

## ENFORCING TOWN COUNCILS' DUTIES OF FINANCIAL PRUDENCE

### Problems Addressed by the Town Councils (Amendment) Act 2017

This article discusses the means by which a Town Council's statutory duties, particularly its duties of financial prudence, may be enforced. It studies the law as it was prior to 2017 and reveals various conceptual and practical problems, the result of which was that it was possible for a Town Council to fail to perform its statutory duties and face only minimal consequences. This article will provide a background to some of the new statutory procedures introduced in the 2017 amendments to the Town Councils Act (Cap 329A, 2000 Rev Ed), which solve the problems from which the previous law suffered. It is hoped that this will shed light on the history of the 2017 amendments and how they may be applied. This article also highlights the problem of how conditions attached to grants made by the Government to Town Councils are to be enforced, which is an outstanding issue that has not been addressed by the 2017 amendments and which represents potential for future development of the law.

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## I. Introduction

1 Prior to 1989, the Housing and Development Board (“HDB”), a statutory board, was the sole authority managing the common property of public housing estates. This changed in 1989, when the Town Councils Act<sup>1</sup> (“TCA”) was passed. Under the Town Council (“TC”) scheme, common property in each town is managed by a TC led by elected Members of Parliament.<sup>2</sup> The aim of this scheme is to facilitate residents’ democratic participation in municipal decision-making, with two aims:

(a) a practical one: allowing residents to have a say in low-level municipal matters which would “introduce individuality into each constituency”; and

(b) a political one: “encourag[ing] voters to vote carefully ... [which would] provide a ballast to [Singapore’s] political system”.<sup>3</sup>

2 Each TC is funded from the following sources:

(a) by levying charges (known as “service and conservancy charges” or “S&CC”) on residents;

(b) through grants (known as “grants-in-aid”) from the Ministry of National Development (“MND”), which is the HDB’s parent ministry;<sup>4</sup> and

(c) through income gained through the investment of existing funds.<sup>5</sup>

3 The second of these sources underscores the existence of a legal relationship between TCs and the Government.<sup>6</sup> However, there is little literature about this *legal* (as opposed to political) relationship.<sup>7</sup> This

1 Cap 329A, 2000 Rev Ed.

2 Each town consists of the area comprising one or more electoral constituencies: Town Councils Act (Cap 329A, 2000 Rev Ed) s 3(1).

3 *Singapore Parliamentary Debates, Official Report* (29 June 1988) vol 51 at cols 379–381 (Goh Chok Tong, First Deputy Prime Minister and Minister for Defence).

4 Town Councils Act (Cap 329A, 2000 Rev Ed) s 42.

5 A fuller overview of the history of the Town Council (“TC”) system and how TCs are funded may be found in *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 (HC) at [42]–[47] and *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 (CA) at [1]–[9].

6 As the Ministry of National Development is the government ministry in charge of such matters, in this article “the MND”, “the Minister”, and “the Government” will be used interchangeably.

7 A selection of the existing literature is as follows. For an overview of the political setting of Town Councils (“TCs”) and their interaction with other entities such as Community Development Councils and other grassroots organisations, see:

(cont’d on the next page)

legal relationship has always been a potentially interesting one because of the following tension. On the one hand, because the TC scheme was meant to “encourage voters to vote carefully”,<sup>8</sup> the TC scheme envisaged that residents bear the consequences of poor choices – if the candidates elected mismanaged TC funds, too bad for the residents; the Government would not inject money to bail the TC out. On the other hand, because TCs are ultimately public bodies which receive public funds, there is an intuitive sense that “it is simply unarguable that there is nothing to constrain the governance of the Town Councils”.<sup>9</sup>

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(a) Thio Li-ann, “Neither Fish nor Fowl: Town Councils, Community Development Councils and the Cultivation of Local Government/Governance in Singapore” in *Municipi d’Oriente: Il Governo Locale in Europa Orientale, Asia e Australia* (Hiroko Kudo, Giampaolo Ladu & Lucio Pegoraro eds) (Centre for Constitutional Studies and Democratic Development, 2009) <[https://www.academia.edu/601385/\\_Neither\\_Fish\\_nor\\_Fowl\\_Town\\_Councils\\_Community\\_Development\\_Councils\\_and\\_the\\_Cultivation\\_of\\_Local\\_Government\\_Governance\\_in\\_Singapore](https://www.academia.edu/601385/_Neither_Fish_nor_Fowl_Town_Councils_Community_Development_Councils_and_the_Cultivation_of_Local_Government_Governance_in_Singapore)> (accessed 12 November 2017); and

(b) Thio Li-ann, “The Right to Political Participation in Singapore: Tailor-making a Westminster-modelled Constitution to Fit the Imperatives of ‘Asian’ Democracy” (2002) 6 SJICL 181.

For earlier politico-legal overviews and critical commentary, see:

(a) Kevin Y L Tan, “Parliament and the Making of Law in Singapore” in Kevin Y L Tan, *The Singapore Legal System* (Singapore: Singapore University Press, 2nd Ed, 2003) ch 4;

(b) Kevin Y L Tan, “Constitutional Implications of the 1991 Singapore General Elections” (1992) 13 Sing L Rev 26; and

(c) Thio Li-ann, “The Post-colonial Constitutional Evolution of the Singapore Legislature: A Case Study” [1993] SingJLS 80.

For comments from a public policy perspective, see:

(a) M Shamsul Haque, “A Grassroots Approach to Decentralization in Singapore” (1996) 4(1) *Asian Journal of Political Science* 64;

(b) Ooi Giok Ling, *Town Councils in Singapore: Self-determination for Public Housing Estates* (Institute of Policy Studies Occasional Paper No 4) (Singapore: Times Academic Press, 1990);

(c) Ooi Giok Ling, “Town Councils in Public Housing Estates: Change and Implications” in *City & the State: Singapore’s Built Environment Revisited* (Ooi Giok Ling & Kenson Kwok eds) (Singapore: Oxford University Press, 1997) ch 3; and

(d) Ooi Giok Ling, “Managing Change and Continuity in the Public Housing Process in Singapore” (1992) 354 *Ekistics* 170.

For a more recent view from a politician, see: Aaron Low, “Missing Link between Town Councils and Residents” *The Straits Times* (27 June 2009) (containing remarks by Senior Minister Goh Chok Tong). An overview of the TC scheme from the Government’s point of view may be found at: Ministry of National Development, *Town Councils – Participating in Progress* (1988).

