of the D1-D5BOA.

⁵⁸ Tito v. Waddell, at pg. 605C-E, Tab 32 of the D1-D5BOA.

has been used. The word, indeed, is one that may be found by the unwary to invite the comment *Qui haeret in litera haeret in cortice*.⁵⁹ (emphasis added)

Determining whether a “true trust” or a “trust in the higher sense” exists

51. In *Tito v Waddell*, the plaintiffs relied on the following factors to argue that the Crown had created trusts in relation to the Banabans: (1) A 1913 agreement between the mining company and a number of Banabans where clause 7 read that the company undertook “*to hand over to the resident commissioner*” the initial sum of monies received and the expenditure was to be made “*for the benefit of the existing Banaban community...*”; and (2) the annuity scheme where an initial amount was paid followed by subsequent payments of interest on the royalty and this interest was to be paid “*to the Government by the company for the Banaban Fund,*” or as clause 10 puts it, “*payable by the company to the Banabans (through the government) in royalty.*” The plaintiffs argued that the latter expression amounted to a declaration of trust by the Crown such that when monies were paid by the mining company, they were impressed with a trust. The plaintiffs also emphasized that the 1913 agreement had created something that had a flavour of trust in establishing a fund in favour of the Banabans.⁶⁰ Megarry VC however held that the surrounding circumstances of the matter before him and the terms of the relevant documents “*do very little to support the concept of any true trust. Instead, they do much to support the view that, subject to the limited rights created by the annuity scheme, the Banaban Fund was a fund which was subject not to any true trust but to a trust “in the higher sense,” or a governmental obligation, to use it for the general benefit of the Banaban community. It was money which the Banabans were told would be expended by the government in their interests...*”.⁶¹
52. Megarry VC stated that the whole of the circumstances of the case⁶² needs to be considered and that any indications need to be looked at against the general background when inferring whether there was an intention to create a true trust or a trust in the higher sense.⁶³ He also set out some general principles that are relevant for consideration in our present case:

“... First, the use of a phrase such as “in trust for,” even in a formal document such as a Royal Warrant, does not necessarily create a trust enforceable by the courts. As Lord O’Hagan said, 7 App.Cas. 619, 630: “There is no magic in the word ‘trust.’” Second, the term “trust” is one which may properly be used to describe, not only

⁵⁹ *Tito v. Waddell*, at pg. 606G-H, Tab 32 of the D1-D5BOA.

⁶⁰ *Tito v. Waddell* at pg. 599E-H, Tab 32 of the D1-D5BOA.

⁶¹ *Tito v. Waddell* at pg. 602H, Tab 32 of the D1-D5BOA.

⁶² *Tito v. Waddell* at pg. 603H, Tab 32 of the D1-D5BOA.

⁶³ *Tito v. Waddell* at pg. 603F, Tab 32 of the D1-D5BOA.

relationships which are enforceable by the courts in their equitable jurisdiction, but also other relationships such as the discharge, under the direction of the Crown, of the duties or functions belonging to the prerogative and the authority of the Crown. Trusts of the former kind, so familiar in this Division, are described by Lord Selborne L.C. as being "trusts in the lower sense"; trusts of the latter kind, so unfamiliar in this Division, he called "trusts in the higher sense."

... The third is that it seems clear that the determination whether an instrument has created a true trust or a trust in the higher sense is a matter of construction, looking at the whole of the instrument in question, its nature and effect, and, I think, its context. Fourth, a material factor may be the form of the description given by the instrument to the person alleged to be the trustee. An impersonal description of him, in the form of a reference not to an individual but to the holder of a particular office for the time being, may give some indication that what is intended is not a true trust, but a trust in the higher sense.⁶⁴ (emphasis added)

53. Having examined the surrounding circumstances and the terms of the documents, Megarry VC concluded that the royalty paid by the mining company to the Resident Commissioner that was to be expended for the Banabans' benefit (the "**Banaban Fund**") only created a trust in the higher sense. In reaching this conclusion, Megarry VC gave significance to some of the following indications: (1) the fact that "*there was nothing to give any identifiable Banabans any definable right in the capital of that fund*" and the "*serious problems in ascertaining both the beneficiaries and the quantum of their beneficial interests in the Banaban Fund*"⁶⁵ and (2) the general language that proceeds of the royalty are "*to be devoted to the general benefit of the natives*".⁶⁶ Unless the plaintiffs were able to point towards statements by the government officials in relation to the 1913 agreement that showed a clear unequivocal intention to hold the royalties on an enforceable true trust⁶⁷ or show that the Crown had deliberately chose to act as a trustee⁶⁸, Megarry VC held that the entire matter was best explicable on the footing of a governmental obligation, a trust in the higher sense.⁶⁹
54. A proper construction of the TCA having considered its nature, effect and context would plainly show that there is no "true trust" on the facts of this matter on which fiduciary duties may attach to the Town Councillors.
55. Where the individual Town Councillors are concerned, the TCA does not have any express provisions on their statutory duties as members of the Council whether in relation to administering the Town Council Fund or otherwise. However, AHTC relies on Section 18 of the TCA to allege that Ms Sylvia Lim and Mr Low are custodial

⁶⁴ *Tito v. Waddell* at pg. 596G-H, Tab 32 of the D1-D5BOA.

⁶⁵ *Tito v. Waddell* at pg. 602G, Tab 32 of the D1-D5BOA.

⁶⁶ *Tito v. Waddell* at pg. 603B, Tab 32 of the D1-D5BOA.

⁶⁷ *Tito v. Waddell* at pg. 603C-D, Tab 32 of the D1-D5BOA.

⁶⁸ *Tito v. Waddell* at pg. 603A, Tab 32 of the D1-D5BOA.

⁶⁹ *Tito v. Waddell* at pg. 603E, Tab 32 of the D1-D5BOA.

fiduciaries by arguing that “Town Councillors... have a duty to apply AHTC’s funds for the benefit of AHTC and consequently its constituents”.⁷⁰ This is misconceived because Section 18 of the TCA provides for the “*Functions of Town Council*” and not the individual Town Councillors.

56. Instead, the general purposes for which the Town Council Fund is constituted and used by the TC are set out at Sections 33 and Section 39 respectively of the TCA:⁷¹

“Constitution of Town Council Fund

33.—(1) For the purposes of improving, managing and maintaining the common property of the residential and commercial property in the housing estates of the Board, a Town Council shall establish and maintain separate funds for improvements to and the management and maintenance of residential property and of commercial property; and such funds shall together constitute the Town Council Fund and shall, with all property which is or may become vested in the Town Council, be under the direction and control of the Town Council subject to the provisions of this Act.

(2) All moneys received by a Town Council by virtue of this Act or any other Act shall be paid into the Town Council Fund and all liabilities falling to be discharged by a Town Council shall be discharged out of that Fund.”

Conservancy and service charges

39.—(1) For the purposes of carrying out its duties and functions under this Act or any other Act, a Town Council may in each month levy conservancy and service charges at such rates as it may determine in accordance with its by-laws in respect of every flat in any residential or commercial property and every stall in any market or food centre of the Board within the Town.

(2) Charges levied by a Town Council under subsection (1) shall be payable, subject to this section, by the owner or tenant of every such flat or stall, as the case may be.”
(emphasis added)

57. Section 33(1) and (2) read with Section 39(1) and (2) of the TCA leads to the conclusion that the Town Council Fund which constitutes monies received by the TC under the TCA through the conservancy and service charges paid by the residents are to be used for the general purposes of improving, managing and maintaining the common property of the residential and commercial property in public housing estates within that TC’s purview. There is no language that gives any identifiable ratepayer a definable right in the capital of the Town Council Fund.
58. Further, as stated in [38] above, the Town Councillors who performed a public duty through AHTC cannot therefore be said to be trustees of AHTC or of the residents as

⁷⁰ AHTC’s Opening Statement at [3.3.1] and [3.3.5].

⁷¹ Tab 4 of the D1-D5BOA.

no private trust has been created over the Town Council Fund for which there is no beneficiary in the equitable sense.

Agency as an Alleged Basis

59. AHTC also asserts that there is a principal-agent relationship between the TC and the Town Councillors which renders the Town Councillors fiduciaries of the TC because the agent-principal relationship is one of the established categories of fiduciary relationship.⁷² However, this is incorrect. As mentioned in [35(c)] above, the TC only acts through decisions that are made at the meetings of the TC or a committee thereof through a majority vote of the Council members present. Accordingly, the acts of the Town Councillors represent the acts of the TC such that there is no question of agency involved. The force of applying such reasoning to the decision-making bodies of an artificial legal personality that can only operate through its organs is consistent with that of decisions made by directors vis-à-vis their company:

*“...if the members pass a resolution pertaining to a matter in their sphere of competence in a general meeting, that resolution represents the decision of the company. Similarly, the members by approving a course of action by the directors will make that act the act of the company. An act which commands the unanimous approval of the members, even if that approval is informally given is a corporate act and binding on the company. If the board of directors, acting within its sphere of competence, passes a resolution, that resolution may also be taken to be the company’s decision. In certain circumstances (see below), the intention of a company’s organs is deemed to be the company’s intention. **When the board or the general meeting acts within its sphere of competence, it is acting as the company, not just on behalf of the company; there is no question of agency involved.**”⁷³*
(emphasis added)

Provisions in the TCA as an Alleged Basis

60. In an attempt to demonstrate that the Town Councillors have fiduciary relationships with the TC, AHTC relies on Section 56 of the TCA which provides that “*members, officers and employees of a Town Council and all employees of its managing agent shall be deemed to be public servants for the purposes of the Penal Code.*” The mere fact that a person is a public servant does not give rise to a fiduciary relationship. Such reliance on Section 56 is misplaced as Mr S. Dhanabalan stated in Parliament that this section was not to impose an additional burden of fiduciary duties on Town Councillors but to protect them in discharging their duties under the TCA.⁷⁴

⁷² AHTC’s Opening Statement at [3.1.2].

⁷³ “Walter Woon on Company Law” (Rev 3rd Edition, 2009) at pg. 84, see Tab 47 of the D1-D5BOA.

⁷⁴ 1st to 5th Defendants’ Opening Statement at [60]. See also Parliamentary Debates, Official Report (29 June 1988) vol 51 at col 444, Tab 48 of the D1-D5BOA.

61. AHTC also relies on Sections 20 and 33(8) of the TCA which relate to the Secretary's general responsibilities towards the proper administration and management of the TC including all payments made to and out of the Town Council Fund as a basis for asserting the existence of a fiduciary relationship. As mentioned at [43] above, the fact that a person may hold statutory duties to administer a property or monies does not necessarily impose fiduciary obligations on the person.
62. Finally, AHTC relies on Section 15 of the TCA, what is a general rule of good governance, to assert that the Town Councillors are fiduciaries. This, without more, does not give rise to a fiduciary relationship between the Town Councillors and the TC.
63. AHTC also asserts that Ms Sylvia Lim and Mr Low are custodial fiduciaries because Section 35(1)(a) of the TCA requires every TC to ensure that "*proper accounts and records of the transactions and affairs of the Town Council*" are kept in accordance with the TCFR.⁷⁵ The need for entities such as TCs that perform public functions to keep proper accounts of the various Town Council Fund do not render these funds as trust property on which a true trust arises, such that the Town Councillors are in turn trustees of the funds. In *Tito v. Waddell*, Megarry VC held as follows:⁷⁶

*"... Where, however, the question is whether there is on the one hand a true trust, or on the other hand a "trust in the higher sense," or governmental obligation, it does not seem to me that segregation plays the same part. **Governments have to keep accounts; and if there is a fund of money applicable for a particular purpose, then as a matter of practice the government will normally keep a separate account of that fund.** In *Chippewa Indians of Minnesota v. United States* (No. 2), 307 U.S. 1, I may say, there was a fund established by statute, and yet there was no true trust. **In short, I cannot see how the maintenance of a separate fund, or a separate account, can normally play any significant part in distinguishing between a true trust on the one hand and a governmental obligation on the other:** the separateness of the fund or account seems to me to be indifferently a badge of each."*⁷⁷ (emphasis added)

Trust and Confidence as an Alleged Basis

64. AHTC asserts that the Town Councillors are fiduciaries of AHTC because the electorate had reposed trust and confidence in the Town Councillors.⁷⁸ By AHTC's own reasoning, the trust and confidence reposed by the electorate can only be made manifest when the electorate votes in favour of the person receiving such votes. On this reasoning, any fiduciary relationship that arises would be limited to one between

⁷⁵ AHTC's Opening Statement at [3.3.4(c)]

⁷⁶ *Tito v Waddell* at pg. 599G-H, Tab 32 of the D1-D5BOA.

⁷⁷ *Tito v Waddell* at pg. 600A-C, Tab 32 of the D1-D5BOA.

⁷⁸ AHTC's Opening Statement at [3.2.1] – [3.2.3]

the elected Town Councillors and the constituents who voted for them, thus excluding appointed Town Councillors and the remaining constituents from the mix.

65. As held by the CA in Tan Yok Koon v Tan Choo Suan and another and other appeals [2017] 1 SLR 654,⁷⁹ the distinguishing obligation of a fiduciary is the obligation of loyalty. As such, applying fiduciary concepts in the sphere of public law to hold that the Town Councillors are fiduciaries of the electorate is fraught with doctrinal difficulties. As explained in an article entitled “*The False Promise of Fiduciary Government*”:

“... Two principles animate fiduciary law. First, private fiduciaries owe a single beneficiary or a discrete class of beneficiaries a duty of undivided loyalty. It is difficult, however, to specify how politicians and bureaucrats are fiduciaries for a discrete class of beneficiaries. Second, in discharging her duties, the fiduciary must pursue one or a set of agree-upon ends, which are measured by a specific set of doctrinal maximands. By contrast, in public law there is no agreement upon specific maximands. This distinction is significant because the existence of a rough consensus on specific ends mediates between the general, indeterminate concepts of “loyalty” and “care” and the outcomes that courts reach in fiduciary litigation. As a result, the thick analogy between private fiduciaries and public officials fails as a formal matter, whether the analogue is the parent-child, trustee-beneficiary, or corporate manager-shareholder relationship.”⁸⁰ (emphasis added)

66. Even if there was a fiduciary relationship between the electorate and the Town Councillors (which is denied), the fact that TCs were designed to “[make] MPs accountable to their direct voters for the running of their estate”⁸¹ does not render Town Councillors fiduciaries of the TC. AHTC also relies on the same statutory provisions referred to in [35(a)], [60], [61], and [62] above to submit that trust and confidence was reposed in the Town Councillors.⁸² For reasons set out earlier, these provisions do not support the finding of a fiduciary relationship between the Town Councillors and the TC.

Resident Volunteers Do Not Owe Fiduciary Duties

67. It would be unduly onerous to saddle appointed Town Councillors such as the 4th and 5th Defendants with fiduciary duties as they are laymen volunteering their services for the common good. Both these Defendants were only paid an honorarium of \$300 a month each. In the Singapore High Court decision of Koh Keow Neo and others v Chee Johnny and others [2004] 3 SLR(R) 385⁸³ (“Koh Keow Neo”), it was alleged that the 5 defendants who were members of a committee that co-ordinated the privatisation

⁷⁹ Tan Yok Koon, at [192], Tab 31 of the D1-D5BOA. See [52] of D1-D5’s Opening Statement.

⁸⁰ At pg. 1158, Tab 45 of the D1-D5BOA.

⁸¹ AHTC’s Opening Statement at [3.2.3(a)], see MND Report at 24 CB 18530.

⁸² AHTC’s Opening Statement at [3.2.3(c)]

⁸³ Tab 20 of the D1-D5BOA.

exercise of a HUDC Estate had breached their fiduciary duties by, *inter alia*, leading the plaintiffs (who were owners of other units in the HUDC Estate) to believe that the requisite mandate had been obtained on voting day. In holding that the defendant volunteers did not owe fiduciary duties, the High Court stated as follows:

“93 Were there other duties which the defendants owed to the plaintiffs as gratuitous agents? It bears remembering at this juncture that the defendants are all laymen. In volunteering their services for the common good, on their own time and without payment, in what has turned out to be a thankless task, I believe it would be unduly onerous and unfair to saddle them with fiduciary duties of the standard imposed on the accountants in Winnifred Wai Yue Yu by the Supreme Court of New South Wales. The facts there showed the parties had a past relationship of accountant and client, since 1978. In our case, the privatisation exercise was the only occasion that the five defendants (and other pro-term committee members) got together to represent their fellow flat owners. The principles in Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] AC 465 relied on by the plaintiffs clearly cannot apply. I also disagree that the defendants have duties akin to those of promoters of companies. No authorities were cited by the plaintiffs to support this proposition.”⁸⁴ (emphasis added)

68. At trial, the Plaintiffs submitted that Koh Keow Neo is no longer good law due to the CA’s decision in Ng Eng Ghee v. Mamata Kapildev Dave and others [2009] 3 SLR(R) 109⁸⁵ (“Ng Eng Ghee”).⁸⁶ This is incorrect. Whilst Koh Keow Neo involved a pro-tem committee that coordinated the privatisation exercise of the HUDC Estate in question, Ng Eng Ghee concerned a collective sale committee (“SC”) of a condominium development. The CA observed that the SC has a strong power that may result in the objecting subsidiary proprietors (“SPs”) losing their units without their consent. The objecting SPs are placed in a vulnerable position as the SC usually comprises the very same consenting SPs whose objective is to sell the property, contrary to the wishes of the objecting SPs. In that context, the CA held that they owe fiduciary duties.⁸⁷ Further, the CA did not go so far as to hold that all gratuitous agents owe fiduciary duties. Neither did it explicitly address the case of Koh Keow Neo.
69. In enacting the TCA and implementing TCs as institutions in 1989, TCs were designed to encourage ownership amongst the residents by devolving some of the powers of township management into the hands of grassroot leaders and their elected MPs. It is pertinent to bear the policy consideration in mind that should the Court unduly hold resident volunteers as fiduciaries, saddling the onerous burden of fiduciaries on a resident volunteers who serve their constituency as appointed Town Councillors would

⁸⁴ At [93], Tab 20 of the D1-D5BOA.

⁸⁵ Tab 27 of the D1-D5BOA.

⁸⁶ 05.10.2018 NE, Pg 83 L 14 - 25 to Pg 84 L 1 – 5.

⁸⁷ At [113], Tab 27 of the D1-D5BOA.

have a chilling effect on whether residents would come forward to volunteer their services.⁸⁸ As Mr S. Dhanabalan said during the Parliamentary Debate on the TCA:

“... The other area of concern is to ensure the voluntary spirit in terms of the work in the Town Council. We have to carefully examine the implementation of monetary incentives for those who are involved in the work of the Town Council. I am afraid if there are disparities in terms of the provision of monetary incentives between and amongst Town Councils, it may cause problems and pressures amongst different Town Councils. I hope the voluntary participation of Town Councillors can be maintained at its best and they should be encouraged to be involved on the basis of voluntary effort. They belong to the community and the spirit of voluntarism needs to be ensured so that the Town Councillors themselves feel that they have a role to play effectively in terms of the improvement of their neighbourhood.”⁸⁹ (emphasis added)

ISSUE (II) WHETHER THE APPOINTMENTS OF FMSS AND FMSI AND THE PAYMENTS TALLING \$33.7 MILLION TO FMSS AND FMSI WERE IMPROPER.

Definition of an “improper payment”

70. Both AHTC and PRPTC are relying on the KPMG and PwC Reports for their claims for reliefs. However, neither KPMG nor PwC have satisfied the order by the CA in CA 114 for the accountants to establish “whether any past payments made by AHPETC were improper and ought therefore to be recovered”.⁹⁰ Even though both KPMG and PwC witnesses have not made clear in their Reports, AEICs or testimonies what are the payments that are improper and ought to be recovered, AHTC and PRPTC have made blanket claims for various payments that were made during the Review Period from 27 May 2011 to 27 November 2015.

71. KPMG adopted the following definition of an “improper payment”:

“2.3.2 For the purposes of the KPMG Report, we “considered payments to be improper where they are in breach of [AHTC]’s policies or procedures, the TCA, the TCFR or any other applicable duties imposed on [AHTC] and Town Councillors by law. Our approach has also been to consider payments to be improper when the payment exceeds the sum that [AHTC] is required to pay under a given contract (i.e. an overpayment), or when payment is made for work or services that have not been performed satisfactorily or not sufficiently delivered.”⁹¹

72. Based on the above definition of “improper”, KPMG made “findings” which PwC adopted.⁹² It bears highlighting that upon adopting this definition of improper

⁸⁸ AEIC of Ms Sylvia Lim at [20].

⁸⁹ Singapore Parliamentary Debates on 29 June 1988 at Column 408, Tab 48 of the D1-D5BOA.

⁹⁰ CA 114 at [131(d)], Tab 9 of the D1-D5BOA.

⁹¹ AEIC of Mr Hawkes at [2.3.2], 1 BA 10.

⁹² 26 CB 20257.

payments, the KPMG Report only concludes that the “detectable” improper payments by AHTC to FMSS and FMSI amounts only to **\$1,518,286**.⁹³ KPMG’s table found in “Section 5.3 Detectable improper payments to FMSS and FMSI”⁹⁴ is reproduced below (with serial numbers added) for convenient reference (“**KPMG’s 1st Table**”):

S/No.	Improper Payments	Amount (SGD)	Amount that ought to be recovered (SGD)
1.	Overpayment to FMSS in respect of overtime claims and CPF contributions	8,990	8,990
2.	Overpayment to FMSS for electrical parts	3,720	3,720
3.	Payment to FMSS for electrical parts	6,130	Not determinable
4.	Payments to FMSS that are purportedly for project management fees, but which are actually covered by managing agent fees paid by the Town Council	608,911	608,911
5.	Payments to FMSS that are purportedly for project management fees, but which are actually in respect of matters that involve a combination of managing agent services as well as project management services	611,786	Not determinable
6.	Payments to FMSS or FMSI that are unsupported by certifications of services received or contracts	194,759	Not determinable
7.	Payments to FMSS made in breach of financial authority (namely, without the requisite co-signature of the Chairman or Vice Chairman of the Town Council)	80,990	Not determinable
8.	Unclaimed liquidated damages under EMSU contract	3,000	3,000
	Total amount determinable	1,518,286	>=624,621
9.	“Settlement” of breaches with FMSS	250,000	Not determinable

74. The Plaintiffs confirmed that they are not pursuing the sum of \$250,000 at S/No. 9.⁹⁵ The Town Councillors have confirmed that they are not disputing KPMG’s Report in relation to the sum of \$3,720 at S/No. 2⁹⁶ and \$3,000 at S/No. 8⁹⁷ which are claims that the Town Councillors intended to claim against FMSS.

75. Where AHTC’s payments to third-parties are concerned, KPMG identified the sum of **\$5,409,123** as an improper payment by AHTC as per its table reproduced below with serial numbers added (“**KPMG’s 2nd Table**”).⁹⁸

S/No.	Improper Payments	Amount (SGD)	Amount that ought to be recovered (SGD)
1.	Use of higher-priced panel consultant	2,794,560	Not determinable

⁹³ 26 CB 19899.

⁹⁴ 26 CB 19898.

⁹⁵ 08.10.2018 NE, Pg 101, L 17 - 19.

⁹⁶ 08.10.2018 NE, Pg 114, L 8 - 14, Pg 138, L 20 – 25; 19 CB 14455.

⁹⁷ 09.10.2018 NE, Pg 64, L 12 - 25, Pg 65 L 1 – 12; 19 CB 14455.

⁹⁸ 26 CB 19922, Section 6.1.4 of the KPMG Report.

2.	Payments made without supporting evidence	43,961	Not determinable
3.	Weaknesses in payment approval leading to improper payment	105,554	Not determinable
4.	Expenditure incurred without authority in breach of TCFR and Town Council internal controls	2,463,083	Not determinable
5.	Overpayment of allowances to a Town Councillor	1,500	1,500
6.	Overpayment of lithography charges	465	465
	Total amount determinable	5,409,123	>=1,965

76. Both AHTC and PRPTC have confirmed that they are only claiming S/No. 1 for the sum of **\$2,794,560** (“**\$2.79 million**”) being the alleged additional costs for appointing LST over DM.⁹⁹ This is despite KPMG concluding that the amount that ought to be recovered in relation to this sum is “not determinable”. This claim will be dealt with at [233] to [245] below. The Town Councillors are not disputing the finding in relation to S/No. 5 of KPMG’s 2nd Table for the sum of \$1,500 for overpayment of allowances to a town councillor.¹⁰⁰
77. On cross-examination, Mr Hawkes explained the difference between the terms “detectible” and “determinable” when he stated that the payments identified as improper in the above table are “*detectible in the sense of being identified, but of course some of them are not determinable as we discussed earlier because we simply don’t have the evidence to determine either way*”.¹⁰¹
78. Mr Hawkes admitted that even when KPMG identifies a payment as improper, they are not necessarily recommending that they ought to be recovered.¹⁰² As such, the discrepancies between what KPMG alleged are improper payments and the amounts that ought to be recovered are due to amounts that are “not determinable”. Mr Hawkes elaborated that “not determinable” applied to payments where it is not possible to determine what part of them could be labelled improper and ought to be recovered:
- “Q: All right. So the total amount -- the total items of improper payment are those six items. They have a total possible value of \$5,409,123, but as far as can be determined by you there is 1,965 which is determinable and as the remaining balance is not determinable, correct?
- A: Yes. So perhaps just to explain what not determinable means, I am sure everyone is clear, but just to be put it beyond doubt, what we say is that where it is not determinable that doesn't necessarily mean that we don't know how much was spent. **It means that we know of the amount that was spent or that was paid out it is not possible to determine what element of would it [it would?] be correctly**

⁹⁹ 08.10.2018 NE, Pg 98, L 14 to 22.

¹⁰⁰ 19 CB 14455.

¹⁰¹ 10.10.2018 NE, Pg 46, L 14 – 25, Pg 47, L 1 – 18.

¹⁰² 10.10.2018 NE, Pg 47 L 24 - 25 to Pg 48 L 1 - 15; 26 CB 19899.

labelled improper and ought to be recovered and what element of it was spent but ought not to be recovered."¹⁰³ (emphasis and words in square brackets added)

79. Accordingly, Mr Hawkes clarified that of the \$1,518,286 that KPMG identified as alleged improper payments to FMSS and FMSI, KPMG concluded that only **\$624,621** is recoverable. Further, the bulk of the sum of \$624,621 comprises the project management fees of \$608,911 under the contract with FMSS, such that if it were excluded, the remaining sum that ought to be recovered is merely **\$15,710**. Of the \$5,409,123 that KPMG identified as alleged improper payments to third parties, KPMG concluded that only **\$1,965** is recoverable:

"Q "And these are, if you look at the previous page the heading is "Detectible Improper Payments to FMSS and FMSI" and in the table on page 19899 you set out a list of eight items which you say are detectible improper payments made to FMSS and FMSI; is that correct?

A: Yes, that is right.

Q: And these payments total \$1,518,286. That is correct?

A: Yes, that is right.

Q: And then you say "Amount that ought to be recovered" and then you have a total of \$624,621 and there is that funny notation in front of it. Can you explain that to us?

A: That means greater than or equal to.

Q: Oh, greater than or equivalent to 624,621?

A: That is right, yes.

Q: So those are improper payments to FMSS and FMSI and this is set out in the report. And then on page 19922 you have improper payments to other parties and this on paragraph 6.1.4 is a table of these payments and there are six items here and the total is 5,409,123; is that correct?

A: Yes.

Q: **And that is the total amount. And the amount that ought to be recovered is the sum of 1,965 more or equal to \$1,965, all right?**

A: **Yes, that is right.**"¹⁰⁴ (emphasis added)

80. It is pertinent to highlight that nowhere in the KPMG Report or the PwC Report does it state that all of AHTC's payments to FMSS/FMSI totalling \$33.7 million is improper and therefore ought to be recovered. This is despite Mr Hawkes' admission that KPMG does not assume that because they have not detected a payment as improper, there is nevertheless something which is improper:

"Q: Surely you shouldn't assume that because you have not detected it there is nevertheless something which is improper?

A: **We do not, no.**"¹⁰⁵ (emphasis added)

81. Mr Hawkes repeated this position when cross-examined about KPMG's conclusion on the MA fees of approximately \$26.6 million that were paid to FMSS and which make up the bulk of AHTC's claim for \$33.7 million:

¹⁰³ 08.10.2018 NE, Pg 96 L 18 – 25, Pg 97 L 1 – 8.

¹⁰⁴ 08.10.2018 NE, Pg 94 L 12 - 25 to Pg 95 L 1 - 12.

¹⁰⁵ 10.10.2018 NE, Pg 47 L 13 – 18.

“Q: Now, all those payments to the managing agents are being challenged, am I correct? You challenge them?

A: We challenge the appointment of or the nature of the appointment of FMSS to the managing agency in terms of **whether we say the whole amount is something which was ill-spent or recoverable, we don't come to the conclusion that automatically you look at the beginning of the report. What we expressly say is this much money was spent, that the circumstances involved we felt were failures, but our conclusion is that it is not really possible to tell how much of that, on the information we had at the time, was necessarily an improper payment that ought to be recovered.**

Q: Yes, but the basis for your saying that this 26.6 million should be recovered is that FMSS should not have been appointed?

A: **Again, our report doesn't say that this 26.6 million should be recovered. That is not the conclusion of the report.”**¹⁰⁶ (emphasis added)

82. A similar issue arises with PRPTC's claims. In relation to PRPTC's claim for \$674,388.70 to third parties under 56 invoices in November 2015, Mr Goh confirmed under cross-examination that whether these payments were improper is not something that he expresses a view on:

“Q: Yes. And because there was no certification on the invoice by the department head it was not properly authorised. Payment was not properly authorised?

A: **We did not make that allegation.**

Q: Okay.

A: We are saying that there is nobody taking the accountability in checking that the invoice is properly -- well, the amount on the invoice is in accordance with whatever contracted sum and the department head should be the one who is certifying that.

Q: So you are saying that because the invoice was not signed by the head of department, there has been a breach of TCFR 56(4)?

A: **That is correct, your Honour**

Q: **Now, whether the payment was therefore a wrongful payment or an improper payment is not something you express a view on. You are simply saying the invoice was not signed by the head of department, breach 56(4)?**

A: **That is correct.”**¹⁰⁷ (emphasis added)

83. Given the above, it is remarkable that the Plaintiffs have made the following claims in the Suits that are unsupported by the KPMG Report and the PwC Report:

(a) Alleged Improper Payments to FMSS and FMSI

- (i) KPMG identifies the sum of **\$1,518,286** as detectable improper payments;
- (ii) KPMG concludes that of the \$1,518,286 alleged improper payments, **\$624,621** ought to be recovered;
- (iii) However, the Plaintiffs have made a claim in the Suits for **\$33.7 million**, i.e. all payments made by AHTC to FMSS/FMSI.

¹⁰⁶ 09.10.2018 NE, Pg 95 L 24 - 25 to Pg 96 L 1 - 17; see generally 09.10.2018 NE, Pg 95 L 4 - 25 to Pg 100 L 1 - 18.

¹⁰⁷ 11.10.2018 NE, Pg 121 L 15 - 25 to Pg 122 L 1 - 9.

(b) Alleged Improper Payments to third parties

- (i) KPMG identifies the sum of **\$5,490,123** as improper payments;
- (ii) KPMG concludes that of the \$5,490,123 alleged improper payments, only **\$1,965** ought to be recovered;
- (iii) However, the Plaintiffs have made a claim in the Suits for **\$2.7 million** of the sum of \$5,490,123.

84. The above does not include PRPTC's additional claims in relation to payments to third parties other than LST¹⁰⁸ and under the 56 invoices paid in November 2015 totalling \$674,388.70. PRPTC had made a claim under 12 invoices which Mr Goh admitted during cross-examination was part of the amount claimed under the 56 invoices.¹⁰⁹ Further, Mr Goh also admitted that the PwC Report did not express a view on whether the amount paid under the 56 invoices was an improper payment.

85. The Plaintiffs therefore have no basis to make this claim for equitable compensation unless they have suffered a loss. On cross-examination, Mr Hawkes confirmed that KPMG was not suggesting that there was an obvious shortfall in the MA's delivery of services to the residents:

"A: Yes, so in terms of the financial and governance elements of the town council we felt that there were substantial shortfalls as you can see from our report and I think 22 monthly reports we issued. **In terms of the delivery of service to residents, I don't think we are suggesting that there is an obvious shortfall. Our concern is on the financial and the governance side.**"¹¹⁰ (emphasis added)

86. In fact, Mr Hawkes had testified that *"the suggestion isn't that the lifts didn't work, the streets were dirty. Having been to Hougang on many, many, many occasions, it is not like we are suggesting it is some kind of Max Max style wasteland. It is a perfectly pleasant area of the country. It is that it is the management of the town council's affairs itself rather than things like maintenance that concerned us."*¹¹¹

87. Mr Hawkes also admitted that if the services were satisfactorily delivered, there would be no loss:

"Q: So if AHTC were satisfied that these services were properly, were satisfactorily provided, then AHTC has done nothing wrong in making those payments?

A: Well, it has breached the Town Council Financial Rules in making those payments.

Q: No, the question is: AHTC has done nothing wrong in making those payments?

A: It has made the payments in breach of the Town Council Financial Rules.

Q: And so that makes it an amount which should be recovered from the individual town counsellors of AHTC?

¹⁰⁸ PRPTC's Statement of Claim does not quantify its claims relating to the payments made to the third parties other than LST.

¹⁰⁹ 12.10.2018 NE, Pg 3 L 9 – 17.

¹¹⁰ 10.10.2018 NE, Pg 12 L 7 - 14.

¹¹¹ 11.10.2018 NE, Pg 11 L 3 - 10.

A: Well, as I think I just said, if the services were delivered they were delivered at the contractual rate. It is hard to see that there is a specific loss to AHTC.

Q: Yes.

A: However, if the services were not delivered satisfactorily then there would be. We cannot tell. The certification that they were delivered satisfactorily is not there. That is why we raised it is an improper payment under the definition of an improper payment in this report and therefore flagged it as being something which is improper but not determinable for repayment.

Q: So, in other words, the fact that you categorise or describe something as an improper payment does not mean that it is necessarily recoverable from anyone?

A: I think we expressed that very directly in the report.

Q: No, I would be grateful if can you say yes to that?

A: Yes, we discussed it yesterday, I believe.

Q: Thank you. So as far as these payments were concerned, these two payments of \$29,400 each, if they had to be paid by AHTC to FMSI under the contract then the fact that there may have been an improper payment as far as KPMG's definition of improper payments goes, it does not mean that it is recoverable from AHTC or anyone else?

A: FMSI, you mean?

Q: Yes, from FMSI?

A: If as you say the services were delivered satisfactorily and they were obliged to make them under contract it is difficult to see what the loss would be.”¹¹²
(emphasis added)

88. Whilst KPMG identified “Control Failures” in AHTC,¹¹³ even these financial and governance shortfalls have been completely remedied as of February 2018. Mr Hawkes confirmed this on cross-examination¹¹⁴ and Mr Goh stated this in his AEIC.¹¹⁵
89. Each of the alleged improper payments to FMSS/FMSI at S/Nos. 1, 3 to 7 in KPMG’s 1st Table at [72] above are dealt with below.

Relevance of the Accountants’ Views on Issues of Fact and Law

90. It is submitted that little weight should be accorded to the evidence of Mr Hawkes and Mr Goh given the inconsistent and unsustainable positions taken in respect of their roles in these proceedings. In Vita Health Laboratories Pte Ltd and others v Pang Seng Meng [2004] 4 SLR(R) 162,¹¹⁶ the Court distinguished between an accountant who was appointed to act as an independent expert and an accountant who was appointed to act as a consultant:

“An accountant expert discharges a unique role. He may be called upon to execute a variety of roles in legal proceedings. I drew counsel’s attention to the following passage in a leading treatise:

¹¹² 09.10.2018 NE, Pg 51 L 2 - 25 to Pg 52 L 1 - 16.

¹¹³ See AHTC’s Opening Statement at [1.2.2]. “Control Failures” refer to the 115 audit points identified in the AGO Report and the 71 instances of non-compliance with Section 35(c) of the TCA by AHTC identified by KPMG.

¹¹⁴ 08.10.2018 NE, Pg 17, L 19 – 25, Pg 18, L 1 – 5.

¹¹⁵ AEIC of Mr Goh at [15], 1 BA 66.

¹¹⁶ Tab 35 of the D1-D5BOA.

An accountant might be engaged to fulfil one of at least three roles in connection to litigation:

- (1) to act as an independent expert and provide an opinion on liability, quantum, or both;**
- (2) to act as a consultant assisting in the preparation of the case of one of the litigants; and**
- (3) to act in a supporting administrative role in managing the documentary information required for the litigation.**

It is only in the first role that the forensic accountant is acting as a forensic expert. When the accountant acts as a consultant, he or she is assisting in the advocacy of the client's case, which is a role that is inconsistent with the forensic expert's need for independence. Accordingly, the accountant should generally avoid accepting instructions that would require the accountant to act both as an independent expert and a partisan consultant.

...

In my view, careful consideration has to be accorded to the evidence of an expert accountant who has been engaged as an investigator and collator of facts, and later reprises in court the role of an advocate in support of evidence that he himself has gathered. Such evidence may at times, be coloured by the difficult and sometimes conflicting roles being discharged by him.¹¹⁷ (emphasis added)

91. In the present case, it is clear that Mr Hawkes was not an independent expert witness but a factual witness called in support of AHTC's case.¹¹⁸ Mr Hawkes' attempts to portray himself otherwise at trial by stating that KPMG was appointed as "independent accountants"¹¹⁹ is misplaced. Mr Hawkes was called as a factual witness and his evidence was therefore partisan and ought not to be treated otherwise.
92. With respect to PRPTC's sole witness, Mr Goh stated in his AEIC dated 14 September 2018 that he was giving evidence as a witness of fact.¹²⁰ However, he also went on to state that "*to the extent that this affidavit of the PwC report or [his] testimony deals with any matter which calls for expert testimony, [he] confirms that [he has] over 30 years of experience in audits, forensic accounting and investigations*".¹²¹ It was only at the JPTC on 1 October 2018 that PRPTC took the position that Mr Goh was called as an expert witness.¹²²
93. It is apparent from the above that Mr Goh had played the role of not just an expert but as a consultant assisting in PRPTC's case. Mr Goh was in fact present in court throughout the trial representing PRPTC. Further, it is PRPTC's position that Mr Goh and Mr Hawkes were appointed to go "beyond the remit of their expertise, or terms of reference ... *because they were appointed by the Court of Appeal to do just that*".¹²³

¹¹⁷ Vita Health at [84] and [85], Tab 35 of the D1-D5BOA.

¹¹⁸ 01.10.2018 NE of JPTC, Pg 5 L 1 – 2.

¹¹⁹ 08.10.2018 NE, Pg 124 L 1 – 11, Pg 126 L 11 – 15, Pg 127 L 16 – 25.

¹²⁰ AEIC of Mr Goh, at [4], 2 BA 62.

¹²¹ AEIC of Mr Goh, at [4], 2 BA 62.

¹²² 01.10.2018 NE of JPTC, Pg 4 L 30 – 31.

¹²³ 05.10.2018 NE, Pg 79 L 1 – 7.

Given that express position, Mr Goh cannot be an independent expert due to the conflicting roles that he was discharging.

94. The case of Cheong Soh Chin v. Eng Chiet Shoong [2018] SGHC 131 (“**Cheong Soh Chin**”), makes it clear that forensic accountants should not venture beyond their remit to express views on issues of fact or law. In Cheong Soh Chin, parties called their respective forensic accountants who expressed views on whether an expense was incurred in the sense that money was actually paid out for a valid reason, whether the expense claimed was reasonable in amount, and whether a disputed expense should be allowed or disallowed, which the Court held as impermissible:

“Role of experts in the accounting phase

*32 My second observation concerns the expert evidence given in the accounting phase. **Both parties engaged and adduced expert evidence from forensic accountants. The accountants have expressed views on whether an expense was incurred, in the sense that money was actually paid out; whether that money was paid out for a valid reason, in the sense that it was connected either directly or indirectly to the Wees’ investments; and whether the expense claimed was reasonable in amount. They have even expressed views on whether a disputed expense should be allowed or disallowed.***

33 In expressing these views, both experts have ventured beyond the remit of an expert. These issues are not matters of accounting practice but issues of fact or law which the court has to decide. Both experts have also regrettably shown themselves too ready to adopt the views of the party who engaged them as to whether a disputed expense should be allowed or disallowed. In other words, the experts were wrong to express a view on an issue of fact or an issue of law and were even more wrong in being too ready to adopt a view that was not their own.

34 This is impermissible on several levels. First, it is impermissible because the question whether any specific expense should be allowed or disallowed when taking an account on a wilful default basis in equity is outside the realm of a forensic accountant’s expertise.

*35 Second, and flowing from the first, expressing a view on this issue essentially contravenes the ultimate issue rule. That rule prohibits an expert from giving his opinion on the very issue which the court has to decide. **While the rule has lost some force today, especially in civil cases, it remains live.** On this point, the Court of Appeal’s observations in Eu Lim Hoklai v Public Prosecutor [2011] 3 SLR 167 at [44] bear repeating: Ultimately, all questions – whether of law or of fact – placed before a court are intended to be adjudicated and decided by a judge and not by experts. An expert or scientific witness is there only to assist the court in arriving at its decision; he or she is not there to arrogate the court’s functions to himself or herself...”¹²⁴ (emphasis added)*

95. In the present case, both Mr Hawkes’ and Mr Goh’s roles were to ascertain whether payments were “improper” and whether they ought to be recovered. In so doing, their investigations and Reports should be based on instances where a payment is unaccounted for or not according to the contract. As pointed out above, it is

¹²⁴ Cheong Soh Chin at [32], Tab 11 of the D1-D5BOA.

indisputable that the accountants have gone beyond their remit by second-guessing whether the contracts and appointments should have been made. However, this is a matter of how the Town Councillors manage their estates. This will become apparent as we examine each of the relevant areas examined in the respective Reports.

