

COMPOSITION

Legal and Theoretical Foundations

The composition of offences has been an integral part of the Singapore criminal justice system from its inception. This article sets out the legal and theoretical foundations for composition, as well as its historical genesis within our Criminal Procedure Code – from its roots in English law to its statutory entrenchment in India and the Straits Settlements. The recent amendments to the Criminal Procedure Code and its effect on composition in our penal system will also be examined.

Ryan David LIM

LLB (Hons) (Nott);

Deputy Public Prosecutor, Attorney-General's Chambers, Singapore.

Selene YAP

BA (Hons) (National University of Singapore), JD (Melb);

Deputy Public Prosecutor, Attorney-General's Chambers, Singapore.

I. Historical genesis of composition

A. English common law¹

1 At first blush, composition appears to be an aberration in criminal law. As K S Rajah observes in his article “Composition and Due Process”:²

A crime is regarded as a wrong done to society. The offender and the victim are not normally allowed to come to an agreement to absolve the offender from criminal responsibility.

2 Indeed, the compounding of a felony – a prosecutor or a victim accepting consideration in return for not prosecuting a felony – was an offence under English common law.³ The compounding of theft

1 For a comprehensive history of the composition of offences in English law, see Percy Henry Winfield, *The Present Law of Abuse of Legal Procedure* (Cambridge University Press, 2013) at p 117.

2 K S Rajah, “Composition and Due Process” (2004) *Law Gazette* <<http://www.lawgazette.com.sg/2004-1/Jan04-col.htm>> (accessed 3 June 2014).

3 Rollin M Perkins & Ronald N Boyce, *Criminal Law* (Foundation Press, 3rd Ed, 1982) at p 576. The common law offence of compounding a felony has since been abolished in England and Wales and has been replaced by s 5 of the Criminal Law Act 1967 (c 58) (UK).

constituted the more serious offence of theftbote,⁴ which was criminalised by Edward III as early as the 12th century.⁵ Theftbote was regarded as a heinous offence; in fact, a judicial decision appears to have been needed to settle that the punishment for it was *not* capital.⁶ While theftbote has long since been abolished, it remains an offence (in both English law and Singapore law) for a person to accept consideration or restitution to screen an offender from punishment.⁷

3 An example of the arguments against allowing the composition of offences appears in the 1825 case of *Elworthy v Bird*⁸ (“*Elworthy*”). The case concerned the compounding of several indictments against one William Bird for violent assaults against his wife, Mary Bird, in return for, *inter alia*, a deed of separation and the payment of £50 a year for the rest of her life. The defendants argued that agreements to compound offences were illegal:⁹

[This] was an agreement to suppress and compromise indictments for offences against the public peace. All such agreements are illegal; for *an indictment is not a matter of private interest, but of public policy*; and the object of it is, *not to procure compensation for injury done to an individual, but to protect the community, by the punishment of offences injurious to it.* [emphasis added]

4 Despite this, composition as an accepted way of resolving a criminal case has its roots in the common law. In the 1734 case of *Johnson v Ogilby*,¹⁰ it was argued and accepted that a prosecution could be lawfully stifled where the indictment was for fraud and the party wronged agreed to be satisfied, “matters of fraud being cognizable and relievable as well in equity as in law”. The decades following this decision saw the court accept that at least some misdemeanours could be compromised; however, there was also some uncertainty regarding the boundaries within which this was allowable.¹¹

-
- 4 Edward Coke, *The Third Part of the Institutes of the Laws of England; Concerning High Treason, and Other Pleas of the Crown and Criminal Causes* (London: W Rawlins, Thomas Basset, George, St Dunstan’s Church, Fleet Street, 6th Ed, 1681) at p 134: “Theftbote is when the owner not only knowes of the felony, but taketh of the thief his goods again, or amends for the fame to favour or maintain him, that is, not to prosecute him, to the intent he may escape ... *quando proprietaries recipit latrocinium, et quando latronem.*”
- 5 John Reeves, *History of the English Law: from the Time of the Saxons, to the End of the Reign of Philip and Mary* vol 3 (London: E Brooke, Bell-Yard, Temple-Bar, 2nd Ed, 1787) at p 123.
- 6 Fitz Abr Corone, 353 (3 Ed III It North).
- 7 See ss 213–215 of the Penal Code (Cap 224, 2008 Rev Ed); see also the case of *Harry Lee Wee v Public Prosecutor* [1980] 2 MLJ 56.
- 8 [1825] 3 LJOS 190.
- 9 *Elworthy v Bird* [1825] 3 LJOS 190 at 193.
- 10 3 P Wms 277.
- 11 *Roy v Duke of Beaufort* (1741) 2 Atk 190; *Collins v Blantern* (1767) 2 Wils 347.

