



SINGAPORE

by:

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BASELINE REPORT: SINGAPORE¹

SNAPSHOT BOX

Number of Multinational Business Enterprises operating in the country	There were approximately 160,000 enterprises in Singapore in 2011, of which about 24,000 or 15% were majority foreign-owned enterprises. ²																				
Number of Micro, Small and Medium Business Enterprises operating in the country per 1,000 people	34 869 [2007] ³																				
Number of State-owned Enterprises and the industries in which they operate	The exact figure is unknown, but estimated to make up approx. 50% of Singaporean businesses. Industries range from manufacturing, finance, transportation, trading, shipbuilding and services. ⁴																				
Flow of Foreign Direct Investment from 2008 to 2012 (or other recent 3 to 5 year range)	<p>FDI Inflows (Millions of US Dollars)⁵</p> <table border="1"> <thead> <tr> <th>2007</th> <th>2008</th> <th>2009</th> <th>2010</th> <th>2011</th> </tr> </thead> <tbody> <tr> <td>376,980</td> <td>412,724</td> <td>502,071</td> <td>502,071</td> <td>526,860</td> </tr> </tbody> </table> <p>FDI Outflows (Millions of US Dollars)⁶</p> <table border="1"> <thead> <tr> <th>2007</th> <th>2008</th> <th>2009</th> <th>2010</th> <th>2011</th> </tr> </thead> <tbody> <tr> <td>256,960</td> <td>252,567</td> <td>299,955</td> <td>331,455</td> <td>337,031</td> </tr> </tbody> </table>	2007	2008	2009	2010	2011	376,980	412,724	502,071	502,071	526,860	2007	2008	2009	2010	2011	256,960	252,567	299,955	331,455	337,031
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1 The author is a Researcher on Governance & Human Rights at Singapore Institute of International Affairs (SIIA). Special thanks to Ms Jolyn Ang, a rising fourth year student at the National University of Singapore, Faculty of Law, and Ms Natalie Koh, Intern at SIIA, who provided valuable legal research and input.

2 Foreign owned enterprises are those with less than 50% local equity

3 Singapore Department of Statistics, at <http://www.singstat.gov.sg/pubn/business/sme2007.pdf>, accessed 24 Jun 2012.

4 Carlos D Ramirez & Tan Ling Hui, 'Singapore Inc vs. the Private Sector: Are Government Linked Companies Different?', IMF Working Paper (2003), at <http://www.imf.org/external/pubs/ft/wp/2003/wp03156.pdf>, accessed 24 Jun 2012.

5 Singapore Department of Statistics, 'Foreign Direct Investment in Singapore by Country/Region, 2007–2011,' at <http://www.singstat.gov.sg/stats/themes/economy/investment.html>, accessed 13 Feb 2013.

6 Singapore Department of Statistics, 'Singapore's Total Direct Investment Abroad by Country/Region, 2007–2011' at <http://www.singstat.gov.sg/stats/themes/economy/investment.html>, accessed 13 Feb 2013.

<p>Main industries in the country</p>	<p>International banking, trade finance, maritime finance, insurance, treasury operations, asset and wealth management, electronics, chemicals, pharmaceuticals, oil drilling equipment, petroleum refining, rubber processing and rubber products, processed food and beverages, ship repair, offshore platform construction, life sciences, entrepot trade.⁷</p>
<p>Number of cases involving business-related human rights violations reported to (i) NHRIs, (ii) other national human rights bodies (e.g. ombudsmen), and/or (iii) international human rights bodies</p>	<p>There appear to be none – no NHRI or any other national human rights body exists and Singapore is not party to the complaints mechanisms of the two international treaties it has ratified, the International Convention on the Rights of the Child, and the International Convention on All Forms of Discrimination Against Women.⁸ The Universal Periodic Review of Singapore, conducted in 2011 also did not reveal human rights violations involving business.</p>
<p>Have the Framework and/or the Guiding Principles been translated into the country's languages and published in the country?</p>	<p>No. English is one of Singapore's 4 official languages and the administrative language of the country.</p>

Overview of the country's business and human rights landscape

Ranked the world's easiest place to do business, first in the world as the city with the best investment potential as well as the most transparent country in Asia⁹, it is easy to see why companies thrive in Singapore. This report examines the ability of Singapore to protect its inhabitants against human rights violations by corporate enterprises, and identify areas where additional research is necessary. With an ideal environment for business, Singapore is well placed to implement business and human rights principles.

Singapore is a leading provider of services such as international banking, trade finance, maritime finance, insurance, treasury operations, and asset and wealth management within the region, and the fourth largest foreign exchange trading centre in the world.

⁷ Singapore Economic Development Board, Industries, at http://www.edb.gov.sg/edb/sg/en_uk/index/industry_sectors.html, accessed 20 April 2012.

⁸ University of Minnesota Human Rights Library. *Ratification of Human Rights Treaties – Singapore*, at <http://www1.umn.edu/humanrts/research/ratification-singapore.html>, accessed 24 June 2012.

⁹ Economic Development Board, Singapore Rankings, at http://www.edb.gov.sg/edb/sg/en_uk/index/why_singapore/singapore_rankings.html#rank_chart, accessed 27 May 2012.⁹ Singapore Institute of International Affairs, Stakeholder's Universal Periodic Review Submission to the UN Human Rights Council, May 2011, 2, at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSGStakeholdersInfoS11.aspx>, accessed 12 Feb 2013.

Overview of the country's business and human rights landscape

When it comes to human rights in Singapore, by many accounts, the country has done well in promoting the rule of law, and preventing and combating corruption. However, Singapore does not fare particularly well in terms of internationally recognised civil, political and minority rights.¹⁰

Key human rights concerns include a low level of accession to and ratification of international human rights law conventions. Singapore has not for example, acceded to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of Racial Discrimination.¹¹ Despite limitations on media freedom, its civil society has grown increasingly vocal on rights issues over the past few years. Following the general elections in 2011, online media has become a space for greater discourse and the government is making increasing efforts to appear more transparent and inclusive.¹²

At the regional level, Singapore is an active member of the Association of South East Asian Nations (ASEAN) and helped draft and is now party to the 2007 ASEAN Charter which states, inter alia, that members should adhere to 'principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms.'¹³ The Charter also created an ASEAN Inter-Governmental Commission of Human Rights ('AICHR') designed to 'promote and protect human rights and the fundamental freedoms of the peoples of ASEAN.'¹⁴ On 18 November 2012, Singapore joined its other ASEAN partners in unanimously endorsing the ASEAN Declaration on Human Rights.

In the field of business and human rights, basic concerns include labour rights of migrant workers (especially those of foreign domestic workers and unskilled or low-skilled foreign workers)¹⁵ and sexual harassment.¹⁶ Singapore has recently named leader of AICHR's first study on Corporate Social Responsibility (CSR)¹⁷ & human rights.

10 Singapore Institute of International Affairs, Stakeholder's Universal Periodic Review Submission to the UN Human Rights Council, May 2011, 2, at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSGStakeholdersInfoS11.aspx>, accessed 12 Feb 2013.

11 CEDAW Committee, Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1, 2.

12 Wong Chun Han, 'Ruling Party Suffers Blow in Singapore By-Election,' Wall Street Journal, at <http://online.wsj.com/article/SB10001424127887323539804578266192267043164.html>, accessed 28 January 2013.

13 ASEAN Charter, Article 1(7).

14 Ibid., Articles 1(7) & 14.

15 CEDAW Committee, Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1, 10.

16 According to a 2008 NGO survey on workplace sexual harassment of both men and women, about 214 of the 500 respondents were women who had experienced sexual harassment in the workplace. HRRRC Baseline Study on Women and Children Study, citing Association of Women for Action and Research (AWARE) Research Study on Workplace Sexual Harassment, 2008.

17 UN General Assembly, Report of the Working Group on Human Rights and Transnational Corporations and Other Business Enterprises, at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/459/11/PDF/N1245911.pdf?OpenElement>

I. HOW HAS THE STATE REACTED TO THE UN ‘PROTECT, RESPECT AND REMEDY’ FRAMEWORK (‘FRAMEWORK’)?

The State has not directly responded to the Framework in an official capacity.

However, former Singapore Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR) Richard Magnus expressed support for the Ruggie Principles on Business and Human Rights in a letter to Professor Ruggie in May 2011.¹⁸ Magnus, as the Singapore government’s representative to AICHR, may legitimately be seen to represent the views of the State.¹⁹

The Framework and/or the Guiding Principles have not been translated into three all of Singapore’s four official languages: Chinese, Malay and Tamil. However, as English is an official language, and more important, the administrative language in Singapore, the lack of translations has not been an impediment to its dissemination or implementation.

II. IS THE STATE DUTY TO PROTECT AGAINST HUMAN RIGHTS ABUSES BY THIRD PARTIES, INCLUDING BUSINESSES (‘STATE DUTY TO PROTECT’), RECOGNIZED IN THE COUNTRY’S DOMESTIC LEGAL SYSTEM?

1. Do any of the State’s domestic laws, including the Constitution / basic law of the State, provide a basis for a State Duty to Protect?

18 Richard Magnus to John Ruggie, at <http://www.business-humanrights.org/media/documents/ruggie/singapore-letter-to-ruggie-re-guiding-principles-23-may-2011.pdf>, accessed 11 Apr 2012.

19 Most other representatives to the ASEAN Inter-governmental Human Rights Commission, with the exception of Indonesia, were also selected by their governments.