8 *Singapore Parliamentary Debates, Official Report* (29 June 1988) vol 51 at cols 379–381 (Goh Chok Tong, First Deputy Prime Minister and Minister for Defence).

9 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [50]–[51].

4 Closer study of this legal relationship has now been made timely by the enactment of the Town Councils (Amendment) Act 2017<sup>10</sup> (“the 2017 amendments”). The amendments have introduced a suite of statutory procedures which may be invoked against TCs. This article aims to provide a background to some of these new statutory procedures by studying the previously existing law. As will be seen, the previous law relating to the enforcement of TCs’ statutory duties (including its duties to maintain proper accounts and internal controls – hereafter, its “duties of financial prudence”) suffered from unsatisfactory gaps; the 2017 amendments can be seen as responses to these gaps. It is hoped that this analysis will shed some light on how the amendments to the TCA are to be interpreted and the new statutory procedures approached.

5 This study must begin with the Court of Appeal’s 2015 judgment in *Attorney-General v Aljunied-Hougang-Punggol East Town Council*<sup>11</sup> (“AHPETC”), which is the only case on TCs. The author’s critique of this case will lead to an examination of s 21(2) of the TCA, which will reveal the gaps in the law. The position following the decision in *AHPETC* will be examined, with a view to explaining the reasons for the 2017 amendments and the ways in which they may be applied.

## II. Claims made in *AHPETC* and courts’ orders

### A. *MND’s applications*

6 *AHPETC* involved a TC (the Aljunied-Hougang-Punggol East Town Council, or “AHPETC”) which, upon an audit of accounts, had been found to have failed (and later admitted in court to having failed)<sup>12</sup> to discharge its duties of financial prudence, as set out in s 35(c) of the TCA:<sup>13</sup>

A Town Council shall —

...

(c) do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorised and that adequate control is maintained over the assets of, or

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10 Act 17 of 2017.

11 [2016] 1 SLR 915.

12 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [16(a)].

13 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 (“*AHPETC*”) at [14]–[16]. After the decision in *AHPETC*, s 35 of the Town Councils Act (Cap 329A, 2000 Rev Ed) was amended in 2017 to elaborate on the content of this duty.

in custody of, the Town Council and over the expenditure incurred by the Town Council.

7 The MND made an application to the High Court, bringing essentially two types of claim against AHPETC:

(a) *First*, the MND wanted the court to appoint independent accountants to oversee the propriety of transactions made using AHPETC's moneys and help recover such moneys which had been improperly paid out, as well as make the transfers into AHPETC's sinking funds that should have been made (pursuant to the Town Councils Financial Rules<sup>14</sup> ("TCFR")) but had not been.<sup>15</sup> This was prayer 3 of the statement of claim ("Independent Accountants Claim").

(b) *Second*, the MND made three prayers for what will be called the "Declarations Claims":<sup>16</sup>

(i) **Prayer 1:** for a declaration that the Government had a "legal or alternatively, equitable interest" in the grants-in-aid it had paid to AHPETC;

(ii) **Prayer 2:** for a declaration that the Government had "an interest" in ensuring that AHPETC do essentially the things that it wanted the independent accountants to ensure were done; and

(iii) **Prayer 2A:** for a declaration that AHPETC had breached a duty to make transfers into the sinking funds.

8 The MND submitted that its entitlement to these claims was founded on what will be referred to as the "Four Bases". These may be divided into two groups as follows:<sup>17</sup>

(a) "Common-law Bases": a "contractual mandate" and a *Quistclose* trust; and

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14 Cap 329A, R 1, 1998 Rev Ed.

15 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 at [2] (prayer 3). Sinking funds are funds specifically earmarked for "improvements to and the management and maintenance of residential property and of commercial property": see s 33(4) of the Town Councils Act (Cap 329A, 2000 Rev Ed). The duty to make such transfers arises under r 4(2B)(a) of the Town Councils Financial Rules (Cap 329A, R 1, 1998 Rev Ed).

16 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 at [2].

17 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 at [39]–[40].

(b) “Statutory Bases”: a “statutory mandate pursuant to the TCA” and a “statutory right under s 21(2) of the TCA”.<sup>18</sup> Section 21(2) of the TCA provides:

Where a requirement or duty is imposed on a Town Council by this section, the Board or any person for whose benefit, or for the benefit of whose flat that requirement or duty is imposed on the Town Council, may apply to the High Court for an order compelling the Town Council to carry out the requirement or perform the duty, as the case may be.

Section 21(1)(f) provides that one such duty is a duty to “comply with the provisions of this Act and the rules made thereunder”; this would include the duties of financial prudence set out in s 35(c) of the TCA.

### **B. High Court’s dismissal of MND’s claims**

9 The High Court dismissed both the Independent Accountants Claim and the Declarations Claims, holding that none of the Four Bases had been made out:

(a) As for the Statutory Bases: The only remedy afforded by the TCA that could “require a Town Council to comply with its duties under the TCA” was that under s 21(2) of the TCA.<sup>19</sup> However, as a matter of statutory construction, the MND had no right to invoke s 21(2) of the TCA.<sup>20</sup>

(b) As for the Common-law Bases: The MND could in principle assert interests in the grants-in-aid in AHPETC’s hands as a matter of private law (eg, under a *Quistclose* trust or contractual mandate), if any existed.<sup>21</sup> However, on the facts, no such interests had arisen.<sup>22</sup>

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18 It appears that the first was based on the Town Councils Act (Cap 329A, 2000 Rev Ed) as a whole, while the second was based on s 21(2) in particular. The distinction between the two does not matter for the purposes of this article. Neither does it appear to have mattered to the courts, which simply treated the two together.

19 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 at [96]–[98].

20 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 at [68]–[71] and [84].

21 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 at [85]–[93].

22 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 at [94]–[144].

**C. Court of Appeal's dismissal of MND's claims**

10 On appeal, the Court of Appeal held as follows in response to the MND's claims:

(a) The High Court was correct in holding that, on a proper statutory construction, the MND was not entitled to bring an action under s 21(2) of the TCA.<sup>23</sup> In other words, the MND could not rely on the Statutory Bases.

(b) The Common-law Bases could not possibly be made out, because common-law private law concepts were totally inapplicable as a matter of law. Instead, any remedies against TCs would have to arise from the TCA.<sup>24</sup>

(c) Therefore, the Independent Accountants Claim and Declarations Claims, as they had been made *by the MND*, were dismissed.