5 The next landmark in the history of composition was the 1844–1846 case of *Keir v Leeman*¹² (“*Keir*”). In *Keir*, Lord Denman CJ reviewed the case law up to that point and laid down the rule that the law will permit a compromise of all offences though made the subject of a criminal prosecution, for which offences the injured party might sue and recover damages in an action, this being often the only manner in which he can obtain redress; “but if the offence be of a public nature, no agreement can be valid that is founded on the consideration of stifling a prosecution for it”.¹³ This remained the state of the common law up to the introduction of composition into Indian law.

B. India and the Straits Settlements

6 Composition was first enshrined in statute in the Indian Criminal Procedure Code under s 345 of Act X of 1882. A virtually identical provision was enacted in the very first Straits Settlements Criminal Procedure Code under s 248 of Ordinance VII of 1892 (“s 248”),¹⁴ but was only brought into force under s 248 of Ordinance XXI of 1900.

7 It is unclear why composition was introduced into our Criminal Procedure Code¹⁵ (“CPC”). The 1892 Ordinance was passed by the Legislative Council of the Straits Settlements without any discussion on the composition clause.¹⁶ It is known that large swathes of the 1882 Indian CPC were imported into the Straits Settlements CPC, and it is likely that this was the case for s 248. The authors have also been unable to ascertain as yet the reason why composition was first provided for in the 1882 Indian CPC.

8 The effect of s 248 was to establish that certain offences could be compounded by certain persons. Compoundable offences were divided into two groups – those which composition required the consent of the court, and those which did not.¹⁷ This distinction was removed in Singapore by 1955, requiring the consent of the court for the composition

12 (1846) 9 QB 371.

13 *Keir v Leeman* (1846) 9 QB 371 at 394.

14 One notable difference is that voluntarily causing grievous hurt under s 325 of the Penal Code was on the list of compoundable offences under the Indian Act X of 1882, but is not present in the Straits Settlements Ordinance VII of 1892.

15 Currently Cap 68, 2012 Rev Ed.

16 Straits Settlements, Colony of Singapore, *Proceedings of the Legislative Council* (9 March 1892) at pp A18 and B62.

17 Originally, only four offences required the consent of the court for their composition – voluntarily causing hurt with a dangerous weapon, voluntarily causing grievous hurt on grave and sudden provocation, causing hurt by an act endangering life, and causing grievous hurt by an act endangering life (ss 324, 335, 337 and 338 Penal Code respectively) – see Annex A below.

of all compoundable offences. The list of compoundable offences has otherwise remained remarkably similar between the 1892 Ordinance and the 2012 Revised Edition of our CPC. Notably, the offence of enticing a married woman has been removed,¹⁸ and outrage of modesty, along with several offences under the Miscellaneous Offences Act, has been added.

9 Interestingly, while composition in both India and Singapore has its roots in the 1882 Indian CPC, the two provisions have since diverged substantially. The Indian Code of Criminal Procedure 1973 (“CrPc”) retains the distinction between offences that can be compounded only with the consent of the court and offences that can be compounded without. In addition, the Indian CrPc has considerably expanded the list of compoundable offences – notably, theft, criminal breach of trust, cheating, dishonestly receiving or assisting in the concealment of stolen property, fraudulent concealment of property, counterfeiting, and marrying again during the lifetime of a spouse are all offences that can be compounded with the consent of the court under the Indian CrPc.¹⁹

II. **Compoundable offences**

10 The Law Commission of India commented that “[which] offences should or should not be made compoundable is always an enigma for ... law-makers”.²⁰ Is there any conceptual coherence that can be attributed to the current schema of compoundable offences?

