

PRESS RELEASE

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OPENING OF THE LEGAL YEAR 2013
SPEECH OF ATTORNEY-GENERAL
STEVEN CHONG S.C.

May it please Your Honours, Chief Justice, Judges of Appeal and Judges of the Supreme Court:

1 2012 was a momentous year of challenge and change in Singapore's legal landscape. The Opening of the Legal Year 2013 marks a first in Singapore's post-independence legal history, as the Chief Justice, the Attorney-General and the President of the Law Society will all be making their maiden addresses in their respective offices.

2 We bade farewell to former Chief Justice Chan Sek Keong, who retired after devoting mind, body and spirit to a stellar career in the law. In his years as an advocate and solicitor, Judge, Attorney-General and Chief Justice, CJ Chan made innumerable and incomparable contributions to the development of Singapore's legal system. He served the people with humility, conviction and distinction. I recall his words of encouragement when I was invited to take up the office of Attorney-General. He said, "Steven, it is a difficult job but I think you can do it." I shall endeavour to live up to the high standards set by my distinguished predecessors. CJ Chan will be widely remembered as the Chief with an eye for progress, a mind for jurisprudence, and a heart for the common man. He will be keenly missed. I wish him a fulfilling retirement.

Ushering in the new Chief Justice

3 Much as CJ Chan will be dearly missed, it is with immense pleasure that we now welcome and congratulate your Honour the Chief Justice as you take on the highest judicial office of the land.

4 Your Honour was appointed the Republic's fourth Chief Justice on 6 November 2012, an appointment that has been warmly welcomed and received by the Bench, the Bar, my Chambers, academia and the wider legal profession. Before taking up public office, your Honour had an illustrious career in private practice, first at Shook Lin & Bok in 1987, and subsequently at other local law firms such as WongPartnership and Rajah & Tann between 1991 and 2003. Your Honour also spent some time practising law in the foreign firm Jones Day until April 2006 when you were appointed Judicial Commissioner. In 2008, your Honour was appointed senior counsel and prior to your appointment on 1 October 2010 as Attorney-General, you also held the position of Managing Partner at Rajah & Tann. During your time in practice, you were widely recognised as a leading light of the Singapore Bar. You have been described as Singapore's leading arbitration practitioner, working tirelessly to develop Singapore as an international arbitration hub. I have had the privilege of being your colleague for a number of years and witnessed first-hand your Honour's razor sharp legal mind and phenomenal drive. You are widely respected as an intellectual giant with a heart - always willing to listen, always willing to help in every way you can. No doubt, that quality will manifest itself in your role as Chief Justice.

5 In 2006, your Honour served the nation as Judicial Commissioner for a year, presiding over several prominent criminal and civil cases in the High Court. Your judgments—at once scholarly and pragmatic—reflected a bold independence of thought. In *Hong Leong Singapore Finance Limited v United Overseas Bank Limited*, for instance, having clarified the law on proprietary estoppel, you fashioned a creative and yet effective remedy that neither party had originally sought. Your judgment in the case of *Public Prosecutor v Lew Syn Pau*, which involved the criminal prosecution of two directors under the Companies Act, further demonstrated your capacity to master

complex issues of corporate and criminal law and reflected your experience as an international lawyer in your analysis of jurisprudence from Australia and South Africa.

6 In the two years that your Honour was at the helm of the Attorney-General's Chambers, you wrought sweeping reforms. As head of AGC, you modernised Chambers, streamlining work processes and initiating changes in the management of Chambers. You led efforts to build up an office dedicated to public service.

7 As the Government's chief legal adviser, your contributions were nothing short of outstanding. You oversaw the advisory and drafting work flowing from special events such as the General and Presidential Elections.

8 As Public Prosecutor, you discharged your responsibility for instituting and conducting prosecutions without fear or favour, ill will or affection. You presided over the implementation of the new Criminal Procedure Code, which effected significant changes to our criminal procedure, including the introduction of a structured Criminal Case Disclosure Procedure and a community-based sentencing regime. You spearheaded dialogue and collaborative efforts between the Prosecution and the Criminal Bar. The common objective of these initiatives was to improve access to, as well as the administration of, criminal justice. These are initiatives that I intend to build on during my tenure as Public Prosecutor. In short, as your successor in the office, I am the principal beneficiary of your legacy.