**D. HDB's claims and Court of Appeal's orders**

11 However, that was not the end of the matter. The *HDB* had applied to the Court of Appeal to be joined as a party,<sup>25</sup> and made the Independent Accountants Claim and prayers 2 and 2A of the Declarations Claims (*mutatis mutandis*) in its *own* name. The Court of Appeal granted the HDB's application to be joined, and held that, on a proper construction of the statute, the HDB was entitled to invoke s 21(2) of the TCA.<sup>26</sup>

12 The Court of Appeal then elaborated on the types of order it was empowered to make under s 21(2) of the TCA. Nothing in the TCA specifies the types of remedial orders the court may make, other than s 21(3): "On an application being made under subsection (2), the High Court may make such order as it thinks proper". The Court of Appeal interpreted this as meaning that:<sup>27</sup>

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23 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [76]–[84].

24 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [123].

25 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [42].

26 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [43]–[84].

27 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [97].

... the court can order the Town Council to take such steps, as it may consider necessary to *effectively* secure compliance with the requirement or duty in question. [emphasis in original]

13 The Court of Appeal added the following guiding principles:

(a) On the one hand, the court refused to be “reduced ... to an irrelevant and ultimately toothless observer”.<sup>28</sup> The court would have to do more than merely *reminding* the TC of its duties by “declar[ing] that the Town Council is obliged to carry out the duty or requirement in question”.<sup>29</sup>

(b) On the other hand, the order must “compe[l] the performance of the requirements and duties in question *by those on whom these have been imposed*” [emphasis added].<sup>30</sup> In other words, the remedial action must be taken by the TC and not by the court. The court would refuse to “*substitute* AHPETC as the relevant actor by having [someone else] step in and do what is needed to secure the performance of the relevant duties” [emphasis in original]<sup>31</sup> or to “take it upon itself to attend to the performance of the requirements and duties that have been neglected”.<sup>32</sup>

(c) Finally, the court cannot dictate a *particular* course of action, that is, it cannot “prescribe the manner” in which a TC performs its duties<sup>33</sup> or “substitute *its own* decisions for those of the Town Council in question as to *how* the various requirements and duties are to be carried out” [emphasis added].<sup>34</sup>

14 Applying these criteria, the Court of Appeal dealt with the HDB’s claims as follows. First, as for the HDB’s Independent Accountants Claim, the Court of Appeal made the following orders (“the Independent Accountants Orders”):

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28 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [87].

29 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [86].

30 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [96(d)].

31 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [109].

32 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [96(b)].

33 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [85].

34 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [87].

(a) that AHPETC “take steps to comply with s 35(c) of the TCA”, including appointing accountants to “assist in identifying” and “advise on the steps that must be taken to remedy” instances of non-compliance;<sup>35</sup> and

(b) that AHPETC require the accountants to produce “monthly progress reports” on the outstanding non-compliances and what was being done about them; such reports were to be submitted to the HDB, which may then make these reports publicly available.<sup>36</sup>

15 It must be noted that the Independent Accountants Orders were less extensive than what was claimed in the Independent Accountants Claim. The Independent Accountants Claim was a prayer that the accountants be able to “do all things necessary” to ensure that proper procedures were complied with and identify past breaches, and to “demand, collect, get in, [and] receive” moneys previously improperly paid out.<sup>37</sup> The court held that ordering this would be impermissible as it:<sup>38</sup>

... would not *compel* AHPETC to comply with [its statutory duties], so much as it would *substitute* AHPETC as the relevant actor by having the independent accountants step in and do what is needed. [emphasis in original]

In other words, it would be treating the independent accounts as “*agents of the court*” [emphasis in original], which would imply that the remedial action was ultimately taken by the court and not by the TC itself. This would be contrary to the notion that the court could not “step into the shoes of the Town Council”.<sup>39</sup>

16 Second, as for the HDB’s Declarations Claims:

(a) For prayer 2A, instead of granting a declaration that AHPETC had not made the transfers to its sinking funds required by the TCFR, the Court of Appeal made an outright order that “AHPETC shall make all outstanding sinking fund transfer(s) within a period of three months from the date of this

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35 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [119].

36 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [119].

37 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [17] (prayers 3(b) and 3(c)).

38 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [109].

39 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [85] and [87].

order or such other time as the Court of Appeal may permit upon application being made to it"<sup>40</sup> ("the Transfer Order").

(b) Given that the Independent Accountants Claim had been granted and the Transfer Order had been made, it was not necessary to grant the HDB's equivalent to the MND's prayer 2.<sup>41</sup>

17 The Court of Appeal's orders might, at first glance, appear to be in line with sound principle, in that the court limited itself to exercising supervisory power over AHPETC without stepping into its shoes. However, on closer inspection, there are several problems which rendered the court's supervision potentially ineffectual.

### III. Court of Appeal's orders did not constitute complete legal remedy for TC's breaches of duty

#### A. *Legal duties and legal remedies*

18 The first problem is, simply put, as follows: The accountants did not have coercive power; what if the TC were simply to refuse to co-operate with the independent accountants? The Independent Accountants Orders are unsatisfactory because, unlike the Transfer Order, they would not *compel* the TC to perform its statutory duties, leading to a situation in which the TCs had various legal duties which, if breached, cannot be met by a legal remedy.

19 To explain why, let us begin by reflecting briefly on why *any* sort of remedy ought to lie against errant TCs at all. The Court of Appeal's elliptical answer to this question may, it is submitted, be unpacked as follows: The TCA describes various "duties" of TCs. It is clear that the TCA provides for "recourse at law" for breach of these duties.<sup>42</sup> This includes, in particular, recourse to the courts under s 21(2). This means that the duties are, as the Court of Appeal put it, "legal dut[ies]". Therefore, the law has to furnish a "legal remedy" because "it is perverse to speak of a legal duty ... that lacks a legal remedy and invites only a political remedy".<sup>43</sup>

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40 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [131].

41 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [103] and [106].

42 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [51].

43 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [53].

20 All this is correct. However, the court did not engage with the questions of what a “legal remedy” is, and how to tell if the remedy granted is a sufficient one.