11 As discussed below, the court appears to allow composition for offences which are relatively minor, and which composition would not be against the public interest. These requirements are mirrored in the list of compoundable offences under the CPC – Yong CJ observed in *Public Prosecutor v Norzian bin Bintat*²¹ (“*Norzian bin Bintat*”) that “almost all [offences prescribed as compoundable] are minor and largely private in nature”.²²

12 It should be noted that theft and the other dishonesty-related offences are omitted from the list of compoundable offences and it is uncertain whether the omission is a matter of legislative policy.²³ It could be argued that it would be against public policy to condone dishonesty.

18 Penal Code (Ord 4 of 1871) s 498.

19 For more information on the legislative history of composition in the Indian Code of Criminal Procedure 1973, see Law Commission of India Report No 237, *Compounding of (IPC) Offences* (2011) 10.

20 Law Commission of India Report No 273, *Compounding of (IPC) Offences* (2011) 6.

21 [1995] 3 SLR(R) 105.

22 *Public Prosecutor v Norzian bin Bintat* [1995] 3 SLR(R) 105 at [31].

23 These are compoundable offences under the Indian Code of Criminal Procedure 1973.

13 It is also worth noting that all the compoundable offences under the CPC require that there be a victim who can compound the matter. This results in offences under ss 337 and 338 of the Penal Code²⁴ (rash/negligent act causing hurt and rash/negligent act causing grievous hurt) being compoundable, while offences under s 336 (rash/negligent act endangering life) of the Penal Code are not.

III. Composition in Singapore prior to the 2010 legislative reforms

14 Save for the changes stated above, s 248 of the Straits Settlements CPC survived largely intact in s 199 of the 1985 Revised Edition of the Criminal Procedure Code (“old CPC”).

15 The compoundable offences in the Penal Code were listed in the sixth column of Sched A to the old CPC and could be compounded by the person prescribed in that column.²⁵ Notwithstanding any prior settlement between the accused and the prescribed person, the offence could only be compounded with the consent of the court *once the accused was charged for the offence*.²⁶ Composition has the effect of an acquittal.²⁷

A. Starting point is to lean towards the granting of consent

16 As composition under the old CPC was governed by the consent of the court, there was a substantial body of case law concerning the court’s discretion to allow composition. The court begins with the assumption that the Legislature intended for compoundable offences to be compounded:²⁸

[Magistrates] should not withhold their consent to the compounding of an offence ... unless there is reason to suppose that the case in question is one of an aggravated nature. According to an Enactment of the legislature the compounding of such offences is not contrary to public policy, and it is the duty of all judicial officers to give effect to the Enactments of the legislature so far as in them lies.

24 Cap 224, 2008 Rev Ed.

25 Criminal Procedure Code (Cap 68, 1985 Rev Ed) s 199(1).

26 *Kee Leong Bee v Public Prosecutor* [1993] 3 SLR 190; *Wong Sin Yee v Public Prosecutor* [2003] 1 SLR 197; s 199(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed).

27 Section 199(4) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) and s 241(5) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed); see also *Re Lim Chor Pee* [1990] 2 SLR(R) 117, where the High Court affirmed that the same principle applies when an offence is compounded under an Act other than the Criminal Procedure Code.

28 *Daud bin Kalam v Public Prosecutor* [1937] MLJ xl, cited with approval by Yong Pung How CJ in *Public Prosecutor v Norzian bin Bintat* [1995] 3 SLR(R) 105 at [29].

17 As far as possible, the court gives effect to statute in allowing the composition of compoundable offences. However, the consent of the court is not a mere formality,²⁹ and the court's discretion has to be exercised not only in accordance with the rules of reason and justice but also in accordance with the provisions of law.³⁰

B. *Public interest and the seriousness of the offence*

18 In deciding whether to allow composition, the general principle was that in the absence of aggravating factors, courts should lean towards the granting of consent in cases where the public interest does not feature strongly.³¹ This principle manifested in two limbs:

19 First, an offence that was public in nature, or has an element of public interest, would not usually be compounded. For example, in *Ho Yean Theng Jill v Public Prosecutor*³² ("*Jill Ho*"), the court held that the public interest elements in maid abuse cases were sufficient to warrant a departure from the general principle that the courts should lean in favour of granting consent for the composition of minor offences.