96. Further, as submitted at [58] to [63] of the 1st to 5th Defendants' Opening Statement, KPMG has also ventured to comment on issues of law such as the duties owed by the 1st to 5th Defendants as Town Councillors. Not only were the positions stated there inaccurate in law, this went outside of KPMG's remit as an accountant. In addition, although both KPMG and PwC stated that it was beyond their mandate or scope of review to conclude whether any criminal offences have been committed, they both concluded upon "advice" that the issues identified may disclose the commission of criminality¹²⁵ or that the circumstances may warrant further investigations by relevant authorities as to potential criminal offences.¹²⁶

Town Councillors' Actions should not be Second-Guessed

97. In pursuing their claims, the Plaintiffs have not called any factual witnesses to challenge the Town Councillors' evidence of the circumstances that they faced almost immediately after they were elected on 7 May 2011. This was the first time in Singapore's history that an opposition party had won a GRC resulting in a need for a change in TC management of that scale. There was no precedent to work on.
98. Mr Low had the most experience among the elected WP MPs and had advised them of his experiences in Hougang SMC.¹²⁷ The WP MPs agreed with Mr Low's assessment that it was necessary to have a contingency plan for the management of the estates and other essential services as the incumbent MA and other contractors may pull out. Ms How also gave similar evidence on the difficulties, prejudices and challenges she faced with Mr Low in running HTC for over 20 years.¹²⁸ The alternative option of direct management was not a feasible option because this would require the MPs to make decisions in relation to routine estate maintenance and operational matters and most of the MPs-elect did not have prior experience in township management.¹²⁹ As Mr Low had testified, the Town Councillors made the decisions they did with the residents' best interests at heart.¹³⁰

¹²⁵ KPMG's Report at [4.6.2] and [4.7.4], 26 CB 19889 and 19891.

¹²⁶ PwC Report at [5.48(d)], 26 CB 20297.

¹²⁷ AEIC of Mr Low at [18] - [27], 2 BA 344 - 347.

¹²⁸ 30.10.2018 NE, Pg 21 L 10 - 25 to Pg 22 L 1 - 10.

¹²⁹ AEIC of Mr Low at [35], 2 BA 351.

¹³⁰ 16.10.2018 NE, Pg 85 L 5 - 9.

99. TCs are empowered with wide autonomy to manage their affairs. This is explicitly recognised by the MND in the MND Report as set out at [25] above.
100. In the course of cross-examination, the Plaintiffs attempted to build their case by subjecting the Defendants to the standards of perfect hindsight using hypothetical scenarios that did not take into consideration the actual circumstances that the Town Councillors faced at the time. The actions of the “honest, responsible town councillor” needs to take into account the peculiar facts and circumstances existing at the material time as Mr Pritam Singh put it on the stand:
- “Q: Thank you. Mr Singh, a responsible town councillor would apply his mind to the implications of waiving a tender on future prospects of parties in the industry being interested in making a bid. Do you agree or disagree?
- A: **I disagree, because a responsible town councillor needs to understand what is the difference between his town council, PAP town councils, and the reality of the politicised nature of the town councils' space in Singapore.**
- Q: Thank you.
- A: **After that responsible town councillor goes through that process, he will understand why AHTC, as the first opposition town council -- first opposition GRC, had to take the decisions which it was doing, particularly after Mr Lee Kuan Yew himself warned that the Aljunied residents had five years to repent. So they made their decisions in a particular context, in a particular environment, and this is all permitted by the Town Council Act: waiver of tenders, provided certain conditions are met -- urgency, for example -- are permitted.”¹³¹** (emphasis added)
101. The Plaintiffs' claims require the Honourable Court to assess the Town Councillors' decisions as to the appointments and payments made by AHTC with respect to FMSS, FMSI and the various third parties. In other words, the Honourable Court is being asked by the Plaintiffs to second-guess the decisions of the Town Councillors. It is submitted that neither the accountants nor the Honourable Court is in a position to state what the decisions should have been. It is trite law that the courts do not second-guess discretionary decisions. The learned authors of *MP Jain, “Administrative Law of Malaysia and Singapore”* state the law as follows:

“This means that courts do not concern themselves with the merits of a discretionary decision as much as with how the decision has been arrived at and whether there is any flaw in the process leading to it. Judicial review is limited to the decision-making process and does not extend to a review of the merits of the decision itself said VK Rajah J in the Singapore case of Chee Siok Chin v Minister for Home Affairs⁵⁶ – adding that almost inevitably findings of fact are not within the purview of such a review.

The courts do not question a discretionary decision on such grounds as: whether it should have been taken or not; whether some other decision ought to have been taken etc.

A court does not substitute its own discretion for that of the decision maker. This stems, in the main, from the doctrine of the separation of powers. Of the several options

¹³¹ 25.10.2018 NE, Pg 59 L 15 - 25, Pg 60 L 1 - 15.

open to an authority, a court may opt for the view that it will not sit as arbiter of the correctness or soundness of the view adopted by that authority. **It is not for the courts to say that this, and not that, view ought to have been adopted by the authority.** In the words of the Supreme Court of India in *Dwarkadas Marfatia and Sons v Board of Trustees, the Port of Bombay*.⁵⁷ 'It is not within the purview of a court to substitute a decision taken by a constituted authority simply because the decision sought to be substituted is a better one'. For example, under a statute, the government may have power to acquire land for a public purpose. Whether any land has to be acquired for a particular purpose and, if so, what land? - these are questions for the authority and not for the courts to decide. **Thus, a municipal corporation having statutory power to construct public conveniences constructed them under a street so that it also provided a subway to cross the street. The court refused to interfere saying: "Assuming the thing done to be within the discretion of the local authority, no court has power to interfere with the mode in which it has been exercised".**¹³² (emphasis added)

102. The CA in CA 114 recognized that it was not for the court to step into the shoes of the TC or to substitute its own decisions for those of the TC in question as to how the various requirements and duties are to be carried out. Importantly, the Plaintiffs have not shown that AHTC has suffered a loss due to various matters that are now the subject of the 2 Suits or that the Town Councillors have personally benefited from them in any way. As such, unless the Plaintiffs prove that the Town Councillors had caused the TC to act outside of its proper purposes in exercising its statutory powers and duties, the Court should not second guess the Town Councillors' decisions and actions, even if the Plaintiffs may disagree the certain decisions or actions that were taken. Otherwise, the Court would inadvertently be enabling the Plaintiffs to circumvent the trite position in public law by commencing civil claims to seek private remedies against the Town Councillors instead of seeking public law remedies against the TC. The following extract from CA 114 is relevant for the Honourable Court's consideration:

"What can the court do?"

85 The answer to this is circumscribed by the terms of s 21(2) of the TCA which provides that an interested person may apply to the High Court for "an order compelling the Town Council to carry out the requirement or perform the duty", and s 21(3) of the TCA which provides that on such application, the High Court may "make such order as it thinks proper". Relying on the wide terms of s 21(3) of the TCA, Ms Kam [on behalf of the AG] submitted that the court has power not only to compel the Town Council to carry out the requirement or perform the duty in question but also to prescribe the manner in which this should be done. She submitted that the court's power is not constrained such that it can only grant a mandatory order, but can do whatever is necessary to remedy the breach of statutory duty, including in the present context, appointing independent accountants to step in and do what is necessary to ensure compliance (see prayer 3 at [17] above).

¹³² MP Jain, "Administrative Law of Malaysia and Singapore" (4th Ed., LexisNexis), page 393, Tab 44 of the D1-D5BOA.

86 As against this, Mr Low [representing AHTC] submitted that under s 21 of the TCA, the court only has the power to order AHPETC to abide by the provision or declare that it has not done so. As Mr Low put it, all the court can do is to declare that the Town Council is obliged to carry out the duty or requirement in question and perhaps also that the Town Council is and has been in breach of this requirement or duty.

87 In our judgment, there are difficulties with both sets of contentions. **While we accept that s 21(3) is drafted in wide terms, we do not consider that the intention underlying that section was for the court to step into the shoes of the Town Council or to substitute its own decisions for those of the Town Council in question as to how the various requirements and duties are to be carried out.** The nature of the orders that were sought by the HDB in effect extended to the court taking steps to see to it that the specified duties were carried out in a particular way by an actor, namely, the independent accountants who, Ms Kam submitted, would be acting on behalf of and be accountable to the court as its agents for the conduct of those duties. **In our judgment, this reveals the flaw in the argument because it is inconceivable that the court could be put in such a position in a matter that involved an aspect of local government.** On the other hand, Mr Low's contention reduced the court to an irrelevant and ultimately toothless observer. As we pointed out to Mr Low, the issue was not one of the Town Council being unaware of its duties so that it needed to be reminded of them by the court. Hence, here again we are driven to construe the provisions of ss 21(2) and (3) to determine just what the court may do in a situation such as this." (Words in square brackets and emphasis added)

103. Several of the Plaintiffs' questions during cross-examination were not only based on hypothetical scenarios which sought to second-guess the Town Councillors' decisions, these questions were also based on an unpleaded case. Some of the key instances are dealt with in the course of the submissions below.

Appointment of FMSS under the 1st MA Contract

104. The contingency plan was to have an alternative MA in case the incumbent MA and other contractors were to pull out.¹³³ Mr Low spoke to Ms How to see if she and Mr Loh would be willing to set up a company providing MA services.¹³⁴ The contingency plan involved using experienced staff from HTC as part of the new MA.
105. It was alleged at trial by the Plaintiffs that the contingency plan involved benefiting WP's supporters on the basis that HTC's staff were WP supporters.¹³⁵ This allegation, which was not pleaded, is baseless and unsupported by any evidence. Mr Low's clear evidence was that the HTC staff had the requisite experience.¹³⁶
106. It was also alleged for the first time during cross-examination that the improper purpose underlying his contingency plan involving FMSS was to "use residents' monies to fund

¹³³ AEIC of Ms Sylvia Lim at [33]-[34], 2 BA 193; AEIC of Mr Low at [43], 2 BA 354; AEIC of Mr Pritam Singh at [16], 2 BA 877.

¹³⁴ AEIC of Mr Low at [43], 2 BA 354.

¹³⁵ AHTC's Opening Statement at [5.1.1] and [8.3.3]; PRPTC's Opening Statement at [79].

¹³⁶ 16.10.2018 NE, Pg 118 L 8 - 12.

a start-up for the benefit of towns run by opposition parties".¹³⁷ Mr Low testified that the incorporation of FMSS would give rise to a "positive outcome or consequence" of having another MA in the market that would be available to help opposition towns; it was however not the motivation or intention behind asking Ms How to set up a company.¹³⁸ At trial, the Plaintiffs raised a new baseless allegation that Mr Low persuaded Ms How by giving her the profit element by asking her to set up a company to serve as MA instead of continuing with the direct management model and enlarging the staff size.¹³⁹ This could not have been possible because Mr Low did not know FMSS's cost structure such that he could ascertain whether FMSS would make a profit or a loss in being appointed as a MA.¹⁴⁰ Ms How had herself testified that "business is business", i.e. FMSS and AHTC dealt with each other at arm's length. She overcame her initial reluctance because she saw that Mr Low was facing the situation that he was in and she knew that he had no other people to depend on. As such, she agreed to help Mr Low by setting up FMSS out of goodwill arising from the long working relationship they had together in HTC.¹⁴¹

CPG Requested to be Released as MA of ATC

107. The Town Councillors testified that CPG wanted to be released as MA. The Plaintiffs did not call any officers or other personnel from CPG to rebut this evidence.
108. Just 3 days after WP had won the Aljunied GRC, Mr Low received feedback on 9 May 2011 that CPG had already begun exhibiting signs that it will be exiting as MA for ATC. Mr Low recorded this feedback in his email of 9 May 2011 to the elected MPs:

*"1. I am asking Ms How, GM of HGTC to attend the both meetings to meet Secretary of Aljunied TC and HDB Town Council Secretariat. This is because feedback received by Hougang TC that CPG Facilities Management has started not to manage or go into inactive management of the contract for some projects and some areas are poorly maintain. We need to understand the situation in greater details and may have to take over the management earlier or risk residents suffering from poor service and rubbish piling up..."*¹⁴²

109. In addition to the feedback that Mr Low received through HTC as early as 9 May 2011, Ms Sylvia Lim also testified that similar feedback on CPG's inactive management were

¹³⁷ 16.10.2018 NE, Pg 91 L 7 - 14.

¹³⁸ 16.10.2018 NE, Pg 88 L 1 - 3.

¹³⁹ 16.10.2018 NE, Pg 76 L 25, Pg 77, L 1 - 6, Pg 84 L 9 - 18.

¹⁴⁰ 16.10.2018 NE, Pg 81 L 17 - 25, Pg 82 L 1 - 2, Pg 83 L 7 - 13.

¹⁴¹ 30.10.2018, Pg 21 L 10 - 25 to Pg 22, L 1 - 10.

¹⁴² 8 CB 5017.

received from the residents over the next few weeks after elections were held on 7 May 2011 through e-mails¹⁴³ or the newly-elected MPs' walks around the estate.¹⁴⁴

110. On 10 May 2011, Ms Cynthia Phua ("**Ms Phua**"), the outgoing Chairman of ATC (as it then was), had reportedly said that the staff of ATC were concerned about their jobs when she met them the day after the elections on 8 May 2011. The following is an extract from The Straits Times published on 10 May 2011:

"Mr Low yesterday had some assuring words for Aljunied Town Council staff about their jobs, saying those with experience would have priority: 'The new management will need to employ experienced town managers and priority will go to those who are already working with Aljunied Town Council."

He was responding to comments by Aljunied Town Council chairman Cynthia Phua that staff were worried about their jobs. The concerns surfaced at a meeting Madam Phua had with key town council managers on Sunday.

'My priority is the 90-plus staff. There were definitely concerns as this is their livelihood,' she said. 'But if they become unemployed, I will help them look for a job in my personal capacity.'¹⁴⁵ (emphasis added)

111. It is apparent from the above that Ms Phua had reason to believe that CPG was exiting as MA in order for her concerns on the livelihood of the ATC's staff to arise. It is significant that CPG's staff had these concerns almost immediately after the elections even before they knew what decision had been made by the WP MPs. As Ms Sylvia Lim had testified, the elected MPs have not had any conversations with CPG at this point in time¹⁴⁶ and the first sign that CPG was exiting as MA came from the PAP.¹⁴⁷ As such, these concerns must have arisen from CPG itself.¹⁴⁸ Mr Pritam Singh also gave similar evidence as to what he construed from Ms Phua's statement:

"A: Like, as you mentioned a few days ago, what were the duties of the secretary at that time? After 7 May, does the secretary come to the newly elected MPs and say, "Hey, I have got to warn you, in my capacity as secretary, this is the AIM contract, this is the CPG contract"? They don't do anything of that sort. **In fact, one of the first things we know is, we have the outgoing chairman saying, "I'm worried about my staff".**

Q: Thank you, Mr Singh –

A: I think the intention is clear."¹⁴⁹

(emphasis added)

112. Part of the contingency plan was to retain a copy of the data relating to the residents as such data was critical for collection of service and conservancy charges ("**S&CC**")–

¹⁴³ 19.10.2018 NE, Pg 52 L 22 - 25 to Pg 53 L 1.

¹⁴⁴ 16.10.2018 NE, Pg 43 L 10 - 12; 19.10.2018 NE, Pg 102 L 11 - 20.

¹⁴⁵ See Trial Exhibit marked as "1D3".

¹⁴⁶ 19.10.2018 NE, Pg 5 L 16 - 21.

¹⁴⁷ 19.10.2018 NE, Pg 37 L 14 - 15.

¹⁴⁸ 19.10.2018 NE, Pg 103 L 17 - 19.

¹⁴⁹ 25.10.2018 NE, Pg 54 L 18 - 25 to Pg 55 L 1 - 4.

the lifeblood of the TC.¹⁵⁰ To this end, Mr Low had instructed Ms How to prepare and send the 13 May Letter which is as follows:

“[On letterhead of Hougang Town Council]

13 May 2011

*Mr Jeffrey Chua
Secretary
Aljunied Town Council
Block 81 0 Hougang Central
#02-214
Singapore 630610*

*Miss Png Chiew Hoon
Secretary
Marine Parade Town Council
Block 50 Marine Terrace #01-265
Singapore 400050*

Dear Mr Jeffrey Chua/Miss Png Chiew Hoon

REQUEST FOR TRANSFER OF DOCUMENTS AND DATA

We would like to inform that we have been Instructed by the Elected Members of Parliament for Aljunied GRC and Hougang SMC to arrange for the taking over of the management of Aljunied Town Council and Kaki Bukit Precinct.

Following the above, we would thus like to kick-off the taking over process and to facilitate same, we would appreciate if you could arrange for the following documents and data/information of the Aljunied Town Council and Kaki Bukit precinct to be first transferred to us:

1) FINANCIAL COLLECTION SYSTEM

To allow us sufficient time to complete the above, our computer vendor has listed the preliminary items required as shown in Appendix A1 to A3 for your necessary arrangements to collate the information in the format requested therein for transfer.

2) ESTATE MANAGEMENT/CUSTOMER SERVICE

Appendix 81 and 82 list the preliminary Items required. Items marked are priority items.

As time is of essence and so as to enable us to commence with setting-up at our end, we would appreciate if the above Items requested under Item 1 and those marked priority under Item 2 could be transferred to us by 20 May 2011. For a better understanding of the details of the items required to be transferred to us and in particular that which are required for the setting up of the financial collection system, we too would like to arrange for a meeting between ourselves and our computer vendors either at 10.00 am on 18 May 2011 or at 3.30 pm on 19 May 2011 at the Aljunied Town Council office at Block 810 Hougang Central. Your confirmation on the preferred date would be appreciated.

Meantime, perhaps Mr Jeffrey Chua could also provide us with the particulars and contact numbers of the staff at Aljunied Town Council for us to liaise directly with them pursuant to Mr Low Thia Kiang's assurance to Ms Cynthia Phua over her concern as expressed in the press pertaining to employment status of Aljunied Town Council staff.

Yours sincerely

¹⁵⁰ AEIC of Ms How, at [55], 4 BA 1338.

[Signed How Weng Fan]
 MS HOW WENG FAN
 Secretary
 HOUGANG TOWN COUNCIL”¹⁵¹

113. On cross-examination, Ms How explained the purpose of writing this letter and the reason for making the requests she did in this letter:

“Q: The first question is: What were you asking for in this letter? And the second question is: What was the reason for this request?

A: Okay. Basically the -- **I was instructed to actually obtain the financial data, which is basically the master file of the residents' information**, which means, like, the name, their block household, the account number, you know, such information, and to upload it into the HTC system.

Q: Yes.

A: All right. And also to obtain from ATC all the contracts, you know, that we need to look into, and the list of all these things is actually attached to this letter under the various appendixes.

Q: All right. And what was the reason for this request?

A: **The instruction from Ms Lim, related to me by Mr Low, okay, was to immediately start the – obtaining such information, and Mr Low did explain that, you know, that experience we had way back in 1991, such information was actually given to us very late. All right? But that time, we were lucky because HDB provided the TCMS system. So here Mr Low actually has this contingency plan just in case, you know, we're put into this position of having to develop our system again, you know, or we don't have anybody to manage. He wanted the information first, so I kick-start the process of obtaining this information. In a sense, it's like for safekeeping for us, you know. You don't know when you need to start using it, yeah.**¹⁵² (emphasis added)

114. Based on the first paragraph in the 13 May Letter above, the Plaintiffs claimed that it “gave notice to CPG that Hougang Town Council will be taking over the management of the AHTC from CPG” and “CPG was told that they are going to be out”¹⁵³ because the letter was allegedly being sent to the MA, CPG.¹⁵⁴ The Plaintiffs also referred to the last paragraph of the letter as purported evidence that CPG was being told that it was going to be replaced.¹⁵⁵ The Plaintiffs’ allegations are misconceived:

- (a) The letter was not sent to CPG but to Mr Jeffrey Chua and Ms Png Chiew Hong as the respective secretaries of ATC and Marine Parade TC.¹⁵⁶
- (b) Mr Low¹⁵⁷ and Ms Sylvia Lim testified¹⁵⁸ that “taking over the management of AHTC from CPG” referred to the new Town Councillors led by the WP MPs replacing the previous management of ATC.

¹⁵¹ 8 CB 5041.

¹⁵² 30.10.2018 NE, Pg 15 L 6 - 25 to Pg16 L 1 - 15.

¹⁵³ 16.10.2018 NE, Pg 64 L 6 - 7.

¹⁵⁴ 16.10.2018 NE, Pg 62 L 11 - 18.

¹⁵⁵ 16.10.2018 NE, Pg 71 L 5 - 25 to Pg 72 L 1 - 21.

¹⁵⁶ 8 CB 5041.

¹⁵⁷ 16.10.2018 NE, Pg 60 L 25, Pg 61 L 1 - 20, Pg 63 L 4 - 24.

¹⁵⁸ 24.10.2018 NE, Pg 109 L 9 - 15.

- (c) Based on the subject matter of the letter as per its subject heading and its contents, it was clear that the purpose of the letter was to obtain the data relating to the residents.
- (d) Mr Low testified that it was in the context of the CPG's staff's concerns and the statements made by Ms Phua and Mr Low to the press on 10 May 2011, that Ms How was instructed by Mr Low to include the assurance about employing the former ATC staff in the last paragraph of the 13 May Letter.¹⁵⁹
115. In response to the 13 May Letter, Mr Jeffrey Chua replied in his e-mail of 16 May 2011 to state that CPG will be re-deploying the ATC staff to other alternative postings.¹⁶⁰ It is significant that CPG did not register any objections to the content of this letter if CPG was indeed being informed that its services were going to be terminated. CPG had a multi-million dollar contract for MA services for a further 2 years and it would not be in CPG's interest to have the contract terminated prematurely. This crucial evidence of CPG's conduct belies the Plaintiffs' case that CPG was told to go.
116. The Plaintiffs' case at trial based on the 13 May Letter is not pleaded. If this was their case, they should have called Mr Jeffrey Chua as a witness. However, the Plaintiffs did not do so and relied on their own self-serving interpretations of the 13 May Letter.
117. On 13 May 2011, Mr Low received further confirmation that CPG was intending to withdraw as the MA and that CPG had already begun deploying some of their staff to other departments outside of the TC. This information was contained in an email from Mr Tan Thuan Tong (a WP member) to Mr Low. Mr Low in turn forwarded this email to Ms How who replied that the information "*more or less coincides with what the [Aljunied Town Council] Secretary [i.e. Mr Jeffrey Chua] told [her].*"¹⁶¹ Ms How testified that she got this understanding from speaking with Mr Jeffrey Chua on 13 May 2011. He had said during this conversation that he might not continue as MA.¹⁶² None of this evidence was rebutted by any evidence called by the Plaintiffs.
118. On 13 May 2011, Mr Low received an email query from The Straits Times' Ms Teo Wan Gek ("**Ms Teo**") about HDB's statement that the new Aljunied GRC MPs "*will take on all existing agreements of the Aljunied Town Council, ... [which] includes*

¹⁵⁹ 8 CB 5042.

¹⁶⁰ 8 CB 5073; 16.10.2018 NE, Pg 110 L 3 - 24.

¹⁶¹ AEIC of Mr Low at [43], 2 BA 354.

¹⁶² AEIC of Ms How Weng Fan at [58], 4 BA 1339.

agreements such as the managing agent, cleaning and maintenance contracts". On 14 May 2011, Mr Low forwarded Ms Teo's email to the other elected MPs:

"Chairman,

*Please watch this. I do not quite understand what it means by all existing agreement and clarify to include managing agent agreement. We will not extend the managing agent agreement. I think is better to wait till we look at the agreement before saying anything"*¹⁶³

119. Based on Mr Low's above email, the Plaintiffs alleged that the elected MPs had already decided not to use CPG under the existing MA contract.¹⁶⁴ However, this is a distortion of the plain words which Mr Low used. Mr Low explained on the stand that he meant that the MA contract will not be extended beyond its current term:

"Q: A decision had been made; right?

A: **No. I forward the email to the chairman, and my opinion is that we should not extend the managing agent's agreement.**

Q: **Which management agreement are you talking about?**

A: **The managing agent.**

Q: **Yes. Which one?**

A: **CPG.**

Q: **Yes. And when is it extendable?**

A: **I don't know. That's what I ask to the chair.**

Q: It says –

A: **I assume that the agreement will run for up to some time and there may be a clause for extension. This is my assumption, so I say, "You better check, but I don't think we should want to accept one part or (unclear)."**

Q: It says "we will not extend the agreement". Having regard to the question that was asked, having regard to the earlier communications that we had seen, you were reiterating to your fellow elected MPs, "I don't know what she's asking about, but we ain't going to use CPG"; correct?

A: **No, that was not -- that was not what it means. What I mean is that we will not extend the contract beyond what is existing contract in force."**¹⁶⁵

(emphasis added)

120. At a meeting between the AHTC MPs, Ms How and CPG on 30 May 2011, Mr Jeffrey Chua informed the AHTC MPs that CPG did not wish to continue as MA of ATC after 31 July 2011 and asked to be released from its MA Contract. This was the AHTC MPs' first official meeting with CPG. Mr Jeffrey Chua's reason for CPG not wishing to continue was that CPG also served as MA for Ang Mo Kio TC, which was helmed by the Prime Minister and that it would be bad for CPG's business to be serving both PAP and opposition-run TCs.¹⁶⁶ Again, no evidence was called by the Plaintiffs to rebut this. The presentation slides used by CPG at this meeting also confirms its position that it

¹⁶³ 8 CB 5064.

¹⁶⁴ 16.10.2018 NE, Pg 99 L 2 - 14, Pg 100 L 7 - 13.

¹⁶⁵ 16.10.2018 NE, Pg 99 L 14 - 25, Pg 100 L 1 - 17.

¹⁶⁶ AEIC of Mr Low at [47], 2 BA 355; AEIC of Ms Sylvia Lim at [46], 2 BA 197; AEIC of Mr Pritam Singh at [13], 2 BA 876.

wanted to be released by 31 July 2011 given that it referred to a “care taking period” from 27 May 2011 to 31 July 2011 and an “Interim Management Arrangement”.¹⁶⁷ These slides were obviously prepared by CPG even before 30 May 2011.

121. Consistent with the evidence of the AHTC MPs, it was CPG which undertook the task of preparing the legal documentation so that it can be released from its legal obligations under the MA Contract. CPG’s lawyers prepared a document known as a “Deed of Mutual Release” which CPG’s Mr Seng Joo How (“**Mr Seng**”) (the Deputy General Manager of ATC) sent Ms Sylvia Lim by email on 18 July 2011. It is significant that in this email, Mr Seng said “Thank you for agreeing to release M/S CPG Facilities Management Pte Ltd and Secretary Jeffrey Chua from our obligations under the Managing Agent contract on 1 August 2011”.¹⁶⁸ This crucial contemporaneous evidence has not been challenged by the Plaintiffs.

122. The following further contemporaneous evidence was not disputed by the Plaintiffs:

(a) On 1 August 2011, Ms Sylvia Lim received several queries from The Straits Times reporter Mr Kor Kian Beng, including the issue of FMSS being appointed the new MA for AHTC and why the new AHTC management decided to appoint a new company as its MA instead of appointing CPG or other experienced industry players.¹⁶⁹ As such, Ms Sylvia Lim sent an e-mail to Mr Jeffrey Chua on 1 August 2011 to inform him of the media query as follows:

“The media have been asking me questions about why we did not get CPG to continue. It is not my intention to make this an issue. But I will probably have to tell them that CPG requested to be released without saying more. OK?”¹⁷⁰

Mr Jeffrey Chua responded on 1 August 2011 to say “*mutually agreed release better.*” It is evident that CPG did not dispute that they wished to be released but simply took the position that they did not want this to go on public record.¹⁷¹

(b) On 6 August 2011, Ms Sylvia Lim forwarded a copy of AHTC’s media release of 5 August 2011 to Mr Jeffrey Chua and Mr Seng with a comment that the press had reported CPG’s name wrongly as “CPF”. It was not disputed that Mr Jeffrey Chua’s only comment was “*Good. Confuse everyone*” whilst Mr Seng

¹⁶⁷ AEIC of Ms Sylvia Lim at [51], 2 BA 199.

¹⁶⁸ AEIC of Ms Sylvia Lim at [82], 2 BA 208; 8 CB 5389.

¹⁶⁹ AEIC of Ms Sylvia Lim at [85], 2 BA 209.

¹⁷⁰ AEIC of Ms Sylvia Lim at [87], 2 BA 210.

¹⁷¹ AEIC of Ms Sylvia Lim at [88]-[89], 2 BA 210.

did not respond. Neither of them disputed that the media statement stated that there were “discussions initiated by the incumbent MA” following which it was agreed that AHTC would then release CPG from the CPG MA Contract.¹⁷²

- (c) On 10 August 2011, Ms Sylvia Lim received a further query from The Straits Times as to why AHTC did not retain CPG. Ms Sylvia Lim produced her text messages¹⁷³ to Mr Jeffrey Chua in which she had informed him that she had to tell The Straits Times that CPG requested the release. Again, Mr Jeffrey Chua did not disagree with her. His only response was that the media was attempting to sensationalise the news.¹⁷⁴

123. Given the overwhelming and unrebutted evidence above, the Plaintiffs’ case that CPG did not wish to be released is clearly false.

Delegation of Authority to Ms Sylvia Lim under Section 32 of the TCA

124. Mr Jeffrey Chua had announced at the 1st AHTC Meeting on 9 June 2011 that CPG did not wish to continue. As such, all the Town Councillors present became aware of the need for prompt action to be taken to facilitate the transition and unanimously decided to delegate the authority to Ms Sylvia Lim under Section 32 of the TCA in the interests of the residents. There is no basis for the Plaintiffs to allege that Ms Sylvia Lim connived to obtain the delegated authority by withholding information from the appointed Town Councillors. As Ms Sylvia Lim stated in her AEIC, “*the urgency of the circumstances justified a situation where I could not have sought prospective approval from AHTC for the actions I deemed necessary for a smooth handover*”.¹⁷⁵ Apart from the MPs, the appointed Town Councillors, Mr Kenneth Foo¹⁷⁶ and Mr David Chua,¹⁷⁷ also testified that all Town Councillors agreed to delegate authority to the then Chairman, Ms Sylvia Lim, to facilitate the handover in a timely manner in the interests of the residents¹⁷⁸ given the urgency for the handover.¹⁷⁹
125. If indeed Ms Sylvia Lim had obtained the authority in order to exercise it improperly, which is the Plaintiffs’ unpleaded case and is denied, it does not stand to reason for

¹⁷² AEIC of Ms Sylvia Lim at [103], 2 BA 218.

¹⁷³ 8 CB 5477.

¹⁷⁴ AEIC of Ms Sylvia Lim at [104], 2 BA 218.

¹⁷⁵ AEIC of Ms Sylvia Lim at [63], 2 BA 203.

¹⁷⁶ 25.10.2018 NE, Pg 173 L 5 – 9.

¹⁷⁷ 29.10.2018 NE, Pg 72 L 9 - 25 to Pg 73 L 1 - 16.

¹⁷⁸ AEIC of Mr Kenneth Foo at [13(f)], 3 BA 973.

¹⁷⁹ AEIC of Mr Chua Zhi Hon at [12(d)], 3 BA 933.

her to present for consideration and affirmation by all the Town Councillors her decisions at the 2nd AHTC Meeting on 4 August 2011.

Letter of Intent dated 15 June 2011 and Payment of Invoice for June 2011

126. At a meeting on 2 June 2011, Mr Danny Loh and Ms How gave a presentation of FMSS's proposal for appointment as MA to Mr Low, Ms Sylvia Lim, and Mr Faisal. The other elected members were invited but were unable to attend.¹⁸⁰ At this presentation, there were discussions about the requirements the TC would need and how FMSS would fulfil those needs. Mr Loh also presented a basic plan showing FMSS's key personnel and their expertise, proposed organisational charts for AHTC's various branch offices, and more importantly, the pricing structure which was at the same rates as charged by CPG for Aljunied GRC.¹⁸¹ In other words, FMSS would be maintaining the 2 existing cost structures for HTC and ATC.¹⁸² FMSS also proposed to take over all existing staff of HTC with effect from June 2011.¹⁸³ As such, Ms Lim, Mr Faisal and Mr Low found this to be a reasonable proposal and discussed it further with the other elected MPs.¹⁸⁴
127. Much ado was made at the trial about Mr Low's purported plan to appoint FMSS so as to benefit the Hougang staff who were allegedly WP supporters by "providing sanctuary" to them through FMSS and ensuring that they remain employed.¹⁸⁵ However, it is not in dispute that the number of Hougang staff who would benefit from such a move was just 22.¹⁸⁶ While FMSS agreed to hire the Hougang staff due to their township management experience¹⁸⁷ and with whom Ms How had worked with for many years, FMSS required significantly more staff to run a TC which had to manage an area 5 times that of HTC. This staff was hired by FMSS from the market.¹⁸⁸ The Plaintiffs' case at trial based on this alleged motive of Mr Low is wholly misconceived.
128. Having received the Council's delegated authority, Ms Sylvia Lim exercised it and entered into an agreement for FMSS to act as MA of AHTC.¹⁸⁹ Ms Sylvia Lim has testified that she had informed Mr Danny Loh that FMSS was appointed as MA and

¹⁸⁰ AEIC of Ms Sylvia Lim at [58], 2 BA 201.

¹⁸¹ AEIC of Ms Sylvia Lim at [58], 2 BA 201.

¹⁸² 19.10.2018 NE, Pg 107 L 14 - 22; 1st to 5th Defendants' Defence (Amendment No. 2) in Suit 716 at [45(a)].

¹⁸³ AEIC of Ms Sylvia Lim at [58], 2 BA 201.

¹⁸⁴ AEIC of Ms Sylvia Lim at [58], 2 BA 201.

¹⁸⁵ 19.10.2018 NE, Pg 127 L 21 - 25 to Pg 128 L 1 - 8.

¹⁸⁶ 17.10.2018 NE, Pg 112 L 1 - 3. See AHTC Media Statement at 8 CB 5447.

¹⁸⁷ 16.10.2018 NE, Pg 118, L 10 - 12.

¹⁸⁸ 8 CB 5449.

¹⁸⁹ 22.10.2018, Pg 6, L 15 - 21.

instructed FMSS to go ahead and carry out its services on or around 15 June 2011.¹⁹⁰ This agreement is recorded in a Letter of Intent dated 15 June 2011 which was eventually signed by Ms Sylvia Lim and Mr Yaw on 8 July and 18 July 2011 respectively.¹⁹¹ Pursuant to this agreement, FMSS became the MA of the Hougang division of AHTC on 15 June 2011 and the MA of the 5 divisions under Aljunied GRC on 15 July 2011:

"1. Former Aljunied Town Council

*a) **We shall take-over the management of the former Aljunied Town Council Town Council (sic) on 15 July 2011 at the prevailing Managing Agent's fees and fees structure as per the existing Managing Agent contract between Aljunied Town Council and M/S CPG Facilities Management Pte Ltd made on 8 June 2010. A copy of the applicable contract sum and breakdown is attached as Annex 1.***

b) In view of the boundary change, we will adjust the Managing Agent fees based on the revised quantum of residential dwelling units, commercial units, market/hawker stalls and motorcar/motorcycle/lorry parking lots.

2. Former Hougang Town Council

*a) **We shall take-over all the existing staff of the former Hougang Town Council at their existing salary and terms of appointment on 15 June 2011 for preparation of takeover.** Our Managing Agent fees shall be based on the annual staff cost as per the accounts as at 31 March 2011 which is \$1,114,283.02 subject to adjustments, if any based on the final audited accounts.*

3. Reimbursement (SIC) of New Staff

*a) **We shall engage new staff as necessary for the preparation of handing and taking over and shall claim such staff costs on a full reimbursement basis.***

4. Scope of Work

a) Our scope of work for Aljunied-Hougang Town Council shall follow the specifications stipulated under the Managing Agent's contract of the former Aljunied Town Council."¹⁹²
(emphasis added)

129. As such, it is incorrect of PRPTC to claim that FMSS was not entitled to issue invoice no. FMSS/0701 for \$166,591 on 31 July 2011 to AHTC or to charge AHTC for the provision of any MA services allegedly because FMSS had not been appointed as MA of AHTC.¹⁹³ As stated before, FMSS had been appointed as MA by then.
130. PRPTC has alleged that AHTC's payment of **\$92,000** under Invoice No. FMSS/0601 dated 30 June 2011 ("**the June 2011 Invoice**") was improper as there was no concluded contract for FMSS to provide MA services to Hougang SMC as at 30 June 2011.¹⁹⁴ However, Mr Hawkes confirmed at trial that KPMG is not disputing that MA

¹⁹⁰ 19.10.2018 NE, Pg 172, L 8 – 11.

¹⁹¹ AEIC of Ms Sylvia Lim at [71], 2 BA 206.

¹⁹² AEIC of Ms Sylvia Lim at [72], 2 BA 206.

¹⁹³ PRPTC's Statement of Claim (Amendment No. 1), at [27A] – [27B].

¹⁹⁴ PRPTC's Opening Statement at [42].

services were in fact provided by FMSS in June 2011. PRPTC's objections are therefore one of form and not substance. Mr Hawkes' testified as follows:

Q: So you are not suggesting that the town council, I am not just talking about EMSU, I am talking about town council works, were not -- the services that a town council arranges for its residents, you are not suggesting that those services were not provided to Hougang Division of AHTC in the month of June 2011, are you?

A: No, it is billed for, both in terms of as we can see managing agent fees which as you can see we have disputed on a different ground and EMSU services which again as you can see we have disputed on a different ground. The question is whether there was -- whether the provision was in accordance with the terms of a contract which wasn't available. So you are right, we are not disputing that services were provided.

Q: Yes. In fact, you really don't know whether these services were provided or not provided?

A: You are right because at the time I was not in Hougang and I wasn't trapped in a lift. I did not see uncollected litter, that sort of thing. So in terms of physical observation you are right. It is probably true that in respect to most contracts, unless you are there at the time they are actually provided, you have to rely on secondary documentation.

Q: And you have to [no?] reason to believe that the services that were provided to the residents of Hougang were not provided in a satisfactory manner, do you?

A: You are seeking to draw a distinction between the sort of internal financial and governance of the town council and the services to the residents?

Q: No, my question is a simple one: **You have no reason to believe or to say that the town council's services provided to the residents of Hougang in June 2011 were not satisfactory?**

A: I see. I think that that is correct. We don't have evidence that they weren't. Obviously, we have limited evidence that they were, but we don't make an assertion either way.¹⁹⁵ (emphasis added)

131. Further, any submissions that there was no contract until 8 July 2011 is misconceived as the law recognizes the commercial realities in which parties operate. As the learned authors of *Chitty on Contracts Vol. 1* (Sweet & Maxwell, 33rd Edition, 2018)¹⁹⁶ state:

"Acting on agreement subsequently completed *The parties may begin to act on the terms of an agreement before it has contractual force. When it is later given such force, the resulting contract may then, if it expressly or by implication so provides, have retrospective effect so as to apply to work done or goods supplied before it was actually made...*

132. As recorded in the Letter of Intent, FMSS took over all the existing staff of the former HTC at their existing salaries and terms of appointment on 15 June 2011. Accordingly, the MA fees charged by FMSS for acting as MA during the transitional one-year contract was \$1,114,283.02, the annual staff cost as recorded in HTC's Financial Statements for 2010.¹⁹⁷ The novation deeds which FMSS entered into with the HTC staff similarly states that FMSS will begin providing MA services for Hougang SMC with effect from 15 June 2011. The following is an extract from an example of a novation deed between HTC, FMSS and Mr Vincent Koh dated 15 June 2011:

¹⁹⁵ 09.10.2018 NE, Pg 21 L 18 – 25, Pg 22 L 1 – 25, Pg 23 L 1 – 5.

¹⁹⁶ *Chitty on Contracts* At [2-132], Tab 37 of the D1-D5BOA.

¹⁹⁷ 22 CB 16938.

“WHEREAS

1. *The Staff is employed by the Council to carry out Duties vide the Council's employment letter dated 05/01/2000 and Letter dated 15 April 2000, (hereinafter referred to as "the Letter") upon the terms and conditions set out therein.*

2. *The Duties undertaken by the Staff under the Letter are currently ongoing.*

3. *FMSS will with effect from 15th JUNE 2011 be providing the Managing Agent services in respect of common property within the Town of ALJUNIED-HOUGANG (Hougang Division) in place of the Council.*

4. *The present Agreement is supplemental to the Letter.*

5. *In respect of the Duties under the Letter to be performed by the Staff relating to ALJUNIED HOUGANG (Hougang Division) Town, the Council desires to be released and discharged of its rights, duties and obligations under the Letter and such rights, duties and obligations are to be assumed by FMSS in place of the Council, and the Staff has agreed to discharge the Council and accept liability of FMSS upon the terms and conditions hereinafter set out.”¹⁹⁸* (emphasis added)

133. It is also evident from the novation deeds that prior to 15 June 2011, the HTC staff continued to carry out their duties. Under cross-examination, Mr Hawkes accepted that the management of Hougang SMC came under the purview of AHTC since the reconstitution took effect from 27 May 2011 such that AHTC became responsible for ensuring that the Hougang residents continued to receive management services.¹⁹⁹ With FMSS appointed as MA of Hougang and the former HTC staff having been novated to FMSS on 15 June 2011, the former HTC staff then remained in the HTC office to carry out work for HTC as MA staff working for AHTC.²⁰⁰ Mr Hawkes also did not question the position that FMSS had taken over all the employees of HTC as of 15 June 2011 and the staff's employment contracts were novated.²⁰¹ As Ms Sylvia Lim had testified, when a TC engages a MA, all of the TC's operational works are outsourced to the MA by virtue of the MA's appointment.²⁰² As such, there is no need for FMSS to “second” its staff to the HTC office as the Plaintiffs alleged at trial.²⁰³

134. Whilst FMSS was only appointed as MA as of 15 June 2011, FMSS paid the Hougang staff salary for the entire month of June 2011. As the work had been carried out by the Hougang staff which FMSS paid for, AHTC reimbursed FMSS for this payment.²⁰⁴

¹⁹⁸ AEIC of Mr Vincent Koh at [11], 3 BA 1027; 5 CB 2948 - 2949

¹⁹⁹ 08.10.2018 NE, Pg 158 L 25 to Pg 159 L 1 - 5.

