

5. BANKING LAW

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I. Cheques and electronic payments

5.1 As part of its roadmap to terminate the Singapore dollar Cheque Truncation System (“CTS”), the Monetary Authority of Singapore (“MAS”) plans to eliminate centrally-cleared corporate cheques.² Banks ceased issuing new cheque books to corporate customers at the end of 2025, and the deadline for cessation of processing of corporate cheques has been extended to the end of 2026.³ However, individuals will be able to continue using retail cheques beyond 2025, ensuring that Singapore’s electronic payments (“E-payments”) transition is inclusive of cheque users who may face difficulties in switching to alternative payment methods.⁴ To support the continued availability of retail cheques, the MAS is proposing to terminate the current CTS and replace it with a system designed to process reduced cheque volumes, provisionally termed CTS Lite.⁵ In this connection, in July 2024, the Law Reform Committee of the

1 The author is grateful to the general editors for their insightful comments.

2 “Consultation Paper On Roadmap to Terminate the SGD Cheque Truncation System – Eliminating Corporate Cheques by 2025”, *Monetary Authority of Singapore* (2 November 2022) <https://www.mas.gov.sg/-/media/mas-media-library/publications/consultations/ftig/2022/consult-paper-2-nov-22/p011_consultation-paper-on-roadmap-to-terminate-the-sgd-cts---eliminating-corporate-cheques-by-2025.pdf> (accessed 12 June 2026) at para 1.1.

3 “MAS and ABS Announce Launch of Electronic Deferred Payment Solutions in Mid-2025 and Extension of Deadline for Cessation of Corporate Cheques”, *Monetary Authority of Singapore* (5 December 2024) <<https://www.mas.gov.sg/news/media-releases/2024/mas-and-abs-announce-launch-of-edp-solutions-in-mid-2025>> (accessed 12 June 2026) at para 4.

4 “Consultation Paper On Roadmap to Sunset Corporate Cheques and Transition Plan for Retail Cheques”, *Monetary Authority of Singapore* (5 December 2024) <<https://www.mas.gov.sg/-/media/mas-media-library/publications/consultations/ftig/2024/consultation-paper-on-roadmap-to-sunset-corporate-cheques-and-transition-plan-for-retail-cheques.pdf>> (accessed 12 June 2026) at para 2.3.

5 “Consultation Paper On Roadmap to Sunset Corporate Cheques and Transition Plan for Retail Cheques”, *Monetary Authority of Singapore* (5 December 2024) <<https://www.mas.gov.sg/-/media/mas-media-library/publications/consultations/ftig/2024/consultation-paper-on-roadmap-to-sunset-corporate-cheques-and-transition-plan-for-retail-cheques.pdf>> (accessed 12 June 2026) at para 2.5.

Singapore Academy of Law published a report on the legal implications of terminating the cheque system.⁶ Key legal implications include the loss of the cash equivalence principle, the loss of a quick and easy enforcement process in the event of non-payment, as well as uncertainty as to whether established defences apply (as discussed further in the report).⁷

5.2 To further facilitate the transition to E-payments, in July 2025, seven banks launched Electronic Deferred Payment (“EDP”) and EDP+, which are intended to function as electronic alternatives to post-dated cheques and cashier’s orders respectively.⁸ In this regard, the MAS had previously consulted on whether legislative amendments were necessary to give an EDP payee a statutory right of recourse against the payer if payment fails due to insufficient funds (similar to that available in respect of cheques under s 47(2) of the Bills of Exchange Act 1949).⁹ However, EDP was launched without the parallel introduction of such a statutory right; payees instead must found their claims on the separate underlying contractual agreement.¹⁰ Potential legal issues include (a) the loss of a comparatively simpler and more efficient enforcement process; (b) the payee’s right of recourse against the payer for non-payment if there is no such underlying transaction on which to found a claim; and (c) uncertainty as to whether a payer may raise non-presentment as a defence to the payee’s claim (and if so, whether the payee may rely on established excuses for non-presentment).¹¹ As such, the MAS has stated that it will monitor the use of EDP and EDP+ and gather feedback about

6 Law Reform Committee, Singapore Academy of Law, *Report On the Legal Implications of Terminating the Cheque System* (July 2024).

7 Law Reform Committee, Singapore Academy of Law, *Report On the Legal Implications of Terminating the Cheque System* (July 2024) at paras 4.11–4.22.

8 “What are EDP and EDP+?”, *The Association of Banks in Singapore* <<https://abs.org.sg/e-payments/edp>> (accessed 17 June 2026); “Response to Public Consultation On Roadmap to Sunset Corporate Cheques and Transition Plan for Retail Cheques”, *Monetary Authority of Singapore* (31 July 2025) <<https://www.mas.gov.sg/-/media/mas-media-library/publications/consultations/ftig/2024/response-to-public-consultation-on-roadmap-to-sunset-corporate-cheques-and-transition-plan-for-retail.pdf>> (accessed 17 June 2026) (“Response to Public Consultation On Roadmap to Sunset Corporate Cheques and Transition Plan for Retail Cheques”, MAS”) at para 3.9.

9 2020 Rev Ed. “Consultation Paper On Roadmap to Terminate the SGD Cheque Truncation System – Eliminating Corporate Cheques by 2025”, *Monetary Authority of Singapore* (2 November 2022) <https://www.mas.gov.sg/-/media/mas-media-library/publications/consultations/ftig/2022/consult-paper-2-nov-22/p011_consultation-paper-on-roadmap-to-terminate-the-sgd-cts---eliminating-corporate-cheques-by-2025.pdf> (accessed 12 June 2026) at para 4.14.

10 “Response to Public Consultation On Roadmap to Sunset Corporate Cheques and Transition Plan for Retail Cheques”, MAS at para 3.19.

11 Law Reform Committee, Singapore Academy of Law, *Report On the Legal Implications of Terminating the Cheque System* (July 2024) at paras 4.11–4.22; Rachel Phang, “The Death of the Post-dated Cheque and the Rise of ‘Electronic Deferred

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users' dispute resolution experiences to determine if further measures are required to improve the legal framework for E-payments.¹²

II. Bank-customer and debtor-creditor relationships

A. *Joint accounts: interpretation of documentation within banking regulatory context*

5.3 *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine*¹³ concerned the beneficial interests in choses of action representing the credit balances in two joint bank accounts.¹⁴ Specifically, the principal question was whether the beneficial interests passed to the appellants by survivorship, or whether the appellants held these on a resulting trust for the deceased's estate.¹⁵ The appellants were the deceased's eldest daughter and widow, who held the joint accounts in joint names with the deceased.¹⁶ The respondents were the deceased's three other children.¹⁷ The Court of Appeal affirmed the decision of the General Division of the High Court ("General Division")¹⁸ that the deceased intended to retain the beneficial interests in the joint accounts, such that the appellants held legal title thereto on a resulting trust for the deceased's estate.¹⁹ Although the main issues on appeal pertained to trust law (and are not discussed in this chapter), aspects of the decision are relevant to banking law and are discussed further below.

5.4 Notably, the Court of Appeal clarified how joint account bank documentation should be interpreted, particularly survivorship clauses and beneficial owner declarations in account opening or account conversion forms.²⁰ The bank terms and conditions were standard forms drafted by the banks without customers' input.²¹ As such, the court agreed with Lord Carnwath's approach in *Whitlock v Moree*²² that bank

Payment': A Legal Perspective of Singapore's New Payment Solution" *Asian Journal of Comparative Law* (forthcoming, 2026).

12 "Response to Public Consultation On Roadmap to Sunset Corporate Cheques and Transition Plan for Retail Cheques", MAS at para 3.21.

