TRUSTS AND THE RULE OF LAW IN SINGAPORE*

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1 Some of you may be wondering what I am doing here this morning, when I retired as Chief Justice of Singapore just over nine hours ago. So, an explanation is called for.

2 Two months ago, David Chong requested me to speak at this conference on "A Tale of Two Cities, on the role of Singapore and Hong Kong", as wealth management centres in 21st Century Asia. With the current financial problems in the West, this would be the best time to examine this subject.

3 I informed David that I would be retiring on 5 November 2012 and would not be able to speak in my capacity as Chief Justice. David replied that it did not matter so long as I spoke. He would not take "No" for an answer. So here I am.

4 When I received the conference programme two weeks ago, I noticed that I was listed to speak on "Trusts and the Rule of Law in Singapore", *ie*, trust as a legal institution. There is, of course, an important difference between "trust" in commercial and social life and "trust" as a legal institution, where we usually use the plural form "trusts". If you trust someone, you have confidence that he will keep his word and will not cheat you. But, to trust someone, according to *The Disrespectful Dictionary*,[1] is "to lay oneself open to deception". We are never so vulnerable than when we trust someone. Nevertheless, it is trust that makes the world go round. Some would suggest that it makes the world go wrong, especially the world of finance recently when financial greed and excess almost destroyed the global financial system.

5 George Schultz gave a speech in 1989 in which he said that "Trust is the coin of the realm".[2] The realm, *ie*, the state, must abide by its promises not only to its own people but also to other states to which it has made commitments or promises. A nation that debases its coinage will lose the confidence of other nations, but especially of money

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1 Victor L Cahn, *The Disrespectful Dictionary* (Price/Stern/Sloan, 1974).

2 So said then Secretary of State George Shultz in his testimony in July 1987 before the Congressional committee investigating the Iran-Contra scandal.

looking for a safe haven. Trust is a commodity that Singapore has plenty to show. Singapore can be trusted to keep its commitments and promises in its international as well as domestic affairs.

6 Global investment banks will not locate their wealth management business in Singapore unless they have trust in at least three things: (a) the Government and its policies; (b) the banking and financial laws and infrastructure, and (c) the legal system which is based on the rule of law. These are the prerequisites to support, grow and sustain a financial industry. Without these, Singapore would be an improbable location as a wealth management centre. The rich of the world demand safety and security for their wealth as the first priority, in addition to increasing their wealth. That Singapore has become a global financial centre over the last 30 years and a wealth management centre in the last ten years is a testament to, among other things, the Government's long-term economic planning and goal-directed policies. These policies, reinforced by an efficient regulatory and legal environment, have provided the foundations of Singapore's success as a financial centre and a wealth management centre.

7 Singapore's laws and financial regulators have created trust in our banking and financial system. Our regulations have allowed trust to be established generally with the three main stakeholders: the industry players, the international financial community, and the clients. There is regular interaction between the regulators and here is one example. When the Monetary Authority of Singapore ("MAS") decided to review its regulatory oversight of the over-the-counter derivatives market in Singapore, it sought feedback from the industry and the general public and issued timely responses to such feedback. Contrast this with jurisdictions where there is no consultation before regulations are enacted,[3] or where the tone of regulation is adversarial,[4] or where the Government flip-flops on policies. Such countries do not generate trust amongst investors.

8 Singapore's regulators are responsive to international standards. This is best illustrated with an example. The Income Tax (Amendment) (Exchange of Information) Bill[5] was read for the second time on 19 October 2009. It proposed amendments to the Income Tax Act[6] to

3 Andy Mukherjee, "Come One, Come All", *The Straits Times* (3 September 2011), quoting Mr Nikhil Srinivasan, the Chief Investment officer of Allianz Investment Management, who said: "the ease with which a credible person can get an audience with the regulator here is remarkable. At a time when other financial centres are being hit by regulations, some of which one might argue are unnecessary, Singapore has maintained a pragmatic stance of sensible regulation".

4 Andy Mukherjee, "Come One, Come All" *The Straits Times* (3 September 2011).

5 Bill 18 of 2009.

6 Cap 134, 2008 Rev Ed.

allow Singapore to implement internationally agreed standards for the exchange of information for tax purposes upon request. Two points should be noted. First, Singapore always seeks to keep in line with relevant international standards. Secondly, and this is perhaps less obvious, Singapore responds quickly. The Minister for Finance made it clear that recognition as an internationally agreed standard was accorded in October 2008 when a UN Committee endorsed the standard. Following that, Singapore decided to endorse the standard a mere five months later. In doing so, the Minister said that Singapore would always adopt relevant international standards because it was a responsible and trusted international financial centre.