21 The term “remedy” is a difficult and ambiguous one.<sup>44</sup> What is clear, however, is that a remedy correlates with a wrong which has been committed.<sup>45</sup> It may *undo* the wrong, as do the remedies of *certiorari* (addressing an unlawful act by quashing it) and *mandamus* (addressing an unlawful omission by filling it). It may also *make up for* the wrong, such as by ordering the payment of damages so as to put parties into a position as though the wrong had not been committed, “as far as money can do it”.<sup>46</sup>

22 But a court order that merely *might* promote the undoing of the wrong, or that has a mere *tendency* to do so, is not a remedy; it is at worst a mere suggestion and at best merely a preliminary step toward ascertaining what must be done in order to fully remedy a breach. If a legal duty is breached, but the court’s orders, even if obeyed perfectly, would not necessarily undo or make up for the breach, then the orders would risk having been made in vain, and the duty may as well not be called a legal duty.

**B. Court of Appeal’s failure to provide legal remedy**

23 For the following reasons, the orders made by the Court of Appeal do not amount to a legal remedy corresponding to AHPETC’s breaches of duty.

24 There were two types of breach of duty:

- (a) failures to make transfers to sinking funds (“the Transfer Breaches”);<sup>47</sup> and
- (b) failures of monitoring of collection of arrears, oversight of related party transactions, internal controls over expenditure, and record-keeping generally (“the Control Breaches”).<sup>48</sup>

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44 See generally Peter Birks, ‘Rights, Wrongs, and Remedies’ (2000) 20 OxJLS 1.

45 Ernest J Weinrib, *Corrective Justice* (Oxford University Press, 2012) at pp 87–89.

46 *Robinson v Harman* (1848) 154 ER 363 at 365.

47 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [14(a)].

48 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [14(b)]–[14(e)].

25 In response to the Transfer Breaches, the Court of Appeal made the Transfer Order.<sup>49</sup> *This* was a remedy: a court order to do the particular thing that ought to have been done but was not. If this order were to be disobeyed, AHPETC would face punishment for contempt of court.

26 By contrast, the Independent Accountants Order which the Court of Appeal made in response to the Control Breaches did not correspond perfectly with the legal wrong of non-compliance with s 35 of the TCA. The Order would not have ensured that the wrong be undone. The wrong consisted of failures to implement systems of control.<sup>50</sup> All AHPETC was ordered to do was to “take steps to comply with s 35(c) of the TCA”<sup>51</sup> (a vague order, such that it is very difficult to say clearly whether or not it has been obeyed); and to appoint accountants who would merely “assist in identifying the outstanding non-compliances” and “advise on the steps that must be taken to remedy those outstanding non-compliances”<sup>52</sup> – in other words, to put it bluntly, merely to make *suggestions* and report them to AHPETC and to the HDB. This *might* help to right the wrong *if* AHPETC co-operated with the accountants and implemented the systems of control which it was its duty to implement. But it would neither *guarantee* this nor serve as a *substitute* as the performance of the duty. If the TC were simply to *continue* to persist in the Control Breaches, *eg*, by simply acting in defiance of the accountants’ advice without giving reasons why, the court’s fears of becoming an “irrelevant and ultimately toothless observer”<sup>53</sup> would be realised.

27 It is important to underscore that, in such a case, the TC could not be held guilty of contempt of court because it would not have disobeyed the court’s order at all. In short, all the court ordered was that (a) AHPETC do *something* to remedy the Control Breaches, such as (b) appointing accountants; (c) the accountants were to produce reports; and (d) the reports were to be submitted to the HDB. A TC could obey the Independent Accountants Order to the letter by doing all these things, and yet continue to commit the Control Breaches.

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49 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [131(a)].

50 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [10].

51 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [131(b)].

52 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [131(c)].

53 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [87].

28 Or suppose that the independent accountants were to find that, as a result of the Control Breaches, the TC had unwittingly made payments which were *demonstrably* in breach of the duty to “ensure that all money expended by the Town Council is correctly spent and properly authorised”.<sup>54</sup> The obvious solution would be for the TC to sue the payees to get the money back. However, following the reasoning in *AHPETC*, it is unlikely that the court would have ordered this, as the court had specifically refused to order (as the MND had requested) that the independent accountants be empowered to:<sup>55</sup>

... with leave of Court, demand, collect, get in, receive (and if necessary commence legal proceedings for the recovery of) all Town Council Moneys incorrectly, improperly or unlawfully paid out and/or take appropriate action in respect of breach(es) of duties or unlawful conduct by person(s) acting for the Defendant (or AHTC) or its agents ...

Instead, all that the court had ordered was that the accountants “establis[h] whether any past payments made by AHPETC were improper and ought therefore to be recovered”.<sup>56</sup> As a result, the TC could duly appoint the accountants, ignore the accountants’ reports, and still not be in contempt of court.

29 For all the reasons above, the Court of Appeal’s orders were not a legal remedy for AHPETC’s breaches of duty.

#### IV. Related problem: Limited scope of s 21(2) of the TCA

30 A related problem is that the Court of Appeal made its orders at the suit of the HDB, not the MND. This was because of the Court of Appeal’s conclusion that s 21(2) of the TCA does not create a right of action on the part of the MND. The author will now explain why, although this conclusion is correct, the result throws up various conceptual and practical problems.

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54 Town Councils Act (Cap 329A, 2000 Rev Ed) s 35(c).

55 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [17] (prayer 3(c)(ii)).

56 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [131(d)].

**A. Section 21(2) is only available to HDB, residents and flat-owners, but not to MND**

31 Section 21(2) of the TCA provides:

Where a requirement or duty is imposed on a Town Council by this section, the [HDB] or any person for whose benefit, or for the benefit of whose flat that requirement or duty is imposed on the Town Council, may apply to the High Court for an order compelling the Town Council to carry out the requirement or perform the duty, as the case may be.

32 The High Court held that the words “any person for whose benefit, or for the benefit of whose flat [a] requirement or duty is imposed on the Town Council” referred to “the residents of [the] tow[n] ... and those persons who own a flat within the town but might live elsewhere”, and *not* the Minister for National Development (“the Minister”).<sup>57</sup> The Court of Appeal agreed.<sup>58</sup> This is correct. As the Court of Appeal rightly pointed out, it cannot be said that the duties in s 21(1) of the TCA have been imposed on TCs “for [the] benefit” of the MND; rather, they have been imposed for the sake of the residents and flat-owners.<sup>59</sup> This is buttressed by the fact that neither the Minister nor the MND is specifically mentioned in s 21(2), unlike in certain other provisions of the TCA.<sup>60</sup>

33 However, the High Court also said, and the Court of Appeal did not disagree, that there was nothing wrong with the Minister having no right of action under s 21(2). This was because “there is no order or remedy that the MND [might wish to] seek that the HDB or a resident cannot already seek”.<sup>61</sup> The High Court specifically stated:<sup>62</sup>

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57 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 at [60].