²⁰⁰ 19.10.2018 NE, Pg 193 L 6 - 12, Pg 198 L 5 - 8; AEIC of Ms How Weng Fan at [97], 4 BA 1348.

²⁰¹ 08.10.2018 NE, Pg 158 L 25 to Pg 159 L 1 - 12; 09.10.2018 NE, Pg 20 L 9 - 25 to Pg 21 L 1 - 3.

²⁰² AEIC of Ms Sylvia Lim at [195], 2 BA 250.

²⁰³ 19.10.2018 NE, Pg 197 L 6 - 12, Pg 198 L 9 - 15.

²⁰⁴ AEIC of Ms How at [97], 4 BA 1348.

135. The Plaintiffs' allegations at trial that AHTC's appointment of FMSS to provide MA services for the Hougang division was a breach of the TCFR is misconceived.²⁰⁵ Ms Sylvia Lim testified that she exercised the delegated authority to waive the tender for the said appointment and "*this waiver was discussed subsequently in the combined proposal*",²⁰⁶ i.e. as part of the discussions at the 2nd AHTC Meeting on 4 August 2011 for the appointment of FMSS as MA for both Hougang SMC and Aljunied GRC.²⁰⁷
136. Ms Sylvia Lim was also questioned for signing off on the cheque for payment of the June 2011 Invoice. She was accused of signing the cheque despite knowing that "*the shareholders of FMSS who issued this invoice were also assuming roles which they did not have in AHTC to sign off on behalf of AHTC*".²⁰⁸ As explained earlier, these persons did in fact have a role in AHTC once the former HTC staff were novated to FMSS and FMSS was appointed as MA. The allegation is therefore baseless.

Specifications of the 1st MA Contract

137. Ms Sylvia Lim was rigorously cross-examined on the question of whether all parts of CPG's MA Contract formed part of the 1st MA Contract when the Letter of Intent stated that AHTC "*shall follow the specifications stipulated under the Managing Agent's contract of the former Aljunied Town Council*".²⁰⁹ However, nowhere in their pleadings have the Plaintiffs made the incorporation of terms an issue. The Plaintiffs themselves did not appear to dispute this when Ms Sylvia Lim made this point in response to some of the questions asked on this issue.²¹⁰ Further, Ms Sylvia Lim explained at various instances that "specifications" was used as a generic word to refer to the terms in all 7 parts of the CPG contract insofar as they can be applied and not merely the discrete section of the CPG Contract titled "Specifications".²¹¹ She testified that this was the understanding she had with Mr Danny Loh in their discussions on the appointment of FMSS after the 2 June 2011 meeting.²¹² She testified that this was also the shared understanding amongst the elected MPs in their discussions on the same.²¹³ The Plaintiffs have not produced any factual evidence to rebut this.

²⁰⁵ 19.10.2018 NE, Pg 171 L 17 - 25, Pg 176 L 1 - 9.

²⁰⁶ 19.10.2018 NE, Pg 175 L 5 - 6.

²⁰⁷ 24.10.2018 NE, Pg 110 L 4 - 7.

²⁰⁸ 19.10.2018 NE, Pg 192 L 18 - 25.

²⁰⁹ 8 CB 5230.

²¹⁰ 23.10.2018 NE, Pg 26 L 13 - 25, Pg 27 L 1 - 2.

²¹¹ 23.10.2018 NE, Pg 23 L 3 - 7.

²¹² 23.10.2018 NE, Pg 27 L 10 - 25, Pg 28, L 1 - 5.

²¹³ 23.10.2018 NE, Pg 25 - 30; 17.10.2018 NE, Pg 117 L 17 - 25.

Allegedly causing the Secretary to Breach his Duties

138. The Plaintiffs also alleged at trial that CPG was kept in the dark about FMSS's appointment. The Plaintiffs further alleged that the 13 May Letter was deliberately designed to give CPG the false impression that the elected MPs had decided to manage AHTC in-house as was the case for HTC.²¹⁴ The Plaintiffs alleged that this was a calculated move to avoid being told that a tender was needed because Mr Low did not want the risk of anyone else other than FMSS being appointed as the MA because he wanted to help WP supporters get the job.²¹⁵ This unpleaded and new narrative is entirely unfounded.
139. Contrary to the Plaintiffs' allegations, there were nothing sinister about Ms How signing on the June 2011 Invoice using the acknowledgement stamp identifying her as General Manager. The Plaintiffs made the unpleaded allegation that this was deliberately done to create a false impression that AHTC had plans to carry out direct management so that CPG would not find out that FMSS had been appointed.²¹⁶ This is untrue. Ms Sylvia Lim had testified that this occurred because AHTC was still using the old chop carried over from HTC to AHTC as an ad-hoc measure during the transitional period.²¹⁷ There was nothing to mislead CPG as its Mr Jeffrey Chua was aware of FMSS's appointment as the new MA.²¹⁸ Ms Sylvia Lim's evidence in this regard was not rebutted by the Plaintiffs.
140. For this reason, the Plaintiffs' unpleaded allegation that Ms Sylvia Lim had caused Mr Jeffrey Chua to breach his duties as Secretary under Section 20 of the TCA is without basis. The Plaintiffs alleged that because he was "*kept out of the fact that there has been a binding commitment as of June 2011, that tenders had not been called, that the matter has not been put before the town council, and the issue of a waiver [had] also not been put before the town council*".²¹⁹ Mr Jeffrey Chua could not have been put in a situation of being unable to discharge his functions²²⁰ when CPG clearly knew that FMSS was going to be appointed as stated above. More importantly, there can be no breach given that the actions were carried out by Ms Sylvia Lim on the authority that had been delegated to her by the Town Councillors, which was done in the presence

²¹⁴ 16.10.2018 NE, Pg 64 L 9 - 23.

²¹⁵ 16.10.2018 NE, Pg 66 L 10 - 25, Pg 67 L 1 - 8.

²¹⁶ 19.10.2018 NE, Pg 193 L 23 - 25 to Pg 194 L 1 - 25 to Pg 195 L 1 - 2, Pg 199 L 7 - 14.

²¹⁷ 19.10.2018 NE, Pg 186 L 10 - 16.

²¹⁸ 22.10.2018 NE, Pg 55 L 2 - 17.

²¹⁹ 22.10.2018 NE, Pg 44 L 6 - 10.

²²⁰ 22.10.2018 NE, Pg 56 L 15 - 21.

of Mr Jeffrey Chua as interim Secretary at the 1st AHTC meeting on 9 June 2011. The Plaintiffs' lengthy cross-examination on this issue is without basis.

141. Ms Sylvia Lim testified that the understanding with Mr Jeffrey Chua of CPG was that during the interim period when CPG continued to manage AHTC until its release at the end of July 2011, he will manage Aljunied constituency while Ms How would manage Hougang constituency.²²¹ Mr Jeffrey Chua was present at one of the weekly Chairman meetings held on 16 June 2011 which was also attended by Mr Seng, Ms How, and Ms Pan Wanjing where the topic of delegation was discussed, as recorded at item 3 of the meeting minutes.²²² Accordingly, Ms Sylvia Lim issued a letter on 16 June 2011 to Mr Jeffrey Chua and Ms How to give them the authority to incur the necessary expenditures to enable CPG and FMSS to perform their tasks as MAs of the Aljunied constituency and Hougang constituency respectively during the handover period.²²³ Further, Ms Sylvia Lim testified at trial that this arrangement came about on CPG's own suggestion through Jeffrey:

"A: And I'm using this document just to explain that on CPG's suggestion, I was asked to sign this document, and this was 16 June. Effectively, Jeffrey Chua's intention was that he would continue to be responsible for the Aljunied part of AHTC during the handover period, and Ms How would continue to be responsible for the Hougang side of things. So he asked me to authorise both of them concurrently to exercise those powers under those rules. And accordingly, you know, it was the understanding that Hougang, in terms of management -- I mean, CPG didn't really want to know about it. They just wanted to continue to manage Aljunied, and, you know, the Hougang part of it would be managed by Ms How's team, in that sense.

Q: Right.

A: So that's why this invoice doesn't go to Jeffrey, because Jeffrey doesn't want to know about the Hougang matters. He's only concerned about Aljunied during the handover period, in that sense."²²⁴ (emphasis added)

142. It was recorded in the minutes of another weekly Chairman's meeting held on 21 July 2011 that *"Ms How handed a list of the projects which the new MA will not be taking over and those which they will be taking over. The number of projects which CPGFM will continue is three (one having been completed already)."*²²⁵ It is clear from this record that CPG must have known about the new MA since the discussion involved the delineation of who handled what projects.

²²¹ AEIC of Ms Sylvia Lim at [65], 2 BA 204.

²²² 18 CB 13182 - 13184.

²²³ AEIC of Ms Sylvia Lim at [65], 2 BA 204.

²²⁴ 19.10.2018 NE, Pg 186 L 24 – 25, Pg 187 L 1 – 15.

²²⁵ AEIC of Ms Sylvia Lim at [84], 2BA 209, 18 CB 13198; 22.10.2018 NE, Pg 54 L 2 – 16.

S/Nos. 4 and 5 of KPMG's 1st Table: Alleged Improper Payment of \$608,911 and \$611,786

143. Where project management fees are concerned, KPMG identified the sum of **\$608,911** which is made up of 99 invoices as an improper payment. These payments were made in respect of works comprising repairs and redecoration works such as those for external walls of estates and KPMG states that they would have been more appropriately classified as "basic services" under the MA contract such that no additional project management fees were payable.²²⁶ On cross-examination, Mr Hawkes explained that KPMG had received "legal advice" that the services in question were not "*serious cyclical repairs and redecorations*" which justified the payment of additional project management fees, but "*the types of works which might be performed routinely or periodically that they would fall under maintenance works. Therefore, basic services*",²²⁷ i.e. those works are covered by the usual MA fees.²²⁸ KPMG also raised a similar criticism in identifying the sum of **\$611,786** as an improper payment that should be recovered. This sum comprises payments made on 83 occasions for project management fees paid for 4 projects where KPMG alleges that "*the subject matter of these invoices was in reality a combination of project management services as well as managing agent services.*"²²⁹
144. On cross-examination, Mr Hawkes confirmed that the basis for KPMG's view that both of the abovementioned payments are improper was the legal advice which was based only on a review of the contract.²³⁰ Neither its legal advisers nor KPMG undertook any investigation on-site to evaluate the nature and scope of the actual works that were carried out and by looking at the completed project or product.²³¹ KPMG also did not take the past practice into account that ATC had similarly classified and paid for such services by CPG as project management fees.²³² Specifically, 2 of the 4 projects (which were also the 2 smallest projects in terms of value) for which project management fees of S\$611,786 were paid were entered into by ATC and later taken over by AHTC after the 2011 GE.²³³ The Plaintiffs' position is untenable. Where project management fees are payable, they go towards AHTC paying for the separate project management team including a tertiary qualified project manager, an M&E engineer

²²⁶ KPMG Report at [5.3.17], at 26 CB 19901.

²²⁷ 08.10.2018 NE, Pg 123 L 4 - 21.

²²⁸ 08.10.2018 NE, Pg 116 L 10 to Page 138 L 1.

²²⁹ KPMG Report at [5.3.18], 26 CB 19902; 08.10.2018 NE, Pg 139 L 10 - 25 to Pg 148 L 1 - 14.

²³⁰ 08.10.2018 NE, Pg 141 L 14 - 17.

²³¹ 08.10.2018 NE, Pg 136 L 23 - 25 to Pg 137 L 1 - 7.

²³² 08.10.2018 NE, Pg 143 L 23 - 25 to Pg 144 L 1 - 8.

²³³ 8.10.2018 NE, Pg 141, L 19 - 25, Pg 142, L 1 - 9.

and a quantity surveyor that are dedicated to the task of project management without having to juggle the routine estate maintenance.²³⁴ As Mr Hawkes has himself acknowledged, if the decision to expend more money by requesting for project management was within the confines of AHTC's "broader duty" to spend public funds properly, then such a matter is for AHTC to decide:

"Q: Even if this area falls into -- the nature of these works falls into an overlap situation, would you accept that it is up to AHTC to decide if it should request for project management services since this required extra payment?

A: Insofar as AHTC obviously has an obligation to spend public funds in a way which doesn't involve --

Q: Oh, we know that, Mr Hawkes. We know that.

A: So insofar as they act within that broader duty, then, yes, whether something is a project management engagement or whether they wish to engage in project management via FMSS is a matter for them.

Q: It is also equally if not more important a duty for AHTC to ensure that the works get properly done, isn't it?

A: That is also important, yes.

Q: Yes. So that the residents don't suffer a messed up job, correct?

A: That is also important, yes.

Q: Yes. And if money has to be spent to ensure that then that money is well spent, wouldn't that be so?

A: If it has to be spent, yes.

Q: Yes. To ensure that it would be well spent, wouldn't you agree?

A: If it has to be spent, and it has to be spent to ensure that, then assuming that you actually need to carry out the project then, yes, that would be correct.

Q: I will take your answer as a "yes," thank you."²³⁵

Waiver of Tender for 1st MA Contract

145. Having received AHTC's delegated authority to do what was necessary to facilitate the handover, Ms Sylvia Lim waived the tender under Rule 74(17) of the TCFR to appoint an MA for AHTC in 2011 for one year. The evidence of the Town Councillors at trial was that this decision was made given the special circumstances that the Town Councillors faced²³⁶ – being the first time when there was a change in GRC management from PAP to WP, the incumbent MA no longer willing to continue to work with the WP MPs, and TCMS being pulled out by AIM.
146. The reasons for waiving the tender were recorded in Ms Sylvia Lim's report on the appointment of FMSS as MA which was circulated to all present at the 2nd TC Meeting on 4 August 2011.²³⁷ AHTC's discussion on this issue of the waiver was also recorded in Annex 1 of the Minutes of this meeting.²³⁸ Unless the Plaintiffs prove that the power

²³⁴ 6 CB 3466; 08.10.2018 NE, Pg 52 L 21 - 25 to Pg 53 L 1 - 9.

²³⁵ 08.10.2018 NE, Pg 129 L 6 - 25, Pg 130 L 1 - 7.

²³⁶ AEIC of Mr Low, at [81] to [82], 2 BA 370; 25.10.2018 NE, Pg 59 L 15 - 25 to Pg 60 L 1 - 15.

²³⁷ AEIC of Ms Sylvia Lim at [95], 2 BA 212.

²³⁸ 18 CB 13207.

to waive the tender was exercised for an improper purpose (which they have not), there is no reason why the Plaintiffs should second guess this decision.

147. Ms Sylvia Lim had testified at trial that the elected MPs had discussed this issue of waiver as early as 19 May 2011 as they were all aware that there may be a lack of time to do a tender.²³⁹ Ms Sylvia Lim also testified that this was reflected in Mr Low's e-mail of 19 May 2011 to Ms How discussing the contingency plan of appointing FMSS as MA on a transitional period of a one year instead of the usual three-year contract period.²⁴⁰

"A: Okay. If I look at the notes of evidence, page 45 and 46, I think at that time Mr Singh was asking me whether I knew of the need to do a tender, et cetera, and I -- in answer, I said I wanted to point him to this email in May, where this issue -- well, it shows that we have thought about this issue. **And the email of 19 May is at page 5102 of volume 8, and you will see in that email, Mr Low is writing to Ms How to capture**

a discussion that he had with me on that day, which was 19 May. And in the first paragraph on the second line, it's mentioned that, you know, the appointment of the MA company, if it comes true, will be for a transition period of one year. And of course this was after a discussion that we had among the elected members that if we were going to do any waiver, it should be for the shortest period possible, and this was why it was written in this way, even though ordinarily MA contracts, I believe, are for three years or so."²⁴¹

(emphasis added)

148. In Parliament, the then Minister for National Development Mr Khaw Boon Wan ("Mr Khaw") delivered a Ministerial Statement on TCs. During this parliamentary sitting on 13 May 2013, the extraordinary circumstances faced by newly-elected MPs during a handover of TCs following an election was stated by Mr Sitoh Yih Pin, the MP from PAP for Potong Pasir, as follows:

"Mdm Speaker, when I took over Potong Pasir Town Council in 2011, it was not an easy handover. I wish to stress, however, that it is not the fault of the previous MP, a man I continue to respect as a politician. But handovers are seldom easy especially when a handover involves essentially a change of system, culture and leadership. It is also compounded by the fact that the change has to take place immediately after the elections.

*This is not just particular to the change in town council management. Ask any company that changes vendors and they will tell you it is never easy. From a change in say, a cleaning and landscape company in a condominium estate to a change in security guard services in a shopping mall. **There are always transition and handover problems despite the best intentions. A town council change from one political party to another is far more complicated than the ones I have quoted.***

...

*Madam, admittedly, not everyone got what they wanted but I think we gave everyone respect and a chance to try and continue working. **I must confess the handover was***

²³⁹ 19.10.2018 NE, Pg 46 L 18 - 25 to Pg 47 L 1 - 17.

²⁴⁰ 8 CB 5099.

²⁴¹ 24.10.2018 NE, Pg 112 L 15 - 25 and Pg 113 L 1 - 7.

*personally an emotionally tiring experience for me but I felt I did what I had to do, always putting the interests of the residents first...*²⁴² (emphasis added)

149. MND had also recognized that both AHTC and Potong Pasir TC (after the PAP won Potong Pasir from the Singapore People's Party ("**SPP**")) had waived the tender requirements for appointment of MAs and stated that this decision had allowed the TCs to ensure continuity of services to residents:

"Procurement for Other Major Contracts and Systems

49. The Review Team observed the following:

- a) All existing contracts, assets and liabilities remain vested with the TC after the General Election, and were passed over to the newly elected MPs when they took over.
- b) For PPTC and AHTC, most major contracts and systems continued after the changeover, which ensured continuity of services to residents.
- c) **The only exception was the MA contracts, where both TCs appointed new MAs. Due to the urgency of the TCs' needs, both TCs exercised a waiver of competition for tender for a one-year contract. In the case of PPTC, they appointed EM Services, who was also the MA for several other TCs. EM Services was able to quickly step in at short notice to ensure continuity of service to residents. In the case of AHTC, they appointed FM Solutions and Services Pte Ltd (FMSS), a company newly set up in May 2011 by the former General Manager of HTC. This allowed AHTC to ensure continuity of service to residents.**

Although there was no compromise of services as both TCs were able to appoint MAs quickly by exercising a waiver of competition, the Review Team is of the view that this arrangement is not ideal and more time should be given to TCs in such a situation to select and appoint their MA, which provides an essential service to the TC and its residents.²⁴³ (emphasis added)

150. Mr Khaw had noted the MND Review Team's observations of AHTC and Potong Pasir TC's experience in the handovers that occurred and concluded that "*there are clearly some lacunae in the rules dealing with handovers of Town Councils*".²⁴⁴ Mr Khaw then considered various recommendations from the MND Review Team to institutionalise some change-over rules to minimise disruptions to critical services during a change in leadership, which include having "*in place contractual provisions for automatic one-off extensions following an election where there is a change of party in charge of the Town Council*" or "*set[ting] a minimum notice period for termination initiated by the contractor or key appointment holders such as General Managers*".²⁴⁵ In other words, MND has recognized that the timelines for handover are insufficient especially where the shortness of time is brought about by the termination of existing services initiated by the contractors or key appointment holders of the TC due to the change in leadership.

²⁴² 24 CB 18595 - 18597.

²⁴³ MND Report, 24 CB 18551 - 18552.

²⁴⁴ 24 CB 18567; AEIC of Ms Sylvia Lim at [125], 2 BA 226.

²⁴⁵ 24 CB 18567; AEIC of Ms Sylvia Lim at [125], 2 BA 226.

151. Mr Khaw also recognised that the TCFR provides latitude to the TCs or their Chairmen to waive the requirement to call for a tender and specifically cited Ms Sylvia Lim's decision to exercise this latitude in waiving the tender in 2011 – a decision that the Plaintiffs continue to question in these proceedings:

"In fact, the Town Councils Financial Rules also provide latitude to Town Councils or their Chairmen to waive requirement to call for tender altogether. Ms Sylvia Lim would be familiar with this because she exercised this latitude when her Town Council waived competition and appointed FM Solutions and Services Pte Ltd (FMSS) as their Managing Agent in 2011. MND left the appointment to her best judgement and did not object. We have to apply the Town Councils Act and the Town Councils Financial Rules fairly, evenly and consistently."²⁴⁶ (emphasis added)

152. During cross-examination, Mr Hawkes admitted that he knew of the aforesaid views of MND when he was preparing the Report. Notwithstanding this, he chose not to consider MND's views in the KPMG Report. Mr Hawkes claimed that he was acting as an independent accountant by forming his own view:

Q: So although you were aware of MND's view, and of the minister's view as expressed in his statement to parliament, that neither of them had any difficulty in accepting that the waiver was properly called for and exercised, you saw it fit to nevertheless state in your report at paragraph 5.5.1 that the circumstances as recorded in the contemporaneous documentation of the appointment of FMSS did not justify the waiver of tender. Insofar as this is the case the contract was improperly entered into?

A: Yes, that is correct, because we reviewed the contemporaneous documentation on the waiver. I don't know whether MND did. I don't know whether the minister did. And in addition, I think these two reports predate the attorney -- the Auditor-General's report. I don't know whether that would have an effect on their view either.

Q: Yes, but you didn't -- the MND report was 2013, which was I believe before the AGS?

A: Yes.

Q: But nevertheless, you still didn't bother to check with MND on these two or with the --

A: I don't think the phrasing "didn't bother" is actually appropriate. The fact is it was not relevant to check.

Q: Well, let us try and be more appropriate then. You did not?

A: No. We did not feel it was necessary.

Q: And you also did not see it necessary to include in your report the fact that MND and the minister had both expressed a view that this waiver was not only properly expressed but was called for; because of the waiver they were able to get the services -- the necessary services -- provided without a break?

A: No, because we had access to the contemporaneous waiver documents at the time and formed our view on those documents.

Q: Very well, all right. And this was you acting as the independent accountant?

A: That is correct, yes."²⁴⁷ (emphasis added)

153. It is unclear how Mr Hawkes can claim to have acted independently if he chooses not to consider the views of MND, the Ministry of National Development, on a matter relating to the running of TCs. It is submitted that MND's views were ignored simply because they were inconvenient to the conclusions that Mr Hawkes wished to draw.

²⁴⁶ AEIC of Mr Low at [87], 2 BA 687; 24 CB 18612.

²⁴⁷ 10.10.2018 NE, Pg 9 L 3 - 25 to Pg 10 L 1 - 16.

154. Mr Goh from PwC similarly did not consider MND's views:

“Q: That is precisely the reason why the TCA and TCFR allow for waivers and that is precisely why the MND recognises that when there is a takeover of a town council the present regulations are very insufficient or the present timelines don't take that into account. And they have strongly recommended that something be looked into because everything has to be done within three months.

A: And that is why they approved the -- well, they don't have to approve it, but that is why they accepted that a waiver had to be done and not just -- not just AHTC. The same thing happened in Potong Pasir. That was also a waiver. Are you saying that was also wrong?

A: Well, your Honour, I am an independent accountant for AHTC not Potong Pasir so I really do not know that incident, but I do know that TCFR yes, does indeed provide for the waiver of tender, but only under urgent circumstance and it is in the public interest to do so, and you know? And this has to be fully justified. This special circumstances has to be fully justified. It is only if it is urgent. Now, the fact that you have two to three months to call for a tender I do not see any urgency in there, your Honour.

MND seems to think that is not enough, but Mr Goh thinks it is more than

Q: enough.”²⁴⁸ (emphasis added)

155. It was apparent that Mr Goh, despite being called as an expert witness, did not approach the task with an open mind and failed to take into account factors that should have been relevant for his consideration:

“MR ...

RAJAH: "In our view their partiality and preference towards FMSS as the MA would have clearly compromised the level of scrutiny that they would impose on the terms eventually put forward by FMSS." All those kinds of allegations are totally denied, and I would suggest to you that that is not the kind of statement that you should be making in a report where you are engaged as an expert accountant?

A: Your Honour, I disagree, because whatever my finding is is actually based on evidence. It is the totality of all the evidence. I am an independent accountant. I am an investigative accountant. I investigate into circumstances surrounding the award of the MA contract because that is very important. That determines later on, you know, why is it that town council has to pay a higher price or why is it --

Court: You were completing your answer, Mr Goh?

A: Yes, why is it that no later on the town council has put itself into a very awkward position that there is a conflicted person approving payment and then certifying work done for their own work. So that actually this whole thing actually comes together, your Honour.

MR It comes together, Mr Goh, in a mind that is looking to find fault?

RAJAH:

A: I disagree totally, your Honour. I have to base my findings on evidence and there is hard evidence to support my findings, your Honour.

Q: I would suggest to you, Mr Goh, that if you approached this matter and your investigation with an open mind then you would have given far more attention to the plight in which the newly elected members of Hougang Town Council found themselves soon after the results of that general election in 2011. Did your report deal with the factors, with the compulsions that caused the defendants to seek the assistance of existing Hougang Town Council managers to form FMSS to provide MA services to circumvent the intending tripping of elected MPs? Did you consider that?

A: Your Honour, my report doesn't consider any emotional factor.

²⁴⁸ 12.10.2018 NE, Pg 76 L 16 - 25, Pg 77 L 1 - 15.

Q: No, no, that is not an emotional factor. That is a factor of political life?

A: Yes, your Honour, but you see the thing is that still there is TCFR to be followed and my report is just talking about why isn't it being followed?

Q: You see, Mr Goh, if the TCFR is breached that doesn't mean that you are trying to cheat or that doesn't mean that you are trying to rob or that doesn't mean that you are trying to do any kind of nefarious or wrong act?

A: That is not my allegation, your Honour.

Q: You see, thank you. Thank you. **But there is nowhere in the report do you talk about the problems that were affecting the decisions, the kind of problems that the newly elected members were seeking to find solutions for or to anticipate and resolve and protect themselves. Did you consider that at all in any way in your report?**

A: Your Honour, I can't say whether I have considered or not considered. I think I do agree that there could be, you know, this agony and all that in forming a new town council, but really, you know, my role is really to see whether there is any breach of TCFR, and in the circumstances surrounding such breach, whether there is any justification. And all the evidence before me actually suggests that not -- well, you know, there is breach of the TCFR. That is -- really, I can't see any reason why they should get a waiver because there is nothing urgent, they have two to three months, and in fact during the town council second meeting on 4 August it wasn't disclosed fully, a lot of material facts weren't disclosed fully that in fact there was a de facto contract that was already awarded, you know, as early as 15 July."²⁴⁹ (emphasis added)

156. Remarkably, Mr Goh even went so far on one occasion as to flatly state that his views would not have changed even if he had the chance to speak with the persons involved and find out their account of events.²⁵⁰

157. Given the context for the handovers as described above, the Plaintiffs have no basis to allege that "*the appointment [of FMSS] was hurried through, with an unjustified waiver of tender*"²⁵¹ or that "*there was simply no alleged 'tight timeframe and urgency'*".²⁵² As will be seen in the next section, the Town Councillors' efforts to achieve a handover without disruption of essential services to residents was made more difficult by the withdrawal of the TCMS.

The Withdrawal of TCMS by AIM

158. At trial, the Plaintiffs alleged that it was the WP MPs who had initiated the termination of the contract with AIM for provision of the TCMS as early as 13 May 2011.²⁵³ The Plaintiffs also alleged that Ms Sylvia Lim had knowingly and deliberately perpetuated the false impression that AIM terminated TCMS such that AHTC was put in a difficult position and had no choice but to upscale.²⁵⁴ These are absurd allegations that are also not the Plaintiffs' pleaded case. Given that the WP MPs had no alternative

²⁴⁹ 12.10.2018 NE, Pg 80 L 8 - 25, Pg 81 L 1 - 25 and Pg 82 L 1 - 16.

²⁵⁰ 15.10.2018 NE, Pg 21 L 16 - 23.

²⁵¹ AHTC's Opening Statement at [5.1.2].

²⁵² AHTC's Statement of Claim at [4.3.4].

²⁵³ 18.10.2018 NE, Pg 132 L 14 - 19.

²⁵⁴ 18.10.2018 NE, Pg 172 L 17 - 25, Pg 173 L 1 - 13.

equivalent software at hand, the MPs would not have made such a decision. The TCMS was critical to the proper functioning of the TC and its withdrawal was the primary cause of the audit lapses in AHTC that was highlighted by the AGO:

- (a) As per Ms Sylvia Lim's evidence, WP's management of AHTC in the initial period was severely handicapped by not having the use of the TCMS:

*"... The termination by AIM would have left us in a lurch if not for our blessing that we had another system that had been in use in Hougang Town Council for many years. **Our obvious choice was to develop this system further to cater for the operations of the GRC...***

Notwithstanding that this system was not new, it was not developed to cater for a GRC. Even the basic hardwares such as its servers could not cater to the demands of a GRC. While it had a simple FER, it needed to be customized to accommodate some of the features of the GRC such as recurring credit card system, internet kiosks, etc. Much work and time was required to put in place this alternative system. Concurrently, the operation of the Town Council was ongoing but we did not have a complete system to work on. For example, the Works Order system was not ready till April 2012 so we had to resort to manual Works Order for the period 1 August 2011 to 31 March 2012.

Logically, using a manual system in the context of a GRC was tedious, time consuming and resulted in slow payment to contractors. This exemplified the problems which we had to deal with after the termination by AIM...

*In summary, if the TCMS, which was developed with funds from the former Aljunied Town Council, was handed over to us, continuity would have been ensured and we would not have to waste time and money to replicate systems and information. **With the absence of a fully functional system suitable for a GRC and the short timeframe to take over on 1 August 2011, the new system was developed in an unconventional manner including putting it to live without the benefits of proper UATs being conducted. Under this context, the new system would require longer than the normal 18 to 24 months and the development process difficult to manage...***²⁵⁵ (emphasis added)

- (b) The above is consistent with Ms Sylvia Lim's response to the MND Review Team given on 15 March 2013:

"Q5 Apart from the termination of the TCMS, did your TC encounter any other difficulties during the transition after GE 2011?

*A5 Most of the difficulties were consequences arising from the termination of the TCMS, such as issues related to the FY11 financial audit. Some of these issues could carry through to FY12."*²⁵⁶

- (c) Ms How had also given similar evidence:

"Further the MND's annual Town Council Management Review (TCMR) had placed AHTC in the "good" band for estate cleanliness and lift breakdowns and the "average" banding for estate maintenance. Many of the other Town Councils also achieved "average" for estate maintenance. AHTC/AHPETC only received the "red" band for S&CC Arrears Management and Corporate Governance because it was

²⁵⁵ AEIC of Sylvia Lim at [126], 2 BA 227, 228.

²⁵⁶ AEIC of Sylvia Lim at [56], 2 BA 200, 269.

in the process of developing its computer system to enable it to cater to a larger GRC and because it was plagued with untimely audits before it could fully run a proper system.”²⁵⁷

- (d) As Mr Yeo Soon Fei, former Operations Manager and Deputy General Manager of AHTC/AHPETC, had testified, “*with an incomplete computer system, doing an audit was asking for the impossible*”.²⁵⁸

“45. As information was not readily available and coupled with the fact that the AHTC did not have a computer system to capture all transactions from 1 August 2011, financial statements for audit had to be prepared manually. Reconciling the records within a very short time was a very difficult task and consumed a lot of time and manpower. With AHTC officers already trying to set up payment system, this was an unneeded distraction.”²⁵⁹

159. The above evidence was not rebutted by the Plaintiffs.

160. The elected MPs anticipated that AHTC would not be allowed to use TCMS. Ms Sylvia Lim testified that they planned for this contingency on the basis that HTC’s existing computer software would have to be upscaled for AHTC’s use should TCMS be terminated:

- “Q: I’m not asking you about what they knew as the consequences. **You’ve already agreed with me, I think, that AHTC was not merely going to go in-house on the financial collection system, but the rest of the software; correct? Yes, Ms Lim?**
 A: **The MPs came to a decision that it was likely that we would not be able to use the TCMS, so we had to make our contingencies.**”²⁶⁰ (emphasis added)

161. Mr Low gave similar evidence on this topic:

- “Q: So you had already decided that you were going to upgrade your existing system at Hougang Town Council; yes?
 A: Yes, expecting that --
 Q: Thank you.
 A: -- we will not have that system come in.”²⁶¹

162. Pre-emptive measures were taken by the WP MPs by asking the vendors to transfer the data and information so that the incoming management would have possession of the data.²⁶² This was also done in contemplation of the highly likely event that HTC’s existing computer software²⁶³ would have to be upscaled should the contract for provision of TCMS be terminated. This concern about the TCMS has always operated on the minds of Mr Low and Ms Sylvia Lim since their days in HTC:

²⁵⁷ AEIC of How Weng Fan at [170], 4 BA 1376.

²⁵⁸ AEIC of Mr Yeo Soon Fei at [42], 4 BA 1439.

²⁵⁹ AEIC of Mr Yeo Soon Fei at [45], 4 BA 1440.

²⁶⁰ 18.10.2018 NE, Pg 141 L 1 - 9.

²⁶¹ 16.10.2018 NE, Pg 69 L 10 - 15.

²⁶² 18.10.2018 NE, Pg 96 L 17 - 25 to Pg 97 L 1 - 7, L 16 - 25 to Pg 162 L 15 - 18; 18.10.2018 NE, Pg 124 L 7 - 20; 19.10.2018 NE, Pg 25 L 17 - 25 to Pg 26 L 1 - 25, Pg 27 L 1 - 10.

²⁶³ 18.10.2018 NE, Pg 119 L 25, Pg 120 L 1 - 8.

"Q: ... give evidence to the effect that by early 2011, AHTC was planning to upscale its computer system? Do you remember that? Answer: Yes." And then the next question is: "And the AHTC, or at least the elected members of AHTC, had decided that they would have an upscaled software for the use of AHTC?" And your answer is: **"We believe we needed to do that."**

A: Yes.

Q: Why did you believe you needed to do that?

A: This was because of the experiences that we didn't want from the past. Mr Low had previously told us about his experiences when he was MP for Hougang SMC and how, in the mid 1990s, there was this decision by the HDB, I think, to withdraw the software that they had -- that HDB allowed the town councils to use at the time, and the PAP went off on its own to group their town councils together to develop their own integrated system, and the few opposition wards had to fend for themselves to do that. And when I became a councillor in Hougang SMC -- I think it was around 2006 or so -- the concern about whether we would have a software system to use if Workers' Party were to win other wards or larger wards at subsequent general elections was always on our minds."²⁶⁴ (emphasis added)

163. Ms Sylvia Lim also testified that the elected MPs attended a meeting on 20 May 2011 with HDB representatives to discuss various issues relating to the handover of the TC.²⁶⁵ Ms Sylvia Lim explained that Mr Chong Weng Yong, HDB's TC Secretariat, asked at the meeting whether the WP MPs had a system that they could upscale and this caused her to believe that they would not be able to use TCMS.²⁶⁶ The evidence shows that Ms Sylvia Lim and Ms How had received a copy of the AIM contract by 9 June 2011²⁶⁷ which they discussed with Mr Jeffrey Chua in the evening of 9 June 2011.²⁶⁸ Ms Sylvia Lim's e-mail of 10 June 2011 to Ms How also records her as stating that *"Jeffrey mentioned that he had told the AIMS people to facilitate our expected request to continue the contract beyond 1 Aug as early termination by them probably is not 'wise'. He further advised me that we should put in our request to AIMS early to that East Coast TC GM who is involved in AIMS."*²⁶⁹

164. It was only after Jeffrey gave Ms How and Ms Sylvia Lim the "heads up" in early June 2011 that AIM would be terminating the contract for TCMS did AHTC start to make urgent preparations for the withdrawal by upscaling the Hougang SMC computer software.²⁷⁰ The fact that Ms Sylvia Lim was informed by Jeffrey about AIM terminating its contract with AHTC was recorded in the Minutes of Meeting with MND on 15 March 2013.²⁷¹ Given that the elected MPs were expecting TCMS to be terminated, it was reasonable for them to have begun their preparations for upscaling early. Having

²⁶⁴ 24.10.2018 NE, Pg 97 L 16 - 25, Pg 98 L 1 - 17.

²⁶⁵ AEIC of Ms Sylvia Lim at [44], 2BA 197; 8 CB 5172.

²⁶⁶ 18.10.2018 NE, Pg 126 L 18 - 25 to Pg 127 L 1 - 25 to Pg 128 L 1 - 13.

²⁶⁷ 18.10.2018 NE, Pg 121, L 10 - 17.

²⁶⁸ 18.10.2018 NE, Pg 150 L 12 - 25, Pg 151 L 1 - 25, Pg 152 L 1 - 9.

²⁶⁹ 8 CB 5172; 18.10.2018 NE, Pg 151 L 10 - 17.

²⁷⁰ AEIC of Ms Sylvia Lim at [114], 2 BA 222; 18.10.2018 NE, Pg 164 L 11 - 14.

²⁷¹ AEIC of Ms Sylvia Lim, at [56], 2 BA 200, 268.

examined the history of TCMS's development as a software prior to the sale by the PAP TCs in 2011 to AIM, the MND Review Team had itself recognized in the MND Report that developing a TCMS software is complex:

*"5. While the PAP TCs complied with the TCs Act and the TCFR in the AIM transaction, the Review Team viewed that the TCs underestimated the complexity of the task of developing the new generation TCMS software. The TCs had initially tendered for a one-year leaseback contract. However, the effort to explore a new system turned out to be more complex than expected. This underestimation of the complexity of the task led to two extensions totalling 18 months beyond the initial contract. Despite this, AIM continued to allow the TCs to use the TCMS software with no additional lease payments during the extensions, and only charged a fee to recoup its operational costs. AIM was also able to secure two extensions of the NCS maintenance contract until April 2013, at no increase in rates to the PAP TCs."*²⁷² (emphasis added)

165. By 10 June 2011, AIM's Co-ordinating Secretary Mr Sasidharan (who was also the General Manager of East Coast TC) had spoken to Ms How about terminating the TCMS software for AHTC. Ms How updated Ms Sylvia Lim of this conversation via e-mail.²⁷³ This email records her conversation with Mr Sasidharan as follows:

"Dear Sylvia

I spoke to Mr Sasidharan, the Co-ordinating Secretary for AIMS (and GM of East Coast TC) this morning to request for the use of their financial system until 31 August 2011. He requested specifically for Jeffrey as AJ-HG TC's Secretary to write in so that he can put forth the request to AIMS. I have then spoken to Jeffrey who will put in the request asap.

***FYI, Mr Sasi (he sounded very nice and helpful) informed that AIMS will definitely give the notice of termination and had even asked if we have received it. If it is one month's notice, I guess they will time it well for the service to be terminated exactly on 31 Jul 2011. At first he suggested that we wait for the notice and then write in for extension but was agreeable later that we should just put in the request before that happens.** Mr Sasi said that he understands the situation as AIMS's IT Director has also been keeping him informed on the progress of the transfer of data to us and will assist to speak to AIMS.*

*Ms How"*²⁷⁴

(emphasis added)

166. Based on the above exchange, it was clear to Ms Sylvia Lim and Ms How that AIM wanted to terminate the TCMS software for AHTC. Thereafter, the upscaling of HTC's computer system was carried out in mid-June 2011 with AHTC engaging IT personnel and procuring the necessary hardware, computer software, equipment and peripherals:²⁷⁵

²⁷² MND Report, 24 CB 18531.

²⁷³ AEIC of Ms Sylvia Lim at [115], 2 BA 222.

²⁷⁴ 8 CB 5211.

²⁷⁵ AEIC of Ms Sylvia Lim at [119], 2BA 223; 24.10.2018 NE, Pg 98 L 21 - 25, Pg 99 L 1 - 15, Pg 103 L 24 - 25, Pg 104 L 1 - 2.

"Q: Question: Thank you. And for that purpose, you engaged in discussions with, among others, Ms How to identify vendors; correct?" And then your answer was: "Which period are you talking about? Question: In May 2011." And your answer to that was: "I recall doing it in June, but May, I do not recall discussing computer vendors with her. I may be mistaken, but I believe it was in June." What do you recall of any discussions that you may have had with Ms How in this regard?