Singapore operates a common law system, with a Westminster-style parliamentary democracy. Courts in Singapore are broadly divided into the Supreme Court and the Subordinate Courts. The Supreme Court comprises the Court of Appeal and the High Court, with the Court of Appeal being Singapore’s highest judicial tribunal. The Subordinate Courts comprises of the District Courts, Magistrate Courts, Juvenile Courts, and Coroners Courts. Apart from the Supreme Court and the Subordinate Courts, there are other tribunals set up to hear disputes on specific areas of law in Singapore, notably the Syariah Court, Industrial Arbitration Court and Military Court.²⁰

The Singapore Constitution does not include an express recognition of the State’s Duty to Protect. However, Part IV of the Constitution contains general provisions guaranteeing the following rights – the right to life and personal liberty,²¹ prohibition of slavery and forced labour,²² protection against retrospective criminal laws and repeated trials,²³ right to equality,²⁴ prohibition of banishment and freedom of movement,²⁵ freedom of speech, assembly and association,²⁶ freedom of religion²⁷ and prohibition of discrimination on the grounds only of religion, race, descent or place of birth in respect of education.²⁸

Although the Singapore Constitution does not contain an explicit recognition of the State’s Duty to Protect, the generality of the language of the fundamental liberties provisions in Part IV of the Singapore Constitution may provide a basis for the courts to interpret the State Duty to Protect into these guarantees. This is especially so since

20 See Yeo Tiong Min, ‘Jurisdiction of the Singapore Courts’ in Kevin YL Tan (ed), *The Singapore Legal System*, 2 ed (Singapore: Singapore University Press, 1999), 249–296.

21 Constitution of the Republic of Singapore, Article 9.

22 Ibid., Article 10.

23 Ibid., Article 11.

24 Ibid., Article 12.

25 Ibid., Article 13.

26 Ibid., Article 14.

27 Ibid., Article 15.

28 Ibid., Article 12(2).

the courts have opined that in interpreting Part IV fundamental liberties, a 'generous' rather than legalistic interpretation to ensure individuals the 'full measure' of their liberties is adopted.²⁹

Singapore has ratified two of the nine core human rights treaties: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC). It is also party to a number of other treaties containing normative standards relevant to business and human rights.³⁰ In applying international law to the domestic setting, the Singapore Court of Appeal has adopted a dualist approach.³¹ Ratification of an international treaty does not make its rules automatically applicable to Singapore. It must first be transformed and incorporated into domestic law by an act of Parliament before having effect. Absent the act of Parliament, the obligations in the international conventions do not have binding force and courts have no power to incorporate international treaties into the local legislation or to give superiority to these types of treaties over national laws. Therefore,

29 *Ong Ah Chuan v PP* [1980-1981] SLR 48 (PC)

30 These include the Convention on the Prevention and Punishment of the Crime of Genocide, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the United Nations Convention Against Corruption, the Kyoto Protocol to the United Nations Framework Convention on Climate Change, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Convention on Biological Diversity (CBD), ILO Convention No. 29 Forced Labour, ILO Convention No. 105 on Abolition of Forced Labour, ILO Convention No. 94 on Labour Clauses (Public Contracts), ILO Convention No. 98 on Rights to Organise and Collective Bargaining, ILO Convention No. 100 on Equal Remuneration, ILO Convention No. 138 on Minimum Age, ILO Convention No. 144 on Tripartite Consultation (International Labour Standards) and ILO Convention No. 182 on the Worst Forms of Child Labour. Source: University of Minnesota Human Rights Library, *Ratification of International Human Rights Treaties*, Singapore, Accessed: 25 September 2012, <http://www1.umn.edu/humanrts/research/ratification-singapore.html>

31 *Yong Vui Kong v PP* [2010] SGCA 20; see also CL Lim, 'Public International Law before the Singapore and Malaysian Courts' [2004], 8, *Singapore Yearbook of International Law*, 243.

even if international treaties impose a positive State Duty to Protect, the obligation will have to be incorporated into Singapore law by an act of the Singapore Parliament. Given that Parliament has so far declined to amend the Constitution or enact laws to explicitly impose a State Duty to Protect, much would likely depend on the courts' interpretation of the existing constitutional provisions.

What the courts have done is to take cognisance of Singapore's international obligations in interpreting the Constitution. In the case of *Yong Vui Kong*, the Court of Appeal appears to have accepted the presumption of compatibility, by stating that domestic law should 'as far as possible' be consistently interpreted with Singapore's international obligations.³²

The Constitution does not explicitly impose a State Duty to Protect, and courts have not interpreted the Constitution to include such a duty and remain cautious about incorporating general principles of international human rights law. However it is arguable that recent cases such as *Yong Vui Kong* could set a precedent towards greater recognition of international human rights principles and norms, as well as the State Duty to Protect.

Domestic law prevails when it conflicts with an incompatible rule of international law and any domestic law incorporating treaty obligations would prevail in the event of conflict with the treaty itself.³³ There is the interesting theoretical argument that should the courts interpret the Constitution to include a State Duty to Protect, the said duty would trump all other domestic law. This point has however not been raised for consideration before the Singapore courts.

32 Ibid.

33 See *Nguyen Tuong Van v Public Prosecutor* [2004] SGCA 47; see also CL Lim, 'The Constitution and the Reception of Customary International Law: *Nguyen Tuong Van v Public Prosecutor*' [2005] *Singapore Journal of Legal Studies* 218; and Thio Li-ann, 'The Death Penalty as Cruel and Inhuman Punishment Before the Singapore High Court? Customary Human Rights Norms, Constitutional Formalism and the Supremacy of Domestic Law in *PP v Nguyen Tuong Van* (2004); (2004) 4(2), *Oxford University Commonwealth Law Journal*, 213-236.

Lastly, given that Singapore has not ratified the Optional Protocols of the CRC or CEDAW, which allow for individual complaints against the state, there are limited opportunities to file complaints for human rights violations at the international level. Singapore currently does not have a national human rights institution or other national human rights body to monitor the protection and promotion of human rights.

2. Has the State Duty to Protect been recognized by the State's courts?

Hitherto, there have been no cases in which the courts have been called upon to consider the State Duty to Protect against human rights abuses by businesses.

III. IS THE STATE TAKING STEPS TO PREVENT, INVESTIGATE, PUNISH AND REDRESS BUSINESS-RELATED HUMAN RIGHTS ABUSES THROUGH EFFECTIVE POLICIES, LEGISLATION, REGULATIONS AND ADJUDICATION?

1. Are there government bodies and/or State agencies that have the responsibility to prevent, investigate, punish and redress business-related human rights abuses? If so, how have they done so?

There are no specific institutions tasked with dealing with corporate human rights abuses. However, there are a number of State agencies with jurisdiction to oversee issues that may relate to corporate human rights abuses such as corruption, labour rights and environmental protection. Their general jurisdiction may allow them to prevent, investigate, punish and redress business-related human rights abuses.

Companies and Businesses

The **Accounting and Corporate Regulatory Authority** ('ACRA') is Singapore's corporate regulator as well as the independent regulator for public accountants. It is a statutory body under the supervision of the Ministry of Finance.³⁴ ACRA reports and make recommendations to, and advises the Government on matters relating to the registration and regulation of business entities and public accountants. It also has a mandate to ensure a responsive and trusted regulatory environment for businesses and public accountants, and is responsible for administering the Accounting and Corporate Regulatory Authority Act (Cap 2A), the Accountants Act (Cap 2), the Business Registration Act (Cap 32), the Companies Act (Cap 50), the Limited Liability Partnerships Act (Cap 163A) and the Limited Partnerships Act 2008 (Act 37 of 2008).

Apart from monitoring and regulating corporates, ACRA is also tasked with promoting public awareness about new business structures, compliance requirements, corporate governance practice and any matter under the purview of the Authority.³⁵

The Registrar of Businesses is empowered to refuse registration of a company if the 'proposed business is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore.'³⁶ The Registrar also has power to cancel the registration of business for the same reasons.³⁷ An equivalent power is found in the Companies Act. The Registrar of Companies may refuse to register a company if the 'proposed company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore.'³⁸ Similar power to refuse registration and cancellation can also be

³⁴ Accounting and Corporate Regulatory Authority (ACRA), *About ACRA*, at http://www.acra.gov.sg/About_ACRA/About_Us.htm, accessed 20 July 2012.

³⁵ *Ibid.*

³⁶ Singapore Statutes, Section 9(1)(a) Business Registration Act (Cap 32).

³⁷ Singapore Statutes, Section 10(1)(a).

³⁸ *Ibid.*, Section 20(2)(a), Companies Act (Cap 50).

found in the Limited Liability Partnerships Act³⁹ and the Limited Partnerships Act.⁴⁰

Labour Issues

The main legislation governing labour in Singapore is the Employment Act.⁴¹ Administration and oversight of the Act comes under the **Ministry of Manpower (MOM)**. The Act sets out the minimum standards regarding contracts of employment, termination of employment, maternity leave, and employment of foreign employees. Any employee covered by the Act who wishes to lodge a claim against his employer regarding the Act can do so by meeting with an Advisory Officer from the MOM. Alternatively, the claim may be made online on MOM's website. However, the latter is only intended for employees who have left employment and wish to recover salaries and other statutory payments such as overtime pay, public holiday and annual leave pay from their former employers.

Employees can lodge complaints online via MOM's ESOL (Employment Standards Online for individual users). Unlike a claim, all information provided in the complaint is kept confidential, and the identity of the employee is kept anonymous. If an employee seeks to appeal against unfair dismissal, he may write to MOM within one month from the date of dismissal. MOM will contact the appellant if it believes there are sufficient grounds to proceed with the appeal.⁴²

A separate Employment of Foreign Manpower Act⁴³ covers the rights of foreign labourers including domestic workers. The Act covers standards regarding contracts and termination of employment.

39 Ibid., Section 17(1)(a), Limited Liability Partnerships Act (Cap 163A).

40 Ibid., Section 13(1)(a) & section 14(1)(a) Limited Partnerships Act (Cap 163B).

41 Ibid., Cap 91.

42 Ministry of Manpower, *Claims, Complaints and Appeals*, at <http://www.mom.gov.sg/employment-practices/disputes-and-claims/Pages/lodge-claim-complaint.aspx>, accessed 18 May 2012.

43 Singapore Statutes, Cap 91A.

A 2012 Amendment to this legislation included enhanced penalties, the penalisation of errant employers and the appointment of Commissioners to enforce regulations more stringently. Changes are scheduled to take effect by the end of 2012, alongside a separate MOM review of the Act. According to Acting Minister for Manpower Tan Chuan-Jin, the MOM review will 'rationalise and clarify the employment responsibilities of employers, foreign workers and foreign domestic workers.'⁴⁴

In the event of a dispute, the MOM encourages domestic worker employers and employees to resolve it amicably through conciliation. A Well-Being Department under MOM's Foreign Manpower Management Division and a special toll-free foreign domestic worker hotline has been set up to deal with complaints from at-risk workers. In situations where conciliation does not lead to a satisfactory outcome and the employers are at fault, the MOM has a duty to prosecute.