58 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [83].

59 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [83].

60 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 (HC) at [63]; *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 (CA) at [79].

61 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 (HC) at [73]. The Court of Appeal in effect agreed with this point: “only very limited changes would have to be made to the originating summons in order to reflect the joinder of the HDB ... The factual substratum remains the same”: *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 (CA) at [41].

62 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 at [73] and [77].

73 ... a resident can equally seek the orders which the MND are currently seeking ...

...

77 if a resident does not come forward to bring an application under s 21(2) of the TCA or is unable to show that the duty imposed on the Town Council was for his benefit or for the benefit of his flat, the HDB can always do so.

For the following reasons, this is both conceptually and practically problematic.

### **B. Conceptual problems**

34 First, there is no logical connection between the interests of the HDB and residents on the one hand, and the duties set out in s 21(1) of the TCA on the other.

35 According to the Court of Appeal, the reasons why s 21(2) grants a right of action to the persons it does are as follows:

(a) “[A]ny person for whose benefit, or for the benefit of whose flat that requirement or duty is imposed on the Town Council”,<sup>63</sup> that is, the “residents and flat owners in the area served by the Town Council”,<sup>64</sup> have a right of action because they benefit from the TC’s “improv[ing] the common property and ... keep[ing] it in a state of good and serviceable repair and in clean and proper condition”.<sup>65</sup>

(b) “[T]he Board” (that is, the HDB) has been conferred a right of action because it is:

(i) the owner of the common property and unsold flats,<sup>66</sup> and

(ii) the body with the statutory duty under s 13(b) of the Housing and Development Act<sup>67</sup> to “manage all

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63 Town Councils Act (Cap 329A, 2000 Rev Ed) s 21(2).

64 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [83].

65 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [83].

66 This position has now been legislatively reaffirmed in s 55(1) of the Town Councils Act (Cap 329A, 2000 Rev Ed) as it stands following the 2017 amendments:

To avoid doubt, any function, power, requirement or duty conferred on a Town Council by this Act must be performed or exercised in a way that is consistent with the title and rights of the Board as owner of the common property within the Town for which the Town Council is established.

67 Housing and Development Act (Cap 129, 2004 Rev Ed).

lands, houses and buildings or other property vested in or belonging to [it]”.<sup>68</sup>

36 But these reasons do not satisfactorily explain why these persons ought to be granted a right of action to enforce (for example) a TC’s duties of financial prudence. They simply have no corresponding legal right to vindicate. Of course, it is up to the Legislature to allow them to bring an action anyway. Nevertheless, this goes against the general principle that only those whose right have been violated ought to be able to sue in respect of those right. To elaborate:

(a) As for the HDB’s interest *qua owner*, and owners/residents interest *as such*: These interests do not justify a right of action to enforce the TC’s duties of financial prudence. This is because the law simply does not recognise that an owner or resident has an interest in the financial standing of the person who manages that property, or a right to that person’s pecuniosity or financial prudence.

(b) The HDB’s statutory duty to “manage ... lands, houses and buildings” also does not justify an entitlement to a remedy against TCs which breach their duties of financial prudence. This is because the HDB’s statutory duty simply has nothing to do with the management of finances: it only pertains to the management of physical facilities. Moreover, the HDB’s statutory duty is merely “residual”,<sup>69</sup> in the sense that this duty is *transferred* from the HDB to the local TC (if there is one).<sup>70</sup> In other words, the scheme of the TCA contemplates that, if there is a TC in charge of any given area, then such duties are to be borne by that TC *to the exclusion of the HDB*. This being so, any breach is simply the TC’s responsibility alone and not the HDB’s, and there is no reason for the HDB to have a right of action.

37 The upshot is that TCs’ duties of financial prudence are *not* duties owed to the persons who are conferred a right of action by s 21(2). It therefore stands to reason that, given the reasoning behind s 21(2), the court ought not to make orders pursuant to s 21(2) compelling the performance of all of a TC’s duties at the instance of the HDB, residents or flat-owners. Therefore, it is conceptually problematic to say that s 21(2) furnishes a legal remedy for breaches of those duties.

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68 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [74].

69 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [74].

70 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [1].

38 Instead, it is submitted that TCs' duties of financial prudence are duties owed to the Government. Now, it is true that the duties have been imposed for the *factual* benefit of residents and flat-owners.<sup>71</sup> However, it does not follow that the *legal* duty is owed to these persons. If A (the Government) gives money to B (a TC) to do something for the benefit of C (the residents and flat owners), it does not follow that C and not A ought to have the power to sue B for not doing that thing properly.<sup>72</sup> Similarly, though TCs' duties exist for the sake of residents and flat-owners, these duties are not owed in law to them, but instead to the Government. It is therefore conceptually problematic that the person to whom s 21(2) gives a right of action is not the Government.

39 These problems are not merely academic. They may manifest themselves practically, as will now be explained.

### C. *Practical problems*

40 Consider the Independent Accountants Order made in *AHPETC*. Because the order was made at the suit of the HDB, it included a stipulation that *the HDB* be the one with veto power over the independent accountants' identity and terms of reference, and that the accountants make monthly progress reports *to the HDB*.<sup>73</sup> One would rightly ask: Why should the HDB be involved in these capacities? After all:

(a) the HDB does not possess institutional expertise in exercising such financial oversight; it is the MND that does; and

(b) the scheme of the TCA clearly envisages that the Minister, not the HDB, take the lead in regulation of TCs' financial affairs:

(i) The breaches committed by *AHPETC* only came to light after an audit conducted pursuant to the TC's duty to submit audited financial statements *to the Minister*.<sup>74</sup>

(ii) Moreover, it is *the Minister* who has the power to call for a TC to furnish copies of "accounting and other records relating to the financial transactions of

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71 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [83].

72 Consider, for example, contractual cases involving claims by third parties, such as *Chia Kok Leong v Prosperland Pte Ltd* [2005] 2 SLR(R) 484.

73 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [131(c)(ii)] and [131(e)].

74 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [8]; Town Councils Act (Cap 329A, 2000 Rev Ed) s 38.

the Town Council and with details of the investments made by the Town Council<sup>75</sup>

Therefore, in the case of a breach of those duties, it is the Minister, and not the HDB or any resident, who would be in possession of evidence that such a breach had taken place.

