

**RESPONSE BY CHIEF JUSTICE SUNDARESH MENON**

**OPENING OF THE LEGAL YEAR 2016**

**Monday, 11 January 2016**

Mr Attorney,

Mr Thio Shen Yi SC,

Members of the Bar,

Ladies and Gentlemen:

**I. Introduction**

1. It gives me great pleasure to welcome you to this morning's proceedings. I am especially grateful to the Honourable Dato Seri Paduka Haji Kifrawi bin Dato Paduka Haji Kifli, Chief Justice of Brunei, the Honourable Nguyen Van Thuan, Permanent Deputy Chief Justice of the Supreme People's Court of Vietnam, the Honourable Justice Matthew Palmer of the High Court of New Zealand and our many guests who have taken the time to join us this morning.
2. As you have already noted, there have been several changes to the Bench and in the Attorney-General's Chambers since we opened the last Legal Year. On behalf of the Judiciary, I too extend good wishes to Mr Tan Siong Thye, who was appointed as our first ever Deputy Attorney-General on 2 February 2015, following a period of distinguished service with the judiciary; and to Mr Kwek Mean Luck who was appointed as the Second Solicitor-General.

3. I also congratulate Justice Quentin Loh on his re-appointment as a Judge of the Supreme Court for a term of two years with effect from 25 December 2015; and Justice George Wei on his appointment as a Judge on 25 May 2015.
4. We welcomed a number of new members to the Bench. Sir Bernard Eder, who was appointed an International Judge on 7 May 2015, is widely recognised as an expert in international commercial litigation and arbitration and will certainly make a substantial contribution to the Singapore International Commercial Court (“SICC”).
5. Sir Bernard is joined by four new Judicial Commissioners, all of whom I warmly welcome. They are Judicial Commissioners Chua Lee Ming, Foo Chee Hock, Kannan Ramesh and Foo Tuat Yien.
6. We now have a total of 14 Judges, 5 Senior Judges, 10 Judicial Commissioners and 12 International Judges, blending a rich diversity of talents and backgrounds with a deep and shared commitment to excellence. This will place us well to meet the challenges of the future.
7. The past year was, of course, especially noteworthy on two accounts, as you, Mr Thio, have already observed: first, the passing of our founding Prime Minister, Mr Lee Kuan Yew; and second, our nation’s 50<sup>th</sup> anniversary celebrations. Mr Lee’s passing united Singaporeans in an unprecedented way. All differences were put aside as we came together in a shared sense of gratitude, admiration and grief.

8. We were grateful for the legacy he left us: a nation founded on the values of the rule of law, the integrity of public institutions, and for our people, equal opportunity, meritocracy, security and prosperity.
9. We were filled with admiration and also pride because all that we have today was unthinkable when nationhood was thrust upon us in 1965. Independent Singapore might not have been the dream that Mr Lee and his founding partners started off with; but when it became a reality that had to be confronted, they rose to the challenge and they set about creating a nation state that would, in time, exceed anything that might have been imagined because of their courage to dream, their vision to plan and their determination to deliver.
10. And we grieved because it is always difficult to face a loss; what more, when it is of such epic proportions.
11. The National Period of Mourning enabled us to honour our greatest statesman and also prepared us to celebrate our 50<sup>th</sup> anniversary of independence as a testament to the legacy that he left us. But even as we reflect on the journey that has brought us to this point, we must already think of the future.

## **II. Towards a world class legal sector**

12. For us in the legal profession, ensuring a successful passage through the next 50 years will require, among other things, a resolute commitment to our core mission, which is to serve our people as the guarantors of the rule of law even as we strive to strengthen our position as a leading centre for transnational legal services in Asia.

13. This calls for a balancing exercise that has been, and will continue to be, rooted in three interlocking ideas:
- (a) First, cementing our position as a regional hub for legal services;
  - (b) Second, recognising the critical role that the law plays in our society; and
  - (c) Third, pursuing excellence without compromise.
14. I will touch on each of these.