20 Second, an offence with aggravating factors would not usually be compounded. For example, in *Jill Ho*, the court distinguished the facts of the case from an ordinary case of simple hurt under s 323 of the Penal Code:³³

On the present facts, I found that not only was there a strong public interest element, there were also *aggravating factors* which warranted a departure from the general norm to grant consent to compound such offences. These included the *cruel ways* in which the appellant had inflicted the injuries on Sartini. [emphasis added]

21 The above two factors are broadly in line with the schema of compoundable offences, of which "[a]lmost all ... are minor and largely private in nature".³⁴

C. *Certain categories of offences excluded from composition*

22 Finally, the courts also established that certain types of offences should not usually be compounded. These types of offences usually engender one or both of the factors listed above, and thus should not usually be compounded.

29 *R v Abu Kassim bin Babu* [1940] MLJ 243, per Aitken J.

30 *Public Prosecutor v Norzian bin Bintat* [1995] 3 SLR(R) 105 at [52].

31 *Public Prosecutor v Norzian bin Bintat* [1995] 3 SLR(R) 105 at [57].

32 [2004] 1 SLR(R) 254.

33 *Ho Yean Theng Jill v Public Prosecutor* [2004] 1 SLR(R) 254 at [35].

34 *Public Prosecutor v Norzian bin Bintat* [1995] 3 SLR(R) 105 at [31], per Yong CJ.

23 For example, in *Jill Ho*, Yong CJ suggested that consent for the composition of maid abuse cases would rarely be granted due to strong public interest.³⁵ Similarly, in *Public Prosecutor v AAX*,³⁶ the court held that offences of outrage of modesty involving an abuse of a relationship of trust over a protracted period were not compoundable due to the aggravated nature of the offences. Finally, the court in *Chua Tian Bok Timothy v Public Prosecutor*³⁷ held that there was a strong public interest against allowing composition in road rage incidents.

IV. Principles behind composition

24 We observed at the beginning of this article that crimes are wrongs done to society. Despite this, we have seen that in some circumstances, the courts and the Legislature are willing to allow certain offences to be compounded by private individuals. We will now examine why the composition of certain offences is allowed. For the purposes of this article, this discussion will be confined to composition prior to the new CPC regime, as there are, as yet, no guidelines or case law governing how the Public Prosecutor might choose to exercise his discretion to compound an offence.

25 An examination of the case law from the common law up to the 2010 legislative reforms suggests four underlying principles governing when an offence should be compounded:

- (a) an agreement with the injured party;
- (b) the consent of the court;
- (c) the public interest; and
- (d) the seriousness of the offence.

A. *An agreement with the injured party*

26 The very basis of composition is that parties must be able to come to an “arrangement” or some kind of “settlement of differences”.³⁸ In *Johnson v Ogilby*,³⁹ it was argued that one of the factors that made the agreement to compromise the indictment lawful was that the “party wronged ... came to an agreement to be satisfied for such injury”.

35 *Ho Yean Theng Jill v Public Prosecutor* [2004] 1 SLR(R) 254 at [31].

36 [1999] 2 SLR(R) 1104.

37 [2004] 4 SLR(R) 514 at [15], *per* Yong CJ.

38 *Emperor v Alibhai Abdul* AIR 1921 Bom 166, *per* Crump J.

39 3 P Wms 277 at 278.

27 In Singapore, the CPC prescribes which person can compound a given offence. It does not define how composition is to be effected or what kind of consideration is legally valid.⁴⁰ In the vast majority of cases today, composition is effected through monetary compensation, usually coupled with an apology either in writing or in open court – although there are occasional deviances, such as requiring the offender to donate a specified amount of money to charity.

28 It is important to note that composition is premised on an agreement with the *wronged party*, and not the State. Why is the satisfaction of the wronged party so important? One answer is that composition encourages restorative justice. In *Ramgopal v State of Madhya Pradesh*,⁴¹ the Indian Supreme Court expressed the opinion that more offences under the Indian Penal Code could be made compoundable, stating that “[any] such step would not only relieve courts of the burden of deciding cases in which the aggrieved parties have themselves arrived at a settlement but may also encourage the process of reconciliation”.

29 As discussed above, this victim-centric approach of composition also leads to certain offences being compoundable while others are non-compoundable.⁴²

B. *The consent of the court*

30 The consent of the court appears to serve as a check and balance on the institution of composition, ensuring that it is not abused. In *Elworthy*, the plaintiffs argued that “though a compromise of a criminal prosecution, made out of court, might be objectionable; such a compromise in court, and made with the approbation of the court, could not be impeached”.⁴³ Indeed, as we have seen, under the common law, the question whether an offence could or could not be compromised was largely determined by the courts.