13 [2025] 1 SLR 758.

14 *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 at [1].

15 *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 at [1].

16 *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 at [1]–[2].

17 *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 at [5].

18 *Khoo Phaik Eng Katherine v Khoo Phaik Ean Patricia* [2025] 3 SLR 1627.

19 *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 at [147].

20 See, generally, *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 at [129]–[146].

21 *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 at [144].

22 (2017) 20 ITELR 658 at [88].

documents should be construed from the bank's perspective, with regard to what the bank would be concerned with.²³ It is submitted that this should not be read as displacing the customer's intention entirely, nor as a departure from the orthodoxy that contractual interpretation is to give effect to the parties' intentions, as objectively ascertained.²⁴ Rather, it can be seen as an application of the contextual approach to contractual interpretation,²⁵ specifically, the interpretation of standard form banking documentation within the banking regulatory context.

5.5 Here, with respect to the phrase "beneficial owner"²⁶ in the joint account documents, the court disagreed with the appellants' construction that this referred to beneficial ownership in the sense of the appellants being entitled in equity to the joint accounts.²⁷ Instead, the court took into account the context of MAS Notice 626, which defines the term "beneficial owner"²⁸ for the purposes of anti-money laundering and countering the financing of terrorism.²⁹ Referring to the notice as an interpretive aid, the court took the view that "beneficial owner" was a term of art which, in the context of bank documents, referred to a natural person who ultimately owns and controls the customer or on whose behalf the customer is transacting or establishing business relations.³⁰ Additionally, the court found that on their plain meaning, the beneficial ownership declarations were joint declarations by the account holders, as a collective, that they were the accounts' beneficial owners.³¹ Separately, with respect to the survivorship clauses, the court observed that these provisions addressed the legal title to (rather than beneficial

23 *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 at [133] and [144].

24 *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [1].

25 *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [133]; *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 at [138].

26 *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 at [130]–[131].

27 *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 at [132].

28 "MAS Notice 626: Prevention of Money Laundering and Countering the Financing of Terrorism – Banks", *Monetary Authority of Singapore* (24 April 2015) <https://www.mas.gov.sg/-/media/mas/regulations-and-financial-stability/regulatory-and-supervisory-framework/anti_money-laundering_countering-the-financing-of-terrorism/mas-notice-626--april-2015.pdf> (accessed 9 October 2026) at para 2.1.

29 "MAS Notice 626: Prevention of Money Laundering and Countering the Financing of Terrorism – Banks", *Monetary Authority of Singapore* (24 April 2015) <https://www.mas.gov.sg/-/media/mas/regulations-and-financial-stability/regulatory-and-supervisory-framework/anti_money-laundering_countering-the-financing-of-terrorism/mas-notice-626--april-2015.pdf> (accessed 9 October 2026) at para 2.1.

30 *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 at [132] and [138].

31 *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 at [140].

interest in) the accounts and focused on the matter of whose instructions the banks were entitled to act upon in the event of an account holder's death.³² The court hence reasoned that the purpose of these clauses was to eliminate uncertainty that could lead to the banks breaching their duty to act strictly in accordance with their customers' mandates, rather than to determine the beneficial entitlements of the account holders *inter se*.³³

5.6 The decision provides a notable illustration of how the banking regulatory context may concretely affect the interpretation of bank documentation. From a drafting perspective, where language used in bank documentation both has a technical private law meaning and constitutes a term of art in banking regulation, if a particular legal effect is intended (such as a declaration of equitable ownership), then this should be clearly articulated. The case also has practical implications for estate planning.³⁴ In Koh and Yeo's case note on the decision, they highlight that where a joint account arrangement is intended to function as an immediate gift, this intention should be expressly documented through appropriate legal instruments (such as a deed of gift or declaration of trust) and/or contemporaneous communications; conversely, where a joint account is established for administrative convenience with no intention that any beneficial interest should pass to the joint account holder, this intention should also be clearly documented.³⁵

B. Private banking: duty of care in provision of investment recommendation

5.7 In the private banking context, in *Glassberg, Jonathan William v UBS AG, Singapore Branch*,³⁶ the Appellate Division of the High Court ("Appellate Division") affirmed the General Division's dismissal of a claim against the respondent bank in relation to a personal investment recommendation that the bank's relationship manager had made to the appellant, an experienced former broker.³⁷ While the case did not raise novel points of law, it illustrates how standard private banking

32 *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 at [142] and [145].

33 *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 at [145]–[146].

34 Kelvin Koh & Terence Yeo, Case Note, "Beneficial Ownership of Joint Bank Accounts: *Khoo Phaik Ean Patricia and another v Khoo Phaik Eng Katherine and others* [2025] 1 SLR 758" (2026) 32(4) *Trusts & Trustees* 203 at 206.

35 Kelvin Koh & Terence Yeo, Case Note, "Beneficial Ownership of Joint Bank Accounts: *Khoo Phaik Ean Patricia and another v Khoo Phaik Eng Katherine and others* [2025] 1 SLR 758" (2026) 32(4) *Trusts & Trustees* 203 at 206.

36 [2025] SGHC(A) 13.

37 *Glassberg, Jonathan William v UBS AG, Singapore Branch* [2025] SGHC(A) 13 at [1]–[2] and [18].

documentation can be effective in precluding a tortious duty of care – particularly where such documentation provides (among others) that the customer makes his own assessment and relies on his own judgment, negating any voluntary assumption of responsibility and reasonable reliance, and therefore precluding a finding of proximity necessary to establish a duty of care in the tort of negligence.³⁸

C. *Appropriation of payments: no invocation of doctrine to characterise single debt*

5.8 As regards debtor-creditor relationships, *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd*³⁹ clarified the applicability of the doctrine of appropriation in the context of a landlord-tenant dispute.⁴⁰ Where a debtor owes several debts to the same creditor, the doctrine allows a debtor to appropriate the money paid to a particular debt; if the creditor accepts the payment thus appropriated, he must apply it in the manner the debtor directs.⁴¹ In this case, the landlord, Marchmont Pte Ltd (“Marchmont”), had issued notices of breach and notices of termination, claiming that these entitled it to forfeit the lease of the tenant, Campbell Hospitality Pte Ltd (“Campbell”).⁴² Nevertheless, Campbell continued making monthly payments to Marchmont.⁴³ Marchmont maintained that the lease had been terminated and considered that Campbell’s payments would offset the double rent payable due to Campbell holding over after the lease’s termination.⁴⁴ However, Campbell argued that it was entitled to appropriate those payments towards the rental due, and that the payments should be regarded as rent, such that Marchmont’s receipt of such payments constituted a waiver of its right to forfeiture.⁴⁵

5.9 The court rejected this argument, observing that in this case, a single sum was due, as opposed to several distinct debts.⁴⁶ The dispute pertained to the characterisation of that one debt: Campbell owed Marchmont either double rent (during the alleged holding over) or rent *simpliciter*, and both claims could not coexist.⁴⁷ The court reasoned that

38 *Glassberg, Jonathan William v UBS AG, Singapore Branch* [2025] SGHC(A) 13 at [13] and [22]–[23].

39 [2025] 1 SLR 816.

40 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [71]–[74].

41 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [71].

42 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [1]–[2].

43 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [2].

44 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [2].

45 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [67]–[68] and [71].

46 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [72].

47 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [72].

if the doctrine of appropriation applies where the nature of the debt is in dispute, then the debtor could simply make payment, unilaterally assert the characterisation of the debt, and thereby succeed in establishing the nature of the debt solely on the basis of its own assertion.⁴⁸ In the landlord-tenant context, the landlord would be unable to deny that the payments constituted rental payments except by returning them.⁴⁹ The court opined that this was not a supportable position, and declined to apply the doctrine of appropriation in this case.⁵⁰ This decision thus clarifies that appropriation should not be applied to resolve a dispute over the characterisation of a single debt.