### **III. Cementing Singapore's position as a regional hub for legal services**

15. The Singapore Academy of Law's ("SAL") Committee for the International Promotion of Singapore Law recently conducted a survey of around 500 commercial law practitioners and in-house counsel who deal with regional cross-border transactions. The survey reveals, among other things, that respondents have taken note of our success in creating the Singapore International Arbitration Centre, a reputable international body; and that there is awareness of the SICC and the Singapore International Mediation Centre as well as willingness to choose Singapore law to govern cross-border transactions. For those who indicated a preference for Singapore law, the stability of our legal system and the certainty of our commercial laws were cited as important considerations.

## **A. The Singapore International Commercial Court**

16. These findings are encouraging in the context of the SICC, which was launched just a year ago. Since then, we have transferred two international, commercial cases to the SICC.
17. The first case involves business interests in Australia, Indonesia and Singapore and a large-scale industrial project with substantial claims and counterclaims. The first tranche of the trial was completed ahead of schedule, having been heard by a three-Judge panel consisting of Justices Quentin Loh, Vivian Ramsey and Anselmo Reyes. I understand that the closing submissions will be heard later this week.
18. There are other positive developments as well. Already, more than 50 foreign lawyers, many of them Queen's Counsel or Senior Counsel, have sought and obtained full registration with the SICC; and some large multinational corporations have started to incorporate the SICC model clauses in their contracts. The coming into force of the Hague Convention on Choice of Court Agreements on 1 October 2015 will further enhance the international enforceability of SICC judgments as and when Singapore ratifies the Convention.
19. I believe that the SICC with its Bench strength and its many innovative features will come to play an important role in the region. This will open new opportunities for our lawyers especially as they continue to engage in raising their standards.

## **B. The Asian Business Law Institute**

20. Another important initiative that we will soon launch is the Asian Business Law Institute (“ABLI”). This is most timely given recent events driving closer transnational economic integration, such as the Trans-Pacific Partnership and the creation of the ASEAN Economic Community.
21. The ABLI will afford an important platform for key stakeholders, including policy makers, judges, members of the business and the legal fraternities, and academics to work together to ensure that the law is a promoter of, rather than an impediment to, the growth of transnational commercial activity. I shall say more at next week’s launch of the ABLI.

## **C. Promoting court-to-court arrangements: cross-border insolvency**

22. Both the SICC and the ABLI are ideas born of our conviction that the world has changed in dramatic ways in the space of a single generation. When those on the Bench today started practice, the practice of law was a domestic proposition. This has all changed as a result of globalisation and the phenomenal rise of connective technologies over the last two decades. In the new paradigm, we will have to be open to new ways of doing things. A prime example can be seen in the area of cross-border insolvency.
23. Corporations that are present and operating in multiple jurisdictions are ubiquitous. The globalisation of businesses presents unique challenges for domestic laws and national courts. A cross-border corporate failure raises the

prospect of multiple proceedings in different jurisdictions which can give rise to inconsistent outcomes and a rush to lay claims over the available assets.

24. Part of the response to these challenges will entail collaboration and communication among the involved courts in diverse jurisdictions, as they work together in search of effective and orderly resolutions. For this, guidelines must be developed to shape the nature and extent of such communications. There have already been some instances of this in selected foreign jurisdictions.
25. Judicial Commissioners Aedit Abdullah and Kannan Ramesh are working with judges from some like-minded commercial jurisdictions to take this forward. We envisage a network eventually connecting the courts of key commercial centres on a multilateral as well as a bilateral basis in an effort to meet the needs of a globalised commercial environment.

#### **D. Global Pound Conference**

26. Lastly, on the subject of our regional activities, let me mention the Global Pound Conference, which will be held in Singapore on 17 and 18 March. The original Roscoe Pound Conference, held in the United States in 1976, is widely credited with igniting the modern ADR movement. Forty years on, at the initiative of the International Mediation Institute, stakeholders in the field of dispute prevention and resolution from around the world are being invited to participate in a global series of Pound Conferences that will be held at various locations across the world. The Series aims to consider the future of dispute resolution and the critical importance of ensuring access to justice. The choice

of Singapore to host the Conference that will launch the global series underscores our standing as an international professional services hub and it will afford us an excellent opportunity to weigh in on these important issues.