9 Similarly, our regulators have also responded quickly to implement the recommendations from the Financial Action Task Force on the prevention of money laundering or terrorist financing.[7] The industry here also understands the importance of such policies in safeguarding the integrity of our financial system.

10 The trust required from the second group, the international financial community and regulators, is vital to the functioning of an international financial hub. As contemporary events show, once that trust is lost, even jurisdictions steeped in history as wealth management hubs will find themselves under a great deal of scrutiny from other countries. Our regulators' quick and near immediate actions would have assured the international community of Singapore's adherence to its international and bilateral obligations.

11 Our regulators have even acted prudentially by issuing reminders to the financial institutions. In September 2011, the MAS issued a set of guidelines to remind financial institutions that they have an important role to play in preserving the integrity of the financial system. The MAS took this step as a preventive measure to guard against any potential inflow of suspicious funds.[8] This came after Singapore had concluded several bilateral agreements to resolve tax issues.[9]

12 On 9 October 2012, as I was in the midst of my preparation for this address, the MAS issued a consultation paper on the designation of tax crimes as money laundering predicate offences in Singapore. This

7 Yasmine Yahya, "S'pore Toughens Fight against Tax Evaders", *The Straits Times* (17 February 2012).

8 Ng Nam Sin, Assistant Managing Director, Monetary Authority of Singapore, Keynote Speech at the Society for Trust and Estate Practitioners ("STEP") Asia Conference (1 November 2011) at para 14. See also "Singapore Says Banks Warned against European Tax Evaders", *Reuters News* (23 August 2012).

9 Ng Nam Sin, Assistant Managing Director, Monetary Authority of Singapore, Keynote Speech at the Society for Trust and Estate Practitioners ("STEP") Asia Conference (1 November 2011) at para 14.

demonstrates Singapore's full commitment to safeguarding its financial system from being used to harbour proceeds from tax crimes.[10]

13 I now turn to the third group of stakeholders, the clients. The confidence that our financial system is clean is important to this group of stakeholders. Clients know that they are placing their assets in a jurisdiction where the abuse of the financial system is not tolerated and criminal conduct is investigated efficiently. They know that they are not only putting their money in a jurisdiction which operates its financial systems with transparency, but also balances it against the need for anonymity, confidentiality and privacy. The Banking Act[11] provides adequate safeguards against the unauthorised disclosure of financial information concerning clients.

14 Clients expect reliability, trustworthiness, transparency, extensive product knowledge and high-quality investment advice from their relationship managers.[12] These are demands which must be met by financial institutions in Singapore for Singapore to continue to grow as a premier wealth management hub.

15 Now, I refer to an issue that will undermine trust in the system: the lack or perceived lack of trustworthy investment bankers. Trust in banks worldwide has spiralled downwards as a result of the 2008 financial crisis. They have lost the trust of the investing public. Many of them are being sued by customers, investigated and heavily fined by regulatory authorities, and prosecuted in court for offences involving dishonesty. The roll of dishonour includes some of the best known global banks.

16 Singapore was ranked by the Heritage Foundation as the second most free economy in the world in 2012 after Hong Kong, and this has been their relative positions for many years. In the category of Business Freedom, Singapore scored 97.2 while Hong Kong scored 98.2. I do not know the elements of this category, but both are common law jurisdictions, and freedom of contract is one of the basic principles of the law of contract. Freedom of contract is a boon for financial institutions. If you ask any financial institution what its credo is, *ie*, the values by which it conducts its business, it should not be very far from two of the business principles of Goldman Sachs, *viz*, (a) "Our clients' interests always come first"; and (b) "Integrity and honesty are at the heart of our business". In other words, investors can trust them to do the right thing by them.

10 Monetary Authority of Singapore, *Designation of Tax Crimes as Money Laundering Predicate Offences in Singapore* (Consultation Paper, October 2012).