III. Secured lending

A. *Limits on bank's "sole" or "absolute" contractual discretion over collateral valuation and requirements*

5.10 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd*⁵¹ (“*Deutsche Bank v ARJ*”) involved a dispute as to whether the claimant, Deutsche Bank AG Singapore Branch (“Deutsche Bank”), was entitled to (a) reduce the collateral value of bonds held in the portfolio of its client, ARJ Holding Ltd (“ARJ”); (b) terminate ARJ’s loan facilities on account of the resulting shortfall; and (c) liquidate the securities in ARJ’s portfolio.⁵² From 2020 to 2021, Deutsche Bank granted ARJ loan facilities of up to US\$400m, secured by a securities portfolio that included substantial holdings of illiquid bonds.⁵³ Deutsche Bank had approved a 30% lending value for those bonds, subject to the condition that ARJ would maintain a diversified portfolio of liquid securities.⁵⁴ In addition to this diversification condition, the loan facilities also included a general requirement for a diversified portfolio.⁵⁵ Clause 18 of the Wealth Management Service Agreement between Deutsche Bank and ARJ provided that collateral would be valued at such percentage of its market value as the bank might determine in its “sole discretion,”⁵⁶

48 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [72].

49 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [72].

50 *Campbell Hospitality Pte Ltd v Marchmont Pte Ltd* [2025] 1 SLR 816 at [72] and [74].
51 [2025] SGHC 163.

52 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [1] and [34].

53 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [2]–[4], [7], [9]–[10] and [174].

54 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [4], [7] and [35].

55 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [91].

56 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [31].

as well as that the bank had the “absolute discretion”⁵⁷ to prescribe collateral requirements.⁵⁸

5.11 In 2022, Deutsche Bank considered that its exposure to illiquid securities had increased beyond permissible limits, and it had not received coupon payments on the bonds.⁵⁹ As such, the bank issued margin calls and reduced the collateral value of the bonds from 30% to 25%.⁶⁰ Thereafter, Deutsche Bank terminated the loan facilities and demanded payment of the full principal and accrued interest.⁶¹ Following ARJ’s failure to make such payment, Deutsche Bank liquidated the assets in ARJ’s account.⁶²

5.12 One notable issue that arose was whether Deutsche Bank was subject to “an implied term of good faith ... [that] required [the bank] not to act in a manner that was irrational, perverse, capricious and arbitrary”,⁶³ and if so, whether such term precluded Deutsche Bank from terminating the loan facilities and liquidating ARJ’s securities.⁶⁴ The General Division held that there was such an implied term in law.⁶⁵ Kwek Mean Luck J acknowledged that the Court of Appeal, in *Ng Giap Hon v Westcomb Securities Pte Ltd*,⁶⁶ had declined to imply a duty of good faith as a term implied in law.⁶⁷ However, the court distinguished a general duty of good faith (as contemplated in *Ng Giap Hon v Westcomb Securities Pte Ltd*)⁶⁸ from the “far narrower”⁶⁹ and “not inconsistent”⁷⁰ proposition (contemplated in a line of High Court decisions)⁷¹ that there should be an implied term of good faith specifically in the exercise of contractual discretion, where the scope of the implied term is simply that the exercise of the discretion should not be irrational, arbitrary, capricious

57 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [31].

58 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [31].

59 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [13]–[14] and [16].

60 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [13] and [19].

61 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [20].

62 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [23].

63 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [33].

64 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [33]–[34].

65 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [188].

66 [2009] 3 SLR(R) 518.

67 *Ng Giap Hon v Westcomb Securities Pte Ltd* [2009] 3 SLR(R) 518 at [44] and [60];

Deutsche Bank AG Singapore Branch v ARJ Holding Ltd [2025] SGHC 163 at [180].

68 [2009] 3 SLR(R) 518.

69 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [181].

70 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [185].

71 See, eg, *Edwards Jason Glenn v Australia and New Zealand Banking Group Ltd* [2012] SGHC 61 at [99]–[102]; and *AL Shams Global Ltd v BNP Paribas* [2019] 3 SLR 1189 at [42]–[48].

or perverse (described in the judgment as the “Good Faith term”).⁷² The court cited prior decisions that treated the implication of such a term as reflecting the presumed reasonable expectation and common intention of the parties.⁷³ It considered these reasons to be “broadly applicable”,⁷⁴ as well as “certainly applicable”⁷⁵ on the facts before it, and accordingly recognised such an implied term in law in relation to Deutsche Bank’s exercise of its discretion under cl 18 of the Wealth Management Service Agreement.⁷⁶

5.13 In this case, the concentration of certain bonds continued to breach the diversification condition, Deutsche Bank had not received coupon payments, and ARJ’s assurances that it would transfer additional securities to its portfolio were found to be unreliable.⁷⁷ As such, on the facts, Kwek J found that Deutsche Bank was not in breach of the implied Good Faith term, as it had good reasons for exercising its discretion to reduce the loan values of the bonds, and its exercise of discretion was not arbitrary, capricious or perverse.⁷⁸

(1) *Legal implications*

5.14 A term implied in law, once so implied, will be implied in all future contracts of that type.⁷⁹ Given that the Good Faith term was implied in law in *Deutsche Bank v ARJ*,⁸⁰ this term, as defined in that decision, is implied in all future contracts of that particular type, that is, in loan facility agreements that provide that the bank has “sole discretion”⁸¹ to determine collateral valuation and “absolute discretion”⁸² to prescribe collateral requirements. The court also took the view that several prior High Court decisions had likewise been decided on the basis of the implication of a term in law, although this may not always have been

72 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [33] and [181]–[185].

73 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [187], citing *MGA International Pte Ltd v Wajilam Exports (Singapore) Pte Ltd* [2010] SGHC 319 at [103] and *Edwards Jason Glenn v Australia and New Zealand Banking Group Ltd* [2012] SGHC 61 at [100], which in turn cited *Horkulak v Cantor Fitzgerald International* [2005] ICR 402 at [30].

74 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [187].

75 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [187].

76 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [187]–[188].

77 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [190]–[206].

78 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [190].

79 *Jet Holding Ltd v Cooper Cameron (Singapore) Pte Ltd* [2006] 3 SLR(R) 769 at [89].

80 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [188].

81 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [31].

82 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [31].

explicit in the court's reasoning.⁸³ These decisions included clauses on, notably, a bank's discretion to refuse to accept any deposit⁸⁴ and a bank's discretion to assess the value of security under a facility agreement.⁸⁵ Following *Deutsche Bank v ARJ*, the terms implied in these decisions can be understood as implied in law in all contracts involving these particular types of discretion clauses.

5.15 The question, however, is whether such a term is also implied in law in respect of other contractual clauses pertaining to a bank's exercise of discretion (for instance, in relation to variable interest rates, set-off, waiver, and refusal to process transactions – or even in relation to the valuation of securities under other contractual arrangements, such as forward sale transactions,⁸⁶ as opposed to loan facilities). Additionally, and more broadly, is such a term implied in law into *all* contracts that have clauses providing for the exercise of contractual discretion (eg, in the context of an employment contract, as in *Braganza v BP Shipping Ltd*)?⁸⁷ While English law, particularly after *Braganza v BP Shipping Ltd*,⁸⁸ has adopted a comparatively more expansive approach, it would appear that it remains open to argument as to whether Singapore law should take a narrower or more context-specific approach. Finally, another issue is whether a discretion need be expressly provided for in order to be subject to review. If such express provision is not required, the question arises as to the extent to which contractual freedom more generally (for instance, to perform in a certain manner) is also subject to review.⁸⁹

(2) *Evaluating implication in law of a “Good Faith term”*

5.16 This section evaluates the implication of the Good Faith term in law by examining the context in which such a term is implied, the content of the implied term, the justifications for its implication in law, and, briefly, alternative approaches to controlling the exercise of contractual discretion (specifically, contractual interpretation and implication of terms in fact).

