

International Conference of Legal Regulators 2019 (4-5 September 2019)

Day 1, Session 3, Workshop C2: Outside the Law Office: Where Do the Boundaries of Regulation Lie?

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Presentation Handout

A. Key legislation pertaining to professional ethics in Singapore

- Primary legislation: Legal Profession Act (Cap. 161, 2009 Rev. Ed.) [**“LPA”**]
- Secondary legislation: Legal Profession (Professional Conduct) Rules 2015 (GN No S706/2015) [**“PCR”**]
- Singapore legislation can be found at Singapore Statutes Online (<https://sso.agc.gov.sg/Index>).

B. Brief overview of ethical regime in the Singapore legal profession

- The Singapore legal profession is a fused profession. Lawyers admitted to the Singapore Bar are known as advocates and solicitors. To practise law in Singapore, advocates and solicitors must hold a valid practising certificate issued by the Supreme Court of Singapore.
- Ethical rules are set out in the PCR, while section 83(2) of the LPA enumerates 10 grounds of professional misconduct (the breach of any would have disciplinary consequences). One of the grounds pertains to the breach of any provision of the PCR. The disciplinary process is administered by the Law Society of Singapore and comes under the ultimate oversight of the Supreme Court of Singapore.
- The PCR adopts a hybrid approach based on general principles and specific rules. In particular, certain general universally accepted principles and rules of conduct in Part 2 of the PCR apply to all lawyers practising in Singapore, including foreign-qualified lawyers. Part 3 of the PCR contains rules applicable to the practice of Singapore law and practice in the Singapore courts, while Part 4 regulates the management and operation of law practices. Part 5 of the PCR deals with touting and publicity. In many parts of the PCR, there are also rule-specific principles, as distinguished from the general universally accepted principles found in Part 2 of the PCR.
- The Advisory Committee of the Professional Conduct Council (**“Advisory Committee”**) gives guidance on ethical queries by both Singapore-qualified lawyers and foreign-qualified lawyers.

C. Separate business interests

- In Singapore, the issue of separate business interests arises in two contexts: (a) where the lawyer carries on a trade, business or calling that is outside the profession of law (the **“Outside Occupation Rule”**); and (b) where the lawyer accepts an executive appointment in a business (the **“Executive Appointment Rule”**).
- The Outside Occupation Rule is manifested in two similar provisions: (i) section 83(2)(i) of the LPA (prohibits an outside occupation that “detracts from the profession of law or is in any way incompatible with it”); and (ii) rule 38(a) of the PCR (prohibits an outside occupation that “derogates from the dignity of the legal profession”). Note that rule 38(a) is found in Part 5 of the PCR, where the rule-specific principle (rule 37) emphasises the importance of the “dignity and standing of the legal profession”.
- In one case, a Disciplinary Tribunal (**“DT”**) found that a lawyer who entered into a consultancy agreement to promote the sales of smallpox vaccines and to conduct lobbying and networking activities for a bio-pharmaceutical company was not in breach of section 83(2)(i) of the LPA, as such activities were not “unsavoury” or “morally reprehensible”: *The Law Society of Singapore v Ong Teck Ghee* [2014] SGGT 7. The DT also observed that the lawyer’s firm could engage in another business so long as the primary business of the law firm was, as required under the LPA, the supply of legal services.
- The Outside Occupation Rule raises at least two issues: (1) what detracts or derogates from, or is incompatible with, the profession of law is contested, “as it invites a broad spectrum of views for which it may be difficult to obtain general consensus within the legal profession” (Alvin Chen &

Helena Whalen-Bridge, *Understanding Lawyers' Ethics in Singapore* (2016) at [10.22]); (2) a related point is whether what is considered an impermissible outside occupation has to be updated from time to time, and if so, who should decide as there is no express whitelist or blacklist?.

- The Executive Appointment Rule is much more complex with many scenarios, exemptions and conditions. It is found in rule 34 of the PCR (Part 3) and must be read together with the (only) 4 Schedules to the PCR. There is no rule-specific principle for rule 34. Generally, a lawyer cannot accept an executive appointment in certain types of businesses e.g. if it is likely to unfairly attract business in the practice of law (rule 34(1)(c)) or which materially interferes with the lawyer's primary occupation of practising as a lawyer (rule 34(1)(b)(i)). Issues of what constitutes "material interference" and "primary occupation" commonly arise. For example, the Advisory Committee has given guidance that a lawyer cannot concurrently be appointed as an in-house counsel or as a full-time consultant with a company (Law Society's *Professional Ethics Digest 2019*, Illustrations 20 and 24).
- A distinction applies to business entities that provide law-related services (executive appointment is permitted) and those that do not provide such services (executive appointment is permitted subject to stringent conditions set out in the Second Schedule). Exemptions are granted for executive appointments held in certain institutions e.g. universities.
- The Executive Appointment Rule overlaps with the Outside Occupation Rule in one aspect: a lawyer cannot accept an executive appointment in a business that detracts from, is incompatible with, or derogates from the dignity of, the legal profession (rule 34(1)(a)).

D. Social media

- In Singapore, the use of social media by lawyers is regulated, firstly, from a publicity/advertising perspective under the PCR e.g. it must not (i) diminish public confidence in the legal profession or otherwise bring the legal profession into dispute (rule 44(1)(a)); or (ii) reasonably be regarded as being misleading, deceptive, inaccurate, false or unbecoming the dignity of the legal profession (rule 44(1)(b)).
- Secondly, in a litigation context, rule 13(6) of the PCR prohibits a lawyer from publishing, or taking steps to facilitate the publication of, any material concerning any proceedings which: (a) amounts to a contempt of court; or (b) is calculated to interfere with the fair trial of a case or to prejudice the administration of justice. This rule flows from the rule-specific principles in rule 13(1) requiring lawyers to behave respectfully before the court and to conduct their case consistent with the standing, dignity and authority of the court.
- Thirdly, the Council of the Law Society of Singapore had issued a binding Practice Direction ("PD") on social media posts, recognizing that lawyers have on occasions shared "facets of their professional life with third parties or the public via websites, blogs, social media or social messaging platforms" (Practice Direction 6.1.1). The PD cautions lawyers to "exercise proper discretion in such circumstances and to refrain from making inappropriate comments, improper disclosures or inaccurate statements".
- Examples of inappropriate comments or improper disclosures include (but are not limited to) posts and/or comments: (a) in relation to on-going proceedings; (b) about clients, judges, opposing party and/or opposing counsel; (c) which disclose confidential information/personal data obtained from clients, judges, opposing party and/or opposing counsel; and (d) which contain photographs which disclose confidential information/personal data or parts of documents/files relating to a client's matter. Lawyers are also advised about "the risk of further dissemination, decontextualisation or distortion by third parties or the public" and to avoid: (1) comments that may prejudice matters *sub judice* or that may be in contempt of court (these now come under the Administration of Justice (Protection) Act 2016); and (2) adverse remarks on the conduct or character of the opposing party.
- Lawyers have been disciplined for making statements in blog or social media posts that were held to be unbecoming an advocate and solicitor: see e.g. *The Law Society of Singapore v Chia Ti Lik* [2011] SDGT 4.