A: Well, specifically in June, when we learned that there was going to be an impending termination of the TCMS software that was in use at Aljunied TC, matters became quite urgent, and I recall that there was some discussion with Ms How and also papers put up to me to purchase certain servers and so on because we would need to be able to, in that sense, fend for our GRC without the use of the system that was in use in Aljunied.²⁷⁶ (emphasis added)

167. Pursuant to Mr Sasidharan's suggestion, Mr Jeffrey Chua wrote on behalf of AHTC to AIM on 10 June 2011 requesting for a one-month extension until 31 August 2011 in respect of the "AIMS-TCMS (Financial Module)" which served the critical front-end function of recording residents' payments of their S&CC. This would enable AHTC to conduct "*parallel runs*" to ascertain the reliability of the new system.²⁷⁷

168. On 22 June 2011, AIM sent its notice of termination for its contract with AHTC and accordingly its provision of TCMS under Clause 9.3 of the Contract with effect from 1 August 2011 "*owing to material changes to the membership of the Town Council*".²⁷⁸ It is again important to note that the contract which the previous management of ATC had entered into with AIM, gave AIM the sole right and absolute discretion to terminate the contract. This clause placed AHTC under a significant disadvantage:

"The Contractor may in its **absolute discretion terminate his services** during the contract period by giving three (3) months prior notice in writing to the Town Council. **However, in the event that there are material changes to the membership of the Town Council** or there are material changes to the scope and duties of the Town Council, including but not limited to changes to its present boundaries the Contractor **may give a month's notice in writing if he wishes to terminate the services during the contract period.**"²⁷⁹ (emphasis added)

The Town Councillors Made a Judgment Call in the Residents' Best Interests

169. The Town Councillors' decision not to compel CPG to continue as MA beyond its requested release date of 31 July 2011²⁸⁰ and to waive the requirement for calling a tender and appoint FMSS for a 1 year interim period was done in the best interests of

²⁷⁶ 24.10.2018 NE, Pg 98 L 21 - 25, Pg 99 L 1 - 15.

²⁷⁷ AEIC of Ms Sylvia Lim at [116], 2 BA 223.

²⁷⁸ AEIC of Ms Sylvia Lim at [117], 2 BA 223, 319; 8 CB 5271.

²⁷⁹ 5 CB 2935.

²⁸⁰ AEIC of Ms Sylvia Lim at [56], [62(a)] and [80(a)], 2 BA 200, 202 and 208.

the residents.²⁸¹ As Ms Sylvia Lim testified, holding a tender in the circumstances would have been unwise and would jeopardize AHTC's interests²⁸² as it would be at the expense of other critical works such as having to upscale the IT system that was needed to replace TCMS.²⁸³ She also stated as follows at [53] and [54] of her AEIC:

"53. In early June 2011, there were various discussions with Ms How to determine what we should do in respect of the withdrawal of CPG. This was a complex issue because it seemed clear that it was pointless for AHTC to try to retain CPG as the MA if CPG did not wish to continue to provide MA services to the TC. If AHTC was embroiled in a dispute with CPG to compel CPG to perform the MA contract, the residents risked facing disruptions to vital services such as maintenance of estate cleanliness. This was politically too costly a step for AHTC to take as we had to consider both the adverse effect this would have to the interests of the residents as well as the political fall-out to WP.

*54. During this period, AHTC was in a serious dilemma of almost crisis proportions. While Mr Low's views seemed to be correct insofar that we would likely have to appoint FMSS to be the MA of AHTC, the transition of the management of the TC from the PAP to the WP would have been much easier if CPG were willing to remain as MA."*²⁸⁴

170. Further, Ms Sylvia Lim testified that the elected MPs were very concerned that the standard of services to the residents would fall because CPG was not committed as they had already indicated that they did not want to stay.²⁸⁵ At trial, Mr Hawkes admitted that *"there might be a potential that assisting one party to run its constituency well might not be 100 per cent aligned to helping another party run its constituency well"*.²⁸⁶ Mr Low testified that it would have been unwise to retain an unwilling MA as *"there are many ways they can trouble you or [mismanage the TC] in a way that would make it difficult for [the Town Councillors] to look after the residents' interests and welfare"*.²⁸⁷
171. At trial, the Plaintiffs made the unpleaded allegation that Mr Low did not make attempts to retain CPG as the MA it gave him the opportunity to fulfil his plans for FMSS to come in.²⁸⁸ Mr Low testified that this is untrue *"because uppermost of [his] mind is how to protect the residents' interests. That is, if the town is not managed, services are disrupted, the welfare of the residents will be affected, their life will be affected."*²⁸⁹ On re-examination, Mr Low similarly confirmed:

²⁸¹ AEIC of Mr Low at [53], 2 BA 357.

²⁸² 19.10.2018 NE, Pg 63 L 22 - 25 to Pg 64 L 10 - 13.

²⁸³ 19.10.2018 NE, Pg 66 L 1 - 7.

²⁸⁴ AEIC of Ms Sylvia Lim at [53] and [54], 2 BA 200.

²⁸⁵ 19.10.2018 NE, Pg 47 L 20 - 25 to Pg 48 L 1 - 2, Pg 62 L 2 - 10.

²⁸⁶ 08.10.2018 NE, Pg 83, L 7 - 11.

²⁸⁷ 18.10.2018 NE, Pg 65, L 3 to 9.

²⁸⁸ 16.10.2018 NE, Pg 105 L 16 - 25, Pg 106 L 1 - 14.

²⁸⁹ 16.10.2018 NE, Pg 106 L 22 - 25, Pg 107 L 1.

"Q: Question: What you did was to put your political supporters ahead of your residents' interests. You didn't even check whether CPG is entitled to get out." Your answer is: "What is important is to make sure --" And then you were interrupted. Can you recall what is this you wanted to say at that time?

A: **Because we were racing against time at that point in time, so it was important to us to make sure that we can look after the residents' interests by preparing for some contingency plan in case CPG wanted out and then they can go in and, you know, manage.**"²⁹⁰ (emphasis added)

172. In response to the Honourable Court's queries, Mr Pritam Singh testified that the Town Councillors' key objective was to stabilize the Town Council's operations by taking over the Town Council's operations as soon as possible by waiving the tender and restricting the appointment of the MA to one year as a transitional measure before holding a tender subsequently in the belief that bids could possibly come through then:

"Court: My question is it a little different. My question actually takes off from your answer, which is that you restricted the first term of FMSS's appointment to a year because you felt, or you had reason to think, that bids might come from the market in a year's time?

A: Yes. Yes, your Honour.

Court: So it would follow that if there had been no waiver in 2011, bids could possibly have been made?

A: Your Honour, it follows. In theory, it does. But as I mentioned in my evidence, we were labouring under a short time period to take over the town council. That would justify, if at all, the

Court: waiver --

A: That is correct.

Court: -- **but it doesn't take away the possibility that bids would have been made if a waiver had not been in place.**

A: **Well -- well, your Honour, at that time -- it is possible, but at that time we were quite clear that we wanted to take over the entirety of the town council fast, stabilise operations, understand what is happening, and then move forward. That was -- that was what we were labouring under.**"²⁹¹

(emphasis added)

173. In the MND Report, the MND Review Team stated that "*the review of the AIM transaction and the inputs obtained from the TCs on other major contracts and the changeover process, have surfaced a broader issue of how to ensure continuity of services to residents in the event of a change of MPs.*"²⁹² In this regard, the MND Review Team concluded that "*it is quite understandable that an in-coming MP and an out-going MP would want to take over or hand over the reins of administration of the TC as soon as possible.*"²⁹³ Like the WP MPs, Mr Sitoh Yih Pin of PAP faced a similar situation in taking over Potong Pasir TC from the SPP in 2011. During a parliamentary sitting on 13 May 2013, he explained that one of his strategies in dealing with the

²⁹⁰ 18.10.2018 NE, Pg 63 L 8 to 13.

²⁹¹ 25.10.2018 NE, Pg 68 L 9 - 25, Pg 69 L 1 - 10.

²⁹² 18 CB 18533.

²⁹³ 18 CB 18533.

change in management was to stabilize Potong Pasir TC by waiving a tender and appointing EM Services as MA.²⁹⁴

174. Accordingly, the decision made by the WP MPs to waive a tender and appoint FMSS for 1 year was a judgment call. A similar judgment call had been made by Mr Sitoh Yih Pin. These judgment calls were accepted by MND.

2nd AHTC Meeting on 4 August 2011

Change of date for 2nd AHTC Meeting

175. The Plaintiffs sought to draw adverse inferences on the postponement of the 2nd AHTC Meeting by 2 weeks from 21 July 2011 to 4 August 2011. However, there is no merit to the Plaintiff's allegations. Ms Sylvia Lim's evidence is that if the meeting was held before August 2011, CPG would be in attendance and "*it would have been inapt or awkward to discuss details of the appointment of FMSS in the presence of the incumbent MA*".²⁹⁵ Mr Low similarly testified that his reason for agreeing with Ms Sylvia Lim's suggestion to postpone the meeting was not because they had anything to hide from CPG because they probably already knew that FMSS would be taking over them²⁹⁶, but that he also felt that it was awkward to discuss the details of the incoming MA's appointment in the presence of the outgoing MA.²⁹⁷
176. Mr Low explained that the probable reason for his discomfort stemmed from the sense of distrust that he had of CPG which he perceived to be a PAP supporter.²⁹⁸ Specifically, Mr Low had a particular discomfort with CPG's Mr Seng being present at a meeting where the details of FMSS' appointment would be discussed. This discomfort arose from Mr Low's past dealings with Mr Seng who was previously HDB's TC Secretariat when HTC was still being managed by HDB back in 1991. Nevertheless, the TC decided to maintain the status quo in the transitional period until CPG was released by retaining Mr Jeffrey Chua as Secretary and Mr Seng and Mr Clarence Tan as the Deputy Secretaries of AHTC "*as it would facilitate them to liaise with government agencies*".²⁹⁹ As recorded in an e-mail of 9 June 2011 from Ms How to Ms Sylvia Lim concerning the upcoming 1st TC meeting, Ms How stated that it would

²⁹⁴ Parliamentary Debates on 13 May 2013, 18 CB 18595 - 18596.

²⁹⁵ AEIC of Ms Sylvia Lim at [74], 2 BA 206.

²⁹⁶ 17.10.2018 NE, Pg 132 L 10 - 14.

²⁹⁷ 17.10.2018 NE, Pg 129 L 5 - 16.

²⁹⁸ 17.10.2018 NE, Pg 137 L 17 - 25, Pg 138 L 1 - 6; 18.10.2018 NE, Pg 29 L 20 - 23.

²⁹⁹ 18 CB 13176.

be better to re-appoint the abovementioned Deputy Secretaries so that “*they can effectively assist in facilitating the handover and taking over issues*” because Mr Seng had mentioned “*that the position gives him the required recognition to get things done at the Aljunied TC.*”³⁰⁰ Contrary to the Plaintiffs’ assertions³⁰¹, there was nothing inconsistent about Mr Low’s agreement to appoint CPG’s officers as Secretary and Deputy Secretaries as the concern at the time was in facilitating the handover.

All Town Councillors Approved the Waiver and Appointment of FMSS

177. At the 2nd AHTC Meeting on 4 August 2011, Ms Sylvia Lim sought the confirmation of all the Town Councillors of the decisions she had made. While she had the requisite authority, which had been given to her at the 1st AHTC Meeting, Ms Sylvia Lim’s evidence is that she acted out of prudence and caution³⁰² in seeking the Town Councillors’ confirmation at the 2nd AHTC Meeting to ensure that they were comfortable with her decision.³⁰³ Mr Kenneth Foo confirmed this on cross-examination. He testified that he did not understand Ms Sylvia Lim to be seeking the TC’s approval for FMSS to start work because the authority to act had already been delegated to Ms Lim.³⁰⁴ He testified that he understood Ms Sylvia Lim to be updating AHTC about the appointment of FMSS and for the Town Councillors’ information and clarification if any.³⁰⁵
178. The Plaintiffs alleged at trial that the WP MPs withheld information at this meeting and breached their duties in so doing to ensure that the appointed Town Councillors would approve the arrangements to appoint FMSS as MA.³⁰⁶ Specifically, the Plaintiffs alleged that the withheld information included the alleged arrangement by the WP MPs to park Hougang staff with FMSS at the cost of AHTC from 15 June 2011.³⁰⁷ The Plaintiffs also alleged that the elected MPs would otherwise be put in a bind “*if the town council had said “no” to FMSS [because], that would, at the very least, have put the elected MPs in a bind, because there would have been a severe disruption to the services to the residents.*”³⁰⁸ Even on the Plaintiffs’ case, there was no need for the WP MPs to mislead the appointed Town Councillors for 2 basic reasons:

³⁰⁰ 8 CB 5205.

³⁰¹ 18.10.2018 NE, Pg 43 L 21 - 25.

³⁰² 22.10.2018 NE, Pg 120 L 4 - 20.

³⁰³ 22.10.2018 NE, Pg 6 L 18 - 25, Pg 7 L 1 - 3, 24 - 25, Pg 8 L 1 - 23, Pg 9, L 22 - 25, Pg 10 L 1 - 6.

³⁰⁴ 25.10.2018 NE, Pg 179 L 1 - 5.

³⁰⁵ 25.10.2018 NE, Pg 179, L 7 - 24.

³⁰⁶ 22.10.2018 NE, Pg 181 L 14 - 21.

³⁰⁷ 22.10.2018 NE, Pg 178 L 21 - 25, Pg 179 L 1.

³⁰⁸ 22.10.2018 NE, Pg 180 L 21 - 24.

- (a) Ms Sylvia Lim had the authority to waive the tender and appoint FMSS which she had done; and,
- (b) Ms Sylvia Lim as the Chairman had the casting vote under Section 20 of the TCA. Even if all the appointed Town Councillors did not agree, the Chairman exercising her casting vote together with the 6 elected Town Councillors can pass the resolution to approve the decisions made.

179. The Plaintiffs did not call any witnesses to rebut the following evidence:

- (a) The Town Councillors were aware that FMSS was owned by Mr Loh and Ms How.³⁰⁹ The fact that Mr Loh and Ms How were directors of FMSS was also disclosed during the 2nd AHTC Meeting. Due to their involvement in FMSS, they were both asked to leave the meeting room whilst the Council members deliberated on the appointment of FMSS as MA.³¹⁰ The disclosure of their directorship in FMSS is recorded in the minutes:

"4. MATTERS FOR DISCUSSION AND APPROVAL

4.1 Appointment of Secretary

The Chairman informed the Meeting that she had appointed Mr Danny Loh as the Secretary of the Town Council with effect from 1 August 2011 and wish to seek the Council's ratification on the appointment.

Mr Danny Loh declared to the Meeting that by virtue of his earlier presentation on the appointment of Managing Agent, he had declared that he is the Managing Director and Ms How Weng Fan is a Director/General Manager of M/s FM Solutions & Services Pte Ltd.

*The Meeting noted the above declaration of interest and agreed to ratify the appointment of Mr Danny Loh as the Secretary. Ms How Weng Fan, who had been appointed earlier as Deputy Secretary, shall remain in the same appointment."*³¹¹
(emphasis added)

- (b) The Town Councillors were aware that Ms Sylvia Lim had already appointed FMSS as MA to facilitate the necessary preparation work in the interest of the residents and that she had signed a Letter of Intent dated 15 June 2011. This was expressly recorded in Annex 1 of the Minutes of the 2nd AHTC Meeting which states that "*Chairman indicated that she had consulted the elected members and signed a letter of intent in June 2011 to facilitate preparation*

³⁰⁹ 24.10.2018 NE, Pg 127 L 12 – 25, Pg 128 L 1 – 13; 25.10.2018 NE, Pg 85 L 24 – 25, Pg 86 L 1 – 11; 29.10.2018 NE, Pg 4 L 7 – 15.

³¹⁰ 18 CB 13202, 13207.

³¹¹ AEIC of Mr Low at [79], 2 BA 368, 639.

works”.³¹² The fact that FMSS was already appointed was also stated in Ms Sylvia Lim’s Report of 3 August 2011³¹³ which she circulated to all present at the 2nd AHTC Meeting.³¹⁴ The contents of the said Letter of Intent were reproduced in the Report.³¹⁵ The Town Councillors were also informed through the Report that FMSS had taken over the HTC staff as of 15 June 2011 to prepare for the handover and the basis on which FMSS has calculated their MA fees for so doing.³¹⁶ Thus, the Plaintiffs have no basis to allege that Ms Sylvia Lim was making misleading statements and giving the false impression “that they were actually appointing FMSS on 4 August in circumstances where, ... there was already a binding commitment.”³¹⁷ The appointed Town Councillors were properly informed that FMSS had already been appointed when they confirmed their agreement to the same at this meeting.

- (c) The Town Councillors were aware that FMSS was appointed on the same rates and same terms as CPG³¹⁸ under CPG’s 2nd year fee structure. As Ms Sylvia Lim had testified, “the key issue was that FMSS was taking over Aljunied at CPG’s prevailing rates, which would mean the town council wasn’t incurring additional costs to ... manage Aljunied if CPG had continued.”³¹⁹ This was recorded in the Minutes of the 2nd AHTC Meeting.³²⁰ At trial, the Plaintiffs alleged that the Town Councillors were irresponsible and have breached their duties in agreeing to the appointment of FMSS at this meeting without knowing the rates which were not included in Ms Sylvia Lim’s Report of 3 August 2011.³²¹ However, given that the amount of monthly MA fees payable to FMSS is determined by CPG’s prevailing rate per Equivalent Dwelling Unit (“EDU”) multiplied by the number of EDUs that FMSS managed that month, it is not unreasonable that the Town Councillors were satisfied with knowing that FMSS was appointed on CPG’s prevailing rates.

180. The Plaintiffs’ best attempt at rebutting the Town Councillors’ first-hand evidence was through nitpicking on minute details that were not reflected in the meeting minutes. As

³¹² 18CB 13207, 22.10.2018 NE, Pg 124 L 6 - 9.

³¹³ Tab 6 of (1A)716SCB.

³¹⁴ AEIC of Ms Sylvia Lim at [95], 2 BA 212; 22.10.2018 NE, Pg 118 L 8 – 9; 25.10.2018 NE, Pg 176 L 22 - 25, Pg 177 L 1 - 23.

³¹⁵ 22.10.2018 NE, Pg 118 L 7 - 17.

³¹⁶ 22.10.2018 NE, Pg 169 L 1 - 19, Pg 178 L 5 - 14.

³¹⁷ 22.10.2018 NE, Pg 128 L 3 - 8.

³¹⁸ 29.10.2018 NE, Pg 89 L 20 - 25 to Pg 90 L 1 - 16.

³¹⁹ 22.10.2018 NE, Pg 135 L 18 - 22.

³²⁰ 18 CB 13202.

³²¹ 22.10.2018 NE, Pg 131 L 20 - 25 to Pg 132 L 1 - 5.

Mr David Chua testified, the minutes often do not record every detail of the discussions at the TC meetings.³²² Mr Pritam Singh gave similar evidence on this issue:

“Q: You're not answering my question. My question is: why is it that a reasonable town councillor would have questions, but you didn't have any?

A: **Well, that's because there are also other discussions that are occurring between the MPs. They're not recorded in emails. I know the big picture, the strategic direction we need to go, and we need to get our team, in.**³²³
(emphasis added)

181. There is un rebutted evidence that Ms Sylvia Lim sent an e-mail to Mr Low and Mr Yaw on 3 August 2011 at 4.02pm saying that she wanted to attach an ACRA search of FMSS in the report that she was preparing for the Town Councillors for the 2nd AHTC Meeting.³²⁴ However, Ms Sylvia Lim testified that this attachment was not produced at the meeting eventually as it slipped her mind.³²⁵ There was nothing sinister about this as imagined by the Plaintiffs. If indeed there was a conspiracy to withhold information from the Town Councillors as alleged, there would have been no such email.³²⁶

182. In a similar vein, following a media query which Ms Sylvia Lim received on 1 August 2011 which includes a reference to an ACRA search of FMSS that showed Ms How as one of FMSS's officers and shareholders³²⁷, the news report which was eventually published on 2 August 2011 also referred to Ms How's shareholding in FMSS.³²⁸ As Mr Pritam Singh has testified, this fact was open knowledge:

“Q: Mr Singh, did it occur to you that when the announcement is made publicly that FMSS had been appointed, it will be learnt by the industry that AHTC did not conduct a tender?

A: Yes, of course.

Q: And did it occur to you that when the announcement is made, the industry -- and when I talk about "the industry", I'm talking about those who provide managing agent services --

A: To HDB estates or managing agents in general?

Q: **Did it occur to you that when the announcement is made, the industry would know that FMSS had, on its board, Ms How?**

A: **Oh, absolutely. It just costs \$5.15 to make an ACRA search. You can find out everything you need to know about the company.**

Q: **And the industry would have known that Ms How was the secretary and general manager of Hougang Town Council and had been so for many 25 years?**

A: **I would think that would be reasonable.**³²⁹ (emphasis added)

183. It is submitted that the Plaintiffs chose to run this unpleaded “conspiracy” case only at trial as there is no legal basis for it. The applicable provision of the TCA at the material

³²² 29.10.2018 NE, Pg 87 L 16 - 21.

³²³ 25.10.2018 NE, Pg 53 L 23 - 25, Pg 54 L 1 - 6.

³²⁴ AEIC of Ms Sylvia Lim at [92], 2 BA 211.

³²⁵ 22.10.2018 NE, Pg 90 L 3 - 25, Pg 91 L 1 - 4.

³²⁶ 22.10.2018 NE, Pg 90 L 23 - 25 to Pg 91 L 1 - 4.

³²⁷ AEIC of Ms Sylvia Lim at [85], 2 BA 209.

³²⁸ AEIC of Ms Sylvia Lim at [92], 2 BA 211.

³²⁹ 25.10.2018 NE, Pg 57 L 5 - 25 Pg 58 L 1.

time did not prescribe a duty on the Town Councillors to disclose whether the TC staff have any interest in the MA. Notably, under Section 15(1) of the TCA, the Town Councillors only had a duty to disclose their own interest:

“Disclosure of interest by members

15.—(1) A member of a Town Council who is in any way, directly or indirectly, interested in a transaction or project of the Town Council shall disclose the nature of his interest at a meeting of the Town Council.”

184. It is only through the Town Councils (Amendment) Bill in 2017 that Section 20 of the TCA now disqualifies an individual from being a key officer of the TC if the individual is appointed as auditor of the TC, is the MA or becomes the MA of the TC, or is in a position to exercise a significant influence over or with respect to the management or operation of the business of the MA of the TC.

The Alleged Conflict of Interests

Industry Practice and Arrangement in ATC before 2011

185. The Plaintiffs did not challenge the position that it is an industry practice to have senior employees of the MA that are also key officers of the TC such as the General Manager and Secretary.³³⁰ It is not disputed that under ATC's previous management, Mr Jeffrey Chua held the position of Secretary even though he was also the Managing Director of CPG.³³¹
186. KPMG sought to distinguish Mr Jeffrey Chua's situation by claiming that as Mr Danny Loh and Ms How were shareholders, they had a “profit motive” which Mr Jeffrey Chua did not have.³³² This distinction is misplaced:
- (a) If the mischief of conflict of interests is to be seriously addressed, there should be no difference between a Managing Director of the MA holding the appointment of Secretary and a Managing Director who is also a shareholder of the MA, holding the appointment of Secretary.
 - (b) There is nothing in the TCA that prohibits such as dual appointments.
 - (c) The very nature of the appointment of a MA is on the basis that the management of the TC is outsourced to the MA. The staff of the TC (which

³³⁰ AEIC of Mr Low at [56], [61], 2 BA 358, 361; AEIC of Ms Sylvia Lim at [48], [49], 2 BA 198, 199.

³³¹ AEIC of Ms Sylvia Lim at [47], 2 BA 198.

³³² KPMG Report at [5.2.5], 26 CB 19893.

would comprise the staff of the MA) report to the Town Councillors – the elected MPs and the members appointed by the elected MPs.

- (d) On the facts, KPMG had failed to take into consideration that Mr Jeffrey Chua was also a shareholder of the MA, CPG. Mr Jeffrey Chua had share options in Downer EDI Limited, the ultimate holding company of CPG.³³³ KPMG's distinction between the "profit motive" and "service motive"³³⁴ is therefore flawed.
- (e) Mr Hawkes acknowledged that Mr Jeffrey Chua's share options is a relevant issue where conflicts of interests are concerned as this would give Jeffrey a "profit motive" as defined in the KPMG Report.³³⁵ In fact, Mr Hawkes also identified Jeffrey's status as a Managing Director as a type of conflict of interests.³³⁶
- (f) The document which records these share options is CPG's financial statement which is part of the CPG MA Contract.³³⁷ Mr Hawkes confirmed on cross-examination that he reviewed the CPG MA contract during the audit.³³⁸ Given the nature of KPMG's allegations, this fact must have been considered but no mention of it was made in the KPMG Report. This calls into question both the alleged independent nature of the Report and the quality of the review undertaken by KPMG in preparing its Report.

187. Notwithstanding the holding of dual appointments being an industry practice that was not prohibited by the TCA, the evidence is that the Town Councillors considered the issue of potential conflict of interests. Ms Sylvia Lim testified that she had sought Jeffrey's views on the potential conflict of interests at the 30 May 2011 meeting and Jeffrey shared his views with those present at the meeting in relation to the system which ATC had in place to address this issue:³³⁹

- (a) The job specifications for the MA were drawn up in the MA contract by an independent firm of quantity surveyors. The job scope was not determined by the MA.

³³³ See trial exhibit marked "1D1".

³³⁴ KPMG Report at [1.1.4], [1.4.2], 26 CB 19870, 19872.

³³⁵ 09.10.2018 NE, Pg 137 L 21 - 25, Pg 138 L 1 - 21.

³³⁶ 09.10.2018 NE, Pg 139 L 3 - 5.

³³⁷ S/No. 21 of the Agreed Bundle of Documents ("AB"). (The CPG MA Contract included in the CB is incomplete).

³³⁸ 09.10.2018 NE, Pg 112 L 14 - 21.

³³⁹ AEIC of Ms Sylvia Lim at [47], 2 BA 198.

- (b) MND was informed of the contracts which ATC entered into with the MA. It is undisputed that AHTC had provided Quarterly Reports to MND with details of the MA contracts during the time WP managed AHTC.³⁴⁰ MND's purpose of requiring TCs to make such quarterly declarations was to ameliorate problems that may arise from any possible conflicts of interests by having the TCs make full disclosure to MND of projects or works that are awarded by the TC to the MA.³⁴¹ MND did not raise any objections in relation to the contracts that were awarded to FMSS as declared in the Quarterly Reports.³⁴²
 - (c) Jeffrey responded to say that as Secretary and General Manager, the decision-making authority lay with the TC and all he did was to execute ATC's decisions.
 - (d) ATC was subject to annual audits by external auditors.
188. As evidenced by Mr Low's e-mail of 19 May 2011, Mr Low took the position that if Mr Toh Kay Seng, a former appointed Town Councillor of HTC, is going to be a shareholder of FMSS, he would not propose that he be reappointed as a Town Councillor of AHTC.³⁴³ Mr Low's key concern was that no personnel involved in the MA should be a Town Councillor. He also confirmed this on cross-examination at trial:

"Q: Okay. Could you explain why -- and listen very careful to my question so that you answer it -- **why, in circumstances where your senior employees at AHTC, the most senior employees, were shareholders of FMSS, and that did not give rise to a concern?**

A: What my understanding is that this has been an industry practice, and when we met CPG on 30 May, I think the issue was raised at that meeting, and CPG also had the same or similar payment structure in Aljunied Town Council. And what they told us, I remember, was that, first of all, you know, the MA contract, you need a (unclear) to do it, and in any case, if there's any contract which is awarded to the MA, you will have to report to MND on a quarterly basis. And, anyway, the town council is subject to audit. **And I also came to be aware that there was a report that in case of Jurong Town Council, the MA is the owner of the company, he also holding senior position in the town council, and he also a member of the PAP, so to me it is industrial practice. It is conflict of interest and you have to dealt with, but it's a conflict which can be mitigated. What I'm most concerned, Mr Singh, at the point in time, because we going to award to FMSS and FMSS is a new company, so my prime concern at that point in time was that I have to make sure that there's no conflict of interest between FMSS and the councillors, the town councillors, who are going to decide to award to FMSS. So if you look further into the email, you will see that the last paragraph, Mr Singh, I state that: "Please confirm whether Toh Kay Seng is going to be a shareholder. If he is, I will not propose to reappoint him as councillor." Toh Kay Seng was a councillor before, and he came to know the plan of FMSS, and I understand that he has interest and he want to invest in the company. So I wasn't sure, so I'm going to make sure that this is my first**

³⁴⁰ AEIC of Ms Sylvia Lim at [187], [188], 2 BA 247, 248.

³⁴¹ AEIC of Ms Sylvia Lim at [187], 2 BA 247.

³⁴² AEIC of Ms Sylvia Lim at [189], 2 BA 248.

³⁴³ AEIC of Mr Low at [58], 2 BA 359.

priority, in terms of conflict of interest, that there is no conflict of interest between the town councillors and FMSS.

Q: But the practice that you referred to was a practice where employees of the managing agent were on both sides; right?

A: Well, whether they are employed -- to me, whether they are employed or shareholder, but they are conflicted in any way."³⁴⁴ (emphasis added)

189. In a similar vein, AHTC had released a media statement on 5 August 2011 stating that no WP members had any interest in FMSS.³⁴⁵ Ms Sylvia Lim confirmed this at trial.³⁴⁶

190. When similar concerns of conflicts of interests arose on the PAP TCs' sale of the TCMS software that belonged to PAP TCs in an open tender in 2010 to AIM, a PAP-owned company (the "**AIM Transaction**"), MND was of the view that there was no conflict of interest given the nature of TCs and the provisions in the TCA and TCFR. This is dealt with in the next section.

The MND Report on the AIM Transaction

191. The accusations against the Town Councillors in this case are all the more surprising given the clear statements made by MND about the nature of TCs and its own conclusions in the MND Report. It is necessary for this Honourable Court to have regard to this Report as it not only reflects the intent behind the TCA and TCFR, it also sets out how the legislative regime was interpreted and applied in a case where there were allegations of conflict of interest.

192. The MND Report was issued following MND's review of the AIM Transaction.³⁴⁷ The scope of MND's review included having to satisfy itself that public funds were safeguarded and residents' interests were not compromised by this sale as there were concerns raised in public discussions of the conflict of interest that existed.³⁴⁸ MND was also asked to make observations on the nature of TCs and how they are run in the course of its review.³⁴⁹ In so doing, the MND TC Review Team studied the TCA, the TCFR, examined the external audit reports for the FY2010 financial accounts of the 14 PAP TCs and obtained and examined statements and inputs from the interviews it conducted with the PAP TCs, AHPETC, AIM, and all TCs on the handling of major

³⁴⁴ 17.10.2018 NE, Pg 167 L 17 - 25, Pg 168 L 1 - 25 and Pg 169 L 1 - 12.

³⁴⁵ 23.10.2018 NE, Pg 91 L 2 - 4, and Pg 93 L 1 - 25.

³⁴⁶ 8 CB 5449.

³⁴⁷ 24 CB 18531.

³⁴⁸ 24 CB 18531.

³⁴⁹ 24 CB 18526.

TC contracts and systems and the issue of how changeovers between political parties can be better managed.³⁵⁰

193. In concluding that the AIM Transaction had complied with the TCA and the TCFR because the PAP TCs acted in good faith in the interests of and for the benefit of their residents³⁵¹ and there was no misuse or loss of public monies arising from this transaction,³⁵² the MND Review Team stated that it studied the transaction in the context of the Act and the consistent nature of its administration. The following observations were made by the MND Review Team:

“Nature and Administration of the Town Councils Act (TCs Act)

a) TCs were set up nationwide in 1989 by an act of Parliament to serve two objectives. Firstly, TCs were set up to enable elected politicians, i.e. MPs who were elected by constituents, to be given authority and responsibility to take charge of their constituents’ estate and allow each Town to develop its own distinctive character under the MP’s leadership. Secondly, TCs so set up made MPs accountable to their direct voters for the running of their estate, as these voters can take into account the MP’s performance in running the TC when they go to the polls.

b) TCs deliver a public service previously handled solely by HDB across the country. The persons selected to lead the management of TCs are selected on a political basis. They are MPs serving the constituents of the wards that have elected them, and an intent of the Town Councils Act was that how they manage and run their TCs will have a bearing on their electoral fortunes at the next election. Given the political character of the TC’s leadership and the political implications attached to the management of the TC, it is inevitable that the TC’s function is carried out in a competitive politicised context.

*c) The Town Councils Act (TCs Act) and subsidiary legislation such as the Town Council Financial Rules (TCFR) reflect a recognition of this political nature of TCs. The intent is to give the elected MPs as much latitude as possible to run the TCs within broad and general rules laid down to ensure proper governance and safeguard public interest. For instance, TCs are required to keep proper accounts, which must be audited annually, by an independent auditor who needs to state whether the receipts, expenditures, investments and the acquisition and disposal of assets have been in accordance with the TCs Act. **Beyond that, TCs are empowered with much autonomy to manage their affairs.** For example, each TC has the powers to make its own by-laws, to set its service and conservancy charges (S&CC) and its enforcement policy. **The TCs Act also does not prohibit transactions with persons or entities associated with political parties. In the administration of the Act, latitude has always been given to MPs, across political parties, to exercise autonomy in their judgement on such matters as to how best to achieve their agenda and serve their residents’ interest. The TCFR also sets out the rules for good financial governance.** However, the regulatory approach by MND is again one of a light touch in order to respect the autonomy of and to provide flexibility to MPs running their TCs and be directly accountable to residents, without excessive intervention by the Government.*

³⁵⁰ 24 CB 18526.

³⁵¹ 24 CB 18531.

³⁵² 24 CB 18532.

AIM Transaction and Compliance under the TCs Act

*d) An issue that has been raised in public discussions is that of conflict of interest and whether the interests of the TCs were protected, because AIM, a PAP owned company, was contracting with TCs which were headed by PAP MPs. In considering the issue of conflict of interest, the background to the setting up of TCs and the nature of the TCs as explained earlier is important. **TCs were set up for, and fulfil a political purpose, and therefore latitude has always been given to TCs to exercise autonomy, where they see fit, in engaging those who share their political agenda or are affiliated to their parties. The substantive issue is therefore whether a conflict of interest arose in terms of TC members having a pecuniary or direct interest in the transaction, and whether the interests of the TCs' residents were protected or impaired and whether there was any misuse of public funds.***

*e) The Review Team found that the PAP TCs complied with the open tender process under the TCs Act and the TCFR. **The review also found that the TCs acted in good faith in the interests of and for the benefit of their residents. There was no misuse or loss of public monies arising from this transaction.*** (emphasis added)

194. As in the case of the AIM Transaction, it is also the case in the present matter that even if the Town Councillors had seen it fit to engage as MA and EMSU service providers those who share their political agenda or are affiliated to their party, the substantive issue is whether the Town Councillors had a pecuniary or direct interest in the transaction, and whether the interests of the residents were protected and there was no misuse of public funds. It is not the Plaintiffs' case that the Town Councillors had a direct or pecuniary interest. The Plaintiffs have also not established by any evidence that the interests of the residents were not protected and that there was misuse of public funds. Their claims herein are no more than a call for this Honourable Court to intervene in the management decisions of the Town Councillors, which it is submitted, is not the function of this Honourable Court.

195. Ms How and Mr Loh were not WP members; this is undisputed. Even taking the Plaintiffs' case at their highest that they were WP supporters, this does not render the appointment of FMSS or its employment of the former staff of HTC an improper exercise of AHTC's powers as alleged by the Plaintiffs. As the MND Review Team had noted, TCs were set up to fulfil a political purpose. It is permissible for TCs to engage those who share their political agenda or are affiliated to their parties (see [193] above).

AHTC's Standing Instructions for Chairman or Vice-Chairman's Signature on All Payments to FMSS/FMSI

196. In assessing the conduct of the Town Councillors, it is necessary to note that despite their limited experience in running a TC, efforts were made to implement additional safeguards even though none was required under the TCA or TCFR. The Town Councillors instituted a standing instruction that it was compulsory for the Chairman or

Vice-Chairman to sign off on all payments made by AHTC to FMSS regardless of the amount. At trial, Mr Pritam Singh testified that this standing instruction served as an independent verification in the payment process from AHTC to FMSS.³⁵³

“Q: Yes. And where invoices come from FMSS, then whoever is signing the cheques, and this would include you on the few occasions that you signed them, would have known that whatever is paid to FMSS clearly would, if there's a profit on the FMSS side, be to the benefit of the shareholders; yes?

A: It follows, yes.

Q: Thank you. **Was this issue ever raised that because of this particular outcome or possibility, if there's a profit, there should be an independent verification somewhere along the process so that there is a break in chain between the FMSS documents and what is then put before the person asked to sign?**

A: **Mr Singh, I believe we operated on the basis that the chairman, and in my case, if I was asked to sign a cheque, would be that break, that we are not related to the managing agent and ultimately we are the ones who will have to sign off and take responsibility for that payment**³⁵⁴ (emphasis added)

197. KPMG criticised AHTC's payment process on the basis that “*“conflicted persons” sat at important gateways in the Town Council's payment approval processes*” such that they were “*in a position to approve payments to themselves at critical stages of the process without meaningful independent oversight*”.³⁵⁵ KPMG's allegations are misconceived. These “conflicted persons” do not exercise control over the payment process such that their involvement can compromise the process.³⁵⁶ As per Mr Low's evidence:

“The fact that one that one such “conflicted person” (to borrow the term used in the KPMG Report) is involved in one stage of the payment process does not render the entire process ineffective. This is not sensible because the converse means that a payment process that only involved “non-conflicted persons” would certainly lead one to the conclusion that all work was done for which payment should be made. The sum total of assessing a MA who has a wide range of work and responsibilities go beyond documentary proof of its work. Reliance on reviewing the supporting documentation prepared by the MA without more in assessing whether the MA has carried out its work is simplistic and will only be a paper exercise. The real measure of the MA's performance comes from the level of satisfaction of the residents since they are the ones who pay monthly S&CC fees to receive the benefit of the MA's services. The MPs were in touch with the residents' sentiments through the feedback and comments we gathered which in turn assisted us in our assessment of the MA's work.”³⁵⁷ (emphasis added)

198. For instance, Mr Yeo Soon Fei, a FMSS Director and Shareholder, was identified by KPMG as a “conflicted person”.³⁵⁸ Mr Yeo testified in relation to the payment process that whenever an AHTC/AHPETC officer (including himself) affixed a stamp on the

³⁵³ AEIC of Ms Sylvia Lim at [171], 2 BA 243; AEIC of Mr Low at [101], 2 BA 378.

³⁵⁴ 25.10.2018 NE, Pg 110 L 17 - 25 to Pg 111 L 1 - 14.

³⁵⁵ KPMG Report at [1.4.4], 26 CB 19872.

³⁵⁶ KPMG Report at [1.4.4], 26 CB 19895.

³⁵⁷ AEIC of Mr Low at [107], 2 BA 380.

³⁵⁸ 26 CB 19893.

invoice, the officer was merely stating that the figures in the invoice are accurately tallied.³⁵⁹ As such, these officers could not have manipulated the payment process by “certifying” that the works were completed for which payment is due when they were not. In fact, the Plaintiffs have not proven that AHTC paid FMSS in excess of what is due under the MA Contracts and EMSU Contracts. As Mr Pritam Singh also highlighted, some of the AHTC staff involved in the payment process may not even be aware that these “conflicted persons” held shares in FMSS such that they could prefer their interests.³⁶⁰ There is therefore no basis for PRPTC to allege that the system of checks and balances in AHTC was so lacking and flawed that it allowed “conflicted persons” to enrich themselves almost at will.³⁶¹

199. Having delegated the management of the TC to a MA, it would appear that the Plaintiffs expect the Chairman and Vice-Chairman to personally verify on the ground that every item of work is completed before appending their signature to the cheque.³⁶² This is an untenable position.
200. AHTC has a system in place that allows them to supervise the MA and make an overall assessment of the MA’s works and to satisfy themselves that things were being managed.³⁶³ This included official channels such as IMMS which was AHTC’s centralized computer system to monitor the MA’s estate maintenance³⁶⁴, the regular interactions which the MPs had with the MA staff through meetings such as the quarterly TC meetings, weekly Chairman’s meetings or sub-committee meetings³⁶⁵, regular estate visits conducted by the MPs, at times together with the Property Officers,³⁶⁶ and the feedback the MPs collect through meeting with the residents.³⁶⁷ Former Operations Manager and Deputy General Manager of AHTC, Mr Yeo Soon Fei, testified at trial³⁶⁸ that the MPs themselves will conduct site inspections and that the MA staff were on call 24 hours and would attend to addressing issues any time an issue arises. Mr Yeo said that there were occasions where the MPs would call the MA staff at night to follow up on the status of certain tasks. Mr Hawkes confirmed on cross-

³⁵⁹ 4 BA 1448; 30.10.2018 NE, Pg 48 L 5 - 17.

³⁶⁰ 25.10.2018 NE, Pg 109 L 19 - 25 to Pg 110 L 1 - 4.

³⁶¹ PRPTC’s Opening Statement at [6].

³⁶² 24.10.2018 NE, Pg 86 L 2 – 25, Pg 87 L 8 - 18.

³⁶³ 24.10.2018 NE, Pg 87 L 5 - 13.

³⁶⁴ AEIC of Ms Sylvia Lim at [201], 2 BA 253; AEIC of Mr Low at [114] to [115], 2 BA 383.

³⁶⁵ AEIC of Mr Low at [112], 2 BA 382.

³⁶⁶ AEIC of Mr Low at [114], 2 BA 383.

³⁶⁷ AEIC of Mr Low at [113], 2 BA 382.