83 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [187].

84 *AL Shams Global Ltd v BNP Paribas* [2019] 3 SLR 1189. This case was discussed in Goh Yihan, Lee Pey Woan & Tham Chee Ho, “Contract Law” (2018) 19 SAL Ann Rev 312 at paras 12.59–12.61 and Hans Tjio, “Securities and Financial Services Regulation” (2019) 20 SAL Ann Rev 677 at paras 26.32–26.35.

85 *Edwards Jason Glenn v Australia and New Zealand Banking Group Ltd* [2012] SGHC 61.

86 See, notably, *Socimer International Bank Ltd v Standard Bank London Ltd* [2008] Bus LR 1304; [2008] 1 Lloyd's Rep 558.

87 [2015] 1 WLR 1661.

88 [2015] 1 WLR 1661.

89 See further Tham Chee Ho & Tan Zhong Xing, “Contract Law” SAL Ann Rev (forthcoming, 2026).

5.17 In determining when the Good Faith term is implied in law, one initial consideration is whether the contract involves the exercise of contractual *discretion*, as opposed to the exercise of a contractual *right*. In *Maybank Singapore Ltd v Synergy Global Resources Pte Ltd*,⁹⁰ the court observed that limits on contractual discretion “should not apply to a discretion to terminate a contract”,⁹¹ as this would constrain parties’ freedom to contract (relying on *obiter* in a decision of the Appellate Division).⁹² This observation would appear to constrain the implication of a term in law in the context of a discretion to terminate a contract. However, it should be noted that as this case involved a winding-up application, the court was concerned with whether the defendant had raised triable issues and was not required to adjudicate the merits of the dispute.⁹³ On one hand, the defendant argued that the claimant bank had wrongfully exercised its discretion to recall banking facilities.⁹⁴ On the other hand, the claimant relied on clauses for the effect that it was contractually entitled to recall the banking facilities given the defendant’s default in repaying an overdue trust receipt.⁹⁵ Given this procedural context, the dispute was not fully ventilated, and as such, it appears somewhat unclear whether the recall was pursuant to a genuine exercise of contractual discretion (as contended by the defendant) or simply the exercise of a contractual right upon the defendant’s default (as appears to have been argued by the claimant). It is submitted that if the latter characterisation applies, then limits on contractual discretion would indeed be inapplicable, but on the basis that the case concerned the exercise of a contractual right arising upon the defendant’s default, rather than the exercise of a genuine evaluative discretion.

5.18 Relatedly, in *Center for Competency-Based Learning and Development Pte Ltd v SkillsFuture Singapore Agency*,⁹⁶ Lee Seiu Kin SJ found that a discretion should be reviewable in so far as it pertained to a non-defaulting party’s sole discretion to determine whether an event of default has occurred, thereby permitting that party to terminate the contract⁹⁷ – drawing a distinction between the right to terminate the contract and a discretion as to whether an event giving rise to that right

90 [2024] 3 SLR 1316.

91 *Maybank Singapore Ltd v Synergy Global Resources Pte Ltd* [2024] 3 SLR 1316 at [25].

92 *Maybank Singapore Ltd v Synergy Global Resources Pte Ltd* [2024] 3 SLR 1316 at [25], citing *Dong Wei v Shell Eastern Trading (Pte) Ltd* [2022] 1 SLR 1318 (which involved an employment dispute) at [92].

93 *Maybank Singapore Ltd v Synergy Global Resources Pte Ltd* [2024] 3 SLR 1316 at [1] and [13]–[17].

94 *Maybank Singapore Ltd v Synergy Global Resources Pte Ltd* [2024] 3 SLR 1316 at [22].

95 *Maybank Singapore Ltd v Synergy Global Resources Pte Ltd* [2024] 3 SLR 1316 at [22].

96 [2024] 5 SLR 481.

97 *Center for Competency-Based Learning and Development Pte Ltd v SkillsFuture Singapore Agency* [2024] 5 SLR 481 at [189].

had occurred. That said, the boundary between a right and a discretion can be difficult to draw⁹⁸ and has even been doubted.⁹⁹

5.19 As regards the content of the implied term, in *Deutsche Bank v ARJ*, the court, taking into consideration the parties' submissions, used the phrase "Good Faith term"¹⁰⁰ to refer to "an implied term of good faith [that] required [the bank] not to act in a manner that was irrational, perverse, capricious and arbitrary".¹⁰¹ The court was very clear as to the meaning of "good faith" in this context. However, given that good faith tends to be a protean and contested concept,¹⁰² it may be preferable to refrain from grounding limits on contractual discretion in the concept of good faith¹⁰³ and dispense with the language of good faith altogether, and instead frame the implied term as simply that a discretion must not be exercised irrationally, perversely, capriciously or arbitrarily. Even in this respect, the authorities differ slightly as to the content of the implied term: capriciousness, arbitrariness and perversity are often cited,¹⁰⁴ while irrationality has occasionally been omitted (with the inclusion instead of whether the discretion was exercised "in bad faith");¹⁰⁵ other formulations include acting honestly, without malice and consistently with commercial purposes.¹⁰⁶

5.20 Criticisms have also been raised regarding the imposition of such limits on contractual discretion.¹⁰⁷ Morgan has argued that even standards of arbitrariness and capriciousness can be "ill-defined"¹⁰⁸ and

98 For example, Bridge considered whether unqualified rights should be treated as discretions merely because they are waivable, and suggested that this should not be the case, since that would effectively render the enforcement of all contractual rights and remedies discretionary: see Michael Bridge, "The Exercise of Contractual Discretion" (2019) 135 *Law Quarterly Review* 227 at 237–238.

99 Jason N E Varuhas, "Three Issues in the Law of Contractual Discretion" (2022) 42(3) *OxJLS* 787 at 811.

100 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [33].

101 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [33].

102 *Ng Giap Hon v Westcomb Securities Pte Ltd* [2009] 3 SLR(R) 518 at [47]–[60].

103 See Ong Ken Wei, "The Limits to Contractual Discretion" (2021) 33 *SaCLJ* 919 at para 43.

104 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [33]; *AL Shams Global Ltd v BNP Paribas* [2019] 3 SLR 1189 at [47]; *Edwards Jason Glenn v Australia and New Zealand Banking Group Ltd* [2012] SGHC 61 at [101].

105 *AL Shams Global Ltd v BNP Paribas* [2019] 3 SLR 1189 at [47].

106 *The CHLOE V* [2025] SGHC 142 at [86].

107 See, eg, Jonathan Morgan, "Against Judicial Review of Discretionary Contractual Powers" (2008) LMCLQ 230; and Jonathan Morgan, "Resisting Judicial Review of Discretionary Contractual Powers" (2015) LMCLQ 483.