27. These efforts will collectively enable us to make a useful contribution to the advancement of the rule of law internationally. But as I have repeatedly emphasised, this must not divert us from ensuring that the needs of our citizenry are well served and it is to this that I now turn.

#### **IV. Recognising the critical role of law in our society**

##### **A. Family Justice**

28. Family justice is an aspect of the law that is potentially important to all Singaporeans. The Family Justice Court (“FJC”) was established on 1 October 2014 as a specialist court to better address the unique needs of family justice.
29. The overriding concern was to ensure that those who must avail themselves of the court’s services in this area might find that their journey through the system is as free of trauma as possible. This will take time and the extent to which we succeed will depend on many different things. But there are measures we can take to improve the odds. For instance, we now require counselling and mediation in all contentious child cases. We also developed a child-inclusive mediation pilot programme incorporating a therapeutic interview with the affected children. We found that this helped parents appreciate the consequences of their actions on their children, with encouraging results: around 75% of the cases in the pilot resulted in consensual resolutions.

30. Similarly, with strong support from the family bar we implemented the new Child Representatives scheme. To-date, 24 family lawyers have been trained and empanelled, and they have helped bring the interests of the affected children to the fore in contentious child cases. My judges report that the Child Representatives are contributing tangibly to the welfare of these children.
31. Within the courts, we have sought to manage cases more robustly and will increasingly direct the pace of the proceedings and confine attention to the relevant issues only. This has already resulted in fewer affidavits being filed and with consequent savings in time.
32. We have also worked with our partners to refine the pre- and post-writ process through greater emphasis on mediation. To enable this, we collaborated with the Singapore Mediation Centre and Singapore International Mediation Institute to develop a national framework for family mediation accreditation and 51 mediators have already been accredited.
33. The quest to improve and enhance the administration of family justice will be a continuing one. We will see new pressures on the family, with an aging population and the increasing incidence of transnational marriages and family relocations. The courts will have to keep pace with these new complexities. In the coming year, working with the Singapore Mediation Centre, the FJC will look into developing an international family mediation framework to address the reality that family law issues too are crossing borders to a growing degree.
34. Family justice poses many challenges and I believe we can learn much from the experiences of other jurisdictions. I have therefore decided to establish an International Advisory Council which will bring together a group of

internationally renowned and respected family judges as well as academics and experts in family law and social science. The Council will discuss the latest ideas in family law and practice, study international best practices and imagine solutions and measures that will situate the FJC at the forefront of the dispensation of family justice. It will meet for the first time later this year.

## **B. Criminal Justice**

35. Criminal justice is another important contact point between the general population and the legal system. The Minister for Law, the Attorney-General and I have discussed the possibility of establishing a Criminal Procedure Rules Committee which will be empowered to make rules that govern the conduct of criminal proceedings. This may be seen as analogous to the existing Rules Committee which makes rules for the conduct of civil proceedings.
36. Such a committee could make rules governing such matters as procedures relating to bail, the subpoena of witnesses or the discovery of documents. I floated the idea at a dialogue that I hosted for senior members of the criminal bar during the year and was heartened by their strong expression of support.
37. We will continue to study the experiences of other jurisdictions, such as England, Hong Kong and New South Wales, which have similar arrangements in place, before reaching a final decision on the remaining details. The Minister has informed me that he hopes to introduce the required legislation in due course. With this significant step, we aim to achieve clarity in practical aspects of criminal procedure, which will benefit us all.

## **C. Civil Justice**

### **1. *The Civil Justice Commission***

38. Turning to civil justice, last year I announced the establishment of a Civil Justice Commission chaired by Justice Tay Yong Kwang. The Commission is conceptualising a new framework for civil litigation, access to justice being one of its primary drivers. Justice Tay and the Commission have worked hard since then and have reached the stage where a report with the final set of recommendations might be completed by 2017. I know this important project is in very capable hands and when it is complete, I am sure we will see changes that will significantly enhance our civil litigation framework while reducing costs and enhancing access to justice.