MOM also circulates an advisory booklet to all foreign workers, including those who are coming to work in Singapore for the first time. The advisory booklet highlights their rights and obligations while working in the country. It also provides numbers which foreign workers can call in the event of an emergency, including contact numbers for medical help, a one-stop social service, agencies including the Samaritans of Singapore, the Labour Relations and Welfare Department, the Work Permit Department of MOM as well as various embassy helpdesk lines.⁴⁵

The MOM also oversees the Workplace Safety and Health Act,⁴⁶ which 'require stakeholders to take reasonably practicable measures to ensure the safety and health of workers and other people

44 Speech of Tan Chuan Jin at the Second Reading of the Employment of Foreign Manpower (Amendment) Bill, 11 Sep 2012, para 34, at <http://www.mom.gov.sg/newsroom/Pages/Speeches-Detail.aspx?listid=401>, accessed 10 Feb 2013.

45 CEDAW Committee, *Fourth Periodic Report of States Parties (Singapore)*, 3 April 2009, at <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.SGP.4en.doc>

46 Singapore Statutes, Cap 354A.

that are affected by the work being carried out.⁴⁷ In addition, it oversees the Work Injury Compensation Act (WICA) that provides injured employees an alternative to common law to settle compensation claims.

Environmental Issues

The **Ministry of the Environment and Water Resources** is responsible for the provision of a healthy living environment and the protection of public health. Established on 1 July 2002, the National Environment Agency (NEA) is the leading public organization responsible for improving and sustaining a clean and green environment in Singapore, while the Public Utilities Board is responsible for ensuring an adequate and clean supply of water. The main Act under the Ministry is the **Environmental Protection and Management Act**.⁴⁸ Under this Act, the NEA has extensive powers to control the use and discharge of substances that may pollute the air, water, or land. This includes the power to demand entry into a premises, arrest a suspect, demand for addresses of offenders, and power of search and seizure.⁴⁹ According to Environmental Law Professor Lye Lin Heng, 'Singapore has a well-integrated environmental management system that works effectively, particularly in relation to pollution control. Complaints are quickly investigated by officers from the National Environment Agency (NEA), which administers the environmental laws relating to pollution and public health.'⁵⁰ There have so far been no enforcement actions on the basis of human rights abuses.

47 Ministry of Manpower, *The Workplace Health and Safety Act: What it covers*, at [http://www.mom.gov.sg/workplace-safety-health-act.aspx](http://www.mom.gov.sg/workplace-safety-health/wsh-regulatory-framework/Pages/workplace-safety-health-act.aspx), accessed 4 April 2009.

48 Singapore Statutes, Cap 94A.

49 Environmental Protection and Management Act, Part XI.

50 Lye Lin Heng, *The Judiciary and Environmental Governance in Singapore*, (2010) 3 No.1, *Journal of Court Innovation* 133-155, at http://www.law.pace.edu/school-of-law/sites/pace.edu.school-of-law/files/IJIEA/Heng_Singapore_3_16.pdf, 5.

Most of the prosecutions have been with respect to environmental pollution rather than hazards posed to workers.

Separate Legal personality

In Singapore, a company incorporated under the Companies Act (Cap. 50) is recognized in law as having a separate legal personality of its own apart from the persons who comprise it. The Companies Act does not explicitly mention the concept of separate legal personality but Section 19(5) of the Companies Act sets out the general effect of incorporation – the company may sue and be sued in its own name, it has perpetual succession in that it can survive indefinitely until it is wound up, it may hold land, and the liability of its members is limited in the event the company is wound up.

These powers are based on the principles espoused in the English case of *Salomon v. A Salomon & Co Ltd*⁵¹ that a company has a distinct legal personality from the individuals that form it and cases have repeatedly affirmed this principle.⁵² The most important consequence of this is that the debts and obligations incurred by the company are its own and its members do not share the company's liabilities. Creditors of the company may only look to the company for payment of debts owed to them by the company. If the company is insolvent and cannot pay its debts, the creditors will have to bear the loss however solvent the company's individual members may be.

However, in certain situations a court will ignore the separate legal personality of a company and look to the members or the controllers of the company. These situations fall into two categories: statutory exceptions and common law exceptions to the principle. Statutory exceptions to the principle

51 [1897] AC 22 (House of Lords).

52 *Salomon v Salomon* was followed in the Singapore Court of Appeal decision of *Gabriel Peter & Partners v Wee Chong Jin & Ors* [1997] 3 SLR(R) 649; [1997] SGCA 53.

TYPES OF BUSINESS ENTERPRISES IN THE COUNTRY

Name of the Type of Business Enterprise <i>E.g. company, partnership, business trust etc.</i>	<i>Creation</i>	<i>Separate Legal Personality</i>	Governing documents and law <i>(E.g. Corporations Law)</i>
1. Sole Proprietorship	No separate process for creation but registration encouraged under the Business Registration Act	No	Business Registration Act (Cap. 32)
2. Partnership	Either express written or implied (oral agreement or by conduct)	No	Partnership Act (Cap. 391) but parties have flexibility to design terms of their relationship
3. Limited Liability Partnership	Registration - can be created through conversion of existing partnership or PLC	Yes	Limited Liability Partnerships Act (Cap. 163A) but parties have flexibility to design terms of their relationship Excludes applicability of general partnership law
4. Limited partnership	Registration Each limited partner must also be registered.	No	Limited Liability Partnerships Act (Cap. 163A) but parties have flexibility to design terms of their relationship Does NOT exclude applicability of general partnership law
5. Registered business trust	Not a legal entity and is created by a trust deed	No	Business Trusts Act (Cap. 31A) establishes the regulatory framework for the governance of business trusts
6. Statutory corporation	Created by special Acts of Parliament	Yes	The incorporating statute
7. Company	Registration	Yes	Companies Act (Cap. 50)

include cases of fraudulent trading,⁵³ the making of false and misleading statements,⁵⁴ the payment of dividends when there are no available profits out of which to pay them,⁵⁵ fraudulent inducement of investment⁵⁶ and fraud by officers of the company.⁵⁷ Judicial exceptions to the principle include agency, cases where it is established that the corporate structure was a sham (in that the acts done or documents executed by the parties were intended to appear to third parties that legal rights and obligations were created, and these rights and obligations were not the actual legal rights and obligations the parties intended to create)⁵⁸ and evasion of legal obligations or duties.⁵⁹

Note on Subsidiaries

The concept of a corporate group as a single economy entity does not justify any departure from the rule that each company in a group of companies is a separate legal entity.⁶⁰ The law recognizes the creation of subsidiary companies, which though in one sense are creatures of their parent companies, will nevertheless under general law fall to be treated as separate legal entities with all the rights and liabilities which would normally attach to separate legal entities.⁶¹

The court is however entitled to investigate the relationship between the parent and the subsidiary. That relationship may be relevant in determining whether the subsidiary was acting as the parent's

53 Singapore Statutes, Section 340 of the Companies Act (Cap 50).

54 Ibid., Section 401.

55 Ibid., Section 403.

56 Ibid., Section 404.

57 Ibid., Section 406.

58 *Win Line (UK) Ltd v Masterport (Singapore) Pte Ltd* [2000] 2 SLR 98; and *TV Media Pte Ltd v De Cruz Andrea Heidi and other appeal* [2004] SGCA 29.

59 *Gerhard Hendrik Gispen & Ors v Ling Lee Soon Alex & Anor* [2001] SGHC 350; and *Nagase Singapore Pte Ltd v Ching Kai Huat and Others* [2008] 1 SLR 80.

60 *Win Line (UK) Ltd v Masterport (Singapore) Pte Ltd* [2000] 2 SLR 98.

61 *DHN Food Distributors Ltd* [1976] 1 WLR 852.

agent because if so, the principal may be held liable for the acts of the agent.⁶² The court may also ignore the subsidiary's separate legal personality if it finds that it was merely a sham company created to advance an illegal or improper purpose of the parent company.

Other Types of Business Forms

The principle of separate legal personality applies only to companies and Limited Liability Partnerships. In other types of business forms e.g. a sole proprietorship, a partnership or a limited partnership, the sole proprietor or partner himself can be held legally accountable directly for all the debts and obligations of the firm.

As for trusts, it is the legal duty of the President, Vice-President, Secretary and Board of Trustees to administer the trust funds properly. If there is a breach of trust they will be held liable for that breach.

Power to Refuse Incorporation

As we noted above, the Registrar of Companies may refuse to incorporate a company if the company is likely to carry out an unlawful activity or one that is prejudicial to public peace, welfare or good order in Singapore, or contrary to national security.⁶³

Criminal Liability of Companies

Section 11 of the Penal Code (Cap. 224) regards 'person' to include any company or association or body of persons, whether incorporated or not,⁶⁴ and as such, companies can be held criminally liable. However, because it cannot be imprisoned, sanctions imposed on companies found in breach of any law include fines, suspension of trading, reprimands,

62 Ibid.

63 *Cotty Vivant Marchisio & Lauzeral, Corporate Law Tools Project, Mandate of the Special Representative of the Secretary General (SRSG) on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, September 2009 at 9* [hereinafter 'CVM&L 2009 Report'].

64 Section 11, Penal Code (Cap 224), Singapore Statutes.

delisting or dissolution by the Minister.⁶⁵ Also, the prosecution of a company is confined to certain offences, to the exclusion of personal natured crimes such as rape.

For other offences, a company could be said to have committed a criminal offense when the act in question has been brought about by individuals who can be said to be the controlling mind and will of the company and if the act is criminal.⁶⁶ The *mens rea* of the company is evidenced by the state of mind of these individuals.

2.1. Do laws and/or regulations require business enterprises to avoid causing or contributing to adverse human rights impacts through their activities, or to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services?