³⁶⁸ 30.10.2018 NE, Pg 39 L 2 - 13.

examination that he had no reason to doubt that the MPs did in fact carry out such checks on the MA's works.³⁶⁹

201. In this regard, Ms Sylvia Lim testified that she worked with the MA on a daily basis such that she had knowledge of how they were managing the town³⁷⁰ and was therefore able to assess their work.³⁷¹ Similarly, Mr Pritam Singh testified that the verification of whether payment for works should be made, included information being shared to the cheque signatory, or through that signatory being the MP on the ground such that he/she would have gotten feedback about certain issues.³⁷² The Town Councillors have to necessarily rely on such a system for feedback as it is not possible to shadow the work of the entire staff of the MA in all 6 divisions. KPMG's conclusions disregard common sense and logic. In fact, other PAP MPs such as Mr Baey Yam Keng, PAP MP and a former Chairman of Tampines TC, also appear to share the wisdom of this practical approach of having to delegate work and not being able to personally verify every item of work before payment is made. Mr Baey made the following statement in his Facebook post of 16 December 2014:

*"The weekly stack of documents and cheques I have to sign as town council chairman. I am unable to check through everything but I will ask questions randomly. We need to have the system in place and the right staff to do their work properly. However, ultimately, I am still responsible."*³⁷³

202. It is illogical to suggest that having delegated the management of the TC to a MA, the Town Councillors who sign cheques for payment to the MA need to personally verify that every item of work was completed by going down to the ground to ensure that has happened before appending his or her signature to the cheque. Logically, this would defeat the purpose of engaging an MA. The Plaintiffs themselves appear to acknowledge busy MPs such as Mr Singh would generally have to rely on the MAs having done a proper job of verifying and calculating because they would be too busy to double-check and go down to the ground and see whether it was done or not.³⁷⁴

S/No. 7 of KPMG's 1st Table: Alleged Improper Payment of \$80,990

203. KPMG identified that a sum of **\$80,990** paid by AHTC to FMSS between 14 July 2015 and 21 October 2015 was improper because it was made in breach of financial

³⁶⁹ 10.10.2018 NE, Pg 23, L 2 - 25, Pg 24 L 1 - 25, Pg 25 L 1 to 25, Pg 26 L 1 - 25, Pg 27 L 1 - 7.

³⁷⁰ 24.10.2018 NE, Pg 89 L 23 - 24.

³⁷¹ 24.10.2018 NE, Pg 85, L 23 - 25, Pg 86 L 1.

³⁷² 25.10.2018 NE, Pg 112 L 25 to Pg 113 L 1 - 6.

³⁷³ AEIC of Mr Pritam Singh at [95], 2 BA 908.

³⁷⁴ 25.10.2018 NE, Pg108 L 11 - 22.

authority without the Chairman or Vice-Chairman's signature.³⁷⁵ However, at the material time, FMSS was no longer the MA and the TC was directly managed. The additional measure was therefore no longer necessary. Mr Hawkes confirmed on cross-examination that he read the relevant minutes of meeting which gave context to the reasons for the standing instruction³⁷⁶ and was aware of the Town Councillors' response that the rationale for the standing instruction no longer existed at the time these payments were made.³⁷⁷ Surprisingly, in yet another example of tunnel vision, Mr Hawkes maintained during the cross-examination that the standing instruction remained applicable because "rules have been set".³⁷⁸ This position is untenable.

S/No. 1 of KPMG's 1st Table: Alleged Improper Payment of \$8,990

204. The Plaintiffs questioned Mr Singh about the sum of \$8,990 which KPMG identified as an overpayment by AHTC to FMSS in respect of overtime claims and CPF contributions by FMSS staff.³⁷⁹ The Plaintiffs relied on this issue to suggest that it serves as an instance of AHTC's control failures in relation to FMSS because FMSS was allowed to claim monies from AHTC when it had no basis to. This suggestion is incorrect because AHTC had specifically authorized FMSS to incur the costs of \$8,990.
205. Of the \$8,990, \$7,322 was for general overtime claims and CPF contributions from FMSS finance staff who had put in many extra office hours to attend to the demands of the special audit by AGO from March 2014 to January 2015.³⁸⁰ This audit was very different from the usual audits envisaged under the specifications of the 2nd MA Contract and outside the contemplation of both AHTC and FMSS. As such, AHTC was agreeable to making these payments. The remaining \$1,668 of the \$8,990 was AHTC's payment for the overtime work provided by FMSS during the Chinese New Year on the elected Town Councillors' request. AHTC's special approval for the additional payments is recorded in the minutes of the weekly Chairman's Meeting on 5 February 2015.³⁸¹
206. On cross-examination, Mr Hawkes confirmed that KPMG's criticism of these payments stems from the legal advice it took on whether FMSS is allowed to charge AHTC for

³⁷⁵ KPMG Report at [5.3.27], 26 CB 19903.

³⁷⁶ 09.10.2018 NE, Pg 58 L 19 - 25.

³⁷⁷ 09.10.2018 NE, Pg 55 L 1 - 10, Pg 56 L 1 - 4.

³⁷⁸ 09.10.2018 NE, Pg 55 L 24 - 25, Pg 56 L 1 - 4.

³⁷⁹ 26 CB 19899.

³⁸⁰ AHTC's Response Part 2, 19 CB 14459.

³⁸¹ 19 CB 14512.

the overtime claims of their finance staff under the 2nd MA Contract and concluded that they were not allowed to.³⁸² Given that this is ultimately an issue of interpretation and the payment was made pursuant to a shared understanding reached between AHTC and FMSS that the overtime work in question is not covered by the 2nd MA Contract,³⁸³ the Plaintiffs should not second-guess the decision and allege that this payment is improper such that it is recoverable from the Town Councillors personally.

Fixed Contractual Payments were Made Under the 1st and 2nd MA Contracts

207. It is undisputed that AHTC had a contractual obligation to make fixed monthly payments under the 1st and 2nd MA Contracts with FMSS. Mr Hawkes had agreed on cross-examination that such payments were fixed monthly contractual payments and the calculation of the amounts payable is “easily determinable and easily calculable”.³⁸⁴
208. Under the MA Contracts with FMSS which were based on the same contractual terms adopted by ATC with CPG³⁸⁵ (which KPMG acknowledged in its Report³⁸⁶), there were no clauses in the MA Contracts that would either require FMSS to make payment of liquidated damages or allow AHTC to vary the amount payable to FMSS in instances where there was dissatisfaction with their performance as MA.
209. As such, it is difficult to see how the officers of AHTC who are approving payments to FMSS may exercise any preference towards FMSS in so doing given that AHTC has a fixed contractual obligation to make these monthly payments.

Appointment of FMSS under the 1st EMSU Contract

210. The Plaintiffs alleged that Ms Sylvia Lim had created the urgency of having to waive a tender for the 1st EMSU Contract on the basis of a fictional verbal agreement, blamed CPG and then used that to justify the waiver.³⁸⁷ This is untrue. At the 3rd AHTC meeting on 8 September 2011, the Town Councillors present were reminded that the contracts with the EMSU service providers (i.e. CPG and EM Services) were expiring on 30 September 2011. At the time, EM Services had declined AHTC’s request for extension of 6 months whilst CPG had not yet formally replied, though it had verbally agreed to do so. As such, a special committee was appointed under Rule 76(4) of the

³⁸² 08.10.2018 NE, Pg 110 L 20 - 25.

³⁸³ 08.10.2018 NE, Pg 114 L 1 - 9.

³⁸⁴ 10.10.2018 NE, Pg 93 L 9 - 25 to Pg 94 L 1.

³⁸⁵ AEIC of Ms Sylvia Lim at [196], 2 BA 251.

³⁸⁶ KPMG Report at [5.5.45], 26 CB 19919.

³⁸⁷ 23.10.2018 NE, Pg 119 L 12 - 14.

TCFR to consider FMSS's proposal to provide EMSU services in case CPG decides not to extend the contract.³⁸⁸ The Plaintiffs were incorrect in asserting that CPG had only given an "indication of interest" which does not amount to a "verbal agreement"³⁸⁹ to extend its existing EMSU contract for 6 months. Reference is in fact made to this "verbal agreement" in the Minutes of the 3rd AHTC Meeting on 8 September 2011.³⁹⁰

211. In writing to confirm that CPG will not be extending the contract contrary to its earlier indication, Mr Jeffrey Chua sent Ms How an e-mail on 14 September 2011, stating that the "*it will not be appropriate*" for CPG "*to continue providing the EMSU services to [AHTC]*".³⁹¹ The language used by Mr Jeffrey Chua was very telling of the political nature of the TCs that market players would make the business decision to refuse taking up projects even where there is money to be made.
212. Given the shortness of time, Ms Sylvia Lim arranged for the special committee to meet with the FMSS representatives on 18 September 2011. Ms Sylvia Lim sent an e-mail to Mr Loh, Ms How and Mr Vincent Koh on 16 September 2011 to confirm that all 4 members of the special committee are available for the meeting on 18 September 2011. Ms Sylvia Lim also instructed them to bring copies of the relevant EMSU contracts for Kaki Bukit, Aljunied and Hougang for comparison purposes and the proposals for the specific issues of manpower and pricing.³⁹² The Plaintiffs did not take issue with whether the meeting of 18 September 2011 occurred and the issue of what constituted the specifications under the 1st EMSU Contract until cross-examination. Yet, they made an issue of Ms Sylvia Lim, Ms How and Mr Vincent Koh not mentioning this in their respective AEICs and that "*this is the first time we are hearing about it*".³⁹³
213. The Plaintiffs also questioned Ms Sylvia Lim on the sequence of events during this meeting of 18 September 2011 and whether the special committee discussed the contract specifications in the presence of FMSS. The Plaintiffs then raised yet another new allegation that Rule 76(4) of the TCFR was breached because FMSS was involved in making a recommendation for its appointment as EMSU service provider.³⁹⁴ However, this is a clear misreading of the rule which provides that "*the managing agent does not participate in the evaluation and recommendation for such waiver*". As Ms

³⁸⁸ AEIC of Ms Sylvia Lim at [127], 2 BA 229.

³⁸⁹ 23.10.2018 NE, Pg 129 L 1 - 23.

³⁹⁰ 8 CB 5573.

³⁹¹ 8 CB 5560; AEIC of Ms How Weng Fan at [178], 4 BA 1380.

³⁹² 8 CB 5568; 23.10.2018 NE, Pg 158 L 7 - 25 to Pg 159 L 1.

³⁹³ 23.10.2018 NE, Pg 150 L 19 - 25 to Pg 151 L 1 - 17.

³⁹⁴ 23.10.2018 NE, Pg 168 L 6 - 7.

Sylvia Lim explained, FMSS did not take part in the recommendation for waiver.³⁹⁵ They were not involved in the Council's discussions on waiver which took place over e-mail correspondence which they were not privy to.

214. Ms Sylvia Lim raised this issue with all the TC members after the meeting on 18 September 2011 over e-mail. Her first e-mail to them was sent at 11.37pm that day to update them of the special committee's discussion and the agreement it reached with FMSS on the contract specifications for the 1st EMSU Contract including the applicable standards:

"Dear All,

The committee (Show Mao, Faisal, Anthony and I) met today at 2 pm at AHTC office to discuss the scope of works for We compared the essential terms of the existing EMSU contracts:

- a) CPG's contract for Aljunied wards except Kaki Bukit;***
- b) EM Services' contract for Kaki Bukit ward;***
- c) Integrated Solutions' contract for Hougang SMC.***

We noted that:

- 1. CPG v EM: Generally, the standards expected for essential maintenance services for CPG and EM Services were about the same e.g. answer calls within 6 rings; to attend to lift rescues within 25 mins of being notified of persons trapped; to attend to problems relating to the common area only and not within the individual flats; replacement parts were charged in addition to the monthly EMSU fee.*
- 2. CPG/EM v Integrated: We noted that the standards contracted for Hougang SMC showed some differences e.g. time limit for lift rescue is officially 30 mins; the contractor also provided some interim help to problems which occur within the units (e.g. choked gulleys) and not just common areas; Integrated's fee was higher than CPG/EM (due to lack of economies of scale).*

The Committee decided that:

- A. The scope of EMSU services for Aljunied GRC would take the higher standards among the 3 contracts. Therefore, e.g. lift rescues are to be done within 25 mins; interim help would be provided to problems even within the flats.***
- B. The fee payable should be about the same as the existing combined fees charged by CPG and EM Services, adjusted for electoral boundary changes. The fee currently is \$70,110.08, excluding replacement parts.***
- C. The manpower requirements would follow the guidelines in the CPG/EM contracts (since there are more economies of scale compared to Hougang SMC)- e.g. one plumber to 16,200 equivalent dwelling units etc.***
- D. The EMSU services to be provided are:***
 - i) telephone answering / channelling back to a monitoring system;***
 - ii) lift rescue service;***
 - iii) lift telemonitoring service and;***
 - iv) tradesman service.***

*The Committee also noted that there are certain advantages of awarding the MA contract and the EMSU contract at the same time e.g. having a clean decision and not feeling obliged to award the MA contract to the existing EMSU contractor. **Given the urgency, the Committee recommends that the EMSU contract be awarded for the interim period***

³⁹⁵ 23.10.2018 NE, Pg 169 L 1 – 6.

from 1 Oct 2011 to 30 June 2012, so that the tenders for the MA contract and the EMSU contractor can be called at about the same time.

As the existing EMSU contracts expire on 30 Sep, Council needs to make certain decisions by email circulation now, as our next AHTC meeting is only on 13 Oct which is too late. I will send a separate email shortly on the decisions Council needs to make.

Sylvia Lim
AHTC Chairman³⁹⁶

(emphasis added)

215. Ms Sylvia Lim then sent a further e-mail at 11.55pm to seek Council's approval to waive a tender for the provision of EMSU services and award the contract on an interim basis to the "interim MA":

"Dear All,

*As you know, the existing EMSU providers CPG (Aljunied GRC except Kaki Bukit Div) and EM Services (Kaki Bukit Div) confirmed just this last week that they are not willing to extend their services beyond 30 Sep. **In CPG's case, this came as a surprise on 14 Sep and was contrary to the verbal agreement that they were willing to extend for 6 months till March 2012.***

It is now only 12 days more to 30 Sep. There is no time to call a tender for a new contract to commence on 1 Oct.

*EMSU is clearly a critical service to residents of our town. A waiver of tender for EMSU services is needed under TC Financial Rule 74(17) due to the urgency of the requirement and public interest necessity. **However, it is recommended that an interim contract only be awarded, and a tender be called after this interim period. Our interim MA, FM Solutions and Services Pte Ltd, has offered to supply the EMSU services in accordance with the scope of works (in the email below) approved by the specially appointed committee under the Town Council Financial Rule 76(4).***

FMSS has also agreed to provide these services in the interim from Oct 2011 till June 2012; an open tender will decide the EMSU contractor after June 2012.

Council's approval is sought to:

(a) waive a tender for the provision of EMSU services from Oct 2011 to June 2012 for the HDB estates within Aljunied GRC;

(b) to award the contract for EMSU services for the period to FM Solutions and Services Pte Ltd, based on the scope of works determined by the Committee appointed under TC Financial Rule 76(4).

Please reply ASAP in this format: (a) – Yes/No; (b) – Yes/No.

If you have questions, pls do ask. Committee members can help add / clarify..."³⁹⁷

(emphasis added)

216. On this note, the Plaintiffs made another new allegation that no agreement had been reached with FMSS on the applicable standards under the 1st EMSU contract³⁹⁸ by disingenuously interpreting Ms Sylvia Lim's e-mail of 11.55pm to mean that FMSS had only offered its EMS services in relation to item (D) in her e-mail of 11.37pm. Item (A) of Ms Lim's e-mail of 11.37pm clearly states that *"the scope of EMSU services for*

³⁹⁶ 8 CB 5572 – 5573.

³⁹⁷ 8 CB 5571 – 5572.

³⁹⁸ 23.10.2018 NE, Pg 164 L 7 - 10.

Aljunied GRC would take the higher standards among the 3 contracts." As Ms Sylvia Lim had explained on cross-examination:

"A: No. Despite the urgency, we did spend time to try to do the best we could in the circumstances to look at the specs. Thereafter, **what was agreed by the committee was told to FMSS. They agreed to provide the EMSU services based on the terms that we had decided upon, and that's why I wrote to the council in that manner.**"³⁹⁹ (emphasis added)

217. At trial, the Plaintiffs also raised the unpleaded allegation that the Town Councillors had abdicated their duties by not reducing the 1st EMSU contract into writing, thereby putting AHTC in a position where it would be difficult to compel FMSS to perform its obligations even in a situation where disputes arose.⁴⁰⁰ The Plaintiffs also further allege that these were reckless acts that revealed an agenda that subordinated the residents' interests to highly improper purposes. As Ms Sylvia Lim explained on cross-examination that whilst there was no separate document which summarized the agreement reached and was signed by both parties,⁴⁰¹ Ms Sylvia Lim testified that the applicable specifications under the 1st EMSU Contract as decided by the Committee were put to the FMSS representatives at the end of the meetings on 18 September 2011 and they agreed to it.⁴⁰² Accordingly, Ms Sylvia Lim wrote an e-mail to the Town Councillors to update them about the agreement reached with FMSS.⁴⁰³ Further, there is a written record of the understanding reached between them. Having obtained the Town Councillors' approval of the 2 resolutions in her e-mails of 11.37pm and 11.55pm,⁴⁰⁴ Ms Sylvia Lim then forwarded this e-mail chain to Ms How and Mr Loh on 20 September 2011 to inform them that that they could proceed as required as "*Council has unanimously approved both resolutions below*".⁴⁰⁵

Appointment of FMSS under the 2nd MA and 2nd EMSU Contract

218. The Town Councillors called for an open tender for the 2nd MA and 2nd EMSU Contracts. The tender notices were advertised in the Straits Times on 13 April 2012 as an open tender with a 3 weeks tender notice period.⁴⁰⁶ Three MA companies collected the tender documents. However, FMSS was the sole tenderer.⁴⁰⁷ The PAP TCs faced

³⁹⁹ 23.10.2018 NE, Pg 164 L 17 – 23.

⁴⁰⁰ PRPTC's Opening Statement at [87] to [89].

⁴⁰¹ 23.10.2018 NE, Pg 129, L 2 - 3.

⁴⁰² 23.10.2018 NE, Pg 150, L 11 - 15, Pg 154 L 18 - 25, Pg 155 L 1 - 3.

⁴⁰³ 23.10.2018 NE, Pg 164 L 17 - 23.

⁴⁰⁴ AEIC of Ms Sylvia Lim at [129], 2 BA 230, AEIC of Mr Pritam Singh at [27], 2 BA 883, AEIC of Mr Low [95], 2 BA 376.

⁴⁰⁵ 8 CB 5628, S/No. 348 of the AB which is taken from S/No. 124 of the 6th to 8th Defendants' List of Document ("LOD") in Suit 668. Reference is made to the LOD as the version in the CB is incomplete.

⁴⁰⁶ 5 CB 2998.

⁴⁰⁷ AEIC of Ms Sylvia Lim at [131], 2 BA 230.

a similar situation when an open tender was called for the sale of TCMS. 5 vendors expressed an interest but only AIM submitted a tender bid.⁴⁰⁸ In concluding that the PAP TCs complied with the open tender process under the TCA and the TCFR, the MND Review Team observed that *“while there was only one bid, it is permissible under the TCFR for the TCs to accept the bid as long as it satisfies the tender requirements and evaluation criteria.”*⁴⁰⁹

219. The above shows that the Plaintiffs’ allegations on alleged loss to the TCs as a result of the waiver of the tender in the first year is without basis. Simply put, the other MAs did not wish to work for an opposition-led TC. This fact, which the Plaintiffs did not challenge by any evidence, has been ignored in the Plaintiffs’ case.
220. Given the above inconvenient truth, the Plaintiffs alleged at trial that FMSS was “locked in” and gained an “incumbency advantage” in relation to the 2nd MA and 2nd EMSU Contract once it was awarded the 1st MA and 1st EMSU Contract in 2011 and that the tender process in 2012 was to create a paper trail to give some semblance of credibility.⁴¹⁰ This allegation is without any evidential basis. As Mr Pritam Singh had testified at trial:

“A: Mr Singh, the market has money to make from an MA contract. They have to make a business calculation, “Do we go in, knowing that it's an opposition town council, or do we not go in?” I can't speak for the market.”⁴¹¹

221. Despite only having FMSS as the sole tenderer, a special Committee was appointed to evaluate their tenders for the 2nd MA and 2nd EMSU Contracts.⁴¹² The Town Councillors nevertheless proceeded in good faith and carried out a due diligence exercise in assessing the FMSS tenders.⁴¹³ The Committee reviewed FMSS’s tender documents which included an ACRA search of FMSS⁴¹⁴ and prepared a Tender Evaluation Report⁴¹⁵ (“TER”) which went to AHTC for its consideration at the 13th AHTC Meeting on 2 August 2012.⁴¹⁶ Other due diligence measures included having 2 tender evaluation meetings with FMSS on 21 June 2012 and 21 July 2012, appointing an external audit firm, RSM, after inviting quotations from 3 audit firms to review the

⁴⁰⁸ 24 CB 18528.

⁴⁰⁹ 24 CB 18546 - 18547.

⁴¹⁰ 17.10.2018 NE, Pg 101 L 7 - 17.

⁴¹¹ 25.10.2018 NE, Pg 66 L 19 - 23.

⁴¹² AEIC of Ms Sylvia Lim at [132], 2 BA 231.

⁴¹³ AEIC of Ms Sylvia Lim at [133(a)-(k)], 2 BA 231 - 233.

⁴¹⁴ 6 CB 3609.

⁴¹⁵ 6 CB 3457.

⁴¹⁶ 24.10.2018 NE, Pg 2 L 15 - 25 to Pg 3 L 1 - 5; 18 CB 13294.

tender evaluation process and award.⁴¹⁷ Eventually, RSM issued the “Internal Audit Report” dated 6 March 2013” issued by RSM.⁴¹⁸ A multinational human resources company, Kelly Services, was also consulted to review the salaries and corresponding job descriptions of FMSS’s staff to see if it was in line with the market rates at the time.⁴¹⁹ Ms Lim’s evidence is that she made some informal queries with other PAP TCs on the MA rates that they are being charged⁴²⁰ and found FMSS’s rates to be within the range though at the higher end.⁴²¹

222. At the T&C Committee Meeting on 21 June 2012,⁴²² the meeting noted that “*the current tender had been called just after one year in the interests of transparency and good governance.*” FMSS’s tender was discussed at this meeting. This included the proposal for additional staff, the annual increase in tender price of 6%, the impact of FMSS’s proposed prices on AHTC’s bottom-line and whether the residents’ S&CC would have to be raised, and costs related to other staffing issues faced by FMSS.⁴²³ These concerns were raised to FMSS whose explanations were recorded in the minutes:

“The Committee noted that, compared with the prices tendered in 2010 by the former Managing Agent, CPG Facilities Mgt Pte Ltd (CPG), for Aljunied Town Council, the rates tendered in 2012 by FM Solutions and Services Pte Ltd (FMSS) represented an increase of 17.3% when averaged out over the respective 3- year contract periods, from \$5.96 per EDU per mth to \$7.00. Both tenders had provided for price increases over the 3 year period tendered for. For the year 2012, CPG had previously tendered at \$6.26 compared with FMSS’ rate for 2012 of \$6.60. FMSS’ rates over the 3 year period were \$6.60 (2012), \$7 (2013) and \$7.42 (2014).

The Committee expressed concern about the marked increase and its impact on the AHTC. Chairman also shared with the meeting that from her understanding through informal checks with some other Town Councils, the going-rate for current MA tenders was between \$6 to \$7. The Committee asked FMSS for justification. FMSS’ Managing Director Danny Loh presented 11 slides explaining FMSS’ pricing strategy (slides are attached as Appendix 1). In gist, he emphasized that a cost plus / cost recovery method had been used, with cross-checking with CPG’s previous rates for reasonableness. Based on the 2012 (first year) tender price, it was shown that salaries alone accounted for about 81% of the monthly fee of \$438,505.50; if overheads were included, the profit margin was less than 8.3%. Mr Loh pointed to other costs which FMSS had to bear:

(a) Lift testing fees — annual no-load tests (currently \$120,000 per annum) and 5-yearly full load tests (approximately \$150,000 for existing lifts over the cycle). Mr Yeo Soon Fei gave the estimated costs.

(b) The number of lifts will rise with completion of the Lift Upgrading Programme, especially in Hougang SMC which is getting all its LUP within a 2 year period. FMSS will

⁴¹⁷ AEIC of Ms Sylvia Lim at [137], 2 BA 234.

⁴¹⁸ AEIC of Ms Sylvia Lim at [135], [139], 2 BA 233, 235.

⁴¹⁹ AEIC of Ms Sylvia Lim at [133(i)], 2BA 233.

⁴²⁰ 24.10.2018 NE, Pg 44 L 22 - 24; 9CB 6159.

⁴²¹ AEIC of Ms Sylvia Lim at [133(k)], 2 BA 233.

⁴²² 18 CB 13274 - 13276.

⁴²³ AEIC of Mr Pritam Singh at [45], 2 BA 889.

be bearing the risk of the increased cost as there is no provision in the contract for revision of MA fees due to higher lift numbers.

(c) Additional number of offices, requiring more admin staff. CPG had operated 3 offices — Hougang Central (Blk 810), Serangoon North (Blk 147) and Bedok Reservoir (Blk 609); FMSS was operating 5 offices — the 3 mentioned plus Hougang SMC (Blk 701) and the new Kaki Bukit office (Blk 549).

(d) Other additional staff, especially technicians and a contracts department. This is discussed in further detail in the next section.

(e) The fact that FMSS' business was focused on town management for AHTC; it did not have the same economies of scale as others who may have several towns to manage or have other business arms.

Ms How Weng Fan added that provision of IT maintenance services were done by FMSS in-house, included in its monthly fee. This was a saving of more than \$30,000 per month compared with the monthly fee charged to the former Aljunied Town Council by its IT service provider." (emphasis added)

223. In this regard, the Plaintiffs alleged that the appointment of FMSS in 2011 resulted in a situation where AHTC had no negotiating power in the tender for the 2nd MA and 2nd EMSU Contracts in 2012 if FMSS were the only tenderer. This is untrue. KPMG had itself observed that *"the Town Council held a reasonably strong negotiating position as the sole customer of FMSS, and it is our experience in similar situations that buyers their [sic] bargaining power to achieve the best negotiated position. In fact, the Town Council did negotiate a reduction in the project management fee, originally proposed at 4%, to the eventually contracted rate of 3.5% for the third year of the managing agent contract."*⁴²⁴ Mr Low also explained on cross-examination that it is untrue that AHTC had no negotiating power.⁴²⁵

"A: Okay. On the point of whether possible to go back and direct management, in subsequent tender, was it 2015, there was no tender, and FMSS also didn't want to tender, and we took back for direct management until now. So it's not impossible, it's not that we can't do it. So I disagree that in 2012, if FMSS give a ridiculous price, that we will have no choice and there be a gun against us. No."⁴²⁶

224. Even after the meeting with FMSS on 21 June 2012, the T&C Committee continued to conduct due diligence on FMSS's proposal and had another meeting with them on 21 July 2012. Further discussions on FMSS's pricing for project management services and project management staffing were discussed then.⁴²⁷

⁴²⁴ KPMG Report at [5.5.46], 26 CB 19919, See also AEIC of Ms Sylvia Lim at [142], 2BA 236; AEIC of Mr Pritam Singh at [47], 2 BA 891, and 6 CB 3464.

⁴²⁵ 17.10.2018 NE, Pg 108 L 18 – 19.

⁴²⁶ 17.10.2018 NE, Pg 113 L 12 - 19.

⁴²⁷ AEIC of Mr Pritam Singh at [48], 2 BA 891.

225. Eventually, the T&C Committee briefed the Town Councillors on FMSS's proposal for the 2nd MA and 2nd EMSU Contracts at the 13th AHTC Meeting on 2 August 2012.⁴²⁸ As before in 2011 (see [179(a)] above), FMSS left the room to allow the Town Councillors to discuss their tenders for the provision of MA and EMSU services.⁴²⁹ Eventually, this recommendation to award both contracts to FMSS was unanimously agreed upon by all the Town Councillors present.⁴³⁰
226. At trial, the Plaintiffs sought to undermine the strength of RSM's Internal Audit Report by alleging that RSM did a "*superficial job of just seeing that documents had been generated*"⁴³¹ and reporting on the basis of what they were told.⁴³² This is untrue. RSM's agreed-upon procedures were to: (i) review the tender procedures and procurement practices in place and to assess the extent of compliance in the tender exercise, (ii) consider whether the current procedures and practices are adequate to ensure that the procurement is made in the ordinary course of business, and there are adequate controls to ensure the award is conducted in an unbiased, objective, fair and transparent manner; and (iii) assess whether the evaluation and award of the tender was conducted in accordance with the existing requirements and good corporate governance practices.⁴³³ Having carried out the agreed-upon procedures, RSM concluded that their "*overall assessment of the review was A*."⁴³⁴ There is no basis for the Plaintiffs to suggest that this assessment is limited to certain areas⁴³⁵ and does not cover the matters under the agreed-upon procedures.⁴³⁶ Given that this issue was not part of the Plaintiffs' pleaded cases, the Town Councillors did not call RSM to testify in the proceedings which would have put to rest the Plaintiffs' spurious allegations.
227. The Plaintiffs also ran the case at trial that Ms Sylvia Lim gave FMSS an unfair advantage through an e-mail of 19 June 2012, where she wrote to Mr Loh to ask them to come prepared to justify their proposed pricing under the tenders at the tender evaluation meeting held on 21 June 2012.⁴³⁷ As Ms Sylvia Lim had testified at trial, there is nothing untoward about this e-mail. She merely wanted FMSS to come prepared for the interviews with the relevant information⁴³⁸ so that the meeting would

⁴²⁸ 18 CB 13293.

⁴²⁹ 18 CB 13294.

⁴³⁰ AEIC of Mr Pritam Singh at [49], 2 BA 891.

⁴³¹ 24.10.2018 NE, Pg 25 L 16 - 18.

⁴³² 24.10.2018 NE, Pg 16 L 6 - 8.

⁴³³ 12 CB 8246.

⁴³⁴ AEIC of Ms Sylvia Lim at [133(a)], 2 BA 231; 12 CB 8247.

⁴³⁵ 12 CB 8249; 24.10.2018 NE, Pg 28 L 18 - 21.

⁴³⁶ 24.10.2018 NE, Pg 27 L 11 - 25, Pg 28 L 1 - 17.

⁴³⁷ PRPTC's Opening Statement at [100]; 24.10.2018 NE, Pg 30 - 57.

⁴³⁸ 24.10.2018 NE, Pg 49 L 12 - 15.

be productive.⁴³⁹ The fact remains that there were no other tenderers for this communication to provide any advantage. Ms Sylvia Lim responded to the Plaintiffs' hypothetical question in cross-examination that if it were a situation involving a competitive tender, she would have given the same "heads up" to all tenderers.⁴⁴⁰ She also testified that this was simply a practical measure – If FMSS had not come prepared, a second meeting would have to be arranged.⁴⁴¹ This communication she had with Mr Loh did not constitute confidential information concerning the TC's evaluation of the tender bid.⁴⁴²

228. At trial, the Plaintiffs also made the unpleaded allegation about that the TCFR was breached by the "limbo period" between the expiry of the 1st MA and 1st EMSU Contract on 15 July 2012 and 30 June 2012 respectively, the official appointment of FMSS under the 2nd MA Contract and 2nd EMSU Contract on 2 August 2012.⁴⁴³ As Mr Pritam Singh testified, AHTC operated on the basis of an extension under the 1st MA and 1st EMSU Contracts.⁴⁴⁴ As Ms Sylvia Lim recorded in her e-mail of 5 July 2012 sent to the tender evaluation committee for the 2nd MA and 2nd EMSU Contract, "*the contract officially ends 14 July, but work will continue until we are ready to confirm the terms of the new contract.*".⁴⁴⁵ It is evident that an agreement had been reached between AHTC and FMSS for an extension of the existing contracts. There is therefore no need to call for a tender of this interim period to begin with.

Alleged Price Difference between the CPG MA Contract and the 1st MA Contract

229. Although the evidence of CPG wanting to be release has not been challenged by any evidence adduced by the Plaintiffs, at trial the Plaintiffs continued to maintain their case on the purported cost comparisons between what KPMG thought would have been the achievable costs of CPG's MA services if CPG was held to its contract and the cost of FMSS's MA services. On this unsubstantiated and clearly unmaintainable premise, the KPMG Report concludes that FMSS was \$515,773 more expensive than CPG under the 1st MA Contract and \$746,000 more expensive under the 2nd MA Contract.

⁴³⁹ 24.10.2018 NE, Pg 54 L 4 - 6.

⁴⁴⁰ 24.10.2018 NE, Pg 57 L 4 - 10.

⁴⁴¹ 24.10.2018 NE, Pg 56 L 16 - 18.

⁴⁴² 24.10.2018 NE, Pg 32 L 1 - 23.

⁴⁴³ 25.10.2018 NE, Pg 130 L 5 - 18.

⁴⁴⁴ 25.10.2018 NE, Pg 130 L 19 - 21.

⁴⁴⁵ 9 CB 8235; 25.10.2018 NE, Pg 131 L 11 – 25 to Pg 132 L 1.

230. KPMG's computation of the aforesaid sums is based on the incorrect assumptions that CPG would have been willing to take over Hougang SMC at the same rates that were charged for Aljunied GRC. AHTC claims that CPG could have been compelled to extend its services to Hougang at the same rate⁴⁴⁶ but this is a mere assertion without more. CPG is not obliged to take over Hougang at the same rate and neither does the TC have the right to insist upon this. Under Clause 10.5 of the CPG MA Contract, any variation in the scope of works above 10% is subject to mutual agreement.⁴⁴⁷ CPG could have negotiated for a significantly higher contract sum if they had to take over managing Hougang SMC in addition to Aljunied. This is especially likely given that CPG would have been unable to perform its function as MA without the TCMS. KPMG's comparison fails to take into account the fact that the MA is not obliged to provide computer systems to the TC under the MA Contract. It remains the TC's responsibility to do so.⁴⁴⁸ The MA is only obliged to provide staff to operate these computer systems. It is clear from the description of "computer systems" under the CPG MA Contract in Annex 5F⁴⁴⁹ that the staff provided by CPG is trained to operate TCMS. Suppose CPG had not requested to leave but continued acting as MA, CPG would certainly have had to factor in the additional costs caused by the transition from TCMS to the new upscaled HTC's system such as the costs of maintaining the computer system (not covered by the CPG MA Contract)⁴⁵⁰ and the costs of training staff to use the new system.
231. Ultimately, even if the 1st and 2nd MA Contracts performed by FMSS were more expensive than the costs that would have been achievable if CPG continued acting as MA, this does not mean that the Town Councillors should be found personally liable on the difference. As stated earlier (see [26] above), there are bound to be discrepancies in prices between TCs arising from the latitude that Town Councillors have been given to manage their respective constituencies. Unless the Plaintiffs can show that the Town Councillors had acted ultra vires their statutory powers in making these decisions, there is no basis for them to be personally liable on this difference in amounts.

S/No. 6 of KPMG's First Table: Alleged Improper Payment of 3 FMSI Invoices that were Allegedly Unsupported by Certifications of Services Received or Contracts

⁴⁴⁶ AHTC's Opening Statement at [5.3.4].

⁴⁴⁷ 09.10.2018 NE, Pg 113 to Pg 120.

⁴⁴⁸ AEIC of Ms Sylvia Lim at [111], 2 BA 220.

⁴⁴⁹ 5 CB 3222.

⁴⁵⁰ AEIC of Ms How, at [148(iv)], 4 BA 1366.

232. Of the sum of **\$194,759** which KPMG identified as an improper payment by AHTC on the basis that it was unsupported by certifications of services received or contracts, the sum of \$88,200 comprised 3 FMSI invoices for EMSU services to HTC., i.e. \$29,400 x 3.⁴⁵¹ This conclusion is incorrect. On cross-examination, Mr Hawkes' attention was brought to the FMSI EMSU contract under which the 3 invoices were payable.⁴⁵² The documentary evidence also shows that EMSU services provided by FMSI were satisfactory. AHTC has provided a log of complaints for FMSI as the EMSU service provider during May to July 2011 to support the proposition that EMSU services were provided. These logs would show the date and location of the complaint, a brief summary of the complaint, and the "status". If the "status" is marked "closed", it means that the case officer from AHTC has 'certified' that FMSI has adequately and satisfactorily addressed the complaint.

S/No. 3 of KPMG's 1st Table: Alleged Improper Payment of S\$6,130

233. KPMG listed the sum of \$6,130 which AHTC paid to FMSS for electrical fittings as an improper payment on the basis that the said fittings were not listed in the schedule of rates. In so concluding, KPMG acknowledged that the fittings appear to have been provided but its criticism appears to be that FMSS did not obtain the requisite approval of the rates prior to procuring and using such fittings⁴⁵³ and that KPMG was unable to determine what would be an appropriate price.⁴⁵⁴ On cross-examination, Mr Hawkes was informed that AHTC had reviewed the payments and concluded that the amounts charged by FMSS were reasonable as most of the payments were for the purchase of new low-value items such as fluorescent light tubes which cost a few dollars each. In response, Mr Hawkes conceded that KPMG has not verified that for themselves and he therefore took a "neutral" position on this matter.⁴⁵⁵ It is submitted that KPMG's criticism of this payment is not warranted when it has not verified the reasonableness of the rates used whilst AHTC has.

ISSUE (III) WHETHER THE APPOINTMENT OF LST ARCHITECTS FOR 7 PROJECTS AND THE PAYMENTS MADE TO LST ARCHITECTS WERE IMPROPER.

234. It is alleged that the Town Councillors are in breach of Rule 74 of the TCFR because:

⁴⁵¹ KPMG Report at [5.3.21], 26 CB 19902.

⁴⁵² 09.10.2018 NE, Pg 49 L 6 - 25 to Pg 50 L 1 - 6.

⁴⁵³ 26 CB 19900

⁴⁵⁴ 08.10.2018 NE, Pg 115, L 7 - 12.

⁴⁵⁵ 08.10.2018 NE, Pg 115, L 13 - 21.

- (a) Instead of inviting a tender for consultants in respect of 10 projects, the Town Councillors had appointed a panel of consultants from which they selected consultants to provide consulting services for each of the 10 projects.⁴⁵⁶
 - (b) Instead of selecting the lower-priced consultant in the panel which was DM, the Town Councillors selected LST, the allegedly higher-priced consultant, for 7 out of the 10 projects. As a result, AHTC allegedly incurred an additional cost of \$2,79 million.⁴⁵⁷
235. At the outset, it must be pointed out that PRPTC has no basis to claim for the payments made to LST as LST was not paid from PRPTC's funds. The payments came from AHTC's Sinking Funds and from AHTC's Routine Funds charged to Paya Lebar Division. This evidence of Ms Sylvia Lim⁴⁵⁸ was not challenged by PRPTC. Contrary to PRPTC's assertion,⁴⁵⁹ there was sufficient documentation in support of this.⁴⁶⁰
236. It is submitted that AHTC had fully complied with the requirements under Rule 74(1) of the TCFR. It had called for a public tender in September 2012 for the appointment of consultants onto a panel for a period of 3 years. The tender was for the provision of certain services at pre-agreed rates based on the awarded project value. The consultants were required to provide architectural, civil and structural engineering services, mechanical services, and quantity surveying services. Two firms, LST and DM put in their bids. The T&C Committee decided to appoint both LST and DM to a panel of consultants and entered into separate Appointment Agreements for the provision of their consultancy services for construction projects.⁴⁶¹ These facts are accepted by KPMG.⁴⁶²
237. Given that AHTC had already entered into contracts with LST and DM following a tender process, there was no need to call any further tenders. Rules 74(16) to (19) of the TCFR are therefore inapplicable. The Town Councillors' position is explained in Part 1 of AHTC's Response to the KPMG Report as follows:

"53. By entering into Appointment Agreements with both Consultants A and B [LST Architects and DM respectively], the requisition for services thereafter is akin to instructing work under a contract that has already been entered into and not a

⁴⁵⁶ AHTC's Statement of Claim at [5.4.1] to [5.4.4].

⁴⁵⁷ AHTC's Statement of Claim at [5.4.5], [5.4.6] and [5.4.8]; PRPTC's Statement of Claim (Amendment No.1) at [68] to [73].

⁴⁵⁸ AEIC of Ms Sylvia Lim at [214] - [216], 2 BA 257 - 258.

⁴⁵⁹ PRPTC's Opening Statement at [131].

⁴⁶⁰ 18.10.2018 NE P 86 L 19 – P 87 L 18.

⁴⁶¹ AEIC of Mr Pritam Singh at [53], 2 BA 893.

⁴⁶² KPMG Report at [6.2.2], 26 CB 19923. See also 09.10.2018 NE Pg 67, L 20 - 25, Pg 68 L 1 - 10.

process of going out to buy new services. In other words, it is, in principle, no different from instructing the managing agent to provide Project Management Services at the pre-agreed rate of 3.5% of the project cost under the managing agent contract. There is no allegation from KPMG or anywhere else that a fresh tender should be called when AHTC instructs the managing agent to take on a new project under Project Management Services. This was because the Managing Agent had already been appointed to carry out such similar [projects] at a pre-agreed rate under the managing agent contract.

54. The requirements under Rule 74 of the TCFR for holding tenders, selecting the lowest priced consultant from the tender and providing documented justification for selecting the higher priced consultant are therefore not applicable in this case.⁴⁶³

(words in square brackets and emphasis added)

238. The TCFR does not prohibit the appointment of a panel. There is also nothing in either the KPMG Report or PwC Report as to why a panel cannot be used. KPMG's conclusion that the use of a panel and selecting consultants from the panel "*does not appear to conform to the TCFR*" is a bare allegation.⁴⁶⁴

239. It is also undisputed that the Defendants' use of a panel was a practice adopted by the previous management of ATC.⁴⁶⁵ During cross-examination, Mr Hawkes accepted that it is a common practice to use a panel among all the TCs.

"Q: ...The tender committee's function was to hold a tender and to then appoint the particular architects to the panel?

A: Yes. Again our advice was that having a panel, although this is certainly not I think the only town council that has done it, technically it does not meet the TCFR. I think the town council disagrees with us on that.