31 In Singapore, the consent of the court was statutorily provided for under s 199 of the old CPC. The role of the court in jurisdictions where statutory composition is provided for is somewhat different. As previously stated, case law suggests that in making certain offences compoundable, the Legislature has indicated that the court should not ordinarily withhold consent for composition. As Yong CJ stated in

40 Compare this with the composition provisions under the Road Traffic Act (Cap 276, 2004 Rev Ed) and other regulatory statutes, which designate that composition be effected by way of a sum of money being collected.

41 (2010) 13 SCC 540 at 540.

42 See para 13 above.

43 *Elworthy v Bird* [1825] 3 LJOS 190 at 193.

Norzian bin Bintat, in the case of compoundable offences, unless there was an element of public interest or the offence was aggravated, “composition is not only not against public policy, but it is to be *positively encouraged*” [emphasis added].⁴⁴

32 That said, Yong CJ also emphasised that “the court in exercising its discretion whether or not to grant consent to composition is not acting as a rubber stamp”.⁴⁵ Yong CJ highlighted in *Kee Leong Bee v Public Prosecutor*⁴⁶ that the court’s discretion in granting consent was vital to the operation of composition:⁴⁷

Compositions are based on the public policy that, where the interests of the public are not vitally affected, such as in offences which are minor and largely private in nature, the injured party should be allowed to come to a settlement with the person against whom he complains. For offences such as those under s 338 or s 354 of the Penal Code which are potentially grave offences, it is difficult to conceive that Parliament would have regarded them as mere petty wrongs which do not affect the public interest and hence require no judicial sanction before composition is allowed.

33 In *Wong Sin Yee v Public Prosecutor*,⁴⁸ the issue of composition arose before the court had the opportunity to consent. Yong CJ stated that such settlements would not be allowed, as “compositions without the consent of the court ... would undermine the entire basis of criminal jurisprudence ... [and] lead to an inequitable legal system where the rich could avoid criminal sanction by paying off the poor”.⁴⁹

34 However, as noted earlier, s 248 of the 1892 Ordinance originally provided for two categories of compoundable offences, the first of which (comprising the more minor offences) did not require the consent of the court. This system is still in place in India today, under the Indian CrPC. It is thus at least arguable that some offences are so minor and/or private that even the consent of the court is not required for their composition.

35 This idea is supported by the composition provisions in the Road Traffic Act⁵⁰ and in other regulatory statutes, which designate the authority that may compound a particular offence, but, as with the first

44 *Public Prosecutor v Norzian bin Bintat* [1995] 3 SLR(R) 105 at [32].

45 *Public Prosecutor v Norzian bin Bintat* [1995] 3 SLR(R) 105 at [51].

46 [1999] 2 SLR(R) 768.

47 *Kee Leong Bee v Public Prosecutor* [1999] 2 SLR(R) 768 at [20].

48 [2001] 2 SLR(R) 63.

49 *Wong Sin Yee v Public Prosecutor* [2001] 2 SLR(R) 63 at [17].

50 Cap 276, 2004 Rev Ed.

category of offences under the 1892 Ordinance, do not require the consent of the court for composition to be effected.⁵¹

C. *The public interest*

36 The requirement that a compounded offence be private in nature is one that stretches back to the common law. Recall that in *Kier*, it was held that:⁵²

The law will permit a compromise of any offence [where] the injured party might recover damages in an action, but, *if the offence is of a public nature*, no agreement can be valid that is founded on the consideration of stifling a prosecution for it. [emphasis added]

37 Similarly, in *Elworthy*, Leach V-C was of the view that “[g]enerally speaking, the policy of the law does not permit the compromise of indictments, on account of [public interest]”, but assaults were compoundable under the common law as they were “so much *in the nature of private injuries*, rather than of public” [emphasis added].⁵³ Put another way, some offences are so private in nature that their composition would not be against the public interest, whereas other offences have a public element to them such that their composition would be against the public interest.