108 Jonathan Morgan, "Resisting Judicial Review of Discretionary Contractual Powers" (2015) LMCLQ 483 at 486.

“invoked opportunistically”,¹⁰⁹ undermining the value of conferring the decision-making discretion on one party and introducing practical uncertainty.¹¹⁰ Whereas High Court decisions have considered the implication of such a term as reflecting the presumed reasonable expectation and common intention of the parties,¹¹¹ Morgan argues that it is not necessarily obvious that sophisticated commercial parties intend for contractual discretion to be judicially reviewable for irrationality.¹¹² Moreover, where the Good Faith term borrows from the language of administrative law, *Deutsche Bank v ARJ* presents another instance where public law considerations are “seeping into”¹¹³ private law.¹¹⁴ In this regard, in so far as public law and private law rest on fundamentally different foundations – with freedom of contract, in particular, constituting a cornerstone of contract law – these differences may justify constraints on the extent to which public law considerations may or should be imported into private law.

5.21 These criticisms notwithstanding, there remain compelling reasons for the implication of such a term in law. Indeed, in *Deutsche Bank v ARJ*, the parties had in fact agreed on the scope of the implied term,¹¹⁵ which suggests – at least in this instance – that its implication does accord with the parties’ intentions. Still, the parties’ intentions are not necessarily determinative as to whether a term will be implied in law (as distinct from implication in fact); rather, the criteria for implying a term in law are grounded in public policy, rather than on the presumed intention of the parties.¹¹⁶ In this regard, reasons of public policy do

109 Jonathan Morgan, “Resisting Judicial Review of Discretionary Contractual Powers” (2015) LMCLQ 483 at 486.

110 Jonathan Morgan, “Resisting Judicial Review of Discretionary Contractual Powers” (2015) LMCLQ 483 at 486.

111 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [187], citing *MGA International Pte Ltd v Wajilam Exports (Singapore) Pte Ltd* [2010] SGHC 319 at [103] and *Edwards Jason Glenn v Australia and New Zealand Banking Group Ltd* [2012] SGHC 61 at [100], which in turn cited *Horkulak v Cantor Fitzgerald International* [2005] ICR 402 at [30].

112 Jonathan Morgan, “Resisting Judicial Review of Discretionary Contractual Powers” (2015) LMCLQ 483 at 487.

113 Hans Tjio, “Securities and Financial Services Regulation” (2019) 20 SAL Ann Rev 677 at para 26.34.

114 Hans Tjio, “Securities and Financial Services Regulation” (2019) 20 SAL Ann Rev 677 at para 26.34. See further, eg, Jack Beatson, “Public Law Influences in Contract Law” in *Good Faith and Fault in Contract Law* (Jack Beatson & Daniel Friedmann eds) (Oxford University Press, 1995) at pp 263–288; and Ernest Lim & Cora Chan, “Problems with *Wednesbury* Unreasonableness in Contract Law: Lessons from Public Law” (2019) 135 *Law Quarterly Review* 88.

115 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [188].

116 *Jet Holding Ltd v Cooper Cameron (Singapore) Pte Ltd* [2006] 3 SLR(R) 769 at [90] and [107]; see further, eg, Elisabeth Peden, “Policy Considerations Behind Implication of
(cont'd on the next page)

arguably support the implication of a term that controls the exercise of contractual discretion. For example, the MAS's Guidelines on Fair Dealing set out the MAS's expectations regarding the responsibilities of financial institutions' boards and senior management for delivering fair dealing outcomes to customers.¹¹⁷ Additionally, industry guidelines, such as the Private Banking Code of Conduct issued by the Association of Banks in Singapore, provide that the valuation of assets should be "performed fairly".¹¹⁸ Although it is not clear whether the Private Banking Code of Conduct applies on the facts of *Deutsche Bank v ARJ*, the MAS's Guidelines on Fair Dealing, together with the overall regulatory and industry context, appear to support the implication of a term that a bank's contractual discretion should not be exercised capriciously, arbitrarily or perversely (particularly with respect to collateral valuation); the implication of such a term would arguably be reasonable and necessary,¹¹⁹ particularly to advance the policy that banks should deal fairly with their customers. Moreover, as regards uncertainty as to the content of the implied term, Lim and Chan argued that this problem can be ameliorated through the development and discernment of "indicia of unreasonableness"¹²⁰ from precedent cases.

5.22 Finally, while *Deutsche Bank v ARJ* involved the implication of a term in law, in other cases, the courts have considered whether the exercise of contractual discretion may be judicially controlled through contractual interpretation¹²¹ and the implication of terms in fact.¹²² Contractual interpretation would necessarily be contingent on the text

Terms Implied in Law" (2001) 117 *Law Quarterly Review* 459.

- 117 "Guidelines On Fair Dealing – Board and Senior Management Responsibilities for Delivering Fair Dealing Outcomes to Customers", *Monetary Authority of Singapore* (30 May 2024) <<https://www.mas.gov.sg/-/media/mas-media-library/fair-dealing-guidelines-30-may-2024.pdf>> (accessed 16 June 2026).
- 118 "Private Banking in Singapore – Code of Conduct", *The Association of Banks in Singapore* (14 February 2020) <<https://www.abs.org.sg/docs/library/pb-code-of-conduct-14-feb-2020.pdf>> (accessed 16 June 2026) at para 7.1.9.
- 119 On the test for the implication of a term in law, see further, generally, Andrew BL Phang & Goh Yihan, "Singapore" in *International Encyclopaedia of Laws: Contracts* (Jacques Herbots ed) (Kluwer Law International, 2021) at paras 1307–1311.
- 120 Ernest Lim & Cora Chan, "Problems with *Wednesbury* Unreasonableness in Contract Law: Lessons from Public Law" (2019) 135 *Law Quarterly Review* 88 at 110–113.
- 121 *Maybank Singapore Ltd v Synergy Global Resources Pte Ltd* [2024] 3 SLR 1316 at [23], citing *ABN AMRO Clearing Bank NV v 1050 Capital Pte Ltd* [2016] 1 SLR 186 at [80]–[85] and Ong Ken Wei, "The Limits to Contractual Discretion" (2021) 33 SAcLJ 919 at paras 23–26.
- 122 See, eg, *Koh Kim Teck v Credit Suisse AG, Singapore Branch* [2019] SGHC 82 at [36]–[38], as discussed in Ong Ken Wei, "The Limits to Contractual Discretion" (2021) 33 SAcLJ 919 at paras 23–34.

(and context)¹²³ of the clause in question. In addition, even if no term were implied in law, a party may potentially seek to imply an equivalent term in fact (subject to the satisfaction of the test in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd*).¹²⁴ By way of illustration, the Good Faith term arguably could have been implied in fact in *Deutsche Bank v ARJ*.¹²⁵ Still, in this regard, it has been suggested, notably by Varuhas, that implication in law may be the preferable approach, taking into account, for instance, the uncertainty of a comparatively more *ad hoc* approach were the term to be implied in fact on a case by case basis, the potential artificiality of premising the term upon parties' intentions, and the consideration that business efficacy may not mesh with the implied term's rationale.¹²⁶

(3) *Practical implications*

5.23 Even in the cases where the Good Faith term or a similar term was implied, on the facts, the courts found that this implied term was not breached;¹²⁷ indeed, this was the case in *Deutsche Bank v ARJ*.¹²⁸ This suggests that the implied term – namely, that a bank's contractual discretion must not be exercised irrationally, perversely, capriciously or arbitrarily – is relatively undemanding and often readily satisfied in practice. Still, as a matter of process, banks may wish to ensure that there is clear documentation of the reason(s) for a decision made in exercise of their contractual discretion, so that compliance with this implied term can be readily demonstrated.

5.24 It is clear from *Deutsche Bank v ARJ* and precedent authorities that the language of “sole discretion”¹²⁹ and/or “absolute discretion”¹³⁰ does not preclude the implication of a Good Faith term in law. If judicial reviewability of a decision made in exercise of a contractual discretion is desired, particularly on grounds other than those contemplated in the Good Faith term, then parties should expressly provide for such and specify the grounds upon which the relevant decision may be reviewed.