Q: Yes. And not only AHTC's town council doesn't agree with you on that, but most of the other town councils also probably wouldn't agree with you on that?

I am not sure if they have formed a settled opinion, **but I accept that it is common**

A: **practice to have a panel.**⁴⁶⁶ (emphasis added)

240. Further, the Plaintiffs' allegations that the Town Councillors are in breach for selecting LST is on the purported basis that DM is cheaper than LST. However, KPMG had proceeded on the assumption that DM would have carried out the projects at a flat rate regardless of their project value. This assumption is misconceived.

241. The KPMG Report did not consider the following facts which Mr Hawkes accepted during cross-examination:

- (a) DM and LST had quoted their fees based on project values under 8 ranges starting from a project value of up to \$0.5m to a project value of above \$3.5m. For 6 out of the 8 ranges, LST was cheaper than DM.⁴⁶⁷

⁴⁶³ Part 1 of AHTC's Response at [53] and [54], 18 CB 13815.

⁴⁶⁴ KPMG Report at [6.2.3], 26 CB 19923.

⁴⁶⁵ AEIC of Mr Pritam Singh at [55], 2 BA 893.

⁴⁶⁶ 09.10.2018 NE, Pg 70 L 6 - 17.

⁴⁶⁷ 09.10.2018 NE, Pg 73 L 1 - 25, Pg 74 L 1 - 25, Pg 75 L 1 - 25, Pg 76 L 1 - 12.

- (b) When DM was under a panel of consultants under the previous management of ATC, DM re-quoted a higher fee for a project value of more than \$3.5m.⁴⁶⁸ DM did not carry out the project on the rate that it had quoted in its tender.

242. Mr Hawkes acknowledged during cross-examination that if the reasons for preferring a consultant⁴⁶⁹ was that the more expensive consultant was more efficient, it would be within the TCFR to appoint such a consultant:

“Q: If it was the opinion of those who were appointing him that he was slower, then that would be a reason for preferring him over the cheaper or the less expensive, I should say, architect?

A: **Yes. If as you say, if they are more efficient in some way and that amounts to special circumstances and they are fully justified, then it would be within the TCFR to appoint that architect.**⁴⁷⁰ (emphasis added)

243. The Town Councillors’ position is that LST was appointed over DM because LST is the better consultant. No factual witnesses were called by the Plaintiffs to rebut Mr Pritam Singh’s evidence of the facts which are as follows:

*“57. Based on my own observations and interactions with the 2 consultants, I was not surprised that FMSS awarded more consultancy contracts to LST as compared to DM. **In general, over the period 2013-2015, I found project meetings with LST more focused as LST had a keen eye on a project’s progress and resolution.** My only sustained contact with DM came as a result of them being the appointed consultant for the Neighbourhood Renewal Program at Eunios Spring, a precinct in my constituency of Eunios within Aljunied GRC. **DM did not give me the same sense of efficiency in the course of performing their work as compared to LST when I was involved in meetings with the latter. At project meetings involving DM, parties such as the contractor, architect, and project manager tended to be lackadaisical, whereas LST always appeared to be deliverable-focused and willing to take the initiative to drive matters and resolve delays expeditiously, so as to push each party to deliver on time when it came to project meetings involving them. For instance, at the 15th AHTC Meeting held on 14 February 2013, I requested the MA to give DM an ultimatum to expedite on the plan submissions and preparation of tender. This is recorded at paragraph 3.4.2(b)(iii) of the Minutes, a copy of which can be found at S/No. 913 of the CB.***

*58. This impression of DM remains with me even in AHTC’s recent interactions with them. **On 7 March 2018, AHTC put DM on notice for unsatisfactory performance arising out of a complaint by the Project Manager of an Electricity Load Upgrading Project.** The said Project Manager was from SIPM Consultants Pte Ltd (a wholly-owned subsidiary of Surbana Jurong) and he raised the issue of unnecessary delays and deficiencies in the execution of DM’s professional services to the TC. I exhibit at **“TAB 2” of PS-1** a copy of an e-mail which reflect the comments of the SIPM Project Manager on DM’s performance.”⁴⁷¹ (emphasis added)*

244. Both the KPMG Report and the PwC Report do not consider factors other than the price. This reveals a serious flaw in their assessment and ultimately the conclusions:

⁴⁶⁸ 09.10.2018 NE, Pg 82 L 5 - 25, Pg 83 - 89, Pg 90 L 1 - 9.

⁴⁶⁹ Referred to as “architect” in the extract

⁴⁷⁰ 09.10.2018 NE, Pg 72 L 18 - 25.

⁴⁷¹ AEIC of Mr Pritam Singh at [57] and [58], 2 BA 894.

- (a) During the period in question, there were 16 projects carried out.⁴⁷² KPMG had merely selected 10 projects in which LST had been appointed. Of the 10 projects, LST was more expensive in 7 projects.
 - (b) Other than the purported difference in price, no other reason has been cited by KPMG or PwC to support their views that LST should not have been selected.
 - (c) The TC tasked the MA to select the appropriate consultant for each project. The MA had full time professional staff from the project management team who had the expertise to make the appointments and the experience of working with both consultants. The project management team included a tertiary-qualified project manager, a M&E engineer and a quantity surveyor.
 - (d) No members of the MA were called to give evidence in support of the Plaintiffs' case that LST should not have been selected.
245. It is apparent that in making this claim, the Plaintiffs are inviting the Honourable Court to second-guess the discretionary decisions made at that time by AHTC to appoint specific contractors for specific jobs. As stated above under Issue II above, the courts do not concern themselves with the merits of a discretionary decision.
246. At trial, the Plaintiffs ran the case that the Town Councillors should not have delegated the task of choosing the appropriate consultant to the MA.⁴⁷³ The Town Councillors case is that the appointment is made by the Chairman on the advice of the MA.⁴⁷⁴ For reasons stated above at [243], the Town Councillors agreed with the decision to appoint LST. In response to the Plaintiffs' case at trial, Mr Pritam Singh testified that the operational team of the TC would be in the best position to make the specific appointment as they would be better placed to appreciate the nature of the work:
- “Q: Right. And I agree with you that the decision is made by the town council, you see. But what appears to have happened in your case is that the decision was made by the managing agent.
A: I beg your pardon. When I said "town council" I meant –
Q: You meant the MA?
A: **-- the operational -- yes, the managing agent of the town council.**
Q: Okay. But that doesn't make this right; correct? Assuming that that did happen, two wrongs don't make a right. Do you agree?
A: **I have a different view to this, Mr Singh. I would expect the MA, properly appointed, to be in the best position to understand which consultant would**

⁴⁷² KPMG Report sets out the review period as 27 May 2011 to 27 November 2015, 26 CB 19868.

⁴⁷³ 25.10.2018 NE, Pg 141 L 6 -16.

⁴⁷⁴ 1st to 5th Defendants' Defence (Amendment No.1) in Suit 668 at [62] and the Defence (Amendment No.2) in Suit 716 at [78].

be more appropriate for the job. Costs would be a factor to consider, for sure, but there would be a list of other conditions, in terms of how busy they were, because the nature of the work that a town council undertakes for various projects is different. Some projects are short; some projects are longer.⁴⁷⁵

...

Q: Right. I think what you are saying – and tell me if I put it wrongly, Mr Singh, I don't want to be unfair to you -- is that, "Okay, we didn't follow the rules", or rather, "We didn't follow the rationale and spirit of the rules, but the reason we didn't do that is that we had assumed that since someone else had done it this way, we thought it was okay to do it". Would that be right?

A: **I would disagree with the first part, that we disagreed with the rationale and spirit of the rules, because I believe we followed it. We followed the rationale and spirit. We appointed the two consultants properly. Then the consultants were reviewed as to their ability to undertake a contract -- undertake a particular scope of works, and the appropriate consultant was awarded the job.**⁴⁷⁶

...

Q: Right. Now, if that delegation is permissible, it would therefore mean that the purpose, the rationale of the tender process can be so easily gotten around by having, in my example, a panel of five people and then leaving it to others to decide?

A: **Mr Singh, it is my belief that the Town Council Rules, while I agree they have a certain objective that they seek to meet, it does not stop the town council from having flexibility in appointing the right consultant as it deems fit.**

Q: That's right, and that's my point. It does have the flexibility. I don't -- it is not my case that the process of appointing two or three on the panel is wrong. My case is that, having done that, when it comes to the actual work to be done, the specific project to be done, the town council cannot then just say, "Okay, I'm leaving it now to the managing agent to pick". The town council has to say, "All right, having now pre-selected these people, I need to satisfy myself as a town councillor that, for that project, this is the best person from that panel".

A: **I understand that's your case, Mr Singh. My view is we did not do anything wrong in this case to delegate that task to the managing agent.**⁴⁷⁷
(emphasis added)

ISSUE (IV) WHETHER THE APPOINTMENTS AND PAYMENTS MADE TO THIRD PARTY CONTRACTORS WERE IMPROPER

247. Based on its pleadings, PRPTC in Suit 716 has challenged the following appointments and payments made by AHTC/AHPETC:

- (a) Calling a tender and appointing Red-Power for a period of 3 years. PRPTC alleges that the existing contracts with Digo Corporation Pte Ltd ("**Digo**") and Terminal 9 Pte Ltd ("**Terminal 9**") should have been extended.⁴⁷⁸
- (b) Calling a tender and appointing Rentokil instead of Pest-Pro Pte Ltd ("**Pest-Pro**") for a period of 3 years.⁴⁷⁹

⁴⁷⁵ 25.10.2018 NE, Pg 136 L 8 - 25 and Pg 137 L 1 - 6.

⁴⁷⁶ 25.10.2018 NE, Pg 138 L 24 - 25 and Pg 139 Pg 1 - 16.

⁴⁷⁷ 25.10.2018 NE, Pg 140 L 16 - 25 and Pg 141 L 1 - 20.

⁴⁷⁸ PRPTC's Statement of Claim (Amendment No.1) at [58] to [63].

⁴⁷⁹ PRPTC's Statement of Claim (Amendment No.1) at [89].

- (c) Inclusion of PE under AHPETC's contract with Red-Power instead of Tong Lee Engineering Works Pte Ltd ("**Tong Lee**").⁴⁸⁰
 - (d) Inclusion of PE under AHPETC's contract with Rentokil instead of calling a tender or quotation.⁴⁸¹
 - (e) Calling a tender and awarding new contracts to Titan and J Keart instead of extending their previous contracts.⁴⁸²
 - (f) Payment of 12 invoices to various third party contractors in November 2015 by AHPETC allegedly without sufficient supporting documents and/or evidence of work done.⁴⁸³
 - (g) Payment of 56 invoices to various third party contractors in November 2015 by AHPETC allegedly without proper authorisation and/or certification by the HODs.⁴⁸⁴
248. The Honourable Court's attention is drawn to the fact that KMPG, which was appointed to establish "*whether any past payments made by AHPETC were improper and ought therefore to be recovered*",⁴⁸⁵ did not raise the above claims as part of the KPMG Report even though its findings relate to the entire TC (including PE). The above claims therefore do not form part of the claims in Suit 668.
249. PRPTC relies solely on the PwC Report for the claims summarised at paragraph [247] above. The PwC Report is however limited to the extent that:
- (a) PwC did not perform a full review of AHTC's internal processes and information systems in use.⁴⁸⁶ PwC relied on the findings made by KMPG in the KPMG Report and did not separately and independently establish and/or verify the findings made by KPMG.⁴⁸⁷
 - (b) KPMG did not share its working papers with PwC.⁴⁸⁸

⁴⁸⁰ PRPTC's Statement of Claim (Amendment No.1) at [103(a)].

⁴⁸¹ PRPTC's Statement of Claim (Amendment No.1) at [103(b)].

⁴⁸² PRPTC's Statement of Claim (Amendment No.1) at [103(c) and (d)].

⁴⁸³ PRPTC's Statement of Claim (Amendment No.1) at [116].

⁴⁸⁴ PRPTC's Statement of Claim (Amendment No.1) at [122].

⁴⁸⁵ CA 114 at [131(d)], Tab 9 of the D1-D5BOA.

⁴⁸⁶ PwC Report at [3.10], 26 CB 20274.

⁴⁸⁷ PwC Report at [3.12(b)], 26 CB 20276.

⁴⁸⁸ PwC Report at [3.12], 26 CB 20274.

- (c) KPMG did not comment on the conclusions in the PwC Report.⁴⁸⁹
 - (d) PwC has not audited or otherwise verified the information supplied to it in connection with its work from whatever source except as specified in the Report.⁴⁹⁰
250. Given the limited nature of the review undertaken by PwC, it is surprising that PRPTC saw it fit to make the claims as set out in [247] above. This is especially so since PRPTC did not call any factual witnesses at trial and relied solely on Mr Goh of PwC. This serious deficiency would be apparent from the matters set out below.

Appointment of Red-Power instead of extending the contracts of Digo and Terminal 9

251. No loss would have been suffered by PE as PE had an existing maintenance services contract with EM Services Pte Ltd which only expired on 31 March 2015. Even if the respective options to extend the contract periods for Terminal 9 and Digo had been exercised by the Defendants, these extended contracts would have expired on 30 June 2013 and 30 June 2014 respectively. The extensions of the Digo and Terminal 9 contracts would therefore not accrue to PE and by extension, PRPTC.⁴⁹¹
252. A public tender was called and Red-Power was the sole-bidder in this tender. Ms Sylvia Lim and Mr Faisal of the T&C Committee met on 7 June 2012⁴⁹² and a decision was made at this meeting to appoint Red-Power for a period of 3 years.
253. No factual witnesses were called by PRPTC to rebut the above facts.
254. PwC's view is that AHTC should have taken "a more prudent approach" and could have enjoyed "significantly lower rates for a further year" if it had extended the contracts instead of calling a tender.⁴⁹³ It is submitted that:
- (a) The contract with Red-Power was for 3 years whereas if Digo and Terminal 9 had been extended, it would only be for a further 1 year. AHTC would still have to call for a tender after the extended contracts had expired would not necessarily result in AHTC getting lower bids.

⁴⁸⁹ PwC Report at [1.7], 26 CB 20254.

⁴⁹⁰ PwC Report at [4.1], 26 CB 20279.

⁴⁹¹ AEIC of Mr Pritam Singh at [64], 2 BA 896.

⁴⁹² Email exchanges from 6 to 8 June 2012 at 9 CB 6151 - 6153 and 24.10.2018 NE, Pg 83 L 21 - 23.

⁴⁹³ PwC Report at [5.75] to [5.76], 26 CB 20309.

- (b) PwC, in alleging that the actions of AHTC in appointing Red-Power is in breach of the TCFR, seeks to second-guess how AHTC should comply with the requirements and duties under the TCA. PRPTC is inviting this Honourable Court to likewise second-guess the decision of AHTC. As stated under Issue II, the CA in CA 114 had explicitly held that it should not step into the shoes of the TC or to substitute its own decisions for those of the TC on how the various requirements and duties under the TCA should be carried out.⁴⁹⁴

Appointment of Rentokil instead of Pest-Pro

255. PRPTC alleges that Pest-Pro should have been appointed as it achieved the highest Price Quality Method (“**PQM**”) score and had a lower rate. Mr Pritam Singh’s evidence is that AHTC was fully justified in appointing Rentokil given the assessments made of Rentokil and Pest-Pro by the T&C Committee and the reasons set out in the Minutes of the T&C Committee Meeting held on 17 August 2013 (“**the T&C Meeting Minutes**”). PRPTC has not called any witnesses to rebut these reasons.⁴⁹⁵

- (a) Pest-Pro lacked the experience of Rentokil in dealing with the serious problem of rodents. Pest-Pro was unfamiliar with the requirements and documentation to claim for NEA’s subsidy for the Rat-Attack programme;
- (b) Rentokil’s team was better qualified than the team from Pest-Pro;
- (c) Rentokil’s was a well-established company with a world-wide presence unlike Pest-Pro;
- (d) The difference in the tender sums for the routine work between Rentokil and Pest-Pro was only \$13,190 over a period of 2 years; and,
- (e) The difference in the adjustments to the Schedule of Rates for inspection, extermination and eradication of termites, bees’ nests, rodents and other pests of 26% would not have a significant impact on the total costs as these were only for ad-hoc work.

256. Notwithstanding the existence of the T&C Meeting Minutes, PRPTC alleges that “PwC has not seen any other documents that would justify or support the award of the tender to Rentokil”.⁴⁹⁶ The PwC Report alleges that “neither the circumstances and reasons

⁴⁹⁴ CA 114 at [85] to [87], Tab 9 of the D1-D5BOA.

⁴⁹⁵ AEIC of Mr Pritam Singh at [78] to [81], 2 BA 901 - 903.

⁴⁹⁶ PRPTC’s Opening Statement at [136].

*for not accepting the lowest tender in this case were fully justified, nor the reasons for not doing so properly recorded (in the TER and/or in any other document)".*⁴⁹⁷ These allegations are therefore clearly misconceived.

257. Under cross-examination, Mr Goh initially testified that he had not been provided with the T&C Meeting Minutes:

"Q: In this regard could I ask you to look at page 15181 which is the minutes of the tender committee meeting?

A: Yes, I have it.

...

Q: **Yes. So isn't that well-documented reasons for why the T&C committee chose to go with Rentokil?**

A: **It will be very helpful [if] this was given to us during our work, your Honour. This wasn't. In fact, we have inside the tender evaluation report, and that was the only thing that was given to us, there were two things in there that was actually, you know, to us it seems like those are the two items that has been considered."**⁴⁹⁸

...

"Q: It may not specifically address that Pest-Pro's PQM was higher than Rentokil's, but it tells you why they awarded the contract to Rentokil rather than to Pest-Pro?

A: **Yes, but this minute wasn't made available to us at the time when we do our work, together with a lot of other documents which were also not given to us, even though we requested for all these documents, your Honour"**.⁴⁹⁹

...

"Q: **And you said that you had asked for these documents and had not been given them, correct?**

A: **Yes, your Honour. We have asked for all the tender evaluation reports and the supporting documents.**

Q: **And the minutes?**

A: **Yes.**

Q: And are you saying that if you had seen those documents and known the reasons for which the T&C committee had awarded the contract to Rentokil you may have come to a different conclusion in your report?

A: I didn't say that, your Honour, but it would be helpful for me to make my assessment better. At least I can sort of flag it out to the people and ask them you know whether they have considered the PQM."⁵⁰⁰ (emphasis added)

258. When confronted with an email sent on 17 December 2016 to PwC attaching the T&C Meeting Minutes,⁵⁰¹ Mr Goh accepted that the T&C Meeting Minutes were received by PwC but that he never saw it:

⁴⁹⁷ PwC Report at [5.92], 26 CB 20314.

⁴⁹⁸ 12.10.2018 NE, Pg 23 L 23 - 25, Pg 25 L 21 - 25, Pg 26 L 1 - 3.

⁴⁹⁹ 12.10.2018 NE, Pg 26 L 13 - 20.

⁵⁰⁰ 12.10.2018 NE, Pg 35 L 18 - 25, Pg 36 L 1 - 6.

⁵⁰¹ 16 CB 11967.

- “Q: About whether you had received a copy of the minutes of the tender committee meeting?
- A: Your Honour, I will check. The person has left us so there is really no way we can check whether the email is still with us because we couldn't find anything, but I myself haven't seen this email. But I would suggest if Mr Rajah is able to produce this we will accept that there is such an email.
- Q: All right. So the copy of the tender committee's minutes of that particular meeting were sent to PwC, but your recollection is that you never saw it?
- A: That is correct, your Honour.
- Q: **Yes. But you will accept the fact that as far as AHTC was concerned that a copy of the minutes were in fact sent to you. You will accept that?**
- A: **Yes, there is such a minute in there.**⁵⁰² (emphasis added)

259. Part 4 of AHTC's Response states that the T&C Meeting Minutes were furnished to PwC on 17 December 2016.⁵⁰³ PRPTC should therefore have been advised by PwC of this fact. Notwithstanding this, neither PRPTC nor PwC took any steps to verify the explanations given by AHTC at the material time or to seek clarifications from AHTC.
260. With respect to the allegation that Pest-Pro scored a higher PQM, this ignores the fact that PQM is only one of the considerations for selecting a contractor. Mr Pritam Singh's explanation about the PQM score was unchallenged by PRPTC at trial:

“79. In any event, a contractor's PQM score is not entirely determinative of the contractor's capabilities and suitability for a particular project. The PQM score is simply one of the various factors that the Contracts Department takes into consideration when assessing contractors and thereafter awarding contracts. “PQM” stands for Price Quality Method. It is an indicia that AHTC uses to assess the contractors that have submitted tender bids or quotations for AHTC's consideration. In preparing the tender documentation, the Contracts Department would prepare a PQM in which we would define the generic criteria that will be used to give a score to the tenderer. The PQM is usually included in the tender documentation which all the tenderers will receive a copy of such that they are aware of the Contracts Department's selection criteria. The criteria defined in a PQM would typically cover both aspects of the contractor's pricing and quality of work. The Contracts Department will then give the tenderer a score for each criterion and a total score is tallied thereafter. Exhibited hereto at Tab 3 of PS-1 is a copy of the PQM scores for various contractors in relation to repair works to external façade and external wall for water seepage for AHTC.

*80. However, using the PQM as a form of assessment is not simply a mathematical exercise because the fact that one contractor has a higher PQM score than another does not necessarily mean that the tenderer will be awarded the contract. This is because the **PQM does not capture all factors or reasons that may be relevant to the awarder's specific consideration at hand. In the instance involving Pest-Pro and Rentokil for example, the PQM would not capture factors such as the contractor's familiarity with rat control programs specifically or with other documentation that the NEA would require. Other factors such as the AHTC's assessment of managing risks is also not captured by a PQM score. There are other times where the contract may not be awarded to the tenderer with the highest PQM score because it would be risky to award all contracts to that vendor which already has many existing contracts with the awarder such that risks are better spread by awarding that contract to another vendor instead.***

⁵⁰² 12.10.2018 NE, Pg 54 L 2 - 17.

⁵⁰³ Part 4 of AHTC's Response at [20], 20 CB 15136.

81. As such, the PQM score is not entirely determinative and cannot be relied without more in the process of assessing the tenderers when awarding contracts. An assessment will still have to be made of other factors. Otherwise, there will be no utility in having committees such as the T&C Committee or conducting tender interviews of the tenderers. It is during such interviews that assessment of the contractor's ability can be made, such as whether they appear competent and hold themselves out to the qualifications that they or the company professes to have.⁵⁰⁴ (emphasis added)

261. PwC had also alleged that there were no written or documented evidence that all or majority of the members of the T&C Committee had approved of the tender. This is without any basis. Rule 74 of the TCFR imposes no such requirement. In any event, the T&C Meeting Minutes shows that the Committee gave its approval for the award of the tender to Rentokil.
262. Given that the T&C Committee's reasons for selecting Rentokil were not rebutted by other evidence, it is apparent from the cross-examination of Mr Goh that his only basis for objecting to the appointment of Rentokil is that the reasons for awarding the contract to Rentokil were not recorded in the TER. However, there is no such requirement in the TCA or TCFR. Rule 74(16) of the TCFR only requires that the reasons be recorded and open to scrutiny by the auditor. It does not require it to be in the TER. Rule 74(16) of the TCFR states as follows:

"The circumstances and reasons for not accepting the lowest tender which meets the specifications fully or very substantially must be fully justified and shall be recorded and open to scrutiny by the auditor."

Inclusion of PE under AHPETC's contract with Red-Power instead of Tong Lee

263. The Town Councillors' evidence is that Tong Lee had declined to extend its coverage to include PE when asked by AHPETC to do so as it did not have sufficient resources to support this additional division. The PwC Report also confirms that this was told to PwC by Mr Philip Lim of AHTC's Contracts Department.⁵⁰⁵ PwC did not take any steps to verify this fact.
264. Confronted with documentary evidence that the T&C Committee terminated Tong Lee due to its unsatisfactory work performance, Mr Goh's objection was that these matters were not recorded in the TER:

"Q: No, what I am saying, Mr Goh, is that you will also know that Tong Lee services were not of a standard which were -- was of a poor standard and in November 2015 AHTC's tender and contracts committee had decided that their existing contracts with Tong Lee for Paya Lebar Division and Bedok Reservoir Punggol Divisions be terminated?

⁵⁰⁴ AEIC of Mr Pritam Singh at [79] to [81], 2 BA 902 - 903.

⁵⁰⁵ The PwC Report at [5.78], 26 CB 20309.

A: **Your Honour, the service quality of Tong Lee has not been recorded in the tender evaluation report**, as I repeatedly say that, and again this particular document to decide to terminates Tong Lee comes so many months after the contract for Punggol East is included under Red-Power. So I do not think that this --

Q: The termination may have come later but the quality of the work would have been realised earlier?

A: **However, it wasn't recorded in the tender evaluation committee. I think the main thing is that, with due respect Mr Rajah, it brought up a lot of things, a lot of reasons why Tong Lee should not be chosen but all of these reasons were not written in the tender evaluation record and the tender evaluation report clearly states that Red-Power actually charges the highest cost and 700 over per cent higher than the lowest. There is no reason stated in the tender evaluation report why Red-Power, even with all this high cost and without any other reason, why is Red-Power still selected?**

Q: Mr Goh, we will come on to the issue of the relative cost of Red-Power and to awarding the contracts to Red-Power as opposed to somebody else. We will come on to that in a minute, but you will accept that on 26 November 2015 AHTC had decided that Tong Lee's performance was substandard and that they would be terminating Tong Lee as a contractor?

A: **Yes, this is the first time I have read this document.**⁵⁰⁶ (emphasis added)

265. Mr Pritam Singh's evidence was that PE was included under Red-Power as the T&C Committee agreed with AHTC's Contracts Departments' recommendation that doing so would enable AHTC *"to manage these contracts more effectively and to achieve better cost efficiencies when the next new term renewal is called"*.⁵⁰⁷ PwC also confirmed that AHTC's Contracts Department had given them the same reason.⁵⁰⁸ PRPTC did not call any factual witnesses to challenge this evidence.

Inclusion of PE under Rentokil

266. After the pest control contract with Clean Solutions Pte Ltd for PE expired on 31 March 2015, AHPETC included PE under its existing contract with Rentokil. Mr Pritam Singh's evidence⁵⁰⁹ is that, as in the case of PE's inclusion under the contract with Red-Power, the T&C Committee had agreed with the recommendation of AHTC's Contracts Department for PE to be included under AHTC's existing contract with Rentokil as:

- (a) AHPETC would be able to manage all the wards under its contract under the same contractor/contract and achieve greater efficiency; and,
- (b) AHPETC would be able to call for a fresh tender for the provision of services in respect of a large area if PE was included with the other divisions. This could invite a more competitive bid as there would be economies of scale.

⁵⁰⁶ 12.10.2018 NE, Pg 16 L 18 - 25, Pg 17 L 1 - 25, Pg 18 L 1.

⁵⁰⁷ AEIC of Mr Pritam Singh at [70] to [73], 2 BA 899 - 900.

⁵⁰⁸ PwC Report at [5.68], 26 CB 20305.

⁵⁰⁹ AEIC of Mr Pritam Singh at [75], 2 BA 900.

267. The above considerations were not challenged by PRPTC.

Appointment of Titan and J Keart under new contracts

268. The Town Councillors' evidence in this regard is set out in Mr Pritam Singh's AEIC:

- (a) The T&C Committee was informed by AHTC's Contract Department that there was no option to extend the existing contracts with Titan and J Keart;⁵¹⁰
- (b) The T&C Committee instructed the Contracts Manager to call for a tender;⁵¹¹ and,
- (c) Titan and J Keart were the lowest bidders in the new tenders and were accordingly awarded the new contracts for a period of 3 years.⁵¹²

269. Even if the Contracts Department had been mistaken in what it informed the T&C Committee, the appointment of Titan and J Keart cannot be a breach of duties by the Town Councillors:

- (a) It was well within the powers of the T&C Committee to call for a tender instead of extending the contracts.
- (b) There is no requirement in the TCA or TCFR that requires AHTC to justify in writing why it chose to call tenders instead of extending the contracts.⁵¹³
- (c) Mr Pritam Singh explained the advantages of calling tenders instead of renewing existing contracts, whose explanation was not challenged by PRPTC:

*"Generally, the decision on whether to renew an existing contract or to call for a new contract requires consideration of several factors. In a straightforward case, a decision may be made not to renew a contract with a vendor although there is an option to do so, because the vendor has not shown good or satisfactory performance. There are times where the decision-making process was influenced by the market forces at play then. There are instances when it was necessary to consider whether the decision to renew the contract would give AHTC a better deal by being able to negotiate a longer term contract for a lower rate at an earlier time period instead of extending the contract and calling the tender later when the cost could be much higher. Another example is if the calling of tenders were delayed to a later date, some contractors that AHTC hopes would come forward may already have committed their resources to another project such that these contractors will no longer submit a tender because they do not have the capacity to do so."*⁵¹⁴

⁵¹⁰ AEIC of Mr Pritam Singh at [87], 2 BA 905.

⁵¹¹ AEIC of Mr Pritam Singh at [87], 2 BA 905.

⁵¹² AEIC of Mr Pritam Singh at [83] and [85], 2 BA 904.

⁵¹³ AEIC of Mr Pritam Singh at [88], 2 BA 905.

⁵¹⁴ AEIC of Mr Pritam Singh at [61], 2 BA 895.

270. When challenged by PRPTC's Counsel during cross-examination that Mr Pritam Singh would not have extended the contract with Titan even if he knew that he could have done so, Mr Pritam Singh's answer showed that the decision required consideration of multiple factors. His evidence was not rebutted:

"Q: So I'm going to suggest to you, sir, that from the reasons given at paragraph 27(b), because that was your state of mind, even if you had been told that you could extend the old contract, you wouldn't have done so, for those reasons.

A: Mr Singh, I would have -- I can't speak for the entire committee, but **I would have had to put my mind and understand what were the -- what was the historical trend of pricing for conservancy contracts, because here we are getting a contract for three years, and if the price was attractive, within a reasonable range, even though it may be higher, we could have still taken that contract up. However, if the rates were ludicrously high, then we would have to apply our mind to the impact of these rates which will be coming out of your routine fund and the bottom line position of the town council. So we would have to balance certain things quite carefully, because you won't know what the rates would be like in future, but -- yes.**"⁵¹⁵ (emphasis added)

271. It would appear that PRPTC's principal reason for bringing this claim is the significant amount of \$423,147 that it claims could have been saved if the contract with Titan was renewed instead of calling a new tender. However, as explained by Mr Pritam Singh, PwC's computation is incorrect as it had used a lower number of Equivalent Dwelling Units ("**EDUs**").⁵¹⁶ Mr Goh during the trial agreed that PwC's computations were based on a lower number of EDUs as they had ignored the car park lots.⁵¹⁷

Payment of 12 Invoices in November 2015

272. In the PwC Report, it was alleged that there were 22 instances where invoices were paid even though the supporting documents/evidence of work done in the form of job sheets, photographs of works completed on monthly services reports were missing.⁵¹⁸ This was PRPTC's pleaded case until it amended the Statement of Claim on 12 October 2018 (4 days after the trial had begun), reducing the number of invoices from 22 to 12 invoices purportedly due to documents disclosed during discovery. The alleged improper payments were therefore reduced from \$536,059.92 to \$171,112.62.
273. At the outset, it is important to point out that the 12 invoices are in fact part of PRPTC's claim under 56 invoices in the next section. As such, the claim for these 12 invoices overlap with the claim under the 56 invoices.⁵¹⁹

⁵¹⁵ 25.10.2018 NE, Pg 149 L 22 – 25, Pg 150 L 1 - 19.

⁵¹⁶ AEIC of Mr Pritam Singh at [89] to [92], 2 BA 906 - 907.

⁵¹⁷ 12.10.2018 NE, Pg 65 L 12 - 25 to Pg 66 L 1 - 2.

⁵¹⁸ PwC Report at [5.122], 26 CB 20325.

⁵¹⁹ 12.10.2018 NE, Pg 4 to 6.

274. The remaining 12 invoices for which supporting documents/evidence of work done was allegedly missing are as follows:

S/No.	Vendor	Invoice Date	Invoice Number	Alleged Missing Document / Evidence of Work Done
1.	Campaign Complete Solutions Pte Ltd ("Campaign")	19.11.2015	INV10/15-027	Monthly Service Report
2.	Campaign	30.09.2015	INV09/15-021	Monthly Service Report
3.	Campaign	31.10.2015	INV10/15-025	Monthly Service Report
4.	Campaign	19.11.2015	INV11/15-028	Monthly Service Report
5.	Empire Cleaning & Pest Control (S) Pte Ltd ("Empire")	18.11.2015	EMP/19682	Monthly Service Report
6.	J Keart	19.11.2015	INV112015020782	Monthly Service Report
7.	Propell Integrated Pte Ltd ("Propell")	11.11.2015	PRO1511468	Verification of Work Done
8.	Propell	11.11.2015	PRO1511467	Verification of Work Done
9.	Propell	11.11.2015	PRO1511469	Verification of Work Done
10.	Propell	11.11.2015	PRO1511464	Verification of Work Done
11.	Propell	11.11.2015	PRO1511466	Verification of Work Done
12.	Propell	11.11.2015	PRO1511465	Verification of Work Done

275. PRPTC's case is wholly misconceived as the alleged "missing documents" actually exist and should be in the provision of PRPTC. Mr Vincent Koh's evidence is that:⁵²⁰

- (a) The 22 invoices (which includes the now 12 invoices) were paid pursuant to the respective contracts that AHTC had entered into with the relevant contractors.
- (b) AHTC had handed over documents including the supporting documents for the 12 invoices to PRPTC. Due to the voluminous nature of the documentation involved, the process took place over a period of 3 months from October to December 2015. The email exchanges between PRPTC's Secretary/General Manager, Ms Kwok Wei Kin and Mr Vincent Koh confirmed that all documents had been handed over.
- (c) During its audit, PwC did not bring to AHTC's attention that there were missing documents.

⁵²⁰ AEIC of Mr Vincent Koh at [40] to [50], 3 BA 1037-1041.

- (d) With respect to the alleged missing documents for the remaining 12 invoices, Mr Vincent Koh had explained in his AEIC that for Campaign, Empire and J Keart, the monthly service reports were not a necessary part of the payment process as these payments were for routine works. With respect to the remaining vendor, Propell, Mr Vincent Koh's evidence was that these payments do not require supporting documents to verify that the work was completed satisfactorily as the work related to the setting up of polling stations for the 2015 GE on the directions of HDB. HDB had confirmed that the work was done and made the reimbursements for the expenses incurred by AHTC. Despite the undeniable fact that the polling had taken place in the estates managed by AHTC in the 2015 GE, Mr Goh maintained that there was a need for supporting documents such as photographs. This position is untenable.

"Q: So when you saw that remittance advice from HDB, reimbursing AHTC for all the cost, were you still not satisfied that the work had been done?

A: That is after the event, but when payment was made, your Honour, when payment was made there is nobody ensuring that the work has been done and as what Mr Rajah rightly pointed out this actually reimbursement by HDB, HDB themselves may have somebody sort of, you know, certify that the work has been done at their end, but not at the town council's side

And the fact that the general elections 2015 has come and gone and the whole polling has taken place at that polling booth or polling station that also

Q: is not evidence that the work has been done, I assume, by your test?

Well, there is no photographs or anything to show that the work has been done before payment is made.

A: I see. So if there had been photographs you might have taken a different view?

Q: Yes.

I see. All right

A: Because this is actually prescribed by the town council's own procedures. The

Q: town council procedures say and I suppose it is ad hoc services. For ad hoc services the supporting document that is expected to be there are

A: photographs."⁵²¹

- (e) Given the unchallenged evidence that HDB had reimbursed AHTC for the invoices issued by Propell, there was simply no loss arising from these alleged "improper payments". At trial, Mr Goh testified that he was not aware that HDB had reimbursed AHTC for the payments even though PRPTC had been provided with the documents. Even more surprisingly, Mr Goh maintained that this knowledge does not change his findings. This position is untenable.⁵²²

276. During the trial, PRPTC produced a previously undisclosed email chain purportedly showing that documents had not been handed over properly. Mr Vincent Koh

⁵²¹ 11.10.2018 NE, Pg 85 L 25 to Pg 86 L 1 - 25.

⁵²² 11.10.2018 NE, Pg 76 L 12 - 16 and Pg 77 L 6 - 10.

expressed surprise that the issue of missing documents was raised more than one year after the handover and called into question PRPTC's record keeping:

"A: So what happened is when I receive this document from her, I was a bit surprised, because it is one year later, your Honour It is dated February 2017. We had completed our handover in December 2015, and one year later, she write me an email to tell me that I still have outstanding documents that I haven't handed over to Aljunied-Hougang Town Council, which I'm very surprised, because on 9 December she confirmed that she had taken over all the documents.

Court: All right.

A: And furthermore -- sorry. And furthermore is that it is arising from the PwC audit that she discovered that the documents were missing. So, I mean, within that one-year period -- I mean, the thing is that after we hand over, I wouldn't know what happened to the documents. That is -- that is my stand as far as this case is concerned

Court: Right."⁵²³

277. PRPTC did not call any factual witnesses to refute Mr Vincent Koh's evidence.

Payment of 56 Invoices in November 2015

278. PRPTC's pleaded case is that for the 56 invoices, the payments were made even though they were not properly authorised and/or certified by the HODs i.e. the Property Manager, as required under Rule 56(4) of the TCFR. This is denied.

279. Rule 56(4) of the TCFR is as follows:

"56(4) It is the responsibility of the Head of Department to satisfy himself that -

- (a) the services specified have been duly performed;*
- (b) the goods purchased have been properly held or applied for the purpose intended;*
- (c) the prices charged are either according to contracts or approved scales, or fair and reasonable according to current local rates;*
- (d) authority has been obtained as quoted, and the computations and casting have been verified and are arithmetically correct; and*
- (e) the persons named in the vouches are those entitled to receive payment"*

280. As explained by Mr Vincent Koh,⁵²⁴ save for one instance,⁵²⁵ each of these Voucher Journal Reports for these 56 invoices have been properly certified by the relevant HODs i.e. either the Property Manager or the Assistant Finance Manager (who was the Head of the Finance Department). As such the requirement under Rule 56(4) of the TCFR has been complied with.

⁵²³ 29.10.2018 NE, Pg 183 L 8 - 25 to Pg 184 L 1 - 3.

⁵²⁴ AEIC of Mr Vincent Koh at [54], 3 BA 1042.

⁵²⁵ Only Citicon's invoice no. CTCIV13109 had a PV that was not endorsed by the Property Manager. However, it was approved by the Assistant Finance Manager; 11.10.2018 NE, Pg 139 L 22 - 25, Pg 140 L 1 - 25, Pg 141 L 1 - 11.

281. Mr Goh's evidence was that the above provision is breached as long as the HOD did not sign on the invoice itself. This was notwithstanding the fact that nowhere in Rule 56(4) of the TCFR does it state that invoices must be signed by the HOD. It was only under further cross-examination that Mr Goh agreed with this:

"Q: No, I am not asking you about proof or anything at the moment. We are just going through what is it that the head of department is supposed to do in order to comply with rule 56(4), right? And so rule 56(4) says it is the responsibility of the head of department to satisfy himself firstly: "(a) the services specified have been duly performed. (b) the goods purchased have been properly held or applied for the purpose intended. (c) the prices charged are either according to contracts or approved scales or fair and reasonable according to current local rates. (d) authority has been obtained as quoted and the computations and castings have been verified and are arithmetically correct. (e) the persons named in the vouchers are those entitled to receive payment." Okay, right?

A: Yes, I see that.

Q: All right. It doesn't say that he has to sign the invoice, does it?

A: This is the rules, but the thing is that the town council would have to come up with procedure.

Q: Slow down.

A: To satisfy the rules. Sorry, Mr Rajah. I am sorry.

Q: I am sorry, Mr Goh. **The question was it doesn't say he has to sign the invoice, right?**

Q: **It doesn't say it in the rule. It just says he has to satisfy himself that all these things are done?**

A: **That is correct, Mr Rajah.**⁵²⁶ (emphasis added)

282. Further, Mr Goh accepted that Rule 56(4) of the TCFR imposed a substantive requirement and not a specific procedural requirement. It is submitted that Mr Goh's position, that he would only be satisfied that the HOD has satisfied himself that the amount billed is correct if the invoice was signed, is illogical and untenable.

"Q: **But, you see, in order to comply with 56(4) all you have to do is to comply with the essence of it, with the substance of it, not with the form. 56(4) imposes substantive requirements. It doesn't impose procedural requirements. You would accept that?**

A: **I do agree with you**, Mr Rajah, on that sense but there must be evidence that the check is a correct check and, for example, if Mr Imran is signing on the work order that doesn't mean that he is satisfied with the invoiced amount. So similarly, if Mr Imran signed on this journal voucher, that doesn't mean that he is satisfied with what has been invoiced.

Q: No, you see we come back to this 56(4). You are saying that 56(4) has been breached and I need to check back with you again. Are you saying 56(4) has been breached because the requirements as set out in subsection (4) have not been met, or is it because the head of department signed an invoice as opposed to some other document which authorised or which showed that he was happy with – that he was approving this payment?

56(4) says that the department head has to satisfy himself of that and we need, as

A: I already told, we need to see the evidence that he is satisfied.

Supposing he sent you a letter saying, "Mr Goh, I am satisfied that the requirements

Q: of TCFR 56(4) have been met as far as this particular invoice is concerned." He sends you a letter and says that, you will say it is still a breach?