11 Cap 19, 2008 Rev Ed.

12 The Boston Consulting Group, *The Battle to Regain Strength* (BCG Report, Global Wealth 2012) at p 19.

17 Yet, it is a common feature of investment bank mandates that they contain at least three kinds of clauses to protect themselves from their clients: (a) the conclusive evidence clause, (b) the exemption clause, and (c) the non-reliance clause. These clauses operate in different ways but with one objective – to protect the bank against court actions by its customers for losses suffered by them as a result of bad or poor investment advice from their investment managers. The only reason that the banks have not included indemnities by customers is only because an indemnity clause would fall foul of the Unfair Contract Terms Act.[13]

18 Contract law recognises the principle of *caveat emptor* in the market place and the voluntary assumption of risk by customers who sign on the dotted line. Furthermore, the law also accepts, in the higher interest of certainty of the law, that illiteracy is not a privilege but a disability. If *A* signs a document which is expressed in a language he does not understand, the law presumes him to have understood its terms, unless the contrary is proved, usually by credible evidence that the nature of the contract is different from what he was told.

19 Let me now refer to three cases which have come before the Singapore courts recently which illustrate how trust can easily break down between financial institutions and their clients. This is not to say that the fault is always with the banks, but these cases show that the banks have the initial advantage over their clients in terms of contractual rights.

20 In the first case,[14] the Court of Appeal had to consider the legal effect of a bank's oral statement to a customer that it would not close his foreign exchange ("FX") positions without giving him 48 hours' notice. The bank acted precipitately when the FX market was turning against the customer and gave him less than 48 hours' notice to provide the necessary margin to cover his exposure (which he could not). The bank immediately closed his FX positions resulting in a loss to the bank. When the bank sued him for the losses, he pleaded by way of defence that the bank acted wrongfully in not giving him 48 hours' notice, and that if it had done so, he would not have suffered such losses as the FX market turned in his favour over the weekend. The bank contended that its word was not its bond, and that the promise of 48 hours was not legally binding because the customer gave no consideration for the promise. This response was, of course, elementary contract law. The Court of Appeal however held against the bank on the ground that the customer had given consideration and that in any event the customer had suffered detriment in relying on the promise.

13 Cap 396, 1994 Rev Ed.

14 *Lam Chi Kin David v Deutsche Bank AG* [2011] 1 SLR 800.

21 In the second case,[15] the customer sued the bank for losses incurred in 160 allegedly unauthorised dealings by his relationship manager. The bank relied on what is known as a conclusive evidence or verification clause by way of defence. The clause provided that if the customer did not inform the bank within 14 days of inaccuracies in her bank statements, those statements would be conclusively deemed to be correct. The courts have upheld such clauses on the premise that bankers are known to be honest and reliable men of business who are most unlikely to make a mistake.[16] But in that case, the court found on the evidence that the banker had indeed made the investments which were unauthorised, and therefore fraudulent. The judge held that "conclusive evidence clauses which purported to exclude liability for the fraud of banks' employees would stand contrary to public policy considerations and would run foul of the reasonableness test under the Unfair Contracts Terms Act".[17] The judge also discussed the issues of trust and public policy at the end of his judgment, and said:[18]

> Individuals and corporations entrust banks and employees of banks with their savings and investments. Public confidence in the banking system is therefore fundamental to the integrity of the system and is no doubt founded upon mutual trust and a reasonable expectation of honest dealings by employees of banks. Shifting the attendant risk and liability for the fraud or wilful misconduct of employees of banks by way of conclusive evidence clauses, strikes at the very heart of the presumed integrity of the system.

22 The third case[19] involved two elderly Indonesian investors who were unfamiliar with the English language. They incurred considerable losses on their investments and alleged that their bankers had bought, without authority, very risky Russian bonds for their account. The bankers denied this, and also relied on a "non-reliance" clause by way of defence. This type of clause, which is commonly inserted in investment mandates of all banks, is even more prejudicial to customers than conclusive evidence clauses and exemption from liability clauses. The reason is that they provide that whatever advice the investment manager may give, the customer acknowledges that he has not acted on such advice and has relied on his own judgment to make the investment. In that case, the Court of Appeal held that such clauses applied only to authorised transactions but not unauthorised ones.

15 *Jiang Ou v EFG Bank AG* [2011] 4 SLR 246.

16 Alexander Loke Fay Hoong, "Framing Contractual Freedom Within the Precept of 'Honesty, Reliability and Integrity': *Jiang Ou v EFG Bank AG* [2011] 4 SLR 246" [2012] Sing JLS 174 at 180.