123 *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [41] and [133].

124 [2013] 4 SLR 193 at [101].

125 A similar argument was raised in respect of *Koh Kim Teck v Credit Suisse AG, Singapore Branch* [2019] SGHC 82 in Ong Ken Wei, “The Limits to Contractual Discretion” (2021) 33 SAcLJ 919 at para 30.

126 Jason N E Varuhas, “Three Issues in the Law of Contractual Discretion” (2022) 42(3) OxJLS 787 at 805–811.

127 See, eg, *AL Shams Global Ltd v BNP Paribas* [2019] 3 SLR 1189 at [47] and *Edwards Jason Glenn v Australia and New Zealand Banking Group Ltd* [2012] SGHC 61 at [101].

128 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [190].

129 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [31].

130 *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [31].

Conversely, where reviewability is not desired, even on the bases contemplated in the Good Faith term, it is presently unclear whether parties may contract out of this implied term by way of an express term. An argument can be made that it should be open to parties to do so on the basis of freedom of contract,¹³¹ especially in sophisticated commercial banking transactions. Nevertheless, although exclusion of this implied term may be attempted through express drafting, policy considerations may limit the extent to which such attempts are effective.

IV. Letters of credit, standby letters of credit and performance bonds

A. *Standby letters of credit: characterisation and grounds for restraining calls*

5.25 *DJY v DJZ*¹³² (“*DJY v DJZ (SGHC(A))*”) involved the issue of whether an injunction should be granted to restrain a call on a standby letter of credit (“SBLC”).¹³³ This was an appeal against the decision of the General Division in *DJY v DJZ*¹³⁴ (“*DJY v DJZ (SGHC)*”).¹³⁵

5.26 The appellant, DJY, and the first respondent, DJZ, entered into a contract for the former to construct and assemble an oil and gas production platform in Country X.¹³⁶ Subsequently, the Federal Audit Court (“FAC”) of Country X commenced an inquiry into the legitimacy of this contract and an amendment thereto.¹³⁷ The court determined that DJZ should preliminarily cease making payments to DJY under the contract.¹³⁸ However, as DJY could not carry out works under the contract without receiving payment, in an interim decision, the court permitted DJZ to continue making payments under the contract, provided that DJY furnish a guarantee to refund certain payments if so ordered by a final decision of the court.¹³⁹ As such, DJY (the applicant) procured an SBLC from DKA (the issuing bank and second respondent) in favour of DJZ (the beneficiary), to stand as security for its obligation to refund the

131 Jonathan Morgan, “Resisting Judicial Review of Discretionary Contractual Powers” (2015) LMCLQ 483 at 487.

132 [2025] 2 SLR 142.

133 *DJY v DJZ* [2025] 2 SLR 142 at [1] and [28].

134 [2024] SGHC 301.

135 *DJY v DJZ* [2024] SGHC 301 was discussed in the previous issue of the Singapore Academy of Law Annual Review of Singapore Cases: see Eric Chan, “Banking Law” (2024) 25 SAL Ann Rev 147 at paras 5.25–5.34.

136 *DJY v DJZ* [2025] 2 SLR 142 at [6].

137 *DJY v DJZ* [2025] 2 SLR 142 at [7].

138 *DJY v DJZ* [2025] 2 SLR 142 at [7].

139 *DJY v DJZ* [2025] 2 SLR 142 at [7].

payments if the FAC issued a final decision declaring the payments null and void.¹⁴⁰

5.27 After the FAC dismissed appeals against its first instance decision, DJZ called on the SBLC, presenting its signed statement and an FAC notification receipt which stated that the appeal decision could be accessed on its portal.¹⁴¹ DJY sought to restrain DJZ from calling on the SBLC.¹⁴² In addition to its earlier argument that DJZ's call on the SBLC was discrepant, on appeal, DJY also argued that DJZ's demand did not comply with rr 3.06 and 4.04 of the International Standby Practices¹⁴³ ("ISP98").¹⁴⁴ The Appellate Division held that DJY was not permitted to raise these new arguments on appeal.¹⁴⁵ Nevertheless, the court considered whether there was any merit to these arguments if permission had been granted to raise them.¹⁴⁶ Relevant banking law issues included: (a) whether DJY had a legal basis for restraining the call on the SBLC solely on the basis of alleged documentary discrepancies; (b) whether DJY was estopped by representation from raising discrepancies relating to the ISP98 rules; (c) whether DJZ's call on the SBLC should be restrained on the ground of unconscionability; and (d) whether the SBLC should be characterised as a performance bond or a letter of credit.¹⁴⁷

5.28 The court took the view that DJY had no legal basis to restrain the call on the SBLC solely on the basis of alleged discrepancies in the documents presented to the issuing bank.¹⁴⁸ The ISP98 governs two contractual relationships under the SBLC.¹⁴⁹ First, as between the beneficiary and the issuing bank: if the documents presented are non-compliant, the bank must give the beneficiary a notice of dishonour within a reasonable time, failing which, the bank is precluded from asserting that discrepancy.¹⁵⁰ Second, as between the issuing bank and the applicant: if the applicant seeks to assert non-compliance, it must give timely notice to the bank; as there is no privity between the applicant and the beneficiary under the SBLC, the applicant must rely on the issuing bank to reject the documents for non-compliance.¹⁵¹ The court clarified

140 *DJY v DJZ* [2025] 2 SLR 142 at [8].

141 *DJY v DJZ* [2025] 2 SLR 142 at [9]–[10].

142 *DJY v DJZ* [2025] 2 SLR 142 at [15].

143 Issued as International Chamber of Commerce Publication No 590 (published in 1998) and entered into force on 1 January 1999.

144 *DJY v DJZ* [2025] 2 SLR 142 at [19] and [24].

145 *DJY v DJZ* [2025] 2 SLR 142 at [44].

146 *DJY v DJZ* [2025] 2 SLR 142 at [28] and [45]–[97].

147 *DJY v DJZ* [2025] 2 SLR 142 at [45]–[99].

148 *DJY v DJZ* [2025] 2 SLR 142 at [46] and [53].

149 *DJY v DJZ* [2025] 2 SLR 142 at [46].

150 *DJY v DJZ* [2025] 2 SLR 142 at [46].

151 *DJY v DJZ* [2025] 2 SLR 142 at [47]–[49].

that the relationship between the applicant and the issuing bank should not be characterised as a principal-agent relationship; rather, the bank acted under an internal mandate from the applicant.¹⁵² As such, if the issuing bank accepts the beneficiary's tender of non-conforming documents, the applicant has no right as against the beneficiary to reject the documents solely for non-compliance.¹⁵³ On the facts, as the issuing bank had not issued any notice of dishonour to DJZ, there was no legal basis for DJY to restrain payment under the SBLC solely on the basis of alleged documentary discrepancies; the only avenue available to the applicant was for it to demonstrate that the nature of the alleged discrepancies rendered the call on the SBLC unconscionable or fraudulent.¹⁵⁴ This reiterates the autonomy of the contractual relationships under an SBLC. Practically, the decision also underscores the importance of timely notice of objection from the applicant to the issuing bank, in order that the issuing bank can in turn give timely notice of dishonour to the beneficiary.