### **2. *Initiatives to enhance access to civil justice in the State Courts***

39. We have also rolled out a number of initiatives to enhance access to civil justice in the State Courts. Beyond those discussed at the last workplan of the State Courts, let me foreshadow two likely moves in the coming year:

(a) First, the District Court's civil monetary jurisdictional limit currently stands at \$250,000. It is time to review this, 18 years having passed since the last revision in 1997. We will reach a final decision on this in the course of this year.

(b) Second, at the same time, we are examining the feasibility of increasing the monetary jurisdiction of the Small Claims Tribunal from its current

level of \$10,000. The State Courts will continue to discuss this with the Ministry of Law and other stakeholders.

### **3. *Enhancing the Intellectual Property regime***

40. In an increasingly knowledge-based, innovation-driven global economy, the protection of intellectual property (“IP”) rights has come to be recognised as an important driver of economic growth. In 2013, the Government released the IP Hub Master Plan which laid down a framework for Singapore’s development as an IP hub over the coming decade.
41. We approach this from a good base. The World Economic Forum, in its Global Competitiveness Report 2014/2015, ranked Singapore second in the world and first in Asia in terms of IP rights protection; while the Global Intellectual Property Center’s International IP Index 2015 ranked our IP environment fifth in the world and the highest in Asia.
42. An IP Dispute Resolution Committee chaired by Justice George Wei has been working since April 2015 to take this forward. The Committee’s work has been guided by two key objectives: first, to enhance access to the IP dispute resolution system, which feedback suggests might be relatively expensive for less well-resourced parties; and second, to position Singapore as a choice venue for the resolution of IP disputes in Asia. In some ways, these concerns pull in different directions, and this somewhat complicates the task. Among the measures being considered are the introduction of different streams for cases, simplified processes for less complicated cases and robust case management

by judges. The Committee is also studying the experience of the UK Intellectual Property Enterprise Court which has met with considerable success there. The Committee will endeavour to devise a system which ensures that costs are not a bar to smaller players who must act to safeguard their IP rights, without hindering the continuing development of our jurisprudence. The Committee's work should be completed later this year and I look forward to receiving its recommendations.

#### **4. *Evolving paradigms of Medical Litigation***

43. The final development in civil justice that I will briefly mention is medical litigation. The experience in other countries suggests that this is a space we must watch carefully. Medical care is of direct concern to all Singaporeans and we must avoid a situation where the practice of medicine comes to be adversely affected by the medical practitioner's consciousness of the risks of malpractice liability. This can lead to the practice of "defensive medicine" and higher insurance costs. To strike the right balance and ensure that medical practice is not distorted by the fear of litigation, some re-imagination of our medical litigation paradigm is timely. We are evaluating the adoption of three overlapping measures:

(a) First, promoting ADR, in particular mediation, as a primary step in resolving disputes relating to medical malpractice. To this end, I have asked the Singapore Mediation Centre to help ensure that we can support the efforts of the medical profession to divert disputes away from litigation where possible.

- (b) Second, shifting from the present adversarial model to a more judge-led process in which the judge will pro-actively direct the proceedings. This might ultimately prove more conducive to fact finding, at least in the context of such proceedings.
  - (c) Third, recognising the reality that judges lack the specialised knowledge of medical professionals. To address this, judges could be assisted by medical assessors to a much greater degree than is currently being done. Doctors may also feel more assured that decisions are made by judges with the benefit of sufficient and neutral medical input.
44. I have discussed this with the Singapore Medical Council's leadership and we have agreed on some initial steps in this process of re-imagining our medical litigation paradigm. A standing panel of medical assessors comprising senior doctors nominated by the Singapore Medical Council will be established. On our part, a Medical Litigation list of judges will be set up in the High Court and the State Courts to handle these cases. The Singapore Judicial College ("SJC") will work with the Singapore Medical Council to provide training for the judges as well as for the medical assessors. We will also examine areas for procedural refinements. Justice Judith Prakash and Justice Belinda Ang will spearhead this initiative on our side. I am confident that this will help us devise constructive solutions to address an important issue that concerns us all.
45. The various developments in civil justice that I have outlined are wide-ranging and present opportunities in many different areas. I hope we will all take the opportunity to contribute to the on-going discussions so that we end up with what works best for us.