38 As stated in the preceding Part, case law suggests that offences that are statutorily prescribed as being compoundable are, *prima facie*, private in nature. In *Norzian bin Bintat*, Yong CJ observed of the list of compoundable offences under the CPC that “[a]lmost all of them are minor and largely private in nature”.⁵⁴

39 However, even within the ambit of a particular compoundable offence, there are cases which are more private in nature than others. A simple, non-aggravated assault, for example, would appear to be an offence that is *prima facie* so private in nature that its composition would not be against the public interest. In *E M Barnett v L N Thakkar*,⁵⁵ the Indian courts observed that permission to compound should not be refused in the following situation:

It was a private quarrel between two railway guards and one hit the other, with the result that a tooth was knocked out ... [the accused] had

51 Although note that under s 243 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), the person authorised to compound these offences exercises that power subject to “any general or specific directions of the Public Prosecutor”.
52 (1846) 9 QB 371 at 371.
53 *Elworthy v Bird* [1825] 3 LJOS 190 at 194, *per* Leach V-C.
54 *Public Prosecutor v Norzian bin Bintat* [1995] 3 SLR(R) 105 at [31].
55 1956 CriLJ 755 at [2]; AIR (43) 1956 Nag 161 at 6.

made amendments to the complainant, and the complainant had been fully satisfied.

40 On the other hand, in *Jill Ho*, the court held that the public interest element in maid abuse cases is sufficient to warrant a departure from the general principle that the courts should lean in favour of granting consent for the composition of minor offences.⁵⁶

D. The seriousness of the offence

41 The requirement that a compoundable offence be “private” is also often accompanied by the requirement that it be “minor”. Under the common law, only some misdemeanours could be legally compounded – compounding a felony was always an offence.

42 It is submitted that this requirement falls within the larger requirement that the composition of the offence not be against the public interest – non-minor offences like murder or rape go beyond the private realm, and their composition would not be in the public interest. For similar reasons, the Law Commission of India, in their report, *Compounding of (IPC) Offences*, strongly recommended that voluntarily causing grievous hurt with a dangerous weapon under s 326 of the Indian Penal Code not be made compoundable, as it fell within the category of “offences of a very serious and grave nature which imperil law and order”.⁵⁷

43 As is the case with the public interest requirement, the requirement that a compounded offence be minor has been encapsulated in the list of compoundable offences, virtually all of which are minor. However, as with the public interest requirement, even within the ambit of a particular compoundable offence, some cases are more serious than others and accordingly less meritorious of composition. There is a world of difference between an offence under s 323 of the Penal Code committed by an unplanned punch on the arm resulting in tenderness and one committed by a premeditated attack resulting in fractures, or between an offence under s 354 of the Penal Code committed by a stroke of the hair and one committed by a grope of the groin.

44 In *Jill Ho*, Yong CJ distinguished the facts in that case from an ordinary case of simple hurt under s 323 of the Penal Code in justifying the decision to withhold consent for composition, stating that there were several aggravating factors in the case.⁵⁸

56 *Ho Yean Theng Jill v Public Prosecutor* [2004] 1 SLR(R) 254 at [31].

57 Law Commission of India Report No 237, *Compounding of (IPC) Offences* (2011) 29.

58 *Ho Yean Theng Jill v Public Prosecutor* [2004] 1 SLR(R) 254 at [35].

V. Composition in Singapore after the 2010 legislative reforms

A. *The changes*

45 Under the 2012 Revised Edition of the CPC (“new CPC”), the compoundable offences in the Penal Code are listed in the third column of the Fourth Sched and may be compounded by persons mentioned in that column. Notwithstanding the aforementioned, where investigations have commenced, the offence shall only be compounded with the consent of the Public Prosecutor, on conditions as he may impose. Under s 242 of the new CPC, the Public Prosecutor now also has the power to compound any offence or class of offences as may be prescribed. This added provision was intended to allow the Public Prosecutor to compound offences which do not involve specific victims, such as offences relating to public property.⁵⁹

B. *Vesting the power to consent to composition in the Public Prosecutor*

46 In the parliamentary debates on the changes to the CPC, the Minister for Law, Mr K Shanmugam, gave the following reasons for the transfer of power from the court to the Public Prosecutor:

(a) Since the Public Prosecutor has control and direction of all criminal proceedings, he should also be the one to decide whether composition should be allowed.⁶⁰ This would flow logically from the Public Prosecutor’s prosecutorial discretion.⁶¹

(b) The Public Prosecutor would have taken into account the public interest element in each case in assessing whether the victim should accept composition.⁶²

(c) There is conceptual clarity.⁶³ The role of the Public Prosecutor is to decide when a case should be brought to court and prosecuted and the role of the court is to decide the case, give a verdict based on the facts presented to it and the penalty to be imposed. If these functions are distinct, then it follows that the

59 *Singapore Parliamentary Debates, Official Report* (18 May 2010), vol 87 at col 415 (Mr K Shanmugam, Minister for Law).