41 This buttresses the author's conclusion above that TCs' duties of financial prudence are owed *to the Government*. One would therefore think that it should be the MND, and not the HDB, who has a say in the independent accountants' identity and terms of reference and who monitors the accountants' progress. Ideally, the court would have ordered that the independent accountants be accountable *to the MND*. But this was simply not possible because the MND was not entitled to invoke s 21(2) of the TCA.

42 The upshot of all the problems is this: The court did not, and could not, dispute that TCs are financially accountable *to the Minister*. However, it had no means to enforce this: because of the constraints imposed by s 21(2), all the court could do was to order AHPETC to report *to the HDB*. Therefore, TCs had certain statutory duties which only the Government ought to be able to, and is best placed to, enforce; yet the Government had no means to enforce them.

#### V. Imposing conditions on grants-in-aid could not address issues above

43 The author will now consider whether the problems described above might have been addressed by the fact that the Government has regulatory power over TCs in the form of its power to attach conditions to disbursements of grant money ("grant conditions") under s 42 of the TCA.<sup>76</sup> This issue arises for the following reason: The MND had argued that it ought to have a right of action under s 21(2) of the TCA because "the Minister disburses public funds to the Town Councils and that considerations of good governance mandate that the Town Councils be

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75 Town Councils Financial Rules (Cap 329A, R 1, 1998 Rev Ed) r 106A(2).

76 Section 42 of the Town Councils Act (Cap 329A, 2000 Rev Ed) provides:

For the purposes of enabling a Town Council to carry out its functions under this Act or any other Act, the Minister may from time to time make grants-in-aid to the Town Council of such sums of money and *subject to such conditions as the Minister may determine* out of moneys to be provided by Parliament. [emphasis added]

answerable to the Minister/MND in relation to their finances".<sup>77</sup> The Court of Appeal responded, *inter alia*, that:<sup>78</sup>

... when disbursing the grants-in-aid, it was (and remains) open to the Minister to impose conditions upon which these would be available. This is provided for in s 42 of the TCA and it furnishes ample and indeed, in our judgment, the appropriate means by which to secure the ends of sound governance. To the extent the Minister has any concerns over the application of the grants-in-aid, it is open to him to condition the making of any or further grants-in-aid upon the Town Council agreeing to abide by appropriate safeguards.

44 The obvious question is: How are these conditions to be enforced? If the disbursement of grants by the Minister is conditional upon the TC's compliance with certain conditions, then it must follow that the breach of such conditions entitles the Minister to get its money back. However, the Court of Appeal's judgment does not explain how the conditions are enforceable, save that the Minister may wield the threat of refusing the "making of ... further grants-in-aid" in future. It is not at all clear either from the Court of Appeal's judgment or from the TCA how there is to be a remedy in respect of the *past* breaches of the grant conditions.

45 One might think that the answer is to bring an action under s 21(2) of the TCA. But as has been seen, such an action is not available to the Minister. This is in spite of the fact that, as argued above, if anybody is to enforce grant conditions, it must be the Minister. Indeed, nobody else would necessarily even know what those conditions are.

46 In short, the TC's duty to act in accordance with grant conditions is a duty owed to *the Government*; but the Government has no means to enforce this duty.

## VI. Problems with past law summarised

47 The discussion above may be summarised as follows. The law as stated and applied in *AHPETC*, in the light of s 21(2) of the TCA as it then was, suffered from the following problems. There were certain possible breaches of duty in respect of which *the HDB, residents, and/or flat-owners*:

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<sup>77</sup> *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [80].

<sup>78</sup> *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [82].

- (a) should not obtain a remedy under s 21(2) as a matter of principle (because the breaches of those duties would not correspond with the HDB's and/or residents' interests in having those duties performed);
- (b) will not be able to contend for a remedy under s 21(2) as a matter of pragmatism (because of evidentiary problems); and
- (c) cannot be granted what amounts to a complete legal remedy under s 21(2) as a matter of law (because of constraints on the remedial orders which the court may make under s 21(2)).

Instead, it is *the Government* which ought to have a remedy; yet the Court of Appeal held that the Government had none under s 21(2) or as a matter of private law.

48 Moreover, grant conditions would not solve these problems, for there would be no means for the enforcement of grant conditions imposed by the Minister. The Court of Appeal said that it was always “open to the Minister to impose conditions upon which [grants-in-aid] would be available”, which was “ample and indeed, in our judgment, the appropriate means by which to secure the ends of sound governance”.<sup>79</sup> But if there is no means to enforce them, they can hardly be described as “ample”.

49 The upshot is that, as a result of the law laid down in *AHPETC*, it was possible for TCs to fail to perform their statutory duties and face only minimal consequences. At one point during the hearing before the High Court, the learned judge asked whether the effect of *AHPETC*'s submissions was that:<sup>80</sup>

A resident comes to me and says ‘Court, please help, this town council is not putting money in the sinking fund as they should. Two, whatever little is in the sinking fund, they are using it for other purposes which are outside the provision’ ... So that person, I can say, yes, ‘If you prove it to me, that is very naughty of the town council, but you’ll have to wait until the next election to get rid of them.’

Unfortunately, this was very much the effect of the Court of Appeal's decision. If the errant TC refused to co-operate with the independent

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79 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [82].

80 Transcript of hearing of HC/Originating Summons No 250 of 2015 (4 May 2015) at p 177, lines 16–23. The transcript is located in the Appellant's Record of Appeal in CA/Civil Appeal No 114 of 2015 (vol III, Part E) (located in the electronic case file for CA/Civil Appeal No 114 of 2015, obtained from the Supreme Court Registry).

accountants or to recover the past payments which the accountants recommend ought to be recovered, nothing more could be done – given the sort of orders the Court of Appeal had made, not even the threat of committal proceedings could have compelled the TC to do what it ought to have done.