**V. Pursuing excellence without compromise**

46. I turn to the third key idea that informs our work, namely the pursuit of excellence. There are three broad areas I wish to touch on this morning: (a) professionalism of our practitioners; (b) professionalism of the Judiciary; and (c) preparing for the future.

**A. Professionalism of our practitioners**

47. The members of our profession enjoy many important and exclusive privileges, which centre on their duty to serve justice and to ensure she can be accessed. Here, I am happy to say I agree with you, Mr Thio, that we can indeed take pride in the significant *pro bono* commitment of the profession that we have seen, especially in recent years – you can count that as a “Like”. The Public Private Partnership that you have alluded to is one that we must nurture.

48. I also commend the Law Society’s efforts to build capacity so that professional standards may continue to rise. In a similar vein, the SAL too is working with public- and private-sector partners to develop a legal competency framework that will define the levels of knowledge, skills and competence that are needed in such areas as corporate and commercial law, family law, legal technologies and legal support roles. The SAL will then develop appropriate foundational and specialist programmes tuned to each of these requirements. We have already partnered with the British Council to develop a program targeted at improving the written communication skills of those playing legal support roles; and in April 2016, we will work with INSEAD to develop a 3-day executive

leadership programme specifically tailored for those charged with the leadership and management of law firms.

49. We are also looking into establishing a scheme which accords due recognition to those who have achieved excellence in selected areas of specialisation which might then incentivise younger practitioners to strive for such recognition. This could be done through a system of accreditation that would encourage practitioners to develop mastery in selected areas and then to be distinguished by an appropriate designation. A committee led by Justice Quentin Loh in his capacity as Chairman of the Professional Affairs Committee of the SAL is looking into the viability of implementing this for construction lawyers as a pilot project. This will be assessed in due course and if it proves to be successful, we will consider extending it to other areas of specialisation.
50. Let me digress here to note that over the past 27 years, the SAL has established itself as a highly respected and admired institution. The fees for its programmes and services have largely remained unchanged over the years. It is time to confront the inevitable. There will be some upward adjustments and some of these may be implemented by July.
51. Another aspect of enhancing the professionalism of our lawyers concerns the updating of our regulatory and disciplinary frameworks. This was also driven by the increasingly international nature of the legal profession in Singapore.
52. 2015 saw the realisation of many key recommendations made in 2014 by the Committee to Review the Regulatory Framework of the Singapore Legal Services Sector. Among these, was the establishment of a common disciplinary framework for both local and foreign lawyers practising in Singapore. The

Professional Conduct Council was established on 18 November 2015 to oversee matters relating to professional practice, etiquette, conduct and discipline. After consultation and feedback, the Council promulgated the Legal Profession (Professional Conduct) Rules 2015. A Working Group chaired by Justice Steven Chong will periodically review and revise the Rules, while an Advisory Committee, chaired by Mr Ang Cheng Hock S.C., has been established to provide guidance to lawyers on issues arising from their operation.

53. We also saw the establishment of the Legal Services Regulatory Authority (“LSRA”) on 18 November 2015 as a department of the Ministry of Law to oversee the regulation of all practice entities and the registration of foreign lawyers in Singapore. Functions previously shared between the Attorney-General’s Chambers and the Law Society, pertaining to the licensing and registration of practice entities, the registration of foreign qualified lawyers and regulated non-practitioners, and the supervision of compliance with business criteria and licence conditions will now be centralised within the LSRA. Cumulatively, these changes will all contribute to the strengthening of our profession.