No, I think he has to specifically tell me whether what he has checked, whether he

A: has checked the price, right? And then there is a policy that the organisation has to

⁵²⁶ 11.10.2018 NE, Pg 93 L 22 - 25, Pg 94 L 1 - 25, Pg 95 L 1 - 3.

follow consistently that, you know, because there is so many transactions and you have to just follow the policy so that you don't have to send this kind of a letter to anybody at any time."⁵²⁷ (emphasis added)

283. At trial, Mr Goh admitted that 3 of the invoices did not concern property transactions and therefore need not be signed off by the Property Manager.⁵²⁸

Objections to the PwC Report

284. A key observation in the PwC Report is that the reasons for the appointment of the third party were not recorded or minuted. On this basis, PwC alleges that it is unclear if the TC and/or the T&C Committee had carefully evaluated and considered the reasons.⁵²⁹ However, the conclusion that the Town Councillors are in breach of their duties cannot be based merely on the basis that the reasons were not recorded. It was incumbent on PwC to investigate all the facts and circumstances then existing instead of merely relying on the documentation to draw the conclusion that the Town Councillors were in breach of their duties.
285. It is apparent from the above that PwC failed to verify and investigate the information that it was provided. It was apparent from the cross-examination that Mr Goh was content to focus on the TER.⁵³⁰ This is a serious defect in the PwC Report, particularly so as the TCA and TCFR do not require all the reasons to be set out in the TER.
286. In respect of the claims made as summarised under [247] above, the PwC Report seeks to question and second-guess the discretionary decisions made by the Town Councillors of the AHTC. Similarly, the Honourable Court is being asked to second-guess and substitute its decision in lieu of the decision made by the Town Councillors. PRPTC's position is without basis both in fact and in law.
287. In questioning the decisions of the Town Councillors, the PwC Report took no account of the fact that AHTC was an opposition-run TC which did not enjoy economies of scale, unlike the PAP-run TCs. At trial, Mr Goh acknowledged that PAP TCs did enjoy such economies of scale.⁵³¹ The advantage of the PAP TCs being able to enjoy economies of scale was also confirmed by Dr Teo Ho Pin in Parliament on 13 May 2013:

⁵²⁷ 11.10.2018 NE, Pg 132 L 16 - 25, Pg 133 L 1 - 25, Pg 134 L 1.

⁵²⁸ 11.10.2018 NE, Pg 128 L 6 - 25 to Pg 127 L 1 - 13.

⁵²⁹ The PwC Report at [5.72], [5.93], [5.78], [5.89], [5.99] and [5.105], 26CB 20308, 20314, 20309, 20313, 20316 and 20318.

⁵³⁰ 12.10.2018 NE, Pg 10 L 4 - 10, Pg 13 L 19 - 24, Pg 30 L 13 - 24.

⁵³¹ 12.10.2018 NE, Pg 93 L 1 - 25 to Pg 94 L 1 - 25.

“Economies of Scale. One, Emergency Maintenance Service Unit (EMSU) Joint Tender. **The PAP-run Town Councils jointly called a tender** to provide 24 hours emergency maintenance services for their residents. These include lift rescue services, emergency repairs, and call centre services. **The benefit of this joint tender is to bring down the cost** of providing 24 hours emergency maintenance services, and ensure that backup emergency maintenance services are available. **The EMSU tender for the 15 PAP-run Town Councils is grouped into three zones (East, West and Central)** so that two or more service providers can serve and provide backup emergency maintenance services to the residents.

...

Due to the similarities in business, the PAP-run Town Councils have reaped economies of scale when they jointly developed the TCMS in 1994 instead of each Town Council developing or purchasing computer system separately on their own.

In addition, the Town Councils can leverage on each other’s strengths and experiences thus saving time and cost in the TCMS development. Furthermore, cost savings can be derived with a common IT infrastructure such as the hosting of software and data in a centralised environment including backup as compared to the Town Councils having to purchase individual serves and related equipment.

...

Three, town improvement projects. It is a common practice for the PAP-run Town Councils to call joint tender for improvement projects such as covered linkways, children playground or elderly fitness equipment so as to obtain comparative prices. **Due to bulk purchases, the PAP-run Town Councils are able to attract better quality suppliers and contractors for improvement projects.** This has enhanced the durability, maintainability and safety of the amenities added to the towns.”

*Similarly, the PAP-run Town Councils have worked together to negotiate with different lift companies to get better lift maintenance servicing fees, and also spare part prices due to its economies of scale. This has also slowed down escalating costs for lift servicing and maintenance.*⁵³² (emphasis added)

288. PwC also took no account of the evidence that contractors were not prepared to work for an opposition-run TC – a factor which had a significant influence on the decisions of the Town Councillors at the material time. It was not in dispute that in several instances, there was only a single bid when a public tender was called.

ISSUE (V) IF ANY OF THE APPOINTMENTS AND/OR PAYMENTS WERE IMPROPER AS ALLEGED, WHETHER THE 1ST TO 5TH DEFENDANTS HAD ACTED IN GOOD FAITH AND ARE THEREFORE NOT LIABLE

289. Section 52 of the TCA provides for protection against personal liability for, inter alia, Town Councillors if they had acted in good faith in execution or purported execution of the TCA:

“Protection from personal liability

52. No suit or other legal proceedings shall lie personally against any member, officer or employee of a Town Council or other person acting under the direction of a Town Council for anything which is in good faith done or intended to be done in the execution or purported execution of this Act or any other Act. (emphasis added)

⁵³² 24 CB 18571 - 18572.

Meaning of “Good Faith”

290. The meaning of “good faith” in the context of the TCA has not been previously considered by the Singapore Courts. In *Ng Eng Ghee*, the CA construed the meaning of “good faith” in the context of the Land Titles Strata Act (Cap. 158, 1999 Rev Ed). In doing so, the CA considered the meaning of “good faith” under the general law and held that it is important to take into account the specific statutory context in which the term is used:

*“In Dynamic Investments ([91] supra), the High Court reviewed several English cases involving the meaning of “good faith” in specific statutory contexts (eg, Central Estates (Belgravia) Ltd v Woolgar [1972] 1 QB 48 (“Woolgar”)) and concluded that the “core meaning” of “good faith” under s 84A(9) of the LTSA involved just “**honesty or absence of bad faith**” (at [17]). In Street v Derbyshire Unemployed Workers’ Centre [2004] 4 All ER 839 (“Street v Derbyshire”) at [42], Auld LJ pointed out that “**motive, or honesty of motive was all**” (with reference to Woolgar). **However, the meaning of good faith is always contextual.** In Secretary, Department of Education, Employment, Training and Youth Affairs v Prince (1997) 152 ALR 127, Finn J (the author of Fiduciary Obligations ([110] supra)) penetratingly noted at 130 that:*

“The significance of the statutory context in which the formula is used is in the illumination it gives as to what is that required state of affairs. It has correctly been observed that the term ‘good faith’ (or its now less fashionable Latin equivalent ‘bona fide’) is a protean one having longstanding usage in a variety of statutory and, for that matter, common law contexts. ...

The burden of the formula can vary significantly given the purpose it is intended to serve in a given setting. In one context it can focus inquiry upon a person’s reason for action (eg as with the good faith duty of company directors); in another, to a person’s state of knowledge when a particular event occurs.”

Similarly, in Street v Derbyshire (at [41]), Auld LJ pragmatically acknowledged that:

“Shorn of context, the words ‘in good faith’ have a core meaning of honesty. Introduce context, and it calls for further elaboration. ... The term is to be found in many statutory and common law contexts, and because they are necessarily conditioned by their context, it is dangerous to apply judicial attempts at definition in one context to that of another.”⁵³³ (emphasis added)

291. A review of the cases in other jurisdictions interpreting provisions similar to Section 52 of the TCA shows that the courts have generally interpreted “good faith” to be acting honestly and reasonably. These cases are dealt with below.

Interpretation of “Good Faith” in other jurisdictions in the context of statutory provisions for protection from personal liability

⁵³³ *Ng Eng Ghee* at [132], Tab 27 of the D1-D5BOA.

292. In Ontario, Canada, Section 391(1) of the City of Toronto Act contains a protective provision similar to Section 52 of the TCA, which is as follows:

“Immunity re performance of duty

391(1) No proceeding for damages or otherwise shall be commenced against a member of city council, an officer, employee or agent of the City or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this Act or a by-law passed under it or for any alleged neglect or default in the performance in good faith of the duty or authority.”⁵³⁴ (emphasis added)

293. The question of how Section 391(1) should be interpreted arose in The Toronto Party v. Toronto (City) [2013] ONCA 327⁵³⁵ (“**Toronto Party**”). The case involved an attempt to hold members of a city council jointly and severally liable for payments made by the city under a by-law. The suit was initiated by the Toronto Party, a not-for-profit corporation composed of individual residents of the City of Toronto, against councillors who voted in favour of a by-law where councillors could apply for grants to cover approved extraordinary legal and audit expenses incurred during the election campaign and subject to requests for compliance audits. The councillors conceded in this case that they stood in a fiduciary relationship to the taxpayers of the City of Toronto. However, it was found that the councillors were not in breach. It was held on first instance and on appeal that there was no evidence that the councillors, in voting in favour of the motion supporting the by-law, preferred their own interests to those of their constituents. With respect to the Toronto Party’s contention that the councillors had put their own self-interest first since each might be the subject of a similar request for a compliance audit and would want his or her expenses paid, the Ontario Court of Appeal held that the inference the appellant seeks to draw from the foundational fact is not an inference but an impermissible speculation.⁵³⁶ In particular, it was held that:

- (a) To establish the personal liability of individual members of a municipal council, the party who seeks to establish liability must prove the relevant conduct was done maliciously or in bad faith;⁵³⁷ and
- (b) The rejection of good faith is lack of evidence of good faith and not positive proof of bad faith.⁵³⁸

⁵³⁴ Tab 1 of the D1-D5BOA.

⁵³⁵ Toronto Party, Tab 34 of the D1-D5BOA.

⁵³⁶ Toronto Party at [61] and [63], Tab 34 of the D1-D5BOA.

⁵³⁷ Toronto Party at [43], Tab 34 of the D1-D5BOA.

⁵³⁸ Toronto Party at [64], Tab 34 of the D1-D5BOA.

294. The defence of “good faith” has also been interpreted to include an element of reasonableness. In British Columbia, the Local Government Act (formerly known as the Municipal Act) provides immunity for individual local public officers under Section 738:

“Immunity for individual local public officers

738 (...)

(2) No action for damages lies or may be instituted against a municipal public officer or for former municipal public officer

(a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person’s duty or the exercise of the person’s power, or

(b) for any alleged neglect or default in the performance or intended performance of that person’s duty or exercise of that person’s power.

(3) Subsection (2) does not provide a defence if

(a) the municipal public officer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct, or

(b) the cause of action is libel or slander.”⁵³⁹

295. Section 738(2) above does not expressly incorporate the phrase “good faith”. However, in the case of Gook Country Estates Ltd v The Corporation of the City of Quesnel [2006] BCSC 1382⁵⁴⁰ (“**Gook Country**”), the Supreme Court of British Columbia held that Section 287 of the Municipal Act (the former Section 738(2)) conferred a defence of “good faith” as it codified common law trust principles in relieving councillors from strict liability where they have acted honestly and in good faith. Although the reasoning in Gook Country on the codification of common law trust principles is not applicable in the present case, given that the CA had found that it is not appropriate to add private law overlays to the statutory framework of the TCA and TCFR,⁵⁴¹ the Court’s reasoning on the meaning of “good faith” remains instructive:

- (a) The obvious policy reason behind the general immunity conferred by Section 287 is that there is a major public interest in the democratic administration of municipalities, which requires that individuals in those communities be willing to run for office. There are numerous ways that actions taken by a municipal

⁵³⁹ Tab 3 of the D1-D5BOA.

⁵⁴⁰ Gook Country, Tab 17 of the D1-D5BOA.

⁵⁴¹ CA 114 at [122] and [123], Tab 9 of the D1-D5BOA.

council may be subsequently found to be unlawful, either under the many provisions of the Municipal Act, under some other statute, or at common law. The risk of that occurring is particularly high in smaller municipalities, which may not have the in-house legal staff present in larger cities. Without the protection from personal liability that Section 287 provides, individuals would be reluctant to seek municipal office.⁵⁴²

- (b) If council members could be held personally liable for unlawful expenditures even where they acted honestly, reasonably and with no knowledge that the action was unlawful, it is difficult to imagine why any reasonable person would be willing to run for office.⁵⁴³

296. In Gook Country, Gook Country Estates Ltd., a company owned by members of the Gook family who are long-term residents of the Quesnel area, claimed that city officials had provided unlawful assistance to rival developers. The unlawful assistance was alleged to include illegal extension of city water lines and approval of developments that did not comply with legal requirements. The Court dismissed the claim and held that provisions imposing personal liability on council members must be strictly construed and are open to defences based on honest and reasonable conduct.⁵⁴⁴
297. In reaching the above conclusion, the Court in Gook Country considered the case of Lapointe v. Larin (1909), 42 S.C.R. 521, rev'd, [1911] A.C. 520⁵⁴⁵ ("Lapointe"), which dealt with a section of the Montreal City Charter that imposed personal liability and a two-year disqualification from office on council members who authorized expenditures "exceeding the amount previously voted and legally placed at the disposal of the council." In Lapointe, the council had authorized travel expenses for the mayor and it was alleged that council did not follow the proper procedure, including a requirement that expenditures had to first be submitted to council's finance committee. The Supreme Court of Canada in Lapointe held that the council members were liable and disqualified them from office, but this decision was reversed by the Judicial Committee of the Privy Council. The following comment on Lapointe was made in Gook Country :

"In dissent in the Supreme Court of Canada, Fitzpatrick C.J. said that the statute was intended to prevent careless or unbusinesslike management of public money, but did not contemplate its serious consequences being imposed in the absence of "bad faith, carelessness or indirect motive." He relied on the principle that penal statutes must be strictly construed:

⁵⁴² Gook Country at [97], Tab 17 of the D1-D5BOA.

⁵⁴³ Gook Country at [99], Tab 17 of the D1-D5BOA.

⁵⁴⁴ Gook Country at [110], Tab 17 of the D1-D5BOA.

⁵⁴⁵ Lapointe, Tab 23 of the D1-D5BOA.

If for an error in procedure, personal liability and disqualification are to be incurred, no honest man of substance would venture to assume the enormous risk involved in taking a share in the administration of the municipal government of a large city like Montreal (p. 532)

He added that the effect of the strict construction adopted by the majority of court:

...would be to make the members of the council insurers not only of the honesty and efficiency but of the infallibility of the municipal officials. Of the fourteen judges who have heard this case, nine say that the necessary formalities have been complied with and five that the proceedings were irregular; and, as a result, seven men, admitted to be of the most trustworthy, are disqualified for a period of two years and condemned to pay a large sum. Are these gentlemen presumed to be endowed with that grace of infallibility which evidently has been denied the courts of this country? (p. 532)

Although Fitzpatrick C.J. was in dissent, his reasoning was adopted by the Privy Council when it reversed the Supreme Court of Canada's decision. Lord Macnaghten said:

It may be that there has been some departure from ordinary routine or some failure to comply with the provisions of art. 42, which deals with the functions of the finance committee, or some infraction of a by-law of the council. But no error of that sort, if there has been any error, which is by no means clear, can justify the infliction of the penalties attached by article 338 to acts and defaults of a very different description (p. 528).⁵⁴⁶ (emphasis added)

298. The Court in Gook Country held that the meaning of “contrary to this Act” must be taken to mean expenditure for a purpose that is entirely outside the power and jurisdiction of the municipality. Otherwise, very clear and specific legislative language would be necessary to establish liability in circumstances which only concern a failure to follow the proper procedure in doing something that falls clearly within the municipality’s authority:

“A similar analysis can be applied to the meaning of “contrary to this Act” in the sections at issue. Does it mean an expenditure beyond the power and jurisdiction of the municipality, or does it also apply to a failure to follow the proper procedure in doing something that falls clearly within the municipality’s authority?

*The personal liability under the sections at issue relates to the misapplication of funds. If council members have authorized use of money for an improper purpose, it does not matter whether they acted by resolution or by bylaw. Given what I have already said about the purpose of the sections and the severity of the sanction they impose, I think the reference to expenditures “contrary to the Act” must be taken to mean expenditure for a purpose that is entirely outside the power and jurisdiction of the municipality. The illegality of such an expenditure would usually be obvious to council members voting for it and so would rarely be subject to a defence of good faith or due diligence. However, it is easy to imagine countless ways where council may inadvertently fail to follow the proper steps or proper sequence of steps in exercising its powers. Very clear and specific legislative language would be necessary to establish personal liability in those circumstances.*⁵⁴⁷ (emphasis added)

⁵⁴⁶ Lapointe at [102] and [103], Tab 23 of the D1-D5BOA.

⁵⁴⁷ Gook Country at [123] and [124], Tab 17 of the D1-D5BOA.

299. Given the above reasoning of the Supreme Court of British Columbia, AHTC's reliance⁵⁴⁸ on an earlier decision by the same court in MB v British Columbia [2000] BCSC 735⁵⁴⁹ ("MB") is misplaced. MB concerns the Crown's liability for negligence and breach of fiduciary duty for placing the plaintiff in a foster home where she was sexually abused. The relevant legislation that was considered by the Court was the 1960 Protection of Children Act. The Court observed in MB that the Crown's fiduciary duty arose in a context where it undertook to act in the best interests of young and vulnerable children, including to make arrangements for placement in a foster home which best met their needs.⁵⁵⁰ MB does not concern the liability of town councillors having regard to the Local Government Act (formerly known as the Municipal Act). The MB case is further dealt with at [314] to [316] below.

300. In New South Wales, Australia, Section 731 of the Local Government Act 1993 states:

"731 Liability of councillors, employees and other persons

*A matter or thing done by the Minister, the Director-General, a council, **a councillor**, a member of a committee of the council or an employee of the council or any person acting under the direction of the Minister, the Director-General, the council or a committee of the council **does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act**, and for and on behalf of the Minister, the Director-General, the council or a committee of the council, **subject a councillor, a member, an employee or a person so acting personally to any action, liability, claim or demand.**"*
(emphasis added)

301. The New South Wales Land and Environment Court in Garrett v Freeman (No 2) [2006] NSWLEC 334⁵⁵¹ ("Garrett") held that where a person is acting honestly or bona fide in the course of performing his or her duties under an enactment, a provision such as Section 731 of the Local Government Act 1993 will protect the individual from other actions.

302. In Garrett, the defendant, who was involved in the management of Port Macquarie-Hastings Council, was charged with two offences for causing damage to the habitat of threatened species by causing the construction of two roads. The Court held that the construction of roads was for the purpose of executing the Local Government Act 1993 and there is nothing to suggest any lack of good faith for that purpose.⁵⁵² In so holding, the Court cited with approval the judgment of Dixon J in Little v Commonwealth [1947]

⁵⁴⁸ AHTC's Opening Statement at [8.2.3(c)].

⁵⁴⁹ MB, Tab 25 of the D1-D5BOA.

⁵⁵⁰ MB at [117] - [119], Tab 25 of the D1-D5BOA. .

⁵⁵¹ Garrett, Tab 16 of the D1-D5BOA.

⁵⁵² Garrett at [15], Tab 22 of the D1-D5BOA.

75 CLR 94⁵⁵³ (“**Commonwealth**”), where he made some general observations about protective provisions:

*“Protective provisions requiring notice of action, limiting the time within which actions may be brought or otherwise restricting or qualifying rights of action have long been common in statutes affecting persons or bodies discharging public duties or exercising authorities or powers of a public nature. In provisions of this kind it is common to find such expressions as “acts done in pursuance of this section” or “statute”, “anything done in execution of this statute” or “of the powers or authorities” given by a statute, or “under and by virtue of”, a statutory provision. **Such enactments have always been construed as giving protection, not where the provisions of the statute have been followed, for then protection would be unnecessary, but where an illegality has been committed by a person honestly acting in the supposed course of the duties and authorities arising from the enactment.** (At 108.)*

Clearly the purpose of a provision limiting or qualifying rights of action against officers and others acting under a statute would not be fulfilled by an interpretation excluding from its operation cases arising from mistaking the law or failing to comply with the requirements of the law. (At 111.)

The truth is that a man acts in pursuance of a statutory provision when he is honestly engaged in a course of action that falls within the general purpose of the provision. The explanation of his failure to keep within his authority or comply with the conditions governing its exercise may lie in mistake of fact, default in care or judgement, or ignorance or mistake of law. But these are reasons which explain why he needs the protection of the provision and may at the same time justify the conclusion that he acted bona fide in the course he adopted and that it amounted to an attempt to do what is in fact within the purpose of the substantive enactment. (At 112.)⁵⁵⁴ (emphasis added)

303. In another New South Wales case decided by the Federal Court of Australia in Mid-Density Development v Rockdale MC [1993] FCA 408 (“**Mid-Density**”),⁵⁵⁵ which is cited by AHTC,⁵⁵⁶ the Court held that the statutory concept of “good faith” with which the legislation in this case is concerned calls for more than honest ineptitude. The requirement of “good faith” in this case concerned the interpretation of legislation which stated that a council shall not incur any liability in respect of advice provided in good faith. On the facts of the case, the Court found that the respondent had not acted in good faith as it had issued certificates specifying matters relating to land, within the area of the council, without making any real attempt to refer to the vital documentary information available to the council. Further, the council officer who was responsible for dealing with the request for information consciously ignored the very records which would have supplied it.⁵⁵⁷

⁵⁵³ Commonwealth, Tab 22 of the D1-D5BOA.

⁵⁵⁴ Commonwealth at [12], Tab 22 of the D1-D5BOA.

⁵⁵⁵ Mid-Density, Tab 26 of the D1-D5BOA.

⁵⁵⁶ AHTC’s Opening Statement at [8.2.3(b)]

⁵⁵⁷ Mid-Density, Pg 469 L 35 - 44, Tab 26 of the D1-D5BOA.

304. More importantly, the Court went on to state that the council may still have been acting in “good faith” if a real attempt has been made to extract information from its records, even though there was an error made in the inspection, or the results of the inspection were inaccurately represented in the certificate which is issued.⁵⁵⁸ This reasoning by the Court was omitted by AHTC in their reliance on the case.
305. It is submitted that Section 52 of the TCA requires, at the very minimum, the Plaintiffs seeking to establish the liability of the Town Councillors to show that they were neither honest nor reasonable or that the relevant conduct was done maliciously or in bad faith. The Plaintiffs have not established this.

Applicability of the “Good Faith” Defence for Claims by the TC

306. AHTC has pleaded that Section 52 of the TCA has no application and does not operate as a defence in respect of claims by AHTC against the Town Councillors.⁵⁵⁹ PRPTC has not pleaded this.⁵⁶⁰
307. In purported support of this proposition, AHTC cited MB for the view that “*the statutory purpose of a ‘good faith’ defence is to protect statutory bodies and their officers from being impeded in carrying out their functions without fear of unjustified claims from third parties*” and not the TC itself.⁵⁶¹ This is a mischaracterisation of what the case stands for. MB states as follows:

“In MacAlpine v. H.(T.)... Wallace J.A. set out the policy rationale for the defence of good faith:

There are a number of cogent reasons why bodies exercising discretionary statutory duty have been granted immunity. Firstly, the decisions made by these bodies often involve the balancing of a number of divergent interests. Secondly, the court should not simply substitute its view for that of the authority and assign liability accordingly. Furthermore, the court may often lack the experience and expertise in a particular field necessary to make a discerning decision. Finally, to hold public authorities liable for their errors in judgment by way of a civil action may well impede the decision-making process by discouraging public officers from experimenting with programs aimed at furthering social interests, such as rehabilitation.”⁵⁶²

308. The policy rationales for the defence of good faith set out in MB above are applicable regardless of whether the claims are by the TC or third parties.

⁵⁵⁸ Mid-Density, Pg 469 L 27 - 34, Tab 26 of the D1-D5BOA.

⁵⁵⁹ AHTC’s Reply at [2.1.1].

⁵⁶⁰ However, PRPTC has belatedly made the same submission in their opening statement (D&N’s Opening Statement at [32]) and in the course of trial at 05.10.2018 NE, Pg 86 L 16 to Pg 87 L 6.

⁵⁶¹ AHTC’s Opening Statement at [8.1.2].

⁵⁶² MB at [162], Tab 25 of D1-D5BOA

309. With respect to AHTC's submissions that Rule 56 of the TCFR, which imposes liability for unauthorised disbursements, will be rendered "toothless" if the Town Council cannot sue,⁵⁶³ it must be pointed out that Section 52 only protects the officer from personal liability if he had acted in good faith and in execution of the Act. If he had not, he would remain liable.
310. Indeed, as stated by the Court in Gook Country, even where it was the legislature's intention to place unlawful expenditure by councillors in a different category and to specifically continue the personal liability that existed at common law, it is unlikely that legislature intended to make councillors, who acted honestly and reasonably, liable in situations where even a full trustee would be excused:

*"... As stated above, if the action at issue was based on trust principles, a councillor would have a defence based on honesty and reasonableness. If council members could be held personally liable for unlawful expenditures even where they acted honestly, reasonably and with no knowledge that the action was unlawful, it is difficult to imagine why any reasonable person would be willing to run for office."*⁵⁶⁴

311. The distinction that AHTC seeks to draw would lead to a curious situation where the Town Councillors are entitled to rely on a "good faith" defence in claims by third parties, but not in a case where the TC sues them.
312. Section 52 of the TCA is clear and unequivocal that no suit or other legal proceedings shall lie against any officer of a TC for anything which is in good faith done or intended to be done in the execution or purported execution of the TCA. There is no need to consider any extraneous material to justify a contrived interpretation that Section 52 of the TCA would not apply in suits initiated against the Town Councillors by the TC. As the CA held in Tan Cheng Bock v Attorney-General [2017] 2 SLR 850 ("**Tan Cheng Bock**"):

"(ii) The purpose of the statute should ordinarily be gleaned from the text itself. The court must first determine the ordinary meaning of the provision in its context, which might give sufficient indication of the objects and purposes of the written law, before evaluating whether consideration of extraneous material is necessary.

(iii) Consideration of extraneous material may only be had in three situations:

(A) If the ordinary meaning of the provision (taking into account its context in the written law and purpose or object underlying the written law) is clear, extraneous material can only be used to confirm the ordinary meaning but not to alter it.

⁵⁶³ AHTC's Opening Statement at [8.1.3].

⁵⁶⁴ Gook Country at [99], Tab 17 of the D1-D5BOA.

- (B) *If the provision is ambiguous or obscure on its face, extraneous material can be used to ascertain the meaning of the provision.*
- (C) *If the ordinary meaning of the provision (taking into account its context in the written law and the purpose or object underlying the written law) leads to a result that is manifestly absurd or unreasonable, extraneous material can be used to ascertain the meaning of the provision.*⁵⁶⁵ (emphasis added)

313. Section 52 of the TCA is therefore applicable to the impugned actions of the Town Councillors in the present case.

Applicability of the “Good Faith” defence in the context of Policy Decisions

314. Relying on the authority of MB, AHTC submits that no claim of good faith can be made where the decision is operational, as opposed to a “policy-making function” requiring the balancing of factors and weighing of interests.⁵⁶⁶ AHTC further submits that the award of 7 out of 10 projects to LST instead of DM are operational decisions and not “policy-making functions” and thus the Town Councillors cannot avail themselves of Section 52 of the TCA.

315. In the first place, the Town Councillors do not accept that there should be a policy-operations dichotomy drawn in relation to whether Section 52 of the TCA applies to the acts of the Town Councillors. This would be contrary to the clear wording of Section 52 of the TCA. Even if such a distinction is to be drawn, AHTC’s submissions are misconceived based on the following reasoning in MB:

- (a) The “policy-operations” dichotomy is about the nature and quality of the decision to be made and whether there was an exercise of discretion conferred by a statute.⁵⁶⁷
- (b) In the context of the MB case, a social worker’s decision as to whether and how often to visit a foster home does not involve the exercise of a “policy-making function”, but only involves practical considerations such as geography, time, workload and similar factors. A social worker’s responsibilities to monitor and supervise therefore does not involve the exercise of discretion sufficient to raise the application of good faith.⁵⁶⁸

⁵⁶⁵ Tan Cheng Bock at [54(c)(ii)] and [54(c)(iii)], Tab 30 of the D1-D5BOA.

⁵⁶⁶ AHTC’s Opening Statement at [8.2.3(c)].

⁵⁶⁷ MB at [166], Tab 25 of the D1-D5BOA.

⁵⁶⁸ MB at [170], Tab 25 of the D1-D5BOA.

- (c) Once Crown officials are put on inquiry, the defence of good faith will be of no assistance unless they actually consider the matter and make a decision consistent with the exercise of the Crown's duty.⁵⁶⁹ Conversely, where there is "*more than one legitimate response to a set of facts*", the Court stated that it would not "*intrude itself into this inherently complex process so long as the Crown demonstrates that it considered the matter once put on inquiry and made a choice sufficient to indicate that it did not fail to carry out its duty.*"⁵⁷⁰
- (d) On the facts of the MB case, the Court found that the Crown's employee simply made no inquiry. This was not a case revealing significant errors of judgment based on an honest misinterpretation of the facts.⁵⁷¹
316. In our present case, the decisions made by the Town Councillors involve policy-making functions. AHTC has alleged that the TCFR requires the T&C Committee to select the lowest tenderer and "*these are practical considerations, as opposed to a weighing of interests*".⁵⁷² However, in an apparent contradiction of itself, AHTC also accepts that the requirement to select the lowest tenderer is only the "*starting point*".⁵⁷³ As explained by Mr Pritam Singh, based on his own observations and interactions with LST and DM, LST "*appeared to be deliverable-focused and willing to take the initiative to drive matters and resolve delays expeditiously*".⁵⁷⁴ He was therefore not surprised that FMSS awarded more consultancy contracts to LST as compared to DM.

Plaintiffs' case on whether the Town Councillors had acted in Good Faith

Necessary to Plead Particulars of Breach of Duty of Good Faith

317. As set out under Issues 2, 3 and 4 above, the Town Councillors had at all material times acted in good faith and in execution of the Act. The Plaintiffs have alleged that the Town Councillors have acted in breach of their duty to act in good faith as fiduciaries. However, these allegations have not been particularised. Any allegation by the Plaintiffs that the Town Councillors have breached their duty of good faith or are guilty of bad faith need to be properly particularised. As stated in *Singapore Civil Procedure* (Sweet & Maxwell, Volume 1, 2019):

⁵⁶⁹ MB at [173], Tab 25 of the D1-D5BOA.

⁵⁷⁰ MB at [168], Tab 25 of the D1-D5BOA.

⁵⁷¹ MB at [179], Tab 25 of the D1-D5BOA.

⁵⁷² AHTC's Opening Statement at [8.4.1].

⁵⁷³ AHTC's Opening Statement at [8.4.1].

⁵⁷⁴ AEIC of Mr Pritam Singh at [57], 2 BA 894.

“Particulars of pleading (O. 18, r. 12)

(...)

(11) *Dishonesty-bad faith – An allegation that a party has been guilty of bad faith or lack of good faith is the equivalent of an allegation of dishonesty, though not necessarily for a financial motive, and proper particulars of such an allegation must be pleaded, otherwise the allegation will be struck out* (Cannock Chase District Council v Kelly [1978] 1 W.L.R. 1; [1978] 1 All E.R. 152, CA)⁵⁷⁵ (emphasis added)

318. In Chisan v Fielding [2017] ABQB 233⁵⁷⁶ (“**Chisan**”), the plaintiff alleged that the defendants, who were various representatives of the city (including two investigators, a manager, a corporate security officer and a lawyer), had seized various properties without disclosing that they would be doing so. In turn, the defendants applied for a declaration that the plaintiff was a vexatious litigant. The Court of Queen’s Bench of Alberta emphasised that where it is necessary to establish bad faith, a bare allegation of bad faith without particulars is insufficient.⁵⁷⁷ The Court granted the defendants protection under Section 535(2) of the Municipal Government Act which provides as follows:

“Protection of councillors and municipal officers

535(2) Councillors, council committee members, municipal officers and volunteer workers are not liable for loss or damage caused by anything said or done or omitted to be *done in good faith in the performance or intended performance of their functions, duties or powers under this Act or any other enactment.*” (emphasis added)

319. In particular, the Court in Chisan also referred to Grenon v Canada [2016] ABQB 260⁵⁷⁸ (“**Grenon**”) where the plaintiff alleged, *inter alia*, negligence, misfeasance in public office and interference with contractual relations, and breach of fiduciary duty against the Canada Revenue Agency. The Court in Grenon affirmed the proposition that it is not enough to assert baldly conclusory phrases such as “deliberately or negligently” or “callous disregard” when pleading “bad faith” or “abuse of power”.⁵⁷⁹

Necessary to Plead Improper Purposes

320. Given that the Plaintiffs are also alleging that the Town Councillors have breached their duties to act for proper purposes at all times, it is also incumbent on them to have pleaded the particulars of the alleged “personal, collateral, or improper purposes” that the Town Councillors had acted for.

⁵⁷⁵ Singapore Civil Procedure (Sweet & Maxwell, Volume 1, 2019) at [18/12/14], Tab 46 of the D1-D5BOA.

⁵⁷⁶ Chisan, Tab 12 of the D1-D5BOA.

⁵⁷⁷ Chisan at [154], Tab 12 of the D1-D5BOA.

⁵⁷⁸ Grenon, Tab 18 of the D1-D5BOA.

⁵⁷⁹ Grenon at [27], Tab 18 of the D1-D5BOA.

321. In this regard, the following commentary in *Halsbury's Laws of Singapore, Volume 1* (LexisNexis, 2017)⁵⁸⁰ is instructive:

“[10.038] Bad faith, fraud and improper purpose

The exercise of a statutory power is invalid unless the repository of the power has acted honestly and in good faith. The deliberate promotion of a purpose (public or private) alien to that for which the power was conferred, is regarded as bad faith. In the context of deprivation of liberty, bad faith has been held to mean an absence of care, caution and a proper sense of responsibility. Bad faith can be imputed to Ministers or the Cabinet but probably not to the Crown or President himself.

(...)

Even if the donee of a power has been animated by unexceptionable motives, exercise of that power results in excess of power or jurisdiction if it is used for a purpose different from that for which it was granted. If the purposes for which it can legitimately be exercised are specified by statute and are exhaustive, exercise of that power to achieve a different and collateral object is invalid. If the permitted purposes are left unspecified, or are not exhaustively specified, the courts determine what, if any, are the implied restrictions on the purposes for which it may be exercised, for, statutory powers are not to be employed so as to defeat the spirit of the enabling Act.” (emphasis added)

322. The particulars relating to any alleged “personal, collateral, or improper purposes” of the Town Councillors should therefore state: (i) what powers the Town Councillors had exercised which were in excess of power or for a purpose different from that for which it was granted; and (ii) what personal, collateral or improper purposes the Town Councillors had acted pursuant to. The Plaintiffs have not done so.

Burden of Proof is on the Plaintiffs to Prove Dishonesty

323. The burden of proof is on the Plaintiffs to show that the Town Councillors have not acted in dishonesty, based on strong and cogent evidence. In *G. Scammell and Nephew, Limited v Hurley and Others* [1927] 1 K.B. 419⁵⁸¹ (“***G. Scammell***”), the Court considered the issue of when a public authority is said to have carried out an act in execution of a statute. The plaintiff was a company carrying on business in the borough of Stepney and was entitled by statute and contract to receive from the Stepney Borough Council a supply of electrical power. When the plaintiff was deprived of this supply on certain days, they sued members of the Electricity Supply Committee of the Council. In holding that the acts and neglects complained of were done in execution of a statutory duty and the defendants were entitled to the protection of the Public Authorities Protection Act 1893. The Court stated as follows:

⁵⁸⁰ *Halsbury's Laws of Singapore, Volume 1* (LexisNexis, 2017), Tab 38 of the D1-D5BOA.

⁵⁸¹ *G. Scammell*, Tab 15 of the D1-D5BOA.

*“...when a defendant appears to be acting as a member of a public body under statutory authority..., the plaintiff can defeat the claim by proving on sufficient evidence that the defendant was not really intending to act in pursuance of the statutory authority, but was using his pretended authority for some improper motive, such as spite, or a purpose entirely outside statutory justification. When defendants are found purporting to execute a statute, the **burden of proof in my opinion is on the plaintiffs to prove the existence of the dishonest motives above described and the absence of any honest desire to execute the statute, and such existence and absence should only be found on strong and cogent evidence.**”⁵⁸²* (emphasis added)

324. Whatever allegations that the Plaintiffs may have sought to make at trial, the fact remains that the Plaintiffs neither pleaded nor adduced evidence of: (i) the relevant facts as to why the Town Councillors have not acted in good faith; and (ii) the relevant facts to establish that the Town Councillors have allegedly exercised their powers for personal, collateral, or improper purposes. There was no evidence at trial that the Town Councillors had acted dishonestly or maliciously or that they had any direct or pecuniary interest in any of the alleged improper appointments or payments which are in any case denied. It is submitted that the Town Councillors had acted in good faith and in execution of the TCA and are therefore entitled to the protection from personal liability under Section 52 of the TCA.

ISSUE (VI) WHETHER ANY OF THE PLAINTIFFS’ CLAIMS ARE TIME-BARRED UNDER THE LIMITATION ACT

325. The Town Councillors submit that insofar as the Plaintiffs’ causes of action have accrued more than 6 years before the commencement of the present suits, they are time-barred pursuant to Section 6 and/or 22 of the Limitation Act (Cap. 63).
326. Section 6 of the Limitation Act sets out a 6-year limitation period for any actions founded on tort as well as all claims for equitable relief, amongst others:

“Limitation of actions of contract and tort and certain other actions

6.—(1) *Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:*

- (a) actions founded on a contract or on tort;*
- (b) actions to enforce a recognizance;*
- (c) actions to enforce an award;*
- (d) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or sum by way of penalty or forfeiture*

(2) An action for an account shall not be brought in respect of any matter which arose more than 6 years before the commencement of the action.

...

⁵⁸² G. Scammell at pg 429, Tab 15 of the D1-D5BOA.

(7) Subject to sections 22 and 32, this section shall apply to all claims for specific performance of a contract or for an injunction or for other equitable relief whether the same be founded upon any contract or tort or upon any trust or other ground in equity.⁵⁸³

327. Insofar as the Plaintiffs are alleging that the Town Councillors are dealing with “trust property”, and bringing an action to “recover trust property or in respect of any breach of trust”, Section 22(2) of the Limitation Act provides that an action shall not be brought 6 years from the date on which the right of action accrued. Section 22 is set out below:

“Limitation of actions in respect of trust property

22.— (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued.

(3) The right of action referred to in subsection (2) shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property until the interest fell into possession.

(4) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.”⁵⁸⁴

328. A strict approach ought to be taken with respect to actions that are taken out in breach of limitation timelines. The CA in Ang Sin Hock v Khoo Eng Lim [2010] 3 SLR 179 (“**Ang Sin Hock**”) has held that “[e]ven a delay of one day would not be a good reason to allow a claim offending the requisite limitation timeline to proceed” and that “[s]ympathy for a claimant has no role to play when the issue is whether or not a particular limitation timeline has been offended”.⁵⁸⁵ The CA highlighted the main functions underlying limitation statutes as follows:

“...On a related note, the main functions underlying statutes of limitation are well-summarised in the Report of the Law Reform Committee of England and Wales entitled *Limitation of Actions in Cases of Personal Injury* (Cmnd 1829, 1962), as follows (at para 17, which was also cited in the Report of the Law Reform Committee of England and Wales entitled *Twenty-First Report (Final Report on Limitation of Actions)* (Cmnd 6923, 1977) at

⁵⁸³ Section 6 of the Limitation Act, Tab 11 of the D1-D5BOA.

⁵⁸⁴ Section 22(2) of the Limitation Act, Tab 2 of the D1-D5BOA.

⁵⁸⁵ Ang Sin Hock at [78], Tab 7 of the D1-D5BOA.

para 1.7 (see also generally “The History and Policy of Limitation of Actions” in ch 1 of David W Oughton, John P Lowry & Robert M Merkin, *Limitation of Actions* (LLP, 1998)):

*In considering what recommendations we should make ... we have constantly borne in mind what we conceive to be the accepted function of the law of limitation. **In the first place, it is intended to protect defendants from being vexed by stale claims relating to long-past incidents about which their records may no longer be in existence and as to which their witnesses, even if they are still available, may well have no accurate recollection. Secondly, we apprehend that the law of limitation is designed to encourage plaintiffs not to go to sleep on their rights but to institute proceedings as soon as it is reasonably possible for them to do so. ... Thirdly, the law is intended to ensure that the person may with confidence feel that after a given time he may treat as being finally closed an incident which might have led to a claim against him.***⁵⁸⁶

(emphasis added)

329. Bearing in mind the considerations set out by the CA in the preceding paragraph, the responses by AHTC and PRPTC on this issue are dealt with separately below.

AHTC’s Position

330. The Town Councillors submit that AHTC’s alleged causes of action which accrued more than 6 years before the commencement of Suit 668 on 21 July 2017 are time-barred:

- (a) AHTC’s claims in relation to the appointment of FMSS on 8 July 2011 as MA on the terms as set out in in the 1st MA Contract (“**FMSS Causes of Action**”).
- (b) AHTC’s claims in relation to FMSI’s provision of EMSU services to AHTC following HTC’s amalgamation with ATC to form AHTC on 27 May 2011 (“**FMSI Causes of Action**”).⁵⁸⁷

Section 24A(3)(b)

331. AHTC has pleaded that Section 6 does not apply because AHTC only obtained the knowledge to bring the FMSS and FMSI Causes of Action on 31 October 2016 after KPMG had issued the KPMG Report.⁵⁸⁸ In particular, AHTC relies on Section 24A(3)(b) of the Limitation Act:

“24A.—(3) An action to which this section applies, other than one referred to in subsection (2), shall not be brought after the expiration of the period of —

- (a) 6 years from the date on which the cause of action accrued; or**
- (b) 3 years from the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge**

⁵⁸⁶ *Ang Sin Hock* at [77], Tab 7 of the D1-D5BOA.