17 *Jiang Ou v EFG Bank AG* [2011] 4 SLR 246.

18 *Jiang Ou v EFG Bank AG* [2011] 4 SLR 246 at [122].

19 *Als Memasa v UBS AG* [2012] 4 SLR 992.

23 For many years, Singapore has regularly received accolades from global ranking institutions on its efficient economic management and global economic competitiveness. The *Financial Times* of 22 October 2012 carried a Special Report on the results of The Banker's 2012 annual survey of nearly 60 companies on the most attractive financial centres for relocating/expanding asset management operations. Between them, these entities manage more than US$19tn in assets, so their responses have a high degree of credibility. London was No 1 (75 points), Hong Kong No 2 (52 points), Singapore No 3 (33 points), New York No 4 (18 points), Geneva No 9 (4 points), Shanghai No 10 (4 points) and Zurich No 10 (4 points). It may be noted that both New York and Shanghai ranked after Hong Kong and Singapore, and Geneva and Zurich are ranked farther below. These rankings are explained by the factors listed in the survey that influenced investors' decisions to manage funds within a country or region. The factors are, in order of importance, as follows:[20]

1 Economic growth/investment potential (176)

2 Regulatory environment (127)

3 Legal environment (118)

4 Political and social stability (113)

5 Economic stability (111)

6 Stable financial system (110)

7 Business environment (105)

8 Transparency (104)

9 Human Resources (102)

10 Proximity to markets (99)

11 Communication links and infrastructure (92)

12 Long term tax stability (86)

13 Low tax on funds (86)

14 Cost (83)

15 Low corporation tax (80)

16 Proximity to clients (77)

17 Quality of life (76)

18 Low personal income tax (68)

20 Respondents were asked to weigh the importance of each factor out of five and scores were added to create the ranking.

24 These factors tell the whole story about the wealth management industry. There are no surprises in the rankings. Unsurprisingly, the most important factor is economic growth and investment potential. The bigger the market, the more money there is to manage and the more fees would accrue to wealth managers. The least important factor is low personal income tax. If you earn or are paid US$100m a year, what is 50% income tax to you? The second least important factor is the quality of life. This is also explicable: why should any wealth manager be concerned with the low quality of life if it is only temporary, and if after a few years, he is able to amass sufficient capital to retire and enjoy whatever quality of life he desires in any place he wants?

25 So, wealth management is about increasing wealth, that is, making money for the wealth managers from fees, and hopefully, for their clients from increasing the value of their investments. In this connection, I refer to an article by Willie Cheng titled "Singapore a Market Society?" in the Opinion page of *The Straits Times*:[21]

> The financial success of our market society is without question: whether measured in gross domestic product per capita, proportion of millionaires or any of the slew of economic-related key performance indicators, Singapore is usually at the top, if not at the very top.

The writer went on to suggest that market capitalism will erode our values if everything is being measured in terms of economic success and money.

26 One of the values of a market society is "To be rich is glorious", but we have always known that the singular pursuit of riches above everything else is likely to diminish our other values, such as honesty and integrity in our dealings with our fellow beings. This is how trust in social life becomes degraded in national and economic life. Trust is not a virtue but a social necessity, devolved over thousands if not millions of years of socialisation and conditioning to trust one another in daily life.

27 In 1995, Francis Fukuyama published a book entitled *Trust: The Social Virtues and The Creation of Prosperity*,[22] in which he argued (I quote from a review):[23]

> Trust, according to Fukuyama, is the cultural key to prosperity. The level of trust in a society shapes the nature of its economic transactions and institutions. High-trust societies are marked by a high degree of spontaneous sociability. Individuals in these societies

21 *The Straits Times* (26 October 2012).

22 Francis Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity* (Hamish Hamilton, 1995).

23 Enotes, Magill book reviews <www.enotes.com/trust-salem/trust> (accessed 6 November 2012).

> are able to build strong relationships outside such structures as the family. High-trust societies are able to generate the large corporations that form the cutting edge of modern industry. People in low-trust societies are disinclined to trust people outside their family or clan. They tend to form smaller family-run firms. Traditionally, nations such as Italy and China have been low-trust societies, and nations such as Japan, Germany, and the United States have been high-trust societies. Fukuyama warns that an erosion of trust in the United States during recent decades may imperil its economic position. He ends by calling for a rebirth in America of the communal values which promote trust …

Fukuyama's grand thesis was published in 1995, but after the recent financial crisis which began in the US and which almost brought down the global financial system, the loss of trust in US financial institutions would seem to be amply justified. Even today, governments all over the world are still having great difficulty in taming the beasts that they cannot do without and have to live with.