There are no laws and regulations in Singapore that explicitly require business enterprises to avoid causing or contributing to adverse human rights impacts through their activities, or to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services. However, there are several laws and regulations that achieve such an effect despite the lack of explicit wording.

Section 2 of the Interpretation Act outlines how laws may be applicable to businesses, stating that, ‘In this Act, and in every written law enacted before or after 28th December 1965, the following words and expressions shall, without prejudice to anything done prior to that date, have the meanings respectively assigned to them unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided: ‘person’ and ‘party’ include any company or association or body of

⁶⁵ See observations of VK Rajah J (as he then was) in *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653; [2006] SGHC 155.

⁶⁶ *Tesco Supermarkets Ltd v Natrass* [1972] AC 153.

persons, corporate or unincorporated.’ In other words, the word ‘person’ and ‘party’ in legislation may include business forms.

Labour laws and Regulation

Provisions in the Employment Act⁶⁷ and Retirement and Re-employment Act⁶⁸ ensure that employers refrain from certain actions that may violate the rights of employees. The Industrial Relations Act⁶⁹ provides for the regulation of the relations of employers and employees and the prevention and settlement of trade disputes by collective bargaining and conciliation and arbitration and for tripartite mediation of individual disputes. Other statutes dealing with various aspects of employment are the Central Provident Fund Act,⁷⁰ the Factories Act,⁷¹ Workplace Safety and Health Act,⁷² Work Injury Compensation Act,⁷³ Trade Unions Act⁷⁴ and Employment of Foreign Manpower Act.⁷⁵

The right to join or form a trade union is guaranteed by law. Section 17 of the Employment Act does not allow any contract of service to restrict the right of any employee from joining a registered trade union or to participate in activities of a registered trade union, whether as an officer of the trade union or otherwise or to associate with any person to organise a trade union.

Employment Act

The Employment Act covers every employee regardless of nationality except persons employed in a managerial or executive position; seamen; domestic workers and any person employed by a Statutory Board or the government.

⁶⁷ Singapore Statutes, Cap 91.

⁶⁸ *Ibid.*, Cap 274A.

⁶⁹ *Ibid.*, Cap 136.

⁷⁰ *Ibid.*, Cap 36.

⁷¹ *Ibid.*, Cap 104.

⁷² *Ibid.*, Cap 354A.

⁷³ *Ibid.*, Cap 354.

⁷⁴ *Ibid.*, Cap 333.

⁷⁵ *Ibid.*, Cap 91A.

Part II renders every term of a contract of service, which provides a condition of service that is less favourable to an employee than any of the conditions of service prescribed by the Act. The conditions of service prescribed by the Act include conditions relating to notice of termination of contract, possible actions that can be taken by employees to punish an employee for misconduct. It also protects minors under the age of 18 years by stating that no contract of service as an employee shall be enforceable against them and no damages or indemnity shall be recoverable from them in respect of a contract of service unless it is for their benefit.

Part III secures the rights of employees to payment of salary. Some rights include the right to be paid a salary at least monthly and the right to be paid salary due to the employee upon dismissal or upon termination by employee.

Part IV provides for rest days, hours of work and other conditions of service but also applies to workmen earning not more than \$4,500 basic monthly salaries and employees earning not more than \$2,000 basic monthly salaries.

Part VIII covers the employment of children (a person who has not completed his 15th year of age) and young persons (a person who has completed his 15th year of age but who has not completed his 16th year of age), for which minimum rates of salary are applicable. Employers are not allowed to employ a child in an industrial undertaking unless only members of the same family are employed in the undertaking. An industrial undertaking includes mines, quarries, factories, shipyards, businesses and companies carrying out construction work, transport (including bus, ship, car, lorry) operators. Children of 13 years and above may be employed in a non-industrial undertaking to do light work suited to their capacity. A child or young person in respect of whom any of the offences mentioned in the part has been committed may also appeal to the Juvenile Court for care or protection.

Part XI provides for maternity protection and benefits and childcare leave for parent. It entitles female employees to paid maternity leave 4 weeks before and 4 weeks after delivery of their child⁷⁶ and makes it unlawful for an employer to give a female employee a notice of dismissal during her absence or on such a day that the notice will expire during her absence if the female employee absents herself from work in accordance with the provisions of this part. In January 2013 also announced one week of paternity leave for fathers of Singaporeans born from May that year and they will also be able to share one week of their wife's maternity leave entitlement.⁷⁷

Part X entitles employees to holidays and sick leave. Enhancements to the Employment Act in 2008 include expanded coverage and the reduction of the qualifying employment period for paid sick leave from 6 to 3 months.⁷⁸

Part XIV contains general provisions, including a provision prohibiting the refusal to allow an employee whose contract of service has been determined to leave his service. Fraudulently inducing an employee to emigrate through force, intoxication or ill treatment, intimidation or fraud, or by means of false representations, to work beyond the limits of Singapore is also an offence under this Part.

Discrimination

The only type of employment discrimination that is explicitly prohibited is discrimination based on age. Notwithstanding any contrary agreement, the

76 The Law Society of Singapore, *Employment*, at <http://www.lawsociety.org.sg/forPublic/YoutheLaw/Employment.aspx>, accessed 11 August 2012.

77 Yahoo News, *Bigger baby bonus, paternity leave announced*, 21 January 2013, at <http://sg.news.yahoo.com/bigger-baby-bonus--paternity-leave-announced-054119367.html>

78 UN General Assembly, *National Report to the Human Rights Council (Singapore)*, 2 February 2011, at <http://daccess-ods.un.org/TMP/6866388.9169693.html>

Retirement and Re-employment Act⁷⁹ prohibits dismissal of any employee who is below the retirement age of 62 (or other retirement age prescribed by the Minister of Manpower) on the grounds of age.⁸⁰ Unlike the Employment Act, the provisions of the Retirement and Re-employment Act apply to all employees including executives, managers and professionals.⁸¹

Singapore does not have any equal opportunities legislation and there are no explicit laws preventing gender and racial discrimination. Article 12 of the Constitution does however provide that all persons are entitled to the equal protection of the law⁸² and that there shall be no discrimination based on religion, race, descent or place of birth.⁸³ Challenges on constitutional grounds are however rare in Singapore. The scheme of Article 12 is two-fold. First, discrimination is absolutely forbidden on the sole grounds of religion, race, descent or place of birth.⁸⁴ Second, Article 12(1) provides that all persons are 'equal before the law' and are 'entitled to the equal protection of the law'. The courts have interpreted these clauses to mean that 'all persons in like circumstances should be treated alike.' Discrimination is thus legal if it satisfies the reasonable classification test first expounded in the Malaysian Federal Court in case of *Datuk Harun bin Idris v PP*⁸⁵ and followed in the Singapore Court of Appeal decision in *PP v Taw Cheng Kong*.⁸⁶ Under the reasonable classification test, the targeted class must be based on an intelligible differentia (e.g all foreign work permit holders); and there must exist a rational nexus between the class being discriminated and the object and purpose of the impugned legislation. The problem with this test is that much depends on how the court reads the

79 Singapore Statutes, Cap 274A.

80 Ibid., Section 4.

81 Section 2 of the Act an 'employee' is anyone who has 'entered into or works under a contract of service with an employer.'

82 Article 12(1).

83 Article 12(2).

84 Article 12(2).

85 [1977] 2 MLJ 155.

86 [1998] 2 SLR 410; [1998] SGCA 37.

object of the act. The narrower the object of the act, the more likely a discriminatory law will pass muster.

The government has stated that it believes legislation in the area of equal opportunities will not be effective. Instead, it has chosen to address the issue using moral persuasion. For example, the Singapore National Employers Federation, the National Trades Union Congress and the Ministry of Manpower recently issued guidelines on job advertisements. The guidelines stipulate that race, religion, marital status, age and gender should not be used as job criteria in advertisements. Although these guidelines do not have the force of law, they are likely to have some influence on general employment practices.

With regards to gender discrimination, as mentioned above, the Employment Act does provide statutory entitlement to maternity leave and protection from dismissal for female employees while on maternity leave.

Sexual Abuse and Harassment

In the area of sexual harassment, there are no laws compelling employers to take steps to prevent sexual harassment in the workplace. The only available legal provisions are section 509 of the Penal Code and sections 13A and 13B of the Miscellaneous Offences (Public Order and Nuisance) Act.

Migrant Workers

Singapore is currently reviewing the Employment of Foreign Manpower Act and specifically laws on the treatment of domestic workers, who have up until now been left out of the Employment Act. Such persons therefore do not enjoy the protection of the provisions in the Act that mandates minimum conditions of work, hours of work, holidays, termination and retirement benefits. However, the government recently enacted a mandatory one-

day of rest for all domestic workers commencing January 2013.⁸⁷

The main problem has been the unscrupulous practices of employment agencies and the vulnerability of migrant workers to exploitation from such agencies. Thus the Employment Agencies Act,⁸⁸ which lays out the obligations and liabilities of recruitment agencies, was revised in April 2011⁸⁹ after pressure from numerous reports that agents were charging foreign workers exorbitant fees. The Act, which gives extensive investigative and punitive powers to employment agency inspectors, aims to stop the operation of unlicensed employment agencies and reduce the amount of exploitation of workers in Singapore. Since this change was made, the State has been more proactive in prosecuting agencies, though much work remains to be done.

In 2011, the Commissioner for employment agencies at the Ministry of Manpower, Mr Aw Kum Cheong pledged that a crackdown on rogue agencies would continue, stating that the 'MOM will continue to step up enforcement and take strong punitive actions against those who act against the law, and undermine the integrity of the work pass framework.'⁹⁰

Under Section 22C of the same Act, any key appointment holders or employment agency personnel will be disqualified should he be convicted, whether in Singapore or elsewhere, of an offence involving human trafficking. Any person who in any application for a licence makes any statement, which is false in any material, particular shall be guilty of an offence. Additionally, a person

who charges or receives himself or through another person, for his services, any sum greater than the prescribed fee; knowingly and voluntarily deceives any person by giving false information; instigates or induces any person not to admit in his service any worker who has not applied for employment, work or position through his employment agency; or knowingly sends, directs or takes any girl or woman to any place for immoral purposes or to a place where she is likely to be morally corrupted, shall be guilty of an offence.