⁵⁸⁷ 1st to 5th Defendants’ Defence (Amendment No. 1) at [79A].

⁵⁸⁸ AHTC’s Reply (Amendment No. 1) at [5.2.2(a)] and [5.2.3(a)], Tab 11 of the Set Down Bundle in Suit 668.

required for bringing an action for damages in respect of the relevant damage and a right to bring such an action, if that period expires later than the period mentioned in paragraph (a).

(4) In subsections (2) and (3), the knowledge required for bringing an action for damages in respect of the relevant injury or damage (as the case may be) means knowledge —

- (a) that the injury or damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;
- (b) of the identity of the defendant;
- (c) if it is alleged that the act or omission was that of a person other than the defendant, of the identity of that person and the additional facts supporting the bringing of an action against the defendant; and
- (d) of material facts about the injury or damage which would lead a reasonable person who had suffered such injury or damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.”⁵⁸⁹

(emphasis added)

332. In Lian Kok Hong v Ow Wah Foong and another [2008] 4 SLR(R) 186⁵⁹⁰ (“**Lian Kok Hong**”), the Court summarised the applicable principles as to the requisite knowledge under Section 24A(4), which applies to Section 24A(3), as follows:

“Thus, to summarise the applicable principles as to the requisite knowledge under s 24A(4) of the Limitation Act:

(a) First, in respect of s 24A(4)(a) read with s 24A(5), viz, attributability, **the claimant need not know the details of what went wrong, and it is wholly irrelevant whether he appreciated that what went wrong amounted in law to negligence, as long he knew or might reasonably have known of the factual essence of his complaint.**

(b) Second, the requirements under ss 24A(4)(b) and 24A(4)(c) as to the identity of the defendant or otherwise, which we have not elaborated on above because of their relative simplicity, should be addressed when appropriate.

(c) Third, in relation to s 24A(4)(d), the **material facts referred to need not relate to the specific cause of action**, and the assumptions as to the defendant not disputing his liability and his ability to satisfy a judgment, coupled with the requirement of “sufficient seriousness”, must be read to mean that the **case must be one sufficiently serious for someone to actually invoke the court process given these assumptions.**

(d) Finally, conditioning the above is the degree of knowledge required under paras (a) to (c), and this **does not mean knowing for certain and beyond the possibility of contradiction.**⁵⁹¹ (emphasis added)

333. Applying the principles from Lian Kok Hong, AHTC knew the “factual essence” of its claims well before the KPMG Report. The “factual essence” of AHTC’s claim is summarised in [4.1.1] of AHTC’s Statement of Claim:

⁵⁸⁹ Section 24A(3) and (4) of the Limitation Act, Tab 2 of the D1-D5BOA.

⁵⁹⁰ Lian Kok Hong, Tab 21 of the D1-D5BOA.

⁵⁹¹ Lian Kok Hong at [42], Tab 21 of the D1-D5BOA.

“AHTC avers that its financial woes and the improper payments started with the installation of a related party, FMSS, as the managing agent of the Town Council.”

334. In relation to the FMSS and FMSI Causes of Action, AHTC has pleaded that the appointment of FMSS as MA contributed to such a “*flawed system of governance*”⁵⁹² that “*has effectively enabled Loh and How to be responsible for certifying work done, approving payments and/or signing cheques to FMSS/FMSI, to benefit themselves from the very same payments*”.⁵⁹³ If this was indeed the case, which is denied, these material facts were already known to AHTC once FMSI began providing EMSU services to AHTC on 27 May 2011 and when FMSS was appointed on 8 July 2011 as MA. Applying Section 24A(4)(d) of the Limitation Act, these facts would be “sufficiently serious” for AHTC to invoke the court process. AHTC did not need to know the specific causes of action and rely on the findings of the KPMG Report before doing so.
335. AHTC has further submitted that it is “*unrealistic to say that AHTC could have brought the Allegedly Barred Causes of Action on an earlier date, as it was under the control of the Town Councillors*”.⁵⁹⁴ “Control” cannot be a relevant factor to take into consideration in deciding when the cause of action has accrued, or when AHTC had obtained the requisite knowledge under Section 24A(4) of the Limitation Act. The appointment of the IP by AHTC (or the Transferred Undertaking of Punggol East) cannot enhance or create rights which would otherwise not exist. Taking AHTC’s argument to its logical conclusion, if the IP had not been appointed, AHPETC would have remained under the “control” of the Town Councillors, who would be subject to the initiation of these suits for an indefinite period of time.
336. Further, AHTC’s arguments fail to take into consideration the rationale of limitation statutes as set out by the CA in Ang Sin Hock.⁵⁹⁵ In particular, defendants should not be vexed by stale claims about which their records may no longer be in existence and to which their witnesses may have no accurate recollection. Indeed, in the present case, although the Town Councillors testified that they could not recall details of the events which occurred more than 7 years ago, they were pressed for definite answers under cross-examination. The Town Councillors have no choice but to rely on the contemporaneous documents, which do not capture the full facts and circumstances then existing that are relevant and material to the questions put to the Town Councillors during cross-examination.

⁵⁹² AHTC’s Statement of Claim at [5.1.1].

⁵⁹³ AHTC’s Statement of Claim at [5.1.2].

⁵⁹⁴ AHTC’s Opening Statement at [13.2.1].

⁵⁹⁵ Ang Sin Hock, Tab 7 of the D1-D5BOA.

Section 22(1)(a)

337. In the alternative, AHTC relies on Section 22(1)(a) of the Limitation Act, which states that no period of limitation shall apply to an action by a beneficiary under a trust, being an action in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy to. The time bar of six years in an action to recover trust property or in respect of any breach of trust under Section 22(2) is subject to the two exceptions found in Section 22(1). The rationale of Section 22(2) was stated by the CA in Yong Kheng Leong and another v Panweld Trading Pte Ltd and another [2013] 1 SLR 173⁵⁹⁶ ("Yong Kheng Leong") as follows:

"Put simply, it was considered unduly harsh that trustees who had committed innocent breaches should remain liable indefinitely. Hence, there was a general stipulation of a limit – six years – with exceptions to apply in cases where the trustee retained possession of the property or had acted fraudulently..."

338. Therefore, in assessing the applicability of Section 22(1)(a), the CA in Yong Kheng Leong held that the concept of a fraudulent breach of trust connotes dishonesty and an intention on the part of the trustee to pursue a course of action knowing that it is contrary to the interests of the beneficiaries, or where the trustee is recklessly indifferent to the beneficiaries' interests. Dishonesty is to be assessed on both objective and subjective aspects i.e. that the conduct was dishonest based on the ordinary standards of reasonable and honest people and that the defendant realised that by those standards his conduct was dishonest:

"...Turning first to s 22(1)(a), the concept of fraud in the context of the English equivalent of our s 22(1)(a) was discussed by the English Court of Appeal in Gwembe Valley (at [131] and [132]):

*131 In Armitage v Nurse ... [1998] Ch 241 at 251, 260 Millett LJ held that, in this context, **a breach of trust is fraudulent, if it is dishonest**. He accepted counsel's formulation that dishonesty—*

... connotes at the minimum an intention on the part of the trustee to pursue a particular course of action, either knowing that it is contrary to the interests of the company or being recklessly indifferent whether it is contrary to their interests or not.

and added:

*It is the duty of a trustee to manage the trust property and deal with it in the interests of the beneficiaries. **If he acts in a way which he does not honestly believe is in the interests of the beneficiaries then he is acting dishonestly.***

132 The correctness of this guidance was not in issue before us. We were also referred to the recent decision of the House of Lords in Twinsectra Ltd v Yardley ... [2002] 2 AC

⁵⁹⁶ Yong Kheng Leong at [51], Tab 36 of the D1-D5BOA.

164. Lord Hutton, giving the leading speech, emphasised the objective and subjective aspects of the 'combined test' ... :

*which requires that **before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest.***

We agree and adopt this approach to assess the applicability of s 22(1)(a)⁵⁹⁷
(emphasis added)

339. Contrary to the CA's holding in Yong Kheng Leong above, AHTC has erroneously cited the case of Dynasty Line v Sia Sukamto [2013] SGHC 146⁵⁹⁸ ("**Dynasty**") for the proposition that the phrase "*fraud or fraudulent breach of trust*" in Section 22(1)(a) of the Limitation Act "*has been held to have a wide meaning, covering cases where directors disposed of a company's assets in breach of fiduciary duties*".⁵⁹⁹ However, in Dynasty, the Court was careful to emphasise that it is only where the directors did not act honestly and in good faith act in the best interests of the company that their conduct will be considered fraudulent under Section 22(1)(a).⁶⁰⁰
340. AHTC's position that there is no period of limitation in respect of the FMSS and FMSI Causes of Action, to the extent that they are founded upon the alleged breaches of fiduciary duty of Ms Sylvia Lim, Mr Low, Mr Danny Loh and Ms How Weng Fan,⁶⁰¹ without regard to whether the breaches were fraudulent, is unsustainable.
341. For a party to rely on Section 22(1)(a), the CA has held that fraud must be expressly pleaded and proved. In Ernest Ferdinand Perez De La Sala v Compañía De Navegación Palomar, SA and others and other appeals [2018] 1 SLR 894⁶⁰² ("**Ernest**"), which concerns a dispute amongst members of the De La Sala family, the CA found that Ernest, who was to manage the companies' assets for the family's benefit, had acted improperly in transferring moneys from the companies' bank account to himself, and in transferring to himself shares and bonds held by the companies, after a falling out with certain directors of the companies. In relation to the High Court's finding that one of Ernest's siblings, Bobby, could intervene in the matter, the CA held that the power of joinder had been wrongly exercised and that Bobby's claim would have been time-barred in any event. The CA made the following observations in relation to Section 22(1) of the Limitation Act:

⁵⁹⁷ Yong Kheng Leong at [52] and [53], Tab 36 of D1-D5 BOA

⁵⁹⁸ Dynasty, Tab 13 of the D1-D5BOA.

⁵⁹⁹ AHTC's Opening Statement at [13.3.2].

⁶⁰⁰ Dynasty at [27], Tab 13 of the D1-D5BOA.

⁶⁰¹ AHTC's Reply (Amendment No. 1) at [5.2.2(b)], [5.2.3(b)], Tab 11 of the Set Down Bundle in Suit 668.

⁶⁰² Ernest, Tab 14 of the D1-D5BOA.

“Section 22(1)(a) of the Limitation Act provides an exception for fraud and fraudulent breach of trust. However, fraud must be expressly pleaded and proved. This was not done. It is clear that Ernest has acted improperly, at least with regard to the 2011 transfers, inasmuch as he was not entitled to deal with the Companies’ assets as he did. It is also clear that the corporate structure set up by Ernest was designed to make it difficult to determine the ownership of the Companies’ assets. However, that does not necessarily mean that Ernest had acted fraudulently in respect of Bobby in his dealings prior to the 2011 transfers. The very nature of such an assertion requires proper pleadings and proof, neither of which has been provided by Bobby.”⁶⁰³ (emphasis added)

342. Insofar as AHTC seeks to rely on Section 22(1)(a), AHTC has not properly pleaded and particularised any case of fraud (or fraudulent breach of trust) against Ms Sylvia Lim and Mr Low. As pointed out by the CA in Ernest, a mere allegation of improper conduct does not equate to fraud (which is in any event not part of their pleaded case). It is therefore not sufficient for AHTC to merely allege that payments were made improperly. AHTC has not shown that these individuals have acted fraudulently such that it is justifiable to rob them of the protection granted to them under Section 22(2).

FMSS and FMSI Causes of Action allegedly arose on or after 4 August 2011 and 25 August 2011 respectively

343. AHTC has pleaded that in respect of the FMSS Causes of Action, they would have arisen on 4 August 2011.⁶⁰⁴
344. This contradicts the position that AHTC has put forth in trial. In AHTC’s Opening Statement, AHTC stated that *“the earliest crystallized loss it suffered was on 4 August 2011, when a waiver of tender was procured for FMSS”* and that *“[t]his immediately resulted in a crystallized loss in respect of AHTC’s lost savings on the 1st MA Contract amounting to S\$515,773”*.⁶⁰⁵ In fact, AHTC’s case is that the appointment of FMSS was *“a fait accompli”* from as early as 15 June 2011 and that the loss of S\$515,773 arose from the appointment of FMSS under the 1st MA Contract:
- (a) Ms Sylvia Lim’s and Mr Low’s alleged decision to release CPG from its contractual obligations were made on behalf of AHTC *“as a fait accompli, as FMSS had begun providing services to AHTC from as early as 15 June 2011, long before the formal resolution to appoint FMSS was ratified at a Town Council meeting on 4 August 2011”*.⁶⁰⁶

⁶⁰³ Ernest at [219], Tab [14] of the D1-D5BOA.

⁶⁰⁴ AHTC’s Reply (Amendment No. 1) at [5.2.2(c)], Tab 11 of the Set Down Bundle in Suit 668.

⁶⁰⁵ AHTC’s Opening Statement at [13.4.1].

⁶⁰⁶ AHTC’s Opening Statement at [2.1.4].

- (b) *“The correspondence shows that the **“formal” appointment** of FMSS was to be made after 1 August 2011 so as not to alert CPG to the details...”*⁶⁰⁷
- (c) *“FMSS was appointed as MA pursuant to a MA contract for the period from 15 July 2011 to 14 July 2012 (“1st MA Contract”)”* where KPMG had calculated the additional cost of FMSS under the 1st MA Contract as \$515,773.⁶⁰⁸ (emphasis added)

345. As for the FMSI Causes of Action, on AHTC’s pleaded case, these arise from payments made by AHTC to FMSI on 25 August 2011 under Invoice No. FM/1299/11 and all subsequent payments thereafter.⁶⁰⁹ However, AHTC has also pleaded that the improper payments consist of a total sum of \$442,200 charged to AHTC by FMSI during the period of 15 October 2007 to 14 October 2012, pursuant to the FMSI EMSU Contract.⁶¹⁰
346. The Town Councillors submit that the time does not start running from when the payments were made. Since AHTC’s case is that FMSI should not have charged AHTC the fees under the EMSU Contract, AHTC’s FMSI Causes of Action would have accrued on 27 May 2011 when HTC was amalgamated with ATC to form AHTC and when AHTC undertook the liability to pay. In any event, even on AHTC’s case, payments made during the period of 15 October 2007 up till 25 August 2011 are time-barred.

PRPTC’s Position

347. The Town Councillors submit that PRPTC’s alleged causes of action, which accrued more than 6 years before the commencement of Suit 716 on 3 August 2017, are time-barred:
- (a) AHTC’s claims in relation to its appointment of FMSS on 8 July 2011 as MA on the terms as set out in in the 1st MA Contract (**“FMSS Causes of Action”**).

⁶⁰⁷ AHTC’s Opening Statement at [2.2.5].

⁶⁰⁸ AHTC’s Opening Statement at [2.4.1].

⁶⁰⁹ AHTC’s Reply (Amendment No. 1) at [5.2.3(c)], Tab 11 of the Set Down Bundle in Suit 668; S/No. 1147 of the AB.

⁶¹⁰ AHTC’s Statement of Claim at [5.3.2(e)], Tab 1 of the Set Down Bundle in Suit 668

- (b) AHTC's claims in relation to the approval of payment to FMSS on or before 21 July 2011 of the sum of \$92,000 under Invoice FMSS/0601 dated 30 June 2011, which payment was made on 21 July 2011⁶¹¹ ("**Invoice Causes of Action**").⁶¹²

Section 22(1)

348. In relation to both the FMSS and Invoice Causes of Action, PRPTC has pleaded that Section 22(1) applies but has not specified if they are relying on sub-section (1)(a) and/or (1)(b).⁶¹³
349. As explained above at Issue I, insofar as PRPTC relies on the exception of a "*fraudulent breach of trust*" or the recovery of "*trust property or the proceeds thereof*" under Section 22(1)(a), there is no trust relationship to speak of between the TC and the Town Councillors. PRPTC is not a beneficiary under a trust and cannot purport to bring its claims under such a capacity.⁶¹⁴
350. Further, with respect to Section 22(1)(a), the Town Councillors repeat [341] above that particulars relating to the fraud and/or fraudulent breach of trust should be specifically pleaded. This was not done.
351. Insofar as PRPTC relies on Section 22(1)(b), the CA in Ernest held that this provision would apply if the plaintiff is seeking to directly recover trust property or its proceeds which could be identified without taking an account, but not to a claim for an account:

"Section 22(1)(b) of the Limitation Act, which provides an exception for actions to recover trust property or the proceeds thereof, also does not assist Bobby (again, based on the relevant evidence on record). As was observed in the Singapore High Court decision of Ang Toon Teck v Ang Poon Sin [1998] SGHC 67, there is a distinction between an action for an account and an action to recover trust property. An account is not, in itself, an action to recover trust property; it is a process which allows a beneficiary to find out what has become of trust property, and thereafter possibly – as conceptually distinct step – to seek remedies in respect of that property: see the decision of this court in Chng Weng Wah v Goh Bak Heng [2016] 2 SLR 464 at [22] and the Singapore High Court decision in Lalwani Shalini Gobind v Lalwani Ashok Bherumal [2017] SGHC 90 at [26]. Section 22(1)(b) of the Limitation Act therefore cannot apply to Bobby's claim for an account, although it would apply if he were seeking to directly recover trust property or its proceeds which could be identified without taking an account. Lest this distinction be thought to be an overly artificial or technical one, we observe that as a matter of fairness to defendants, it is one thing to allow a plaintiff to sue for the return of trust property, and quite another thing to require a defendant – through the mechanism of an account – to provide a comprehensive explanation of

⁶¹¹ 17 CB 12328.

⁶¹² 1st to 5th Defendants' Defence (Amendment No. 1) at [174A].

⁶¹³ PRPTC's Reply (Amendment No. 1) at [7A(c)].

⁶¹⁴ PRPTC's Opening Statement at [58] and [59].

transactions which could stretch back across an indefinite and unlimited period of time."⁶¹⁵ (emphasis added)

352. However, it is PRPTC's case that an account has to be taken in order to ascertain the losses suffered. PRPTC's position as stated in its written submissions for its bifurcation application in SUM 3482 of 2018 is that "*evidence would have to be led on the work that was allegedly done and/or of services that were allegedly rendered and/or of goods that were allegedly received in relation to the various payments that were made and of their value*"⁶¹⁶ and that this "*will be a lengthy and time consuming affair, akin to an assessment of damages*".⁶¹⁷ Therefore, Section 22(1)(b) would not apply to PRPTC's claims and the general rule in Section 6 still applies.

Section 24A(3)(b)

353. As with AHTC, PRPTC has also pleaded that the earliest date PRPTC had the knowledge required to bring a cause of action was when the KPMG Report was issued.⁶¹⁸ Applying the principles in Lian Kok Hong, the "factual essence" of PRPTC's claims in relation to the FMSS Causes of Action was known more than 6 years before Suit 716 was commenced:

- (a) PRPTC's knowledge must be based on what would have been known to AHPETC when PE was part of AHPETC.
- (b) PE was not part of AHTC when FMSS was appointed on 8 July 2011 as the MA.
- (c) PRPTC relies on paragraph 42 of its Statement of Claim (Amendment No. 1) which refers to matters that occurred during the 4 August 2011 TC meeting. However, PRPTC's case on the appointment of FMSS is based on paragraphs 37 to 41 of its Statement of Claim (Amendment No. 1), which speak of events that took place between 15 May 2011 and 30 June 2011.⁶¹⁹
- (d) In the AEIC of Mr Goh, he has referred to paragraphs 5.9 to 5.48 of the PwC Report as setting out his findings in relation to the appointment of FMSS.⁶²⁰

⁶¹⁵ Ernest at [220], Tab [14] of the D1-D5BOA.

⁶¹⁶ PRPTC's Written Submissions in SUM 3472 of 2018 at [41].

⁶¹⁷ PRPTC's Written Submissions in SUM 3472 of 2018 at [49].

⁶¹⁸ PRPTC's Reply (Amendment No. 1) at [7A(d)]; see also PRPTC's Opening Statement at [65] to [67].

⁶¹⁹ PRPTC's Statement of Claim (Amendment No. 1) at [39(d)] where [13], [14], [21] to [27] are referred to.

⁶²⁰ AEIC of Mr Goh at [43], 1 BA 75.

According to the PwC Report, FMSS had secured *de facto* appointment as the MA by 15 June 2011,⁶²¹ and that even before CPG had expressed a preference to be released, there was already a decision to appoint FMSS.⁶²²

354. As for the Invoice Causes of Action, the “factual essence” of PRPTC’s claims was known to AHPETC more than 6 years before Suit 716 was commenced. PRPTC has pleaded that FMSS issued invoice no. FMSS/0601 on 30 June 2011 and that FMSS was not entitled to do so. This is on the alleged basis that FMSS had not been appointed as AHTC’s MA and that there was nothing to suggest that the services referred to in the invoice had been satisfactorily delivered to AHTC:⁶²³

(a) As in the case of FMSS Causes of Action, observations were made in the PwC Report that FMSS had secured *de facto* appointment as the MA by 15 June 2011 and that FMSS promptly proceeded to issue FMSS/0601 thereafter.⁶²⁴

(b) On PRPTC’s case, it would have at the very least been aware of the “factual essence” of its claims on 30 June 2011 when FMSS issued its invoice for FMSS/0601”.⁶²⁵

355. Applying Lian Kok Hong, the above facts would be sufficiently serious for PRPTC to invoke the court process. PRPTC did not need to know the specific causes of action and rely on the findings of the KPMG Report before doing so.

PRPTC’S Allegations on Continuing Breach

356. Further, PRPTC’s assertion that the “*1st to 7th Defendants’ continuing failure to rectify the wrongful payment of \$92,000 from FMSS*” has caused the cause of action to be “*continued and revived every day until the issuance of the Writ in this action*”,⁶²⁶ is wholly misconceived. As stated in *Preston and Newsom on Limitation of Actions*, John Weeks QC (Longman, 4th Edition., 1989):

“2.1.1 The general rule is that time starts to run from the accrual of the plaintiff’s cause of action. The advantages of this rule are that it produces a starting point which is likely to be reasonably close to the incidents giving rise to the claim and one which is usually (but not always) unmistakable and readily ascertainable...”

⁶²¹ PwC Report at [5.14], 26 CB 20287.

⁶²² PwC Report at [5.25], 26 CB 20290.

⁶²³ PRPTC’s Statement of Claim (Amendment No. 1) at [25] and [26].

⁶²⁴ PwC Report at [5.9(c)] and [5.9(d)], 26 CB 20285.

⁶²⁵ PRPTC’s Opening Statement at [41].

⁶²⁶ PRPTC’s Opening Statement at [60] and [68].

2.1.3 ...*A cause of action arises therefore at the moment when a potential plaintiff first has a right to succeed in an action against a potential defendant...*⁶²⁷

(emphasis added)

357. PRPTC's submission that there can be a "revival" of a cause of action every day until when an alleged breach is rectified is contrary to the principles which undergirds the law on limitation and undermines the very functions of limitation statutes as stated by the CA in Ang Sin Hock.

ISSUE (VII) WHETHER THE PLAINTIFFS ARE ENTITLED TO THE RELIEFS AS PLEADED

358. The following submissions will show, by reference to the facts where necessary, that the Plaintiffs' claims do not even have a sustainable basis in law.

Principles Governing Equitable Compensation

359. Equitable compensation is a compensatory remedy in equity which seeks to compensate the claimant for the loss caused by the fiduciary's breach of duty. The relevance of equitable compensation is explained in *Snell's Equity* (Sweet & Maxwell, 33rd Edition, 2015) as follows:

"It has been argued that equitable compensation is not a remedy for breach of fiduciary duty on the basis that:

'the primary remedy of a beneficiary is to have the account taken [and] if a trustee or fiduciary has committed a breach of trust or fiduciary duty, Equity makes him account as if he had not done so.'

*This argument is coherent where there is a fund of which an account can sensibly be taken, such as where the fiduciary is a trustee, but fiduciaries are not necessarily stewards of property from whom an account can sensibly be taken. Where there is no fund of which an account can be taken, it is sensible for equity to make available compensatory relief to ensure that any loss caused by a breach of fiduciary duty is not left unremedied...*⁶²⁸

360. The principles governing equitable compensation were recently summarised in Tongbao (Singapore) Shipping Pte Ltd and another v Woon Swee Huat and others [2018] SGHC 165⁶²⁹ ("Tongbao") At [119], the Court in Tongbao stated as follows (citing Quality Assurance):

"(a) Equitable compensation, like common law damages, is assessed by reference to the amount of money necessary to restore the victim of a breach of fiduciary duty to the position the victim would have been in if not for the breach (at [41])."

⁶²⁷ *Preston and Newsom on Limitation of Actions*, John Weeks QC (Longman) (4th Ed., 1989) at Pg 8 and 9, Tab 39 of the D1-D5BOA.

⁶²⁸ *Snell's Equity* at [7-058], Tab 41 of D1-D5BOA.

⁶²⁹ Tongbao, Tab 33 of D1-D5BOA.

(b) *The deterrent function of equitable compensation means that the common law rules of causation, foreseeability and remoteness do not readily apply to equitable wrongdoers (at [42]).*

(c) *None of the common law limiting principles, including mitigation and comparative fault, ought to apply in a claim to recover equitable compensation as equity “deems by a fiction that it is decreeing performance of a primary obligation, ie, the defaulting fiduciary’s obligation to pay an equitable debt” (at [50]).*

(d) ***In the usual case, the legal burden of proving but-for causation would remain on the plaintiff throughout. The plaintiff has to show that the loss would not have occurred but for the breach, or that there was an adequate or sufficient connection between the equitable compensation claimed and the breach of fiduciary duty. This amount was to be assessed with the full benefit of hindsight and is quantified as at the date of recoupment, not as at the date of the breach of duty (at [60]).***

(e) ***But when a case concerns (a) a fiduciary who is in one of the well-established categories of fiduciary relationships; (b) who commits a culpable breach; (c) who breaches an obligation which stands at the very core of the fiduciary relationship, several plaintiff-friendly consequences follow. Once the plaintiff adduces some evidence to connect the breach to the loss, equity will readily shift the evidential burden on causation to the breaching fiduciary (at [56] and [61]).***

(emphasis added)

361. It will be apparent from the above that the shift in evidential burden only occurs in the case of a fiduciary who is in one of the well-established categories and commits a culpable breach which stands at the core of the fiduciary relationship. In all other situations, the general rule that the legal burden of proving but-for causation remains on the plaintiff throughout, as stated in [119(d)] of *Tongbao*.
362. Given that the issue of whether town councillors are fiduciaries is disputed and has not fallen for consideration before the Singapore Courts prior to this case, the submission that town councillors are fiduciaries has to proceed on the basis that they are not in the well-established category of fiduciaries. In such a case, the legal burden of proving but-for causation remains on the Plaintiffs.
363. AHTC in this case has confused this shift in evidential burden to submit that their claim for equitable compensation is “subject to” Ms Sylvia Lim and Mr Low showing an account and inquiry. There is no legal basis for this submission.
364. In the context of its submissions on the shift in evidential burden, AHTC cites the case of *Keefe v. Isle of Man* [2010] EWCA Civ 683⁶³⁰ (“*Keefe*”) in support of the propositions that: (i) a defendant who has, in breach of his duty, made it difficult or impossible for a claimant to adduce relevant evidence of causative loss, must run the risk of adverse

⁶³⁰ *Keefe*, Tab 19 of D1-D5BOA. See AHTC’s Opening Statement at [4.3.4].

factual findings; and (ii) the Court may be entitled to presume the highest loss possible against the defendant.

365. AHTC's reliance on Keefe is misplaced. Keefe concerns an employer's liability for negligently exposing its employee to excessive levels of noise, resulting in his hearing loss. It was held that the employer ran "*the risk of adverse factual findings*" because it breached its duty to measure noise levels in places where its employees work. The Court did not consider the employer's liability in the context of an award of equitable compensation arising from breaches of fiduciary duties.
366. Further, in the context of AHTC's submissions on the shift of evidential burden, AHTC cites the case of Maruha Corporation and Maruha (NZ) Limited v Amaltal Corporation Limited [2007] NZSC 40⁶³¹ ("Maruha"). This case is relied on for the proposition that once liability is shown, where the fiduciary seeks to prove an offset against the amounts said to be paid out improperly, the fiduciary must show that "incontrovertible benefits" were conferred. Again, AHTC's reliance on this case is misplaced as it is not the Town Councillors' position that they seek to prove any offset of the amounts that were allegedly improperly paid. As was earlier submitted,⁶³² it is the Town Councillors' position that the payments made to FMSS, FMSI and the third-party contractors were payments for work done and services rendered. That in itself is a defence to AHTC's claims. It is for AHTC to prove otherwise.
367. Accordingly, the burden remains on the Plaintiffs to prove that the sum of \$33.7 million, which consists of FMSS's and FMSI's fees for the MA and EMSU Contracts, would not have to be paid out but-for Ms Sylvia Lim or Mr Low's alleged breaches of fiduciary duties. The Plaintiffs have not discharged their burden for the following reasons:
- (a) Costs would have been incurred in managing the estates regardless of who the MA was and how the MA was appointed.
 - (b) There was no evidence adduced that the work had not been carried out by FMSS and FMSI under these contracts. The Defendants' testimony that the work was done was not rebutted by any factual witnesses called by the Plaintiffs.
 - (c) In relation to FMSS's and FMSI's fees:

⁶³¹ Maruha, Tab 24 of D1-D5BOA. See AHTC's Opening Statement at [4.4.2].

⁶³² 1st to 5th Defendants' submissions in the Plaintiffs' bifurcation applications in SUM 3472 and 3482 of 2018, see 5th Affidavit of Ms Sylvia Lim dated 6 August 2018 at [17].

- (i) They are based on the same rates as charged by CPG and are fixed contractual monthly payments independent of the “System” that AHTC alleges is flawed.⁶³³ Payments totalling \$27,048,149.26⁶³⁴ were made to FMSS and \$442,200⁶³⁵ were made to FMSI.
- (ii) The project management fees were a fixed percentage of the work undertaken. Given that the fees were fixed or calculated based on work undertaken at 3.5%, these fees would have been incurred in any event. These fees amounted to \$1,966,471.18.⁶³⁶
- (d) The Plaintiffs have adduced no evidence that calling a tender would have resulted in any other, much less a cheaper MA. The Plaintiffs’ case that they had suffered a loss as a tender was not called, is entirely speculative.

368. The Plaintiffs have therefore not established their claim for equitable compensation.

Principles Governing Account and Inquiry

369. As stated in *Snell’s Equity* (Sweet & Maxwell, 33rd Ed, 2015):

- (a) By an order for an account, the Court compels the defendant to produce documents and records of his dealings with the relevant property and explaining such dealings. The essential feature of the cause of action for an account is that the defendant is an “accounting party” someone who is or has been in such a relationship with the claimant that he is obliged to render an account.⁶³⁷
- (b) Such a liability arises when the defendant is a trustee or agent who holds assets for others in a custodial fiduciary capacity. The accounting procedure serves the informative purpose of allowing the beneficiaries to know the status of the fund and what transformations it has undergone and what they are entitled to claim for.⁶³⁸ In the present case, none of the Town Councillors have at any time held assets for AHTC.

⁶³³ AHTC’s Statement of Claim at [5.1.1], Tab 1 of the Set Down Bundle in Suit 668.

⁶³⁴ KPMG Report Appendix C at 16 CB 11876.

⁶³⁵ AHTC’s Statement of Claim at [5.2.2(f)], Tab 1 of the Set Down Bundle in Suit 668..

⁶³⁶ KPMG Report Appendix C at 16 CB 11876.

⁶³⁷ *Snell’s Equity* at [20-014], Tab 43 of DBOA.

⁶³⁸ *Snell’s Equity* at [20-013], Tab 42 of DBOA.

370. At the outset, it must be highlighted that the Plaintiffs have not shown why they are entitled to an account and inquiry against the Defendants as they are not an accounting party. As set out in *Snell's Equity*, the Defendants are not fiduciaries who are “stewards of property from whom an account can sensibly be taken”.⁶³⁹ There is therefore no need for a separate process of an “account and inquiry”. Neither substitutive nor reparative compensation is involved. As explained by the Court in *Tongbao*:

*“28 Hence, when the breach concerned does not involve a custodial duty, the accounting rules are inapplicable (Ho, “An Account of Accounts” at para 46) and the rules governing claims to reconstitute trust funds do not apply (Mitchell, “Equitable Compensation for Breach of Fiduciary Duty” at p 326). The purpose of any remedy awarded in such a circumstance, therefore, cannot be restorative (in the sense of restoring a fund), and is compensatory and damage-based instead: Mitchell, “Equitable Compensation for Breach of Fiduciary Duty” at p 327...”*⁶⁴⁰

(emphasis added)

371. AHTC is thus not entitled to an account and inquiry in relation to its claim for equitable compensation for \$33.7 million.

Principles Governing Account of Profits

372. The Plaintiffs' claim for an account of profits also ought to be dismissed given that it is not their case that the Town Councillors have gained any personal profits from the work they have undertaken as Town Councillors. No such evidence was adduced during the trial.
373. The following extracts from *Snell's Equity* shows that a claim for “account of profits” cannot be made in the abstract without first proving that the profits were received by the Town Councillors:⁶⁴¹

*“A fiduciary is bound to account for any profit **that he or she has received** in breach of fiduciary duty. The principal's entitlement to an account of profits which have been made in breach of fiduciary duty is virtually as of right.”*

...

*“The profits for which the fiduciary must account must bear some reasonable relationship to the breach of fiduciary duty. **The obligation is to account for profits which have been made in breach of fiduciary duty, not simply to account for profits in the abstract.**”*

(emphasis added)

⁶³⁹ *Snell's Equity* at [7-058], Tab 41 of D1-D5BOA.

⁶⁴⁰ *Tongbao*, Tab 33 of the D1-D5BOA.

⁶⁴¹ *Snell's Equity* at [7-054] and [7-055], Tab 40 of D1-D5BOA.

Entitlement to Damages for Alleged Breaches of Duties of Care

374. For reasons stated at Issue I above, the Town Councillors do not owe “*concomitant duties of care to AHTC under the common law tort of negligence*”.⁶⁴² Even if this Honourable Court finds that they owe concomitant duties of care under common law, they have not breached their duties of care and should not be made personally liable as they have acted in good faith at all times as stated at Issue V above.⁶⁴³
375. Nonetheless, assuming that they have breached their duties of care, which is denied, the Plaintiffs have the burden of proving that, subject to the doctrines of foreseeability, causation and remoteness, AHTC/AHPETC has suffered loss and damages from the appointments and payments of FMSS/FMSI and the third-party contractors. This they have not done.

PRPTC’s Bifurcated Claim

376. PRPTC’s alleged basis for the bifurcation of its claim is on the basis that where it has shown that there was a breach of fiduciary duties, and “some” evidence to connect the breach to the loss suffered by PRPTC, the evidential burden on causation then shifts to the defaulting fiduciary.⁶⁴⁴ PRPTC submitted that once liability has been determined, there would be a further hearing where evidence would be led on the “*work that was allegedly done and/or services that were allegedly rendered and/or of goods that were allegedly received in relation to the various payments that were made and of their value*” and “*expert witnesses may also have to be called on the question of valuation*”.⁶⁴⁵ Further, PRPTC asserted that the “*lack of records or documents*” would mean that the extent to which services have been rendered or goods have been supplied would be far from straightforward. PRPTC’s suit was therefore bifurcated on 13 August 2018.⁶⁴⁶
377. PRPTC’s submissions are flawed in that the value of work done and services rendered cannot simply be assessed through documentary or expert evidence. Taking the Plaintiff’s largest claims relating to the MA fees paid to FMSS for instance, it is not possible for FMSS to have documented the work that it had carried out as a MA on a day-to-day basis in running the TC. An assessment of the management role played by

⁶⁴² AHTC’s Statement of Claim at [2.3.1].

⁶⁴³ See Issue II generally.

⁶⁴⁴ PRPTC’s Written Submissions of SUM 3482 of 2018, at [53].

⁶⁴⁵ PRPTC’s Written Submissions of SUM 3482 of 2018, at [41].

⁶⁴⁶ Order of Court 5467 of 2018 dated 13 August 2018 in SUM 3482 of 2018.

FMSS requires having regard to intangible factors such as its responsiveness to issues that arise, its problem-solving skills, its management and supervision of the staff working in the TC, and the general upkeep of the estate. It is questionable how the involvement of experts would assist the Court given that the experts are merely applying their own views as to how the management should be carried out.

378. Given the above submissions that there is no shift in evidential burden for the Plaintiffs' claims, both the legal and evidential burden remain on the Plaintiffs to show that it has suffered losses as result of the breaches of duties. On the basis of the matters set out in Issues 2, 3 and 4 above, the Plaintiffs have not discharged this burden.
379. The Town Councillors therefore urge this Honourable Court to reconsider the necessity of ordering a bifurcation in this situation. As stated by the Court of Appeal in Beckett Pte Ltd v Deutsche Bank AG [2009] 3 SLR(R) ("Beckett"), the bifurcation order is only a procedural order. If there is any doubt as to its scope, and if it is necessary to modify or set aside the bifurcation order in the interest of justice, the trial judge has the power to do so, and to give such directions as he thinks fit.⁶⁴⁷

PRPTC's Claim for Improper Payments Made Before PE Joined AHTC

380. PRPTC has also claimed that it is entitled to the "surplus of AHTC", to the extent that the improper payments made by AHTC before PE became a part of AHPETC has a bearing on PE's and accordingly PRPTC's financial affairs. The KPMG Report did not address this and the PwC Report did not explain the basis of this claim.⁶⁴⁸ However, at trial, Mr Goh conceded that it is not clear whether PE will get to enjoy the benefit of the "surplus" and that he cannot confirm whether PE is indeed entitled to the "surplus".⁶⁴⁹
381. Firstly, it is submitted that PE cannot be entitled to any such "surplus" constituting alleged improper payments that were paid before it was part of AHPETC on 22 February 2013. This would include the following heads of claims:
- (a) The entire payment of **\$92,000** to FMSS under Invoice FMSS/0601 for MA Services for Hougang SMC for the month of June 2011.⁶⁵⁰

⁶⁴⁷ Beckett at [81], Tab 10 of D1-D5BOA.

⁶⁴⁸ AEIC of Mr Goh at [63] to [65], 2 BA 81 – 82.

⁶⁴⁹ 12.10.2018 NE, Pg 95 L 22 to Pg 96 L 18.

⁶⁵⁰ PRPTC's Statement of Claim (Amendment No. 1) at [28].

- (b) The entire payment of **\$2,689,434.15** to FMSS between 15 July 2011 and 24 January 2013 pursuant to the 1st and/or 2nd MA Contract and/or the 1st and/or 2nd EMSU Contracts.⁶⁵¹
 - (c) Part of the amount claimed for appointing Red-Power on 7 June 2012 for the period of 1 July 2012 to 30 June 2015.⁶⁵²
 - (d) Payments of **\$2,794,560** made to LST pursuant to its appointment to a panel of consultants on 7 November 2012.⁶⁵³
 - (e) Part of the amount claimed for the alleged improper payment to FMSS between 29 January 2013 and 14 July 2015 pursuant to the 2nd MA Contract and 2nd EMSU Contract.⁶⁵⁴
382. Secondly, even if there was any merit for bringing such a claim for “surplus”, which is denied, the proper party to bring a claim for such payments against the Town Councillors is AHTC and not PRPTC. The alleged losses suffered by AHTC before PE was amalgamated to form AHPETC from 22 February 2013 are not losses that PE would have been entitled to claim, but that of AHPETC. PE’s entitlement to any of the “surplus” had the losses not been suffered, is an issue that ought to be settled between PE and AHTC and is not claimable directly by PE against the Town Councillors.

F. CONCLUSION

383. In summary, the Honourable Court’s attention is drawn to the following:
- (a) TCs are of a political nature and are intended to be managed by the elected MPs with as much latitude as possible within the broad and general rules laid down in the TCA and TCFR.
 - (b) The Town Councillors owe only statutory duties which they have acted in accordance with. At all material times, the Town Councillors acted in good faith and in execution of the TCA and TCFR.
 - (c) The appointments of FMSS, FMSI and the third-party contractors and the payments that were made to them were done in accordance with the processes

⁶⁵¹ PRPTC’s Statement of Claim (Amendment No. 1) at [53].

⁶⁵² PRPTC’s Statement of Claim (Amendment No. 1) at [59] and [62]; PwC Report at [5.69].

⁶⁵³ AEIC of Mr Goh at [64], 2 BA 81.

⁶⁵⁴ PRPTC’s Statement of Claim (Amendment No. 1) at [82].

in AHTC and with the consent of all the Town Councillors. There is nothing improper about these appointments and payments.

- (d) The Plaintiffs' only basis for their claims are the KPMG and PwC Reports. The Plaintiffs' only witnesses, Mr Hawkes of KPMG and Mr Goh of PwC, have no personal knowledge of the facts and circumstances existing at the material time when the Town Councillors made the decisions and carried out the actions which are being impugned in the 2 Suits.
- (e) No evidence has been adduced by the Plaintiffs to rebut the Town Councillors' evidence of the facts and circumstances existing at the material time and the reasons for their decisions which were in the best interests of the residents.
- (f) The Honourable Court should not step into the shoes of the Town Councillors or to substitute its own decisions for those of the Town Councillors in question as to how the various requirements and duties are to be carried out. As held in CA 114, *"it is inconceivable that the court could be put in such a position in a matter that involved an aspect of local government"*.

Dated this the 18th day of January 2019.



Messrs Tan Rajah & Cheah
Solicitors for the 1st to 5th Defendants