9 Chief Justice, your appointment as head of the judiciary heralds a new era in Singapore's legal history. You bring to this office energy, vision, passion, and a steadfast commitment to fairness, justice and the rule of law. We look forward to great things to come.

Taking over the reins of AGC

10 Your Honour would recall that in your maiden address as Attorney-General at the Opening of the Legal Year 2011, you began with a reference to your predecessor

Professor Walter Woon's analogy of a durian farmer, who "plants the seeds [but] may not always be around for the harvest". You saw yourself as harvesting the fruit from the seeds planted by the previous Attorney-General. Now, what an apt reference to the king of fruits that was, given the thorny issues which my Chambers have to deal with everyday. I have taken office for six months. And in those six months the breadth of issues that I am called upon to face every day is unparalleled. My paramount priority, however, is to ensure stability and continuity, for I am sensitive to the number of leadership changes my Chambers have experienced over the past few years. The seeds of many of the projects which I intend to pursue to fruition this year were planted by your Honour. I now propose to review the progress made since and outline my plans for the coming year.

As Public Prosecutor

11 I start first with the progress and challenges accompanying my role as Public Prosecutor.

12 Under your Honour's stewardship, AGC canvassed various reforms in respect of the administration of criminal justice. Last year, my Chambers embarked on numerous joint initiatives with the Criminal Bar. Your Honour will no doubt remember the joint Code of Practice, which your Honour addressed this time last year. The proposal was for the Prosecution and the Bar to jointly issue a Code of Practice setting out best practices in the conduct of criminal cases. My Chambers and the Bar have had intensive discussions on an extensive range of issues in this respect, including the disclosure of documents, interviewing witnesses, and addresses on sentences. I am pleased to announce that we are putting the finishing touches to the Code and will be launching it very shortly. This Code is not intended to lay down any rule of law. However, I am confident that prosecutors and defence counsel alike will adhere to the standards laid out in the Code in conducting their respective cases. I strongly believe that the joint Code of Practice will mark a watershed in the relationship between the Bar and the Prosecution and will enhance and promote dignity in the conduct of criminal cases.

13 Second, my Chambers have continued the work in examining the various diversionary measures that should be employed in respect of specific categories of offenders such as youthful offenders, intellectually disabled or mentally disordered offenders and adult offenders who have committed minor infringements of the law. We recognise that it may be in both the public as well as the offenders' interests for them to be dealt with outside the mainstream criminal justice processes. In order to target youthful offenders, in partnership with the Ministry of Education, the Guidance Programme is being enhanced and restructured to include follow-up mentoring. A triage has been implemented at a pilot phase in various police land divisions in this regard. With respect to intellectually disabled or mentally disordered offenders, my Chambers and our partners are working with Susan Hayes, a renowned psychologist from Australia, to modify the test that she had devised for the identification of such offenders to suit local circumstances. Having completed the phases of calibration and validation of this modified test, the test is now being carried out as a pilot in some of the police land divisions to assess the viability of institutionalising this test. As a sign of our commitment, AGC has underwritten the cost of this pilot. The test will enable investigation officers to identify such intellectually disabled or mentally disordered offenders in order to place them on suitable rehabilitative programmes without putting them through the rigours of the mainstream criminal justice processes. AGC is also currently looking into diversionary measures better suited to address the conduct of adult petty offenders whose infractions of the law are very minor. It may well be far more in the public as well as their interest for such adult offenders to be reformed *via* a model of counselling and rehabilitation than a criminal conviction.

14 Third, on a project close to your Honour's heart when you were Attorney-General, a framework for plea bargaining, the concept paper accompanied by a draft Bill that AGC has prepared is under consideration by the Ministry of Law. This was the result of several rounds of meetings with relevant stakeholders, and study trips to the UK, Australia and various states in the United States. In coming up with the concept paper for plea negotiation, officers from my Chambers had reworked the lessons from

the plea bargaining framework employed in the foreign jurisdictions that they had studied in order to cater to the particular features of our local criminal justice system.