5.29 Additionally, the court took the view that the applicant would in any event be estopped by representation from relying on the alleged discrepancies relating to the ISP98 rules.¹⁵⁵ As DJY had raised these arguments only upon appeal, the court found that DJZ was prejudiced by its inability to rectify its demand, given that the SBLC had since expired.¹⁵⁶ The court also observed that the representor's actual knowledge of the facts giving rise to the estoppel was not strictly relevant, as the inquiry is objective.¹⁵⁷

5.30 Finally, on the issue of the characterisation of the SBLC, there remains uncertainty as to whether SBLCs are better characterised as letters of credit or performance bonds. There is presently some difference in the approaches of (a) the General Division in *DJY v DJZ* (SGHC); (b) the Appellate Division in *DJY v DJZ* (SGHC(A)); and (c) the Court of Appeal in *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corp Ltd*¹⁵⁸ ("*Winson Oil Trading*"). At first instance, in *DJY v DJZ* (SGHC), Wong Li Kok, Alex JC held that the SBLC in that case should be treated as a performance bond, rather than a letter of credit.¹⁵⁹ The label "*standby letter of credit*"¹⁶⁰ [emphasis added] was not dispositive; the court had to examine its terms and underlying purpose, and determine if it is "merely

152 *DJY v DJZ* [2025] 2 SLR 142 at [49]–[50] and [52].

153 *DJY v DJZ* [2025] 2 SLR 142 at [52].

154 *DJY v DJZ* [2025] 2 SLR 142 at [53].

155 *DJY v DJZ* [2025] 2 SLR 142 at [68].

156 *DJY v DJZ* [2025] 2 SLR 142 at [69].

157 *DJY v DJZ* [2025] 2 SLR 142 at [59].

158 [2024] 1 SLR 1054.

159 *DJY v DJZ* [2024] SGHC 301 at [14].

160 *DJY v DJZ* [2024] SGHC 301 at [15].

a security”¹⁶¹ or a “mode of payment in exchange for goods”.¹⁶² On the facts, the court held that the SBLC in this case should be regarded as a performance bond given its terms, purpose and the ISP98 context.¹⁶³ On appeal, Steven Chong JCA held that this point “remains open for consideration in a future case”,¹⁶⁴ as the issue was not raised in the appeal and, in any event, did not affect the outcome of the case.¹⁶⁵ Separately, the Court of Appeal, in *Winson Oil Trading*, cited, in *obiter*, Canadian authority¹⁶⁶ noting that even where SBLCs guarantee the performance of an obligation, they should be treated as letters of credit rather than guarantees (though the characterisation issue was not a focus in that case).¹⁶⁷ Strictly speaking, despite the tension with the apex court’s *obiter* in *Winson Oil Trading*, only the first instance holding in *DJY v DJZ* (SGHC) formed part of the *ratio* of that decision.¹⁶⁸ The issue can perhaps be understood as a tension between legal form (which tends to support a letter of credit characterisation) and commercial function (which may, depending on the facts, support a performance bond characterisation). Pending appellate determination of this point, however, there remains some uncertainty as to the proper characterisation of an SBLC.

5.31 The characterisation of an SBLC is consequential as it impacts the grounds on which the applicant may seek to restrain a call on the SBLC. If the SBLC is characterised as a letter of credit, the call may be restrained only on the ground of fraud; if it is characterised as a performance bond, the additional ground of unconscionability may be available.¹⁶⁹ Given Wong JC’s finding that the SBLC was a performance bond, the Appellate Division considered the principles on unconscionability as a ground for restraining a call on the SBLC.¹⁷⁰ The court agreed with Wong JC that DJZ did not act unconscionably in its call on the SBLC, as the FAC appeal decision was a final decision on the merits that declared DJZ’s payment obligation null and void.¹⁷¹ The court observed that the mere fact of non-compliance with the performance bond’s conditions or that the demand does not fall

161 *DJY v DJZ* [2024] SGHC 301 at [16].

162 *DJY v DJZ* [2024] SGHC 301 at [15]–[16].

163 *DJY v DJZ* [2024] SGHC 301 at [18]–[28]; see further Eric Chan, “Banking Law” (2024) 25 SAL Ann Rev 147 at paras 5.26–5.27.

164 *DJY v DJZ* [2025] 2 SLR 142 at [99].

165 *DJY v DJZ* [2025] 2 SLR 142 at [98]–[99].

166 *Royal Bank of Canada v Darlington* [1995] OJ No 1044.

167 *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2024] 1 SLR 1054 at [57].

168 *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2024] 1 SLR 1054 at [57]; *DJY v DJZ* [2024] SGHC 301.

169 *DJY v DJZ* [2025] 2 SLR 142 at [99].

170 *DJY v DJZ* [2025] 2 SLR 142 at [77]–[80].

171 *DJY v DJZ* [2025] 2 SLR 142 at [77], [84] and [90].

within the performance bond's terms would not in itself support the grant of an injunction; the applicant had to show that the nature of the non-compliance rendered the beneficiary's call unconscionable.¹⁷²

5.32 Practitioners should note the risk that notwithstanding its label, an SBLC may be characterised as a performance bond if such a conclusion is substantiated by the terms, purpose and context of the SBLC. Drafting hence should reflect the SBLC's intended characterisation. If the parties intend that the SBLC should be characterised as a letter of credit, such that injunctive relief is generally constrained to grounds of fraud as the only exception to the autonomy principle, the SBLC's terms should: (a) reflect its commercial purpose as a mode of payment autonomous of any other contractual arrangement; (b) avoid language that suggests it functions as a "security"; and (c) provide for payment strictly against presentation of the stipulated documents, consistent with the character of documentary credits. Conversely, if the parties intend that the SBLC should be characterised as a performance bond, such that a call on the SBLC may potentially be restrained on grounds of unconscionability, then the SBLC's terms should reflect its commercial purpose as security for the performance of a related contract; if the commercial and institutional context permits, parties may also prefer to use an express performance bond.

B. *Letters of credit: representation to issuing bank in letter of indemnity*

5.33 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd*¹⁷³ was an appeal against the first instance decision of the General Division.¹⁷⁴ The Court of Appeal dismissed the appeal, but clarified certain points relating to letters of credit and the use of letters of indemnity to facilitate payment thereunder.¹⁷⁵ These are selectively highlighted herein (without comprehensive discussion of the court's full reasoning pertaining to the tort of deceit, the interpretation of a representation in the letter of indemnity ("LOI") and other matters).

¹⁷² *DJY v DJZ* [2025] 2 SLR 142 at [79].

¹⁷³ [2025] 1 SLR 1146.

¹⁷⁴ *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2024] SGHC 145. This case was discussed in the previous issue of the Singapore Academy of Law Annual Review of Singapore Cases: see Eric Chan, "Banking Law" (2024) 25 SAL Ann Rev 147 at paras 5.12–5.13.

¹⁷⁵ *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [1] and [143].

5.34 The letter of credit issues arose in the context of a chain of contracts for the sale and purchase of the same parcel of gasoil by multiple parties.¹⁷⁶ The second appellant, Banque de Commerce et de Placements SA (“BCP”), issued a letter of credit to facilitate the purchase of gasoil from the respondent, China Aviation Oil (Singapore) Corp Ltd (“CAO”), under one leg of the transaction.¹⁷⁷ The letter of credit provided for payment against presentation of an invoice and LOI in the event that original bills of lading or shipping documents were unavailable, a circumstance that could arise given the back-to-back nature of the contracts.¹⁷⁸ After the buyer’s expected on-sale of the cargo was cancelled and the buyer became insolvent, BCP sought to recover the sum paid under the letter of credit from CAO.¹⁷⁹

5.35 As regards the issue of whether a representation in the LOI was made to BCP, the court held that the test was whether the representation was made “with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff”.¹⁸⁰ As such, even though the LOI was not addressed to BCP, this fact was not determinative of the issue.¹⁸¹ The court found that the purpose of the LOI was to obtain payment under the letter of credit, BCP was specifically mentioned in the LOI and had introduced the representation into the LOI, and CAO had to have known the representation was important to BCP.¹⁸² As such, the court held that CAO had intended for BCP to rely on the representation, notwithstanding that the LOI was addressed to the buyer.¹⁸³ The court affirmed that the principle of autonomy, when read together with the fraud exception thereto, does not preclude a bank’s reliance on a customer’s representation.¹⁸⁴ Moreover, the interposition of a confirming bank did not change the analysis, as CAO issued the LOI ultimately for the purpose of obtaining payment

176 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [8]–[10].