28 Fukuyama further writes:[24]

> If people … trust one another because they are all operating according to a common set of ethical norms, doing business costs less. Such a society will be better able to innovate organizationally, since the high degree of trust will permit a wide variety of social relationships to emerge.

However, as one commentator said,[25] without shared norms and trust, a society must resort to the formalisation of its social and economic relationships under a legal framework to be provided by the state. Economic and social exchanges are vital to the life of a community, but social trust alone cannot support such relationships. The law has to step in to regulate and enforce them. The English law of equity and trusts was created by the Lord Chancellors of England as keepers of the King's conscience and other equity judges to prevent unconscionable trustees (who held the legal title) from claiming as their own properties which they had agreed to hold for the beneficiaries who were recognised by the equity courts as the true owners of the property. The recent financial crises show that financial institutions, if not properly regulated, will always seek to advance their own interests over those of outsiders. English law has developed in such a way that the mercantile class has never been burdened with the onerous duties of trustees, even though customers have no choice but to deposit their surplus cash with them. They are classified as debtors by the law and not as custodians of the

24 Francis Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity* (Hamish Hamilton, 1995) at p 27.

25 SG Redding <https://muse.jhu.edu/journals/journal_of…/v007/7.2br_fukuyama.ht> (accessed 6 November 2012).

depositors' moneys. Banks as investment managers act merely as agents of their clients, but they are not fiduciary agents. Hence, conflicts of interest between their duty to the clients and duty to their employers are ever present. Yet, when conflicts arise, you can guess which party would be preferred. Investment banks are not public utilities, but moneymaking machines.[26] Until financial intermediaries place the interests of clients before their own (and this will never happen), laws will be needed to guard against any abuse of trust.

I. Law of trusts and wealth management in Singapore – The Trustees (Amendment) Act 2004

29 Let me now mention briefly the 2004 amendments to the Trustees Act,[27] which were designed to bring our trust law up to date in order to promote wealth management in Singapore. In 2007, I discussed these amendments in my paper "Trusts: The Legal Environment in Singapore",[28] delivered at the Society of Trust and Estate Practitioners ("STEP") Asia Conference "Wealth Management in Asia Pacific – Building on Our Strengths". In that paper, I deprecated the ignorance of scholars as to the state of trust law in Singapore,[29] and after referring to the amendments and the Trust Companies Act 2005,[30] I said:

26 See review of Greg Smith's book, *Why I Left Goldman Sachs: A Wall Street Story* (Grand Central Publishing, 2012) in the *Financial Times* (27 October 2012), Life and Arts (Books) at p 11.

27 Act 45 of 2004.

28 Available at <http://app.supremecourt.gov.sg/default.aspx?pgid=2161&printFriendly=true> (accessed 23 August 2013).

29 In "Trusts: The Legal Environment in Singapore" available at <http://app.supremecourt.gov.sg/default.aspx?pgid=2161&printFriendly=true> (accessed 23 August 2013) at para 7, I wrote:

> Because Singapore is a small common law jurisdiction, the decisions of Singapore courts do not appear on the radar screens of English judges, lawyers and academics. So it was not surprising that in the leading English textbook, *The International Trust* (2002), a book of 641 pages, excluding the Appendix and the Index, the law of trusts in Singapore is described in 12 words in half a sentence that reads: '… Singapore trusts law remains the English law of the pre-European Union period.' This statement is basically correct with respect to the corpus of trust case law existing as at 1973 (when the United Kingdom joined the EEC). But the same can also be said of the trust case law of every common law jurisdiction for the reason that the bulk of trust law principles have long been settled before 1973. Trust law is essentially institutionalised principles of equity based on conscience and fairness. But the statement is inaccurate if it means that Singapore trust law went to sleep in 1973 and is now 34 years behind English law. The correct position is that Singapore trust law is substantially English trust law as of today, leaving out English trust law-related legislation but adding back Singapore trust law-related legislation. Accordingly, should private bankers or their legal advisers be asked whether Singapore trust law provides an adequate legal framework for wealth management in Singapore and for protecting the interests of the parties to any Singapore or foreign trusts, the answer is definitely 'Yes'. I should note,