Employees with Disabilities

Singapore does not have comprehensive disability legislation aimed at moving away from viewing persons with disabilities as 'objects' of charity and towards viewing them as 'subjects' with rights. In November 2012, Singapore signed the Convention on the Rights of Persons with Disabilities. Like most other human rights conventions, the Convention requires all states parties to 'adopt all appropriate legislative, administrative and other measures for the implementation of the rights' under the Convention,⁹¹ as well as 'all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.'⁹² As this was a very recent development and as Singapore has yet to ratify the Convention, Parliament has yet to pass any legislation pursuant to its treaty obligations.

Anti Trafficking Laws

Anecdotal evidence suggests that many migrant workers, including foreign domestic workers, are deceived about the nature of their employment or salary and the conditions they would face in Singapore, and faced confiscation of their passports, restrictions on their movement, and illegal

87 O'Callaghan, John, Maids' day off fuels Singapore foreigners debate, *Reuters*, March 6 2012, at, <http://www.reuters.com/article/2012/03/06/uk-singapore-foreigners-idUSLNE82501X20120306>, accessed April 4 2012

88 Singapore Statutes, Cap 92.

89 See Employment Agencies (Amendment) Act 2011, No 5 of 2011.

90 'Spore PR fined \$50k for unlicensed employment agency,' *AsiaOne*, 31 Jan 2012, at <http://business.asiaone.com/print/Business/News/Story/A1Story20120131-325125.html>, accessed 14 Apr 2012.

91 Article 4(1)(a).

92 Article 4(1)(b).

withholding of their pay.⁹³ In particular, many owe alleged debts associated with their employment,⁹⁴ rendering them vulnerable to forced labour.

No specific Act exists against labour trafficking however; the Women's Charter,⁹⁵ the Children's and Young Persons Act,⁹⁶ and the Penal Code⁹⁷ include offences, which prohibit trafficking in persons. For the purposes of this report, the focus will be on labour trafficking and not sex trafficking and as such, the Women's Charter will not be discussed.

The Children and Young Persons Act makes it an offence to unlawfully transfer the possession, custody or control of child⁹⁸ and details trafficking offences against children.

The Penal Code also criminalises the selling, buying or hiring of minors for purposes of prostitution,⁹⁹ importing women for purposes for prostitution¹⁰⁰ and compelling any person to labour against the will of that person.¹⁰¹ For all offences except the last, punishment includes, but is not limited to, a fine and/or imprisonment for a term that may extend to 10 years. The punishment for the last offence includes, but is not limited to, a fine and/or imprisonment for a term that may extend to one year.

Environmental Laws and Regulations

A number of laws and regulations have been formulated to ensure that the activities of individuals and business enterprises do not harm

the environment. Key of these laws and regulations is the Environmental Protection and Management Act,¹⁰² which consolidates the laws relating to environmental pollution control, and provides for the protection and management of the environment and resource conservation.

Where an offence under the Environmental Protection and Management Act is committed by a business entity is proved to have been committed with the consent of an officer/partner depending on the business form or is attributable to any act or default on his part, the officer as well as the business entity will be guilty of the offence.¹⁰³ This creates an incentive for officers and partners to monitor the affairs and activities of the company and take preventive measures.

The Environmental Protection and Management Act requires businesses to apply for written permission from the Director-General of Environmental Protection before occupying and using any scheduled premises.¹⁰⁴ The application must give details of the trade, industry or process proposed to be carried in or on the premises, the measures the applicant undertakes to adopt to control pollution from the premises and the measures the application undertakes to adopt to manage hazardous substances and to treat and dispose of toxic substances originating from or stored within the premises.¹⁰⁵ The Director-General, should he grant a written permission, may then impose conditions to ensure that pollution of the environment, as well as hazardous substances, are adequately managed and controlled.¹⁰⁶

93 United States Department of State, *Trafficking in Persons Report 2010 - Singapore*, at <http://www.state.gov/j/tip/rls/tiprpt/2010/142761.htm>, accessed 8 May 2012; SCWO, *CEDAW Shadow Report*, June 2011, 27; AWARE, *CEDAW Shadow Report*, May 2011, para. 6.20-6.21,

94 SCWO, *CEDAW Shadow Report*, June 2011, 27.

95 Singapore Statutes, Cap 353.

96 *Ibid.*, Cap 38.

97 *Ibid.*, Cap 224.

98 Section 12.

99 Penal Code, Sections 372 and 373.

100 *Ibid.*, Section 373A.

101 *Ibid.*, Section 374.

102 *Ibid.*, Cap 94A.

103 Environmental Protection and Management Act, Section 71.

104 *Ibid.*, Section 6.

105 *Ibid.*

106 Environmental Protection and Management Act, Section 7.

Air Pollution

Occupiers of industrial or trade premises must maintain fuel burning equipment and air pollution control equipment installed in or on the premises in an efficient condition.¹⁰⁷ The emission of dark smoke from a chimney of, or used in connection with, those premises,¹⁰⁸ as well as air impurities in excess of the standard of concentration or rate of emission prescribed in respect of that industry, process, fuel burning or industrial plant, is prohibited.¹⁰⁹

Water Pollution

Discharge of any trade effluent, oil, chemical, sewage or other polluting matters into any drain or land without written permission from the Director-General is an offence.¹¹⁰ The occupier of the trade premises must treat any trade effluent discharged before the trade effluent is discharged into any drain or land in pursuance of a written permission.¹¹¹ Discharge of toxic substances or hazardous substances into inland water is also an offence.¹¹²

The Director-General has the power to require the removal and cleaning up of toxic substances or trade effluent, oil, chemicals, sewage, hazardous substances and any other polluting matters¹¹³ and to require businesses to take measures to prevent water pollution due to storage of transportation of these polluting matters.¹¹⁴

Land Pollution

The National Environment Agency is authorised to make regulations to control the pollution of land whereby the condition of the land is so changed as to make or be likely to make the land or the produce

of the land obnoxious, noxious or poisonous.¹¹⁵

Hazardous Substances Control

Importation, manufacture, possession for sale, sale or offer for sale of any hazardous substance is prohibited unless the person holds a licence granted by the Director-General for such purpose.¹¹⁶ The importation, manufacture, possession for sale, sale or offer for sale of the hazardous substance must be effected in accordance with the provisions of the licence and by or under the personal supervision of the person named in the licence.¹¹⁷ Further, proper records of the sale must be kept.¹¹⁸

Every person storing, using or otherwise dealing with any hazardous substance and every agent, servant or employee of such person shall do so in such a manner as not to threaten the health or safety of any person, or to cause pollution of the environment.¹¹⁹ The Director-General also has the power to require removal of hazardous substances from premises¹²⁰ and to require the owner or occupier of hazardous installations to carry out impact analysis studies.¹²¹

Noise pollution

The Director-General is empowered to, by notice in writing, impose requirements (such as the plant or machinery which is, or is not, to be used, the hours during work the works may be carried out and the level of noise or vibration which may be emitted from the premises or at any specified part of the premises or which may so be emitted during specified hours) as to the way in which construction works are to be carried out.¹²² He is also empowered

107 Ibid., Section 10.

108 Ibid., Section 11.

109 Ibid., Section 12.

110 Ibid., Section 15.

111 Ibid., Section 16.

112 Ibid., Section 17.

113 Ibid., Section 18.

114 Ibid., Section 19.

115 Ibid., Section 20.

116 Environmental Protection and Management Act, Section 22.

117 Ibid., Section 23.

118 Ibid.

119 Ibid., Section 24.

120 Ibid., Section 25.

121 Ibid., Section 26.

122 Ibid., Section 28.

to prohibit the owner or occupier of any work place from carrying out any specified activity or operate any specified plant in which a manner as to cause noise in excess of the specified level to be emitted.¹²³ He may also require the owner or occupier to take adequate measures to control the noise on the premises.¹²⁴

Due Diligence and Principal Contractors

In addition to placing the onus on the owner or occupier of the work sites or industrial sites to control pollution, Section 35 of the Environmental Protection and Management Act places a burden on the principal contractor of a construction site who has control of the construction site to prevent any commission of an offence specified under Sections 14, 15 or 17 of the Act. Where there is a contravention of any of these sections, it shall be presumed that the principal contractor of the construction site had control of the site, knowledge of the commission of the offence and had permitted the commission of the offence.¹²⁵ These presumptions will not be rebutted unless the defendant proves that he had exercised due diligence to prevent the commission of the offence at the construction site.¹²⁶ Due diligence involves taking all reasonable measures to prevent the offence from being committed at the construction site.¹²⁷

The imposition of a due diligence duty on principal contractors strengthens the legal infrastructure that encourages businesses to monitor and be responsible for the adverse land-related human rights impacts flowing from their business activities because it fosters a culture of taking preventive action instead of remedial action.

¹²³ Ibid., Section 29(1).

¹²⁴ Ibid., Sections 29(2).

¹²⁵ Environmental Protection and Management Act, Section 35(2).

¹²⁶ Ibid., Section 35(3).

¹²⁷ Ibid., Section 35(4).

Prevention of Pollution of the Sea Act

The Prevention of Pollution of the Sea Act¹²⁸ is an act to give effect to the International Convention for the Prevention of Pollution from Ships 1973 as modified and added to by the Protocol of 1978, and to other international agreements relating to the prevention, reduction and control of pollution of the sea and pollution from ships. It makes provision generally for the protection of the marine environment and for the prevention, reduction and control of pollution of the sea and pollution from ships.

Part II (sections 3-5) deals with the prevention from pollution from land and apparatus, Part III (sections 6-10) deals with the prevention of pollution from ships and Part IV (sections 11-16) imposes duties on businesses to take preventive measures against pollution of the sea, keep oil and cargo record books as well as to report discharges of harmful substances from ships and land or apparatus.

Part V of the PPSA provides the Maritime and Port Authority of Singapore with substantive powers to recover the considerable costs of cleaning operations and Part VI of the PPSA provides the Maritime and Port Authority of Singapore powers to take preventive measures to prevent pollution, including denying entry to or detaining ships.