15 Following the resounding success of the inaugural Criminal Law Conference 2011, officers from my Chambers organised themselves into working groups to look in greater detail into various issues of interest that arose out of the lively discussions at the conference. These include topics as diverse as enhancing the role of expert witnesses in criminal proceedings, reconsidering the eligibility criteria for community sentencing options, enhancing the reliability of statement recording, protection of the legal professional privilege in documents seized in connection with criminal proceedings and calibration of the prosecutorial response to financial crimes. The papers prepared by these working groups are currently under serious consideration by my Senior Management, as the work of these groups may have far-reaching and significant consequences for the criminal justice landscape in Singapore.

16 We will continue to have informal dialogues and feedback sessions to strengthen collaboration between my Chambers and the Bar in the coming year. Last August saw criminal law practitioners, judicial officers and prosecutors attending the inaugural Criminal Justice Dialogue session, in which the Minister for Law Mr K Shanmugam, then Senior Minister of State for Law designate Ms Indranee Rajah and I participated. I was heartened to find the dialogue lively and dynamic. Views on a range of topics were aired with much candour. As a result of the feedback provided at this dialogue, AGC is examining its case allocation system with a view to restructuring and streamlining it. I must emphasise that my Chambers welcome suggestions and feedback on how the administration of justice can be improved. You have my assurance that we will act on useful constructive feedback.

17 Another aspect of criminal justice which I feel strongly about is the need to improve and refine the working relationship between AGC and the enforcement agencies. I envision a prosecution service which is modern in outlook, progressive in practice, and held in high regard for its fairness and strong commitment to the rule of law. Efficient investigation and timely disposal of cases is an integral part of this

vision. Public confidence is vital. To this end, my Chambers have launched an initiative to embed DPPs in enforcement agencies. This move aims to bolster the investigative quality of significant cases in the interest of the public and that of the suspects, while shortening periods of remand and expediting the prosecution of cases. Prosecutors will be stationed at the enforcement agencies to lend immediate guidance to investigating officers, for instance, regarding the type of forensic evidence which needs to be gathered, and whether statements taken are adequate for the purposes of prosecution. Presently, my officers are working on rolling out a pilot project to test these ideas, with implementation targeted in the first half of this year.

18 In the administration of justice, fairness is both the means and the end. On the whole, 2012 was an important year for criminal practice. We pursued reforms. We enhanced transparency. We stressed modernisation and cooperation. In all we did, inputs from the legal profession and the wider community have been invaluable. I look forward to the continued participation of all members of the legal fraternity and hope that they – be they judges, practitioners or academics – will all continue to play a part in reforming criminal practice in Singapore.

As the Government's Chief Legal Adviser and Counsel

19 I now turn to my role as the Government's chief legal adviser and counsel. As the Attorney-General, my vision is for AGC to be known for its expertise and experience in handling Government-related legal affairs. To that end, I have initiated an ambitious project to develop the expertise within Civil Division to advise and to represent the Government on all dispute-related work. Currently, some litigation work involving ministries is outsourced to private law firms because Civil Division does not have the capacity and resources to deal with them. To ensure that a whole of government perspective is adopted with respect to the conduct of litigation, it is essential for government lawyers to handle all government-related litigation. This initiative will help develop my talent pool within Chambers, which will in turn facilitate postings of Legal Service Officers to the Ministries, provide content to the

specialist track in the new HR policy of the Legal Service, and most importantly, to develop my next generation of advocates.

20 In tandem with this project, I have also made some changes to the structure of the Civil Division. Singapore has an informal divided profession and the structure of most law firms reflect that split between litigation and advisory work. In that spirit, I have reorganised the Civil Division in like fashion, in order to develop my officers in the Civil Division with specialised expertise in litigation or advisory work. I believe this split will allow AGC to better meet the Government's growing demand for legal services amidst the other challenges it faces today. Such a split will also allow my training unit to structure and tailor training efforts to suit the specific needs of individual officers. It will also better prepare the Civil Division to cope with the increased load of litigation cases as seen in the past year with significant matters such as the Committee of Inquiry on the disruption to MRT train services and the constitutional challenges as regards the Hougang by-election and the IMF Loan.