60 *Ministry of Law Consultation Paper for Criminal Procedure Code 2008* at p 9.

61 *Singapore Parliamentary Debates, Official Report* (18 May 2010), vol 87 at col 415 (Mr K Shanmugam, Minister for Law).

62 *Ministry of Law Consultation Paper for Criminal Procedure Code 2008* at p 9.

63 *Singapore Parliamentary Debates, Official Report* (18 May 2010), vol 87 at col 573 (Mr K Shanmugam, Minister for Law).

decision of whether the prosecution should be discontinued by way of composition should be exercised by the Public Prosecutor.

(d) To streamline the prosecution process.⁶⁴

47 Non-Constituency Member of Parliament Ms Sylvia Lim argued against the transfer of power with the following comments:⁶⁵

(a) Vesting such powers in the Public Prosecutor would result in loss of transparency since the court's decisions to compound are reported in judgments.

(b) There have been cases in which the Public Prosecutor objected to composition but the court allowed an offence to be compounded.⁶⁶ This showed that there were instances where the court and the Public Prosecutor differed as to what public interest requires. Is the Public Prosecutor in a better position than the court to make the decision?

(c) In an adversarial system, the Public Prosecutor is a party to all criminal cases on the opposite side of the accused. There should be an independent party, like the court, to assess whether composition should be approved.

48 In response, the Minister stated that transparency should be viewed in context.⁶⁷ He stated that the Public Prosecutor makes a whole series of decisions, particularly the decision to charge, and not all decisions should be subject to public scrutiny as that is not the way an efficient system can work; on the other hand, once the matter has proceeded to court, the trial process is for public scrutiny.

C. Conclusion

49 The composition regime has seen some changes over the years. While the regime seems to have been imported without much debate in the early years, it has been the subject of some scrutiny in recent years, especially in the light of the recent amendments. It is envisaged that composition will continue to play an important role in the criminal justice system in the years to come.

64 *Singapore Parliamentary Debates, Official Report* (18 May 2010), vol 87 at col 415 (Mr K Shanmugam, Minister for Law).

65 *Singapore Parliamentary Debates, Official Report* (19 May 2010), vol 87 at col 572 (Ms Sylvia Lim, Non-Constituency Member).

66 *Public Prosecutor v Norzian bin Bintat* [1995] 3 SLR(R) 105 at [52].

67 *Singapore Parliamentary Debates, Official Report* (18 May 2010), vol 87 at col 435 (Mr K Shanmugam, Minister for Law).

ANNEX A
History of composition in Singapore law

S/N	Jurisdiction	Statute	Year	Composition	Remarks
1	Government of India	Criminal Procedure Supreme Court Act	Act 16 of 1852	<i>Not provided for</i>	-
2	Straits Settlements	Criminal Procedure Ordinance	Ordinance V of 1870	<i>Not provided for</i>	Repealed the Indian Act 16 of 1852 due to the enactment of the Penal Code in the Straits Settlements
3			Ordinance VI of 1873		
4		Criminal Procedure Code	Ordinance VII of 1892 <i>(never brought into force)</i>	s 248	Composition limited to the following offences: <ul style="list-style-type: none"> • Uttering words, <i>etc</i>, with deliberate intent to wound the religious feelings of any person (s 298 of the Penal Code) • Causing hurt (ss 323 and 334 of the Penal Code) • Wrongfully restraining or confining any person (ss 341 and 342 of the Penal Code) • Assault or use of criminal force (ss 352, 355 and 358 of the Penal Code) • Unlawful compulsory labour (s 374 of the Penal Code) • Mischief when the only loss or damage caused is loss or damage to a private person (ss 426 and 427 of the Penal Code) • Criminal trespass (s 447 of the Penal Code) • House-trespass (s 448 of the Penal Code) • Criminal breach of contract of service (ss 490, 491 and 492 of the Penal Code) • Enticing or taking away or detaining with a criminal