50 A case in point is that of AHPETC (which is now Aljunied-Hougang Town Council, or “AHTC”)<sup>81</sup> itself. The independent accountants have now identified persons to whom moneys had been allegedly wrongfully paid out from AHPETC/AHTC. AHTC has, in response, recently commenced proceedings against these persons, as well as against its members for allowing these payments to have been made.<sup>82</sup> However, this did not take place pursuant to the Court of Appeal’s orders. Rather, AHTC only commenced proceedings after it *voluntarily* delegated control of AHTC to an “independent panel”, which AHTC appointed as its agent under s 32(2) of the TCA.<sup>83</sup> It was *this* independent panel, and *not* AHTC’s members, which commenced proceedings in the name of AHTC.<sup>84</sup> In other words, if wrongful payments had indeed taken place, they are only to be remedied because AHTC has *chosen* to facilitate their operation by appointing the independent panel.<sup>85</sup>

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81 The reason is that, following the 2015 General Elections, part of the area governed by the Aljunied-Hougang-Punggol East Town Council (which had become known as Punggol East Single Member Constituency) came to be represented by a Member of Parliament from a different political party. For more information, see para 1.1.5 of the statement of claim, available at: “AHTC’s Statement of Claim against Its Town Councillors: Full Document” *Today* (26 July 2017) and the Town Councils (Declaration of Towns) Order 2015 (S 577/2015).

82 The statement of claim is available at : “AHTC’s Statement of Claim against Its Town Councillors: Full Document” *Today* (26 July 2017). The findings of the independent accountants are summarised at, *inter alia*, paras 5.1.5 and 5.1.10 of the statement of claim.

83 According to a press statement by the Aljunied-Hougang Town Council:  
AHTC believes that it is in the interests of AHTC and its residents to appoint an independent panel to review the findings [of the independent accountants] and take such action as deemed appropriate to safeguard AHTC’s interests.  
See Pritam Singh, Chairman, Aljunied-Hougang Town Council, “AHTC Appoints Independent Panel to Review Findings of KPMG Past Payments Report Dated 31 Oct 2016 and Safeguard AHTC’s Interests”, media release (17 February 2017) <<http://www.ahtc.sg/media-release-17-feb-2017/>> (accessed 7 June 2018). Indeed, the independent panel had been appointed pursuant to a *consent order* (CA/ORC 25/2017 dated 17 February 2017) (located in the electronic case file for CA/Civil Appeal No 114 of 2015, obtained from the Supreme Court Registry).

84 See para 3.3.4 of the statement of claim, available at: “AHTC’s Statement of Claim against Its Town Councillors: Full Document” *Today* (26 July 2017).

85 For completeness, the Aljunied-Hougang Town Council had also agreed that “no member, officer or employee of AHTC shall (whether singly or jointly) exercise any power or perform any function or duty that has been delegated to the [independent panel]”: CA/ORC 25/2017 (17 February 2017) cl 1(c) (located in the  
(*cont’d on the next page*)

## VII. Solving the problems: 2017 amendments to TCA

### A. *Reasons for 2017 amendments*

51 Given these glaring problems with the law, it is heartening that, following *AHPETC*, the TCA was amended in 2017 in order to “establish the required standards of transparency, public accountability and performance for Town Councils, and provide for more effective oversight of Town Councils to safeguard the interests of residents.”<sup>86</sup>

52 The 2017 amendments were clearly motivated by the aftermath of *AHPETC* and a recognition that there was a lacuna in the law in the form of an absence of legal remedies for breaches of legal duties owed to the Government. This is evident from the following remarks by Senior Minister of State for National Development Desmond Lee as he was introducing the proposed amendments to the TCA in Parliament:<sup>87</sup>

MND can no longer take a light-touch approach and assume that the people running Town Councils will all be responsible. There is a need to ensure proper systems, accountability and governance to safeguard residents’ interests ... We have also seen in recent years, serious deficiencies in some Town Councils’ governance and financial systems, as well as regulatory breaches, but there were few direct levers to put things right. While most Town Councils have been cooperative, MND has limited powers under the current Town Councils Act to look into suspected irregularities or enforce the rules set out in the Act if they are not complied with.

And, later:<sup>88</sup>

Yes, we have more powers today to intervene, but these powers are because the unspoken compact when the Town Councils were formed 28 years ago, has been broken. That compact is premised on Town Councillors and elected Members recognising the electoral accountability, the visibility to the residents, would do what is right to fix the problems and would proactively do it, as has been wont of many Town Councils by the Government who would report to CPIB and Police when things are wrong.

But in *AHPETC*’s case, despite its external auditor’s findings, despite the AGO’s report, despite the findings by the High Court and Court of

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electronic case file for CA/Civil Appeal No 114 of 2015, obtained from the Supreme Court Registry).

86 *Singapore Parliamentary Debates, Official Report* (10 March 2017) vol 94 (Desmond Lee, Senior Minister of State for National Development).

87 *Singapore Parliamentary Debates, Official Report* (10 March 2017) vol 94 (Desmond Lee, Senior Minister of State for National Development).

88 *Singapore Parliamentary Debates, Official Report* (10 March 2017) vol 94 (Desmond Lee, Senior Minister of State for National Development).

Appeal, and despite KPMG's report, take the view that, 'Come, the reports do not say that definitively; yes, there is a cloud, but you prove it and I will sit tight'.

Even today, we have to wait for an independent panel, external from the Town Councillors, to take decisive action.

53 This neatly sums up the conclusions drawn earlier in this article. It clearly recognises that TCs had duties in respect of which there were no associated *legal* remedies, but rather a mere "unspoken compact", such that there were "few direct levers to put things right". This is the crux of the problems outlined above. The author will now explore how some of the amendments have addressed this issue.

#### **B. Compliance reviews and investigations**

54 First, under ss 43A and 43B of the TCA, there is a new system under which the Minister may assign inspectors to:

(a) carry out "compliance reviews ... the purpose of which is to ensure that the Town Councils conduct their business in accordance with [the] Act [and rules made thereunder]";<sup>89</sup> which may lead to "recommendations for administrative or regulatory change";<sup>90</sup> or

(b) conduct an "investigation ... into the affairs of a Town Council" if, *inter alia*, "there are reasonable grounds to suspect a material irregularity in or affecting the conduct of the Town Council's affairs" or if documents required in the course of compliance reviews are not produced.<sup>91</sup>

55 It will be noted that the functions of compliance reviews and investigations are similar to the functions of the independent accountants which the Court of Appeal in *AHPETC* ordered to be appointed. The difference is that, now, the persons carrying out compliance reviews and investigations are appointed by, and are to report to, the *Minister*.<sup>92</sup> In other words, the HDB has now been taken out of the picture, hence addressing the conceptual problem that there was no normative basis for the HDB to make the application it did in *AHPETC*. If the facts of *AHPETC* were to recur in future, instead of the HDB applying under s 21(2) for independent accountants to be appointed, the Minister could simply direct the carrying on of a compliance review or an investigation.