Extraterritoriality and Subsidiaries

Unfortunately, the provisions of the Environmental Protection and Management Act only apply to businesses conducting their operations here in Singapore. It does not apply to businesses and subsidiaries of these businesses who conduct their operations overseas. Similarly Section 3 and 6 of the PPSA only applies to businesses operating places or apparatus that discharge noxious substances into Singapore waters, it does not apply to businesses operating places and apparatus overseas.

¹²⁸ Singapore Statutes, Cap 243.

Nonetheless Section 7 of the PPSA concerning the discharge of oil and oily mixtures from ships has potential extraterritorial application because it covers the discharge of oil or oily mixture from a Singapore ship into any part of the sea, not just Singapore waters.

Anti-Corruption Laws

Widespread corruption hampers the State from meeting its obligations to protect human rights. The obligation to protect requires states to prevent, suppress or punish forms of corruption that causes or lead to violation of human rights. The primary Singapore statutes prohibiting bribery are the Prevention of Corruption Act (the PCA)¹²⁹ and the Penal Code.¹³⁰

The PCA contains provisions that prohibit bribery in general.¹³¹ The general prohibitions relate to both private commercial activities and acts of a public nature, target both giver and recipient of the bribe and extend to both private individuals and public officials. In addition, there are specific provisions in the PCA pertaining to domestic public officials.¹³² The PCA does not specifically target bribery of foreign public officials, although such bribery could fall under the ambit of the general prohibitions.

The Penal Code also contains provisions that deal with bribery of public officials.¹³³ These provisions describe the following scenarios:

- A public servant taking a gratification, other than legal remuneration, in respect of an official act;
- A person taking a gratification in order to influence a public servant by corrupt or illegal means;
- A person taking a gratification for exercising personal influence over a public servant;

129 Singapore Statutes, Cap 241.

130 Ibid., Cap 224.

131 Prevention of Corruption Act, Sections 5 and 6.

132 Ibid., Sections 11 and 12.

133 Ibid., Sections 161 to 165.

- Abetment by a public servant of the above offences; and
- A public servant obtaining anything of value, without consideration or with consideration the public servant knows to be inadequate, from a person concerned in any proceedings or business conducted by such public servant.

‘Gratification’ is defined very broadly and includes gifts, travel expenses, meals and entertainment.

Foreign Bribery and Subsidiaries

There are no provisions in the PCA or the Penal Code, which specifically prohibits bribery of a foreign public official. However, the general prohibition against bribery in the PCA, read together with section 37 of the PCA (which deems a bribery offence committed outside Singapore by a Singapore citizen to be committed within Singapore) prohibits, in effect, the bribery of a foreign public official by a Singapore citizen.¹³⁴ This means that companies that operate overseas, if incorporated in Singapore, could be held liable for bribery of foreign public officials under the PCA.

In addition, the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA) deals with the prevention of laundering of the proceeds of corruption and crime. Section 47 of the CDSA provides that any person who knows or has reasonable ground to believe that any property represents another person’s benefits from criminal conduct is guilty of an offence, if he conceals, disguises, converts, transfers or removes that property from the jurisdiction for the purposes of assisting any person to avoid prosecution. Therefore if the proceeds of corruption gained by a subsidiary operating overseas, whether incorporated in Singapore or not, is channeled back to a company incorporated in Singapore, the parent company could be held liable under Section 47 of the CDSA

134 See *PP v Tan Cheng Kong* [1998] 2 SLR 410; [1998] SGCA 37.

if it was aware of the corruption overseas.

In contrast, the provisions in the Penal Code focus on the bribery of domestic public officials.

Criminal and Civil Enforcement

Criminal enforcement against corrupt activities is provided for in both the PCA and the Penal Code. In particular, if the court rules that there has been a violation of the general prohibitions on bribery in the PCA, a fine and/or imprisonment will be imposed on the offender. The offender may also have to pay the quantum of the bribe as part of the fine imposed.

However, for civil enforcement, only where gratification has been given to an agent, the principal may recover as a civil debt, the amount or the money value thereof either from the agent or the person paying the bribe.¹³⁵ This provision is without prejudice to any other right and remedy that the principal may have to recover from his agent any money or property. Anyone else who is not a principal but has suffered loss that flowed from the corruption has no access to civil remedies.

2.2 To what extent, how, and by whom have the laws and/or regulations identified in Question 2 above been enforced by the State?

Enforcement of Labour and Regulations Labour Trafficking

In 2011, there were a reported 67 cases with elements of labour trafficking that were still under investigation. Unofficially, there were 146 reported cases of male and female victims of forced prostitution and forced labour, and 676 Employment Act contraventions for migrant workers at NGO shelter. The previous year, there were 8 labour trafficking convictions, while in 2009 there were

8 official reported cases where employers were prosecuted for failing to pay the wages of foreign domestic workers, 2 convictions of employment agencies and 33 'stern warnings' for withholding the passports of foreign workers. In addition there were 228 prosecutions of employment agencies and employers for breaches of employment laws (breach not stated) and 476 convictions for breaches of the Employment of Foreign Manpower Act (breach not stated). Figures were higher in 2008 when there were 276 official reported cases of unpaid wages collected by authorities on behalf of FDWs.¹³⁶

Prosecutions of Breaches of Labour Laws Relating to Migrant Workers

There have been reports of employers hiring repatriation companies, which employ intimidation, coercion, violence and wrongful confinement, to escort foreign workers to the airport, and ensure they have no opportunity to pursue complaints and redress, such as for payment of wages and forced labour.¹³⁷ In 2010, 2 cases of forced repatriation and wrongful confinement by repatriation companies were investigated. An employee from a repatriation company was prosecuted and sent to jail for voluntarily causing hurt to a foreign worker. The employers who had engaged the repatriation companies were also given stern warnings for the

¹³⁶ Delphia Lim, Singapore Country Report in Violence, Exploitation and Abuse & Discrimination in Migration affecting Women and Children in ASEAN: A Baseline Study, Human Rights Resource Centre in ASEAN (2013).

¹³⁷ United States Department of State, *Trafficking in Persons Report 2011 - Singapore*, <http://www.state.gov/j/tip/rls/tiprpt/2011/164233.htm>, accessed 8 May 2012; AWARE, *CEDAW Shadow Report*, May 2011, para. 6.24; TWC2 and the Global Alliance Against Traffic in Women, *Singapore Shadow Report: 4th Periodic Review*, 4 & 12 Jun 2011; Lin Wenjian, 'Manpower Ministry warns 2 repatriation companies,' *Straits Times*, 15 Dec 2011; 'Missing migrant workers hunted down in Singapore,' *Asiaone*, 6 Aug 2011, at <http://www.asiaone.com/News/AsiaOne+News/Singapore/Story/A1Story20110806-293029.html>. It should however be noted that while these incidents were raised in reports on women's issues, the reports canvassed referred only to male workers, or did not distinguish between male and female workers.

¹³⁵ Prevention of Corruption Act, Section 14.

abetment of wrongful restraint.¹³⁸

According to the government, the number of complaints made against repatriation companies has remained small over the years. Since 2010 to November 2011, authorities received 7 complaints against 3 such companies.¹³⁹ These figures may not reflect the full extent of the problem, as victims subject to such forced removal from Singapore would not often be in a position to make complaints, given the use of intimidation and coercion prior to their departure.

Enforcement of Anti-Trafficking Laws

Data compiled on the prevalence of cases involving or related to sexual and labour trafficking are set out below. Unless otherwise stated in this report, the figures are not disaggregated by age or sex, and references to ‘trafficking’ were not disaggregated into labour trafficking and sex trafficking. Shaded boxes indicate the unavailability of information.¹⁴⁰

Figures on Abuse of Foreign Workers in Singapore

	Official numbers	Unofficial numbers
2010	<ul style="list-style-type: none"> • 5 prosecuted for endangering the lives of FDWs in 2009 and 2010 	<ul style="list-style-type: none"> • 685 injury cases for migrant workers • 676 Employment Act contraventions for migrant workers
2009	<ul style="list-style-type: none"> • 60 cases of abuse of FDWs • 32 jailed for abuse of FDWs from 2001 to 2009 	<ul style="list-style-type: none"> • 1,388 migrant domestic workers who suffered violations provided shelter
2008	<ul style="list-style-type: none"> • 53 cases of abuse of FDWs¹⁴⁰ 	<ul style="list-style-type: none"> • 80,000 to 100,000 migrant workers were not given proper accommodation.
2007	<ul style="list-style-type: none"> • 68 cases of abuse of FDWs 	
2006	<ul style="list-style-type: none"> • 42 cases of abuse of FDWs 	
2005	<ul style="list-style-type: none"> • 59 cases of abuse of FDWs 	<ul style="list-style-type: none"> • 147 FDWs died from workplace accidents or suicides from 1999 to 2005.

Source: Singapore Country Report in Violence, Exploitation and Abuse & Discrimination in Migration affecting Women and Children in ASEAN: A Baseline Study

138 Ministry of Foreign Affairs, *Singapore Inter-Agency Task-force’s Detailed Response to the 2011 US State Department’s Trafficking In Persons Report*, 1 August 2011, paras. 16 and 18, at <http://www.mom.gov.sg/newsroom/Pages/PressReleasesDetail.aspx?listid=374>

139 ‘Written Questions filed in Parliament: 21 November 2011’, Singapore 2025 (blog), 22 November 2011, at <http://singapore2025.wordpress.com/2011/11/22/written-questions-filed-in-parliament-21-november-2011>.