					<p>intent a married woman (s 498 of the Penal Code)</p> <ul style="list-style-type: none"> • Defamation (s 500 of the Penal Code) • Printing or engraving matter knowing it to be defamatory (s 501 of the Penal Code) • Sale of printed or engraved substance containing defamatory matter knowing it to contain such matter (s 502 of the Penal Code) • Insult intended to provoke a breach of the peace (s 504 of the Penal Code) • Criminal intimidation except when the offence is punishable with imprisonment for seven years (s 506 of the Penal Code) <p>Composition allowed for the following offences <i>only with the consent of the court</i>:</p> <ul style="list-style-type: none"> • Voluntarily causing hurt with a dangerous weapon (s 324 of the Penal Code) • Voluntarily causing grievous hurt on grave and sudden provocation (s 335 of the Penal Code) • Causing hurt by an act which endangers life (s 337 of the Penal Code) • Causing grievous hurt by an act which endangers life (s 338 of the Penal Code)
5			Ordinance XXI of 1900	s 248	Section 325 is added to the list of offences compoundable with the consent of the court.
6			Ord No 121, 1910		-

7			Ord No 121, 1926		Section 324 is removed from the list of compoundable offences.
8			Cap 21, 1936	s 253	
9	Colony of Singapore		Cap 132, 1955	s 242	All compoundable offences now require the consent of the court. Abetment or attempts to commit compoundable offences are now compoundable. Section 324 is made compoundable (again). Section 354 (outrage of modesty) is made compoundable.
10	Republic of Singapore		Cap 113, 1970 Rev Ed	s 189	Sections 324 and 325 are made non-compoundable.
11			Cap 68, 1985 Rev Ed	s 199	Section 334 (voluntarily causing hurt on grave and sudden provocation) is made compoundable.
12			Cap 68, 2012 Rev Ed	ss 241–243	Consent required for composition transferred from the court to the Public Prosecutor (<i>by Criminal Procedure Code 2010 (No 15 of 2010)</i>). Section 337 is split into sub-ss (a) and (b), both of which are compoundable. Section 354 is split into sub-ss (1) and (2), the former of which is compoundable but the latter of which is not. Section 509 (insulting the modesty of a woman) is made compoundable.

ANNEX B
History of composition in Indian law up to 1898

S/N	Jurisdiction	Statute	Year	Composition	Remarks
1	Government of India	Criminal Procedure Supreme Court Act	Act XVI of 1852	<i>Not provided for</i>	-
2	India	Criminal Procedure Code	Act XXV of 1861	s 345	Composition limited to the following offences: <ul style="list-style-type: none"> • Uttering words, <i>etc</i>, with deliberate intent to wound the religious feelings of any person (s 298 of the Penal Code) • Causing hurt (ss 323 and 334 of the Penal Code) • Wrongfully restraining or confining any person (ss 341 and 342 of the Penal Code) • Assault or use of criminal force (ss 352, 355 and 358 of the Penal Code) • Unlawful compulsory labour (s 374 of the Penal Code) • Mischief when the only loss or damage caused is loss or damage to a private person (ss 426 and 427 of the Penal Code) • Criminal trespass (s 447 of the Penal Code) • House-trespass (s 448 of the Penal Code) • Criminal breach of contract of service (ss 490, 491 and 492 of the Penal Code) • Enticing or taking away or detaining with a criminal intent a married woman (s 498 of the Penal Code) • Adultery (s 497 of the Penal Code)
3			Act X of 1872		
4			Act X of 1882		

					<ul style="list-style-type: none">• Defamation (s 500 of the Penal Code)• Printing or engraving matter knowing it to be defamatory (s 501 of the Penal Code)• Sale of printed or engraved substance containing defamatory matter knowing it to contain such matter (s 502 of the Penal Code)• Insult intended to provoke a breach of the peace (s 504 of the Penal Code)• Criminal intimidation except when the offence is punishable with imprisonment for seven years (s 506 of the Penal Code) <p>Offences that require the permission of the court to be compounded:</p> <ul style="list-style-type: none">• Voluntarily causing hurt (s 324 of the Penal Code)• Voluntarily causing grievous hurt (s 325 of the Penal Code)• Voluntarily causing grievous hurt upon provocation (s 335 of the Penal Code)• Causing hurt by an act which endangers life (s 337 of the Penal Code)• Causing grievous hurt by an act which endangers life (s 338 of the Penal Code)
5		Code of Criminal Procedure	Act V of 1898	s 345	-
...	