(*cont'd on the next page*)

> 11. … Any international trust lawyer who has studied the 2004 amendments to our Trustees Act would be disappointed to find them so conservative and limited in their scope, unlike the model laws of offshore jurisdictions, such as the Cayman Islands or the British Virgin Islands, which allow settlors to have full control over the trusts at any time, including the power to rewrite them as they wish. …
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> 12. In this connection, [Mr Mark Lea,] a trust lawyer, recently delivered a paper at a conference on wealth management[31] in which he regrets that the conservatism and limited scope of the recent changes to the Trustees Act failed to give the wealth management business what it needed. He attributed this failure to, perhaps, (a) professional conservatism combined with an element of protectionism; (b) the desire not to be seen as 'offshore' because the expression is wrongly interpreted to be derogatory; and (c) commented that 'it is more the views and perceptions of those who would legally and properly use Singapore as a financial hub that matter, and not domestic attitudes'.
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> 13. Are [Mr Lea's] criticisms justified? A few general comments are apposite. First, Singapore has taken more than 30 years to establish itself as an international financial centre through conservative, prudent and timely financial policies. I believe that the Government preferred to err on the side of caution rather than to liberalise the trust law, especially in regard to new types of purpose trusts that may not necessarily increase the wealth management business in Singapore but at the same time may create risks of their being used illegally or improperly to promote all kinds of causes that are not in the interest of Singapore, such as money laundering, financing terrorism and political causes. … Secondly, Singapore does not find the term 'offshore' derogatory. It has used that term since … more than 30 years ago to describe offshore financing in USD domiciled outside the US. …
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> 14. However, it may be the case [that] these limitations have little impact on Singapore's future as a wealth management centre in the region. [Mr Lea] … accepts that in spite of these legislative shortcomings, Singapore has emerged, since 2002, as an offshore centre of choice, and that Singapore [may] thrive as a trust jurisdiction. Mr [Lea] asked himself the question: 'Do widgets matter?' and answered that perhaps they do not except only when one or more of them determines the choice of jurisdiction. That is only logical, but it perhaps misses the point, perhaps a number of points. The first is that statutory framework for trust law is important to trust lawyers and their clients. But for Singapore as a financial services hub, trust law is in itself not as important as the presence of private bankers managing their business from here. This is demonstrated by the fact

however, that the 2006 edition of *The International Trust* does not even mention Singapore.

30 Act 11 of 2005.

31 The 10th Singapore Conference on International Business Law (22 August 2007).

that the large majority of the participants in this Conference are from financial institutions rather than law firms.

15. We all know that private bankers, wealthy clients and ordinary investors and trust lawyers have different interests to promote. They have common interests, but each group has its own specific interests. Trust lawyers share the interests of their wealthy clients (the settlors), in having the most flexible and open-ended trust law possible that allows them full control over the trust, and a liberal tax regime. Private bankers also share the interests of their clients in preserving and/or increasing their capital. But, private bankers are generally not so much interested in the trust law of the funds that they are managing, as long as they are legitimate funds. Their interest in the law is to ensure that they are not exposed to legal claims when their advice or decisions on the investments go wrong. …

16. And this leads me to the second point in relation to the governing law of the trust. Singapore law recognises the validity of and the courts will enforce foreign trusts, subject only to public policy considerations. For this reason, settlors … can establish their trusts under the law of any lawful jurisdiction. The global US and European banks have been here for a long time, discreetly managing the funds of their private clients under trust structures set up under the laws of offshore jurisdictions. … But the private bankers need to have a reputable and reliable legal system to ensure that they are able to carry on their business freely and that their clients' rights are fully protected under and by the law.

17. Therefore, in assessing whether Singapore's trust laws are adequate to attract wealth managers to locate their business in Singapore, we should make a distinction between trust business and private banking business. The former is an economic activity important to trust lawyers. The latter is an economic activity important to private bankers. What private bankers look for is something more than the trust law of the jurisdiction in which they manage the funds. The legal framework for trusts, however liberal it is to accommodate the needs of settlors for control and flexibility in changing objects and beneficiaries or even the applicable law of the trust itself, is neither necessary nor sufficient. Nor is a low tax regime in itself sufficient, according to an article in *The Economist* (24 February 2007) entitled "*What it Takes to Succeed*", as slashing tax rates is easy to do for small jurisdictions. The writer lists other essential factors, such as a sound government, low levels of corruption, checks and balances on government, compliance with international standards of corporate and financial governance, a good international reputation for being business friendly, sound regulatory and supervisory framework that can deter or prevent money-laundering and terrorist financing, and regular consultation with the main players to improve the legal and regulatory environment. That is the professional side of the equation.