21 On the international law front, lawyers from the International Affairs Division ("IAD") of my Chambers continue to play key or leading roles in a large number of international negotiations. These included the successfully concluded negotiations on a free trade agreement with the European Union, for an ASEAN Human Rights Declaration and at the Doha Climate Change Conference as well as ongoing maritime boundary negotiations with Indonesia and the complex 11-party free trade negotiation known as the Transpacific Partnership.

22 With Singapore concluding more and more international treaties, IAD is increasingly relied on by the Government to advise on the compliance of policy proposals with Singapore's international obligations and, conversely, on whether Singapore's treaty partners have fulfilled their legal obligations to Singapore. In this context, one key trend approaching us over the horizon is the growing importance and prevalence of international dispute settlement, since many free trade agreements and bilateral investment agreements incorporate compulsory dispute settlement provisions. The building up of expertise in this area is another priority for my Chambers. In this

regard, I intend to expose my officers to more international dispute settlement work in order for them to gain practical experience and expertise in such matters.

As Legislative Draftsman

23 Further, I would like to make specific mention about my Chambers' role as the nation's central legislative drafting office. This is an extremely important role which I hold in high regard. The Legislation and Law Reform Division ("LLRD") is one of the least profiled offices of my Chambers. Yet, it plays a critical role in the administration of justice, for it is where policies become translated and subsequently embodied in the written law.

24 Putting policy to page is very challenging work. To be effective, legislation must be properly drafted, clearly expressed and simple to apply. It must also be consistent with the existing body of statute law. At its core, it must give effect to the intentions of the policy-makers, anticipate difficulties arising and, finally, to draft suitable provisions to address them. The draftsman's greatest skill lies in applying logic and language, structure and creativity, to policy. I am pleased that my draftsmen have delivered some remarkable pieces of legislation in the past year. My Chambers is working with the Ministry of Law on codifying and restating the law on contempt of court in a single Act of Parliament. The proposed Administration of Justice (Protection) Bill had a long period of gestation. It was initiated by CJ Chan when he was Attorney-General and was so aptly named at his suggestion. Over the years, this work benefitted from substantive inputs from my predecessors, Professor Walter Woon and your Honour the Chief Justice. Also for the first time, a legislative regime for the protection of personal data by organisations and a "Do Not Call Register" has been enacted. A comprehensive review of the Casino Control Act was also conducted by various regulatory agencies in close consultation with my Chambers, leading to legislative amendments to address problem gambling and augment regulatory controls.

25 My officers also worked closely with various ministries and agencies in reviewing the mandatory death penalty and drafting the implementing legislation. This

reform attracted considerable public attention and debate, and represents a significant milestone in Singapore's criminal laws. The amendments necessitated a rigorous cycle of drafting, analysis, comments, amendments, further instructions and yet further amendments. The challenge was to produce legislation which is forward looking and yet preserves the bedrock of the existing Penal Code and the Misuse of Drugs Act.

26 2012 witnessed the LLRD's launch of the inaugural Law Reform Essay Competition in conjunction with the Singapore Management University Law School. The aim of the Competition was to spark interest and awareness of law reform work among law students, while giving them an opportunity to suggest reforms to our laws and make a difference to society. The inaugural run of the Competition attracted some very interesting proposals for reforms in the area of maintenance of parents and the protection of the elderly from neglect and abuse. AGC has since compiled and forwarded a list of the more feasible proposals to the ministries to consider in the next round of legislative review. This competition will not only provide another avenue for my Chambers to recruit suitable candidates to join LLRD but will also provide law students with unique opportunities to make actual contributions to law reform in Singapore.

27 Finally, together with the Ministry of Law, we are in the process of institutionalising the formal engagement of law academics as a resource for substantive and major law reform work. This will enable my Chambers to tap on the expertise of academics and at the same time give them due recognition for their contributions.