140 Fact sheet: Foreign Domestic Workers in Singapore (Complaints and Abuses), TWC2, at <http://twc2.org.sg/2011/11/16/fact-sheet-foreign-domestic-workers-in-singapore-complaints-and-abuses/>; referring to Theresa Tan, ‘Looking Better’, *Straits Times*, 25 November 2005. accessed 30 March 2012

Figures relating to Commercial Sexual Exploitation, and Labour and Sex Trafficking in Singapore (2009 -2011)

	2011	2010	2009
Official reported cases	<ul style="list-style-type: none"> • 43 reported cases of sex trafficking • 67 cases with elements of labour trafficking 	<ul style="list-style-type: none"> • 94 arrests for pimping • 81 trafficking victims, of whom 23 were children in prostitution; 1 from Singapore • 50 alleged cases of sex trafficking, of which 7 were 'successfully investigated' 	<ul style="list-style-type: none"> • 7614 arrests of foreign women for vice activities • 32 reported cases of alleged trafficking • 0 reported cases of forced labour • 89 minors aged from 14 to under 18 arrested for prostitution offences • 15 victims of sexual exploitation under 16, with 14 under 14
Unofficial reported cases		<ul style="list-style-type: none"> • 146 male and female victims of forced prostitution and forced labour (non-governmental actors) 	<ul style="list-style-type: none"> • 105 female sex trafficking victims (foreign embassies)
Convictions		<ul style="list-style-type: none"> • 5 sex trafficking convictions • 8 labour trafficking convictions 	<ul style="list-style-type: none"> • 2 trafficking convictions

Source: Singapore Country Report in Violence, Exploitation and Abuse & Discrimination in Migration affecting Women and Children in ASEAN: A Baseline Study

Figures relating to Commercial Sexual Exploitation, and Labour and Sex Trafficking in Singapore (2006 – 2008)

	2008	2007	2006
Official reported cases	<ul style="list-style-type: none"> • 5047 arrests of foreign women for vice activities • 20 victims of sexual exploitation under 16, with 17 under 14 	<ul style="list-style-type: none"> • 5400 arrests of foreign women for vice activities • 28 cases of forced prostitution and importation of women by false pretenses • 5 victims of sexual exploitation under 16, with 4 of under 14 	<ul style="list-style-type: none"> • 33 investigated cases of trafficking in women and girls
Unofficial reported cases	<ul style="list-style-type: none"> • 136 trafficking cases (Philippines embassy) • At least 53 of foreign females arrested and deported for vice activities were children 	<ul style="list-style-type: none"> • 17 trafficking cases (Thai embassy) • 212 trafficking cases of which about 57 involved prostitution and coercion to have sex (Philippines embassy) • 60 female minors involved in prostitution deported¹⁴¹ 	<ul style="list-style-type: none"> • 125 trafficking cases (Philippines embassy) • 34 Vietnamese women and children rescued and repatriated from Singapore (Vietnam government)
Convictions	<ul style="list-style-type: none"> • 2 sex trafficking-related convictions, 1 conviction for child commercial sexual exploitation 	<ul style="list-style-type: none"> • 15 prosecutions for pimping • 30 prosecutions for vice-abetting • 0 trafficking convictions 	

Source: Singapore Country Report in Violence, Exploitation and Abuse & Discrimination in Migration affecting Women and Children in ASEAN: A Baseline Study

141 United States Department of State, Trafficking in Persons Report 2008 – Singapore, at <http://www.state.gov/j/tip/rls/tiprpt/2008/index.htm>, 225, accessed 8 May 2012

Enforcement of Environmental laws and regulations

Environmental laws and regulations in Singapore are enforced by the National Environmental Agency and the Maritime and Port Authority of Singapore.

Prosecutions have been brought against business entities for violation of the provisions of the Environmental Protection and Management Act¹⁴² also previously known as the Environmental Pollution Control Act,¹⁴³ such as in *PP v Grit Blasting Pte Ltd*¹⁴⁴ and *PP v Sinsar Trading Pte Ltd*.¹⁴⁵ There have not been many prosecutions brought but that is because in the case of a first violation, provisions of the Act allows the Agency to first issue notices requiring companies to remedy the situation and companies often do so in fear of being prosecuted.

In *PP v Grit Blasting* for example, prosecution was brought only after the company failed to remedy the problem and comply with the NEA's notice issued under section 13(1) of the Environmental Pollution Control Act.

It is also pertinent to note that the courts impose relatively strict standards of due diligence on businesses to ensure compliance with environmental laws and regulations. In *PP v Grit Blasting Pte Ltd*, the court held that

... it is not sufficient merely to give instructions to the supervisors and workers and [leave] it at that. The defendant company must show that it had taken active steps to ensure compliance with the conditions stipulated in the notice... For example, the other steps which the company could have taken to discharge the due diligence requirement might include, inter alia, regular briefings to the staff to emphasise the

142 Singapore Statutes, Cap 94A.

143 Act 9 of 1999, Singapore Statutes. This Act was enacted in 1999 and replaced by the Environmental Protection and Management Act in 2011 (Act 12 of 2011).

144 [2006] SGDC 4.

145 [2004] SGHC 137.

importance of complying with [environmental laws and regulations], periodic checks or inspections carried out by supervisors to ensure that the workers are complying with [environmental laws and regulations], the imposition of hefty fines or other sanction against supervisors and/or workers for non-compliance, placing of notices at the premises to remind the workers not to conduct [the acts in violation of environmental laws and regulations] in the open, or even internal guidelines concerning the matter which are disseminated to all the company's staff.

Even the above measures listed were stated to not be 'definitive or exhaustive.'

Similarly, the Maritime and Port Authority of Singapore has brought suits against businesses pursuant to PPSA. In *Ventura Navigation Inc. v Port of Singapore Authority (PSA) and Ors* [1989] SLR 626, the PSA (predecessor of the Maritime and Port Authority of Singapore) took measures to remove oil from an accidental spill to prevent and reduce the damage caused by oil pollution. The PSA then successfully sought to recover the costs incurred on the basis of section 14 of the previously applicable law, which was repealed and replaced by a similar provision in current PPSA. The right to recover costs for cleaning operations is now contained within Part V of the PPSA.

Lastly, although the acts discussed above do not provide a civil private cause of action to encourage compliance with the legislation, the possibility of being sued in tort by private individuals may serve as deterrence against violations of environmental laws and regulations in Singapore. For instance, in the area of noise pollution, private individuals may sue in the tort of nuisance as was done in *Lim Sor Choo v Sato Kogyo Pte Ltd*¹⁴⁶ even though the claim was ultimately unsuccessful because the judge found that the defendant had taken reasonable precautions and measures to reduce noise emissions.

146 [2006] SGDC 212.

Enforcement of Anti-corruption Laws

Corrupt Practices Investigation Bureau (CPIB) heads up corruption investigations and prosecutions. Relevant to this report is corporate bribery of public officers and according to Singapore Public Sector Outcomes Review 2012, only 6 out of 135 offenders charged with corruption in 2011 were public sector employees. The government's swift and resolute response to public sector corruption cases is testament to the Government's 'resolve to uphold the highest standards of integrity in the public sector'.¹⁴⁷ In March 2012, Deputy Prime Minister Teo Chee Hean said that the number of public servants charged with corruption has remained stable over the past three years – accounting for 7.5 per cent of those prosecuted by the CPIB.¹⁴⁸

High profile public sector corruption cases have been rare. However, a spate of arrests took place in early 2012, with the investigation and subsequent prosecution of the former Director of the Central Narcotics Bureau (CNB) and the former commissioner of the Singapore Civil Defence Force (SCDF).¹⁴⁹ The former Director of the CNB was charged for accepting sexual favours from a IT sales executive in exchange for furthering the business interests of two IT companies she worked for by favouring tenders from them.¹⁵⁰ The former commissioner of the SCDF was charged for having corruptly obtained sexual favours for himself from several women in exchange for advancing their firms' business interest with the SCDF. The two men are the first senior public officials in Singapore to

147 Ministry of Finance, *The Singapore Public Sector Outcomes Review 2012*, December 2012, Accessed: 19 Jan 2012 <http://app.mof.gov.sg/data/cmsresource/SPOR/2012/SPOR%202012.pdf>,

148 Woo Sian Boon, Public sector corruption cases formed 'only a small part', *Today Online*, 27 Dec 2012. <http://www.todayonline.com/singapore/public-sector-corruption-cases-formed-only-small-part>

149 Ramesh, S & Joanne Chan, CPIB confirms arrest of ex-chiefs of CNB & SCDF, *Channel News Asia*, 26 January 2012, at <http://www.channelnewsasia.com/stories/singaporelocalnews/view/1179024/1/.html>

150 On 14 Feb 2013, the District Court found Ng Boon Gay, former Director of CNB not guilty of corruption. See *The Straits Times*, 15 Feb 2013.

be charged with corruption since 1995, when the former deputy chief of the national water agency, the Public Utilities Board, was jailed for 14 years for taking about \$13.9 million in bribes in exchange for privileged information about board contracts when he was in a position of influence and control over the operations of Singapore's public utilities projects.¹⁵¹

3. Is the State periodically assessing the adequacy of the laws and/or regulations identified in Question 2 above, and addressing any gaps?

Is the State using corporate governance measures to require or encourage respect for human rights?

The Singapore Compact for CSR is a national society committed to bringing the Corporate Social Responsibility (CSR) movement forward. Founded by the National Tripartite Initiative for CSR in January 2005, its partners included the Ministry of Manpower (MOM), National Trades Union Congress (NTUC) and the Singapore National Employers Federation (SNEF).

Though not a complaints mechanism, the Singapore Compact functions as a multi-stakeholder platform that recognises the role and contributions of all CSR stakeholders. It offers 3 types of membership: Corporate, open to all companies and government agencies, Institutional, open to all trade unions, cooperative societies or business associations and Associate, open to institutions, academia, VWOs, NPOs, NGOs and other interest groups. Its Current President is CEO of a major Singapore company, while its Vice Presidents are the Chiefs of the Singapore National Employers Foundation, the Singapore Business Federation and Senior Managing Director of a locally-based multi-national.¹⁵² On the

151 Chun Han Wong, Singapore Charges Former Police Officer in Corruption Case, *Wall Street Journal*, 12 June 2012, at <http://online.wsj.com/article/SB10001424052702303768104577461792447322030.html>

152 Singapore Compact, 'Our Committee,' <http://www.csr-singapore.org/c/about/our-committee>, accessed 10 Feb 2013).

22nd of February 2012, the Compact organized an event aimed to introduce various companies as well as CSR practitioners on how to use ISO 26000 and implement it in various organizations. As the business world begins to see the importance of Corporate Social Responsibility (CSR), it said it was imperative for firms to be able to know how to implement CSR practices in the workplace.