[references added]

30 I apologise for having to recycle old material but those comments remain valid today.[32] My 2007 paper was focused on wealth planning for the wealthy rather than wealth management of the wealthy. In 2007, there was still estate duty in Singapore. With its abolition, settlors domiciled in Singapore no longer have to worry about how to give away their assets to their family members outside the taxable period and yet retain control over their assets. Today, they have full control of their assets unto death without worrying about estate duty. Their only worries are income tax, creditors and their wives in divorce.

31 In an earlier speech on wealth management in the same year, I surveyed the international scene and stated that in terms of market share of the world's private wealth, Singapore had a very long way to go to catch up with more established wealth management centres like Switzerland. The *Financial Times* weekly review of the fund management industry dated 22 October 2012 published a separate article entitled "Singapore is 'Asia for beginners' for foreigners" stating that Singapore is a favourite international hub for institutional and wealth managers which have assets under management of around US$1tn. So I was wrong in my cautious assessment in 2004 about Singapore's relative position to Switzerland, but I was right in asserting that Singapore does not need the Cayman Island model of trust legislation to grow its wealth management business.

II. The rule of law

32 Let me now mention briefly the rule of law in Singapore. Any foreign banker who has lived in Singapore for a short while knows that we have the rule of law. Article 9 of the Singapore Constitution,[33] provides that "(1) No person shall be deprived of his life or personal liberty save in accordance with law." Article 12(1) provides: "All persons are equal before the law and entitled to the equal protection of the law." Scholars have conceptualised the rule of law into a formalist or "thin" version and a substantive or "thick" version. When Singapore asserts that it has the rule of law, western liberal critics scoff at such a claim because they say Singapore does not have the thick version. I think this criticism is unfair, but as this is not the subject of my speech, I shall move on. However, in the context of wealth management, let me quote two passages from Francis Fukuyama again, this time from his latest book, *The Origins of Political Order*:[34]

32 See the factors identified by the *Financial Times* at para 23 above.
33 Constitution of the Republic of Singapore (1999 Rev Ed).
34 Francis Fukuyama, *The Origins of Political Order* (Profile Books, 2011) at pp 248 and 407.

> When economists talk about the rule of law, they are usually referring to property rights and contract enforcement. Modern property rights are those held by individuals, who are free to buy and sell their property without restrictions imposed by kin groups, religious authorities or the state. The theory by which property rights and contract are related to economic development are straightforward. No one will make long term investments unless he knows that his property rights are secure …
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> One of the chief functions of the rule of law is the protection of property rights, and this the Common Law did much more effectively than law in other lands.

33 In Singapore, there is no constitutional protection of property, but legislation and the common law perform the same function. Foreign firms can rest assured that there will not be a sudden change in policy or law instituted by a corrupt, capricious or meretricious government that operates retrospectively to deprive them of the fruits of their labour. Similarly, there is a high level of trust in the quality and incorruptibility of our judicial system and legal infrastructure. Cases are dealt with efficiently and transparently by competent and impartial judges.

34 There is an expression which is seldom used nowadays by lawyers or judges. The expression is "The majesty of the law". It does not mean the pomp and circumstance of a judge's accoutrements. It means the power of the law to administer justice equally. Anatole France, put it best when he said:[35]

> The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.

35 Let me now conclude by showing you a clip from the film, *A Man for All Seasons*. Some of you might not have seen it because the film was produced in 1966. It is about the life of Sir Thomas More, the Lord Chancellor of England, who was tried for treason, found guilty and executed because his conscience and his loyalty to the Pope would not allow him to recognise the King's divorce. In this scene, More (played brilliantly by Sir Paul Scofield) delivered a powerful defence of the rule of law, stating that even the Devil must be accorded the protection of the law. Here is the clip.[36] Thank you.

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35 Anatole France, *The Red Lily* (1894) ch 7.

36 The clip may be found on YouTube <http://www.youtube.com/watch?v=d9rjGTOA2NA> (accessed 23 August 2013).