Training and Career Development

28 I cannot over-emphasise how important training is to my Chambers. As with last year, my Chambers will continue to invest significantly in training efforts this year. We are refining the training roadmap which was instituted under your Honour's watch as Attorney-General. Workshops and training sessions conducted by eminent practitioners including local Senior Counsel and Queens' Counsel from England have become staple fare for my officers. In the months of October and November last year

alone, we had several QCs train our prosecutors and officers from the Civil Division on various aspects of advocacy, including the use of expert witnesses, and the framing of opening and closing arguments. We continue to secure overseas attachment stints in the UK, Australia, Hong Kong and the United States for my officers with esteemed organisations such as the New South Wales Crown Solicitor's Office, several sets of Chambers in London, the Hong Kong Department of Justice, and the UK Office of the Parliamentary Counsel, the Serious Fraud Office and the Treasury Solicitor's Office, to name a few. I believe these initiatives will broaden the horizons of my officers and allow them to learn from the very best worldwide.

29 Nowhere else is this emphasis on training more evident than in the International Affairs Division. IAD constantly identifies international courses to hone the skills and knowledge of the IAD officers. This includes sending them on courses organised by the World Trade Institute, the EU Institute on human rights law, and the Hague Academy of International Law. As the only office specialising in public international law in Singapore, it behoves my Chambers to continually explore opportunities for the training and development of my officers in IAD in order to provide effective advice and the finest representation of the Singapore Government in the international arena.

30 Finally, I should add a few words about Legal Service Officers who are posted to various Ministries and Statutory Boards. These officers provide critical legal support in managing a broad range of issues in public life. Following your lead when you were Attorney-General, I have continued the informal forum on a regular basis to engage these officers so as to better understand the nature of their work, their challenges and the support they require from my Chambers in the discharge of their duties and responsibilities. To further enhance this engagement and to further develop the talent pool particularly within the Civil Division, Legal Service Officers in six Ministries, *ie*, MCI, MCCY, MSF, MOM, MOE and MOH, will be gazetted as State Counsel and be regarded as extended branches of the Civil Division. I believe this scheme will give these Legal Service Officers greater access to the resources of my Chambers and enable them and my Chambers to better serve the legal requirements of the various Ministries.

Conclusion

31 Your Honours, we live in increasingly challenging times. Yet, in such times, we can certainly take pride in the fact that the rule of law remains a firm pillar of our society. With bold strides forward and an unwavering commitment to the rule of law, I am confident that Singapore's legal system is well-placed to address the changing norms of our society. Vision, innovation and true grit will turn unprecedented challenges into equally unprecedented opportunities.

32 One such challenge for my Chambers was the need to move out of our current premises at The Adelphi. I am pleased to inform that this challenge has resolved into an unprecedented opportunity for my Chambers. After an intensive search for suitable new premises, which your Honour will surely have intimate knowledge of, my Chambers will be moving to 1 Upper Pickering Street in March this year. It is interesting to see how the tables have turned, as between your Honour and me. In 2009, when I joined the Bench as a Judicial Commissioner, I had laid down the foundation for the imminent move of Rajah & Tann to its new premises at Straits Trading Building, a move which your Honour oversaw as the managing partner of the firm. In 2013, it is my turn to oversee the move of AGC, a move made possible only by your Honour's arduous efforts when you were the Attorney-General.

33 It now remains for me to close with some good wishes. First, I would like to congratulate my friend, Mr Lok Vi Ming SC on his election as the President of the Law Society. I will, however, avoid the debate as to who has the most difficult job in the profession. Suffice it to say that Mr Lok has the wherewithal to meet the challenges of the profession which lie ahead. I wish him well in his new office. Second, I would like to extend my warmest congratulations to those who will soon be appointed Senior Counsel. You have proved yourself worthy to join this esteemed rank of the profession. To you I have this to say: Lead the profession with exemplary passion and serve the community with compassion. I wish you all the very best.

34 On behalf of my colleagues in my Chambers and the Legal Service, I take this opportunity to pledge our unstinting support and assistance in your task in the fair and efficient administration of justice in Singapore. I extend our good wishes to your Honour the Chief Justice, Judges and members of the legal community, for good health and every success in the coming year.

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