## **B. Professionalism of the Judiciary**

54. I turn to the Judiciary. At the last Opening of the Legal Year, I stressed the importance of continuing education for our judges. A year later, it is my great pleasure to commend and congratulate the SJC for the tremendous progress that it has already made. It offered more than 40 programmes last year,

recording a cumulative attendance exceeding 1,000. The SJC also conducted the inaugural Judiciary-Wide Induction Programme for newly appointed Judicial Commissioners and Judicial Officers. This was attended by 27 of our colleagues and 3 judges from overseas.

55. The SJC also enjoyed notable success in its international programmes. It presented nine courses for foreign judges and these attracted more than 250 participants from over 40 countries across Asia, the Middle-East and the Pacific, including courses that were conducted in Phnom Penh, Yangon, Vientiane, Hanoi and the Solomon Islands. The last of these was a 2-day workshop on eFiling for more than 65 judges, lawyers and court officials.
56. The excellent work of the SJC in its inaugural year has been captured in its first Annual Report, which has been made available to you. For the coming year, I have asked the College to focus on enhancing judicial case management skills because robust case management is a critical tool for reducing the costs and time incurred in litigation and we can expect to see this being used to a greater degree. Immediately after these proceedings, we will launch the SJC Business Centre.

### **C. Preparing for the future**

57. I turn finally to the future and focus in particular on technology and the law.
58. We were among the frontrunners in incorporating technology in the administration of justice. The Electronic Filing System (“EFS”) was introduced at the turn of the millennium to enable the electronic filing, archiving and review

of court documents. After more than a decade of service, EFS was replaced by eLitigation (“eLit”) in 2013 as part of a concerted effort to overhaul and modernise our court technology. Today, barely three years on, we are already looking into the next generation of enhancements to better meet the needs of court users, with a view to enhancing functionality and user-friendliness. Technology continues to develop at an incredible pace and this inevitably will bring more sweeping changes. It is vital that we anticipate these and keep up with them.

59. To better equip ourselves, the Judiciary started working last year with the Infocomm Development Authority (“IDA”), to prepare for the future. As a first step, we formed a “Courts of the Future Taskforce”, led by Justice Lee Seiu Kin, to undertake a strategic study on getting our courts “future-ready”. The study focuses on anticipating the future needs of court users and developing strategies to meet these with technology. As part of its consultation process, the Taskforce has already engaged a wide range of stakeholders including judges, lawyers, government agencies and law students. The Taskforce has received many interesting and innovative suggestions and is exploring many brave ideas, including the possible use of artificial intelligence and natural language technology to enhance the accessibility of information, to cut waiting times, to automate certain applications that would obviate the need for physical attendance in court, to facilitate instantaneous communication between lawyers in court and their colleagues in the office and even to analyse data and aid decision-making. The Taskforce hopes to complete its final report and recommendations this year.

60. The effective implementation of these recommendations and other technology-related initiatives will mean that the courts of the future will be dramatically different from today's courts. This will entail a transformational journey for which we will require the strong support of all stakeholders. This is something we *must* do if we are to build on what we have already achieved. We will discuss these matters in detail with the profession in due course, but I ask you to approach this with open minds. In the final analysis, we must embrace these changes because they will enhance efficiency, lower costs and improve the quality of our work while all the time enhancing access to justice.

#### **VI. Appointment of Senior Counsel**

61. I come to the point in my response where I announce the appointment of senior counsel. The Selection Committee has decided this year to appoint Professor Ng-Loy Wee Loon as Senior Counsel, *Honoris Causa*. I congratulate Professor Ng-Loy who has distinguished herself as an academic and has consistently been of great assistance to us, including by appearing on a number of occasions as *amicus curiae*.

#### **VII. Conclusion**

62. This brings me to the close of this morning's proceedings. I thank you all very much for your presence. As we look forward to an exciting year ahead, let me, on behalf of the Judiciary, wish each and every one of you a very happy, healthy and fulfilling New Year.