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89 Town Councils Act (Cap 329A, 2000 Rev Ed) s 43A.

90 Town Councils Act (Cap 329A, 2000 Rev Ed) s 43A(4).

91 Town Councils Act (Cap 329A, 2000 Rev Ed) s 43B.

92 Town Councils Act (Cap 329A, 2000 Rev Ed) ss 43A(2)–43A(3) and 43B(2)–43B(3).

### C. *Rectification orders*

56 Second, under the new s 43D of the TCA, the Minister may issue a “rectification order” if he is:<sup>93</sup>

... of the opinion —

- (a) that deficiencies have been identified in the conduct of a Town Council’s affairs and that action must be taken to address them; or
- (b) an irregularity has occurred, or is occurring, in the administration of a Town Council’s financial affairs.

57 The rectification order may order the TC to take *specified* action to “address the deficiencies” or “to correct the irregularity or to guard against the recurrence of irregularities (or both).”<sup>94</sup> Non-compliance with the rectification order is a criminal offence, punishable by a fine which increases with every day during which the offence continues;<sup>95</sup> the chairman or secretary of the TC may also be convicted of an offence punishable by a fine and/or imprisonment.<sup>96</sup>

58 It is clear how the rectification order procedure solves the problems with the previous law by providing a legal remedy available at the instance of the Minister for TCs’ breaches of their statutory duties. Such a remedy would correspond perfectly with the wrong committed by the TC. For example, if a TC were to make wrongful payments, the Minister could now issue a rectification order to compel the TC to commence proceedings to get those payments back without being hampered by what the Court of Appeal said were the limitations to what could be done using s 21(2). Moreover, the accompanying criminal sanctions would ensure that rectification orders are effective.

59 At the same time, it is worth noting that the rectification order procedure does not go *beyond* being a legal remedy by doing more than what is necessary to address the TC’s breach of its statutory duties. First, despite the use of the potentially broad terms “deficiencies” and “irregularity”, it is arguable that the proper construction of these words is limited to breaches of TCs’ statutory duties, rather than discretionary decisions taken by TCs with which the Minister merely disagrees. As

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93 Town Councils Act (Cap 329A, 2000 Rev Ed) s 43D(1).

94 Town Councils Act (Cap 329A, 2000 Rev Ed) s 43D(2).

95 Town Councils Act (Cap 329A, 2000 Rev Ed) s 43D(4).

96 Town Councils Act (Cap 329A, 2000 Rev Ed) s 48A.

these words are “ambiguous or obscure”,<sup>97</sup> they may be interpreted with the aid of Desmond Lee’s speech in Parliament:<sup>98</sup>

... in any event, MND’s rectification order can only reflect what the Town Council ought to have done in the first place and will not require the Town Council to take any action over and above what is necessary to bring the Town Council into compliance with the Town Councils Act and its subsidiary legislation.

60 Second, in the event that the TC disputes that the “deficiencies” or “irregularity” exist or that the terms of the rectification order are appropriate, it is in principle possible for the TC to apply for judicial review of the order.<sup>99</sup> The Singapore courts have quashed decisions in which executive authorities made decisions which they could not reasonably have reached in light of the evidence and failed to engage in relevant inquiries;<sup>100</sup> acted outside the legal limits to their powers because of errors of law in their interpretation and application of relevant statutes;<sup>101</sup> failed to act in accordance with the rules of natural justice (such as the requirement of a fair hearing);<sup>102</sup> and failed to take into account relevant matters.<sup>103</sup> The courts have also indicated willingness to intervene in cases where an executive authority acts in bad faith.<sup>104</sup> The possibility of judicial review of rectification orders would allow the court to exercise oversight and guard against the possibility that the Minister commits similar errors.

### VIII. Conclusion

61 The law as stated in *AHPETC* and s 21(2) of the TCA has been studied, and various problems therein identified. This study has

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97 Interpretation Act (Cap 1, 2002 Rev Ed) s 9A(2)(b)(i).

98 Interpretation Act (Cap 1, 2002 Rev Ed) s 9A(3)(c). *Singapore Parliamentary Debates, Official Report* (10 March 2017) vol 94 (Desmond Lee, Senior Minister of State for National Development).

99 Not only does nothing in s 43D of the Town Councils Act (Cap 329A, 2000 Rev Ed) purport to oust the courts’ power of review; the legislative intention was clearly that judicial review be possible:

MND will and has always exercised its regulatory powers with due care and regard to people and the residents’ public interests, as it has always done. Apart from the public eye, there is always the recourse of the courts under the framework of judicial review.

*Singapore Parliamentary Debates, Official Report* (10 March 2017) vol 94 (Desmond Lee, Senior Minister of State for National Development).

100 *Re Fong Thin Choo* [1991] 1 SLR(R) 773 at [57].

101 *Pang Chen Suan v Commissioner for Labour* [2008] 3 SLR(R) 648 at [51] read with [44]–[45]; *Tan Seet Eng v Attorney-General* [2016] 1 SLR 779.

102 *Aziz bin Abdul Rahman v Attorney-General* [1979–1980] SLR(R) 55.

103 *Tan Gek Neo Jessie v Minister for Finance* [1991] 1 SLR(R) 1 at [19].

104 *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2007] 2 SLR(R) 568 at [38].

allowed an understanding the reasons for the existence of the compliance review, investigation and rectification order procedures created by the 2017 amendments to the TCA, which have largely addressed these problems. Were it not for this statutory intervention, TCs would have been able to neglect their statutory duties, and the court would declare emphatically that TCs have legal duties but find itself lacking the power to enforce them.

62 There is one matter which has not yet been addressed fully. It appears that there is still no way to compel TCs to comply with grant conditions. In one sense, this issue is now less pressing than it was before. It will be recalled that the issue involving grant conditions only arose because the Court of Appeal mentioned (as the author has argued, incorrectly) that grant conditions are an “appropriate means by which to secure the ends of sound governance”.<sup>105</sup> To *this* extent, there is now no problem, as the TCA now provides for a mechanism for the Government to compel TCs to perform their duties to the *minimum* standard required by the TCA. Nonetheless, it is still desirable for the Government to have the power to impose *further* constraints on the ways in which TCs may make use of grant moneys. This represents a potential area for future development of the law. A discussion of how this issue may be addressed will take place in a future article.

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105 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 at [82].