177 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [12].

178 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [2] and [4].

179 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [4]–[5] and [9].

180 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [120].

181 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [120].

182 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [122] and [126]–[127].

183 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [131].

184 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [125].

from BCP.¹⁸⁵ Nevertheless, in the final analysis, the court found that the representation was neither false nor fraudulently made, such that the tort of deceit was not made out.¹⁸⁶ The case illustrates the risks assumed by an issuing bank that permits payment against presentation of an LOI in lieu of shipping documents, as well as the circumstances in which a representation in such an LOI may be regarded as made to the issuing bank, even if the bank was not the LOI's addressee.

V. Banking regulation

5.36 In 2025, the MAS introduced regulatory changes and conducted public consultations on several areas of banking regulation, including with respect to prudential regulation, recovery and resolution planning, and governance and business conduct regulation.

5.37 Prudential regulation developments include proposed amendments directed at implementing the Basel Committee on Banking Supervision ("BCBS") standards on the prudential treatment and disclosure of crypto asset exposures.¹⁸⁷ These will be implemented through amendments to the MAS notices, such as MAS Notice 637 on risk-based capital adequacy requirements for banks incorporated in Singapore,¹⁸⁸ and are intended to take effect in 2027 or later.¹⁸⁹ It is worth noting that the BCBS standards have been subject to criticism; for instance, key industry associations have jointly written to the BCBS expressing concern that the prudential framework should not discourage bank participation in crypto asset markets through imposition of "overly

185 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [132].

186 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [143].

187 "Consultation Paper On the Prudential Treatment of Cryptoasset Exposures and Requirements for Additional Tier 1 and Tier 2 Capital Instruments for Banks", *Monetary Authority of Singapore* (27 March 2025) <<https://www.mas.gov.sg/-/media/mas-media-library/publications/consultations/ppd/2025/consultation-on-the-prudential-treatment-of-cryptoassets-and-reqs-for-at1-and-t2-capital-instruments.pdf>> (accessed 30 May 2026) at para 1.2.

188 "MAS Notice 637 On Risk-based Capital Adequacy Requirements for Banks Incorporated in Singapore", *Monetary Authority of Singapore* (9 October 2025) <<https://www.mas.gov.sg/-/media/mas-media-library/regulation/notices/ppd/notice-637/mas-notice-637-effective-1-january-2026.pdf>> (accessed 30 May 2026).

189 "Response to Feedback Received On Prudential Treatment of Cryptoasset Exposures and Requirements for Additional Tier 1 and Tier 2 Capital Instruments for Banks", *Monetary Authority of Singapore* (9 October 2025) <<https://www.mas.gov.sg/-/media/mas-media-library/publications/consultations/ppd/2025/response-to-consultation-paper-on-crypto-at1-and-tier2.pdf>> (accessed 30 May 2026) at para 2.5.

punitive¹⁹⁰ capital requirements.¹⁹¹ The MAS is monitoring market and international regulatory developments, and intends to provide further subsequent updates on the final crypto asset standards.¹⁹² Nevertheless, the proposed amendments represent an alignment with international BCBS standards. They also reflect the increasing integration of formerly peripheral crypto assets into traditional banking activities, necessitating a corresponding prudential regulatory response.

5.38 In the area of recovery and resolution planning, the MAS consulted on a proposed framework for imposing *ex post* resolution levies on banks, merchant banks and finance companies, so as to recover the costs of resolving a distressed bank under the Financial Services and Markets Act 2022.¹⁹³ As banks collectively benefit from the stability engendered by resolution measures, the reasoning is that they therefore should contribute in proportion to their share of uninsured deposit balances.¹⁹⁴

5.39 Finally, with respect to governance and business conduct regulation, the MAS proposed changes to requirements pertaining to

190 Letter from Global Financial Markets Association, Futures Industry Association, Institute of International Finance, International Swaps and Derivatives Association, Financial Services Forum, Bank Policy Institute, Global Digital Finance and Global Blockchain Business Council to Basel Committee on Banking Supervision, Bank for International Settlements (19 August 2025) <<https://www.gfma.org/wp-content/uploads/2025/08/bcbs-prudential-letter-final-public-version.pdf>> (accessed 30 May 2026) at p 2.

191 Letter from Global Financial Markets Association, Futures Industry Association, Institute of International Finance, International Swaps and Derivatives Association, Financial Services Forum, Bank Policy Institute, Global Digital Finance and Global Blockchain Business Council to Basel Committee on Banking Supervision, Bank for International Settlements (19 August 2025) <<https://www.gfma.org/wp-content/uploads/2025/08/bcbs-prudential-letter-final-public-version.pdf>> (accessed 30 May 2026) at p 2.

192 “Response to Feedback Received On Prudential Treatment of Cryptoasset Exposures and Requirements for Additional Tier 1 and Tier 2 Capital Instruments for Banks”, *Monetary Authority of Singapore* (9 October 2025) <<https://www.mas.gov.sg/-/media/mas-media-library/publications/consultations/ppd/2025/response-to-consultation-paper-on-crypto-at1-and-tier2.pdf>> (accessed 30 May 2026) at para 2.5.

193 Act 18 of 2022. “Consultation Paper On Proposed Framework for Ex-post Resolution Levies for Banking Sector”, *Monetary Authority of Singapore*, (30 June 2025) <<https://www.mas.gov.sg/-/media/mas-media-library/publications/consultations/rso/consultation-paper-on-proposed-framework-for-expost-resolution-levies-for-banking-sector-final.pdf>> (accessed 30 May 2026) at para 1.1.

194 “Consultation Paper On Proposed Framework for Ex-post Resolution Levies for Banking Sector”, *Monetary Authority of Singapore* (30 June 2025) <<https://www.mas.gov.sg/-/media/mas-media-library/publications/consultations/rso/consultation-paper-on-proposed-framework-for-expost-resolution-levies-for-banking-sector-final.pdf>> (accessed 30 May 2026) at paras 1.2 and 2.1.

banks' transactions with related parties, including amendments to the definition of related parties, scope of related party transactions and exposure limits.¹⁹⁵ These proposed changes are intended to enhance oversight of such transactions, address risks arising from conflicts of interests, and align with international best practices – reflecting another area in which Singapore's banking regulation is evolving to align with market practices and international standards.¹⁹⁶

195 "Consultation Paper On Proposed Amendments to Related Party Transaction Requirements for Banks", *Monetary Authority of Singapore* (14 October 2025) <<https://www.mas.gov.sg/-/media/mas-media-library/publications/consultations/ppd/2025/consultation-paper-on-proposed-amendments-to-related-party-transaction-requirements-for-banks.pdf>> (accessed 30 May 2026) at para 2.4.

196 "Consultation Paper on Proposed Amendments to Related Party Transaction Requirements for Banks", *Monetary Authority of Singapore* (14 October 2025) <<https://www.mas.gov.sg/-/media/mas-media-library/publications/consultations/ppd/2025/consultation-paper-on-proposed-amendments-to-related-party-transaction-requirements-for-banks.pdf>> (accessed 30 May 2026) at paras 1.1 and 2.4.