The National Trades Union Congress is the only national trade union centre in Singapore. Currently, over 98% of members of trade unions are members of NTUC. Closely aligned with the government, it rarely supports radical changes from government policy, but according to its mandate, exists to protect workers and their rights, to maintain good working conditions and a fair return for labour, and providing ways to train and upgrade the skills of working people.¹⁵³ Membership, with a fee, is open to anyone above 16 years of age, except personnel from Singapore Police Force, Singapore Prisons, Auxiliary Police bodies, students and foreign domestic workers. Criticism of NTUC over being a toothless body when it comes to defending employees' rights has been rebutted by the Union. In an article in the Straits Times, the union insisted that it ensures labour disputes are treated seriously, though most of them are settled away from the glare of publicity.¹⁵⁴

4. **Is the State requiring or encouraging directors of business enterprises to exercise due diligence in ensuring that their business enterprises respect human rights?**

4.1. **What are the general legal due diligence obligations that directors have to comply with?**

153 NTUC, 'About Us,' at <http://www.ntuc.org.sg/wps/portal/up2/home/aboutntuc/organisationprofile/aboutus>, accessed 10 Feb 2013.

154 NTUC not a toothless body when defending employees' rights, *Straits Times*, May 24 2012, at http://www.straitstimes.com/The-Big-Story/The-Big-Story-4/Story/STISStory_802530.html,

Directors, as fiduciaries of the company, are subject to common law fiduciary and negligence duties.¹⁵⁵

Fiduciary Duties

Duty to act bona fide in the interests of the company. A director is required to have a subjective honest belief that he is acting in the interests of the company. Even though the test is subjective, where a transaction is not objectively in the company's interests, a judge may draw an inference that the director was not acting honestly.¹⁵⁶ Directors are allowed to take a wider view of what the company's interests are. A transaction that seems on the face of it to be a bad one numerically may be commercially justifiable if it leads to other intangible benefits to the company.¹⁵⁷ Section 157(1) of the Companies Act is the statutory equivalent of this duty. The effect of the statute is to make a person who acts in breach of this duty liable both civilly and criminally.

Duty to avoid conflicts of interest. There are three aspects of the duty to avoid conflicts of interest: the no conflict rule, the no secret profit and corporate opportunities rule and the no misappropriation of corporate assets rule.

Under the no conflict rule, the director cannot place himself in a position where the interests of the company whom he is bound to protect comes into conflict with either his personal interest or the interest of a third party for whom he acts unless he has disclosed the potential conflict to the company and the company gives its fully-informed consent.

Under the no secret profit and corporate opportunities rule, a director is not allowed to profit from his position unless he provides full disclosure, obtains the informed consent of the company (which at general law means the shareholders at general meeting and the profit cannot be made through

155 On the general duties of directors, see ACRA, *Guidebook for Directors*, at <http://www.acra.gov.sg>, accessed 10 Feb 2013; see also, Tan Cheng Han (ed), *Water Woon on Company Law*, Rev 3 ed (Singapore: Sweet & Maxwell Asia, 2009), chapter 8.

156 Cheam Tat Pang v PP [1996] 1 SLR 541

157 Intraco Ltd v Multi-Pak Singapore Pte Ltd [1995] 1 SLR 313

misappropriation i.e. profit or opportunity was not taken from the company.

Under the no misappropriation of corporate assets rule, a director cannot use company property to take a corporate opportunity for his own personal advantage or for the benefit of any third party. Further, a director who misapplies corporate property for his own benefit may be guilty of criminal breach of trust.

Sections of the Companies Act complement these three common law rules to impose criminal liability in some cases:

- Section 157(2) prohibits officers (including past officers) or agents of the company from making improper use of information that they acquire by virtue of their position as officers or agents of the company to gain either directly or indirectly a benefit for themselves or any other person. An officer in breach will be liable to pay damages or to account for profits, in addition to criminal penalties.
- Section 156(1) of the Companies act requires directors to make appropriate disclosure to the board if they are directly or indirectly interested in a transaction or proposed transaction with the company where the interest is a material interest.
- Section 156(5) requires directors who hold any office or property where duties or interests might, whether directly or indirectly, be created in conflict with their duties or interest as directors, to declare the fact, nature, character and extent of the conflict to the Board of Directors.
- Section 162 prohibits companies from granting loans or entering into any guarantee in relation to loans made to their directors or the directors of their related companies. The director may be made to indemnify for any loss suffered by the company as a result of an unauthorised grant.
- Sections 168 and 169 prohibits companies from making any payment to a director as compensation for loss of office as an officer of the company or as consideration for or in connection with his retirement from any such office subject

to exceptions. A company also cannot provide or improve emoluments for a director in respect of his office unless the provision is approved by a resolution in a general meeting that is not related to other matters. A director who receives money in breach of these sections will be deemed to hold the money in trust for the company.

Negligence

The common law imposes a duty on directors to act with reasonable care, skill and diligence. This duty is treated as comprising of three distinct components: care, skill and diligence and is based on minimum objective standards, which are made more stringent (but not lowered) based on a director's role in the company, the type of decision being made, the size of the company, the business of the company and the director's particular expertise, knowledge or experience.

In a well-known Australian case, *AWA Ltd v Daniels*,¹⁵⁸ which was followed in Singapore High Court case of *Lim Weng Kee v PP*,¹⁵⁹ the New South Wales Court of appeal proposed the following as minimum standards of care, skill and diligence expected of all directors:

- A director must acquire a basic understanding of the business of the company and must be familiar with the fundamentals of the company's business.
- A director is under a continuing obligation to keep himself informed about the activities of the company.
- Detailed inspection of day-to-day activities is not required but a general needs to monitor a company's business affairs.
- A director should attend board meetings regularly.
- A director should maintain familiarity with the financial status of the company by a regular review of financial statements.

¹⁵⁸ (1992) 7 ACSR 759 (Court of Appeal, New South Wales).

¹⁵⁹ [2002] 4 SLR 327 (High Court, Singapore).

The continuum of standards depending on the various factors listed above means that executive directors are subject to a higher standard of care, skill and diligence. With respect to diligence, they are expected to attend all meetings unless there is a good reason not to and to give continuous attention to the affairs of the company. Non-executive directors on the other hand, may only be expected to provide intermittent attention to the company.

These standards also apply in deciding whether a director acted in breach of Section 157(1) of the Companies Act, which similarly imposes a duty to act honestly and use reasonable diligence in the discharge of directors' duties. As far as a duty to exercise reasonable diligence is concerned, the courts have viewed the duty as merely an aspect of the common law duty to act with reasonable care, skill and diligence.¹⁶⁰ Section 157 is essentially a codification of the common law duties and courts have used the case law concerning the common law duty to interpret Section 157.

4.2. **Do directors have specific legal obligations to consider their business enterprises' human rights impacts in carrying out their duties?**

There is no duty or obligation in common law and in the Companies Act requiring directors to consider the business enterprises' human rights impacts in carrying out their duties.

That said, in discharging their overriding duty to the company to act in the company's best interests, directors are required to have regard to the interests of the company's employees generally, as well as the interests of its members.

Further, the common law duty to use powers only for their proper purposes may be used by an interventionist court to impose a legal obligation on directors to consider the human rights impacts of the company's business or activities. Under the duty, directors are not permitted to use their powers

to prosecute objectives outside the scope of the purpose for which the powers are conferred. On first sight this might seem to be a simple inquiry into whether the exercise of the powers falls within the scope of the powers, which is clearly defined by a company's Constitution and Articles of Association. However, academics have argued that such an approach is flawed from a public policy perspective, to the extent that the consequences flowing from it (*viz* the possibility of circumventing the rule altogether by means of felicitous drafting of the Articles of Association) render the doctrine artificial and ineffectual as a means of controlling directors' exercise of power.¹⁶¹ An emphasis on corporate government and responsibility might therefore prompt a court to hold an exercise of power to be improper and outside of its scope should it result in far-ranging negative human rights impacts.

The Singapore courts have displayed a disposition for a more hands-off approach towards the review of corporate decisions and it is unlikely that they will advocate a stricter or more rigid adherence to the proper purpose rule where the directors are acting in the best interest of the company and where there has been no instances or complaints of unfairness or discrimination as between the different classes of shareholders *inter se*.

4.3. **Do directors have specific legal obligations to take into account the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad (supply chain)?**

There are no specific legal compliance requirements for all companies to take into account human rights impacts of subsidiaries, suppliers and other business partners, directors of companies listed on the Singapore Stock Exchange (SGX) that are part of a supply chain are encouraged to conduct

¹⁶⁰ *Lim Weng Kee v PP* [2002] 4 SLR 327

¹⁶¹ Mok Cui Ling, 'Re-Thinking Directors' Duties: An Analysis of the Proper Purpose Doctrine', 2002.

sustainability reporting.¹⁶² In addition, general recommendations in the ACRA Guidebook for Directors 2011 stipulate:

As a director, you should ensure that the company adopts socially responsible practices such as fair employment practices, non-discrimination towards employees and provision of a safe working environment as well as opportunities for employee development...The company should also conduct business ethically and morally by not compromising on the safety of its products or workers in order to maximise profits.¹⁶³

4.4. Have any of the directors' duties identified above been enforced by the State in relation to business-related human rights abuses?

No examples have been found.

4.5. Has the State provided non-binding guidelines encouraging directors to take into account (a) their businesses' human rights impacts in carrying out their duties, and/or (b) the human rights impacts of subsidiaries, suppliers and other business partners, whether occurring at home or abroad (supply chain)?

As part of its awareness initiative, ACRA published a Guidebook for Directors in 2011.¹⁶⁴ According to the authority: 'The handbook is written for new or aspiring directors to better understand their responsibilities and duties. It also serves as a practical hands-on guide for these directors

on the know-how in performing their statutory duties and meeting their legal and compliance requirements.' Section 7 of the Guide – covering corporate governance and social responsibility – outlines the importance of corporate governance, the Code of Corporate Governance, corporate social responsibility, adopting ethical and socially responsible practices, engaging with society and protection of the environment and sustainable development. In addition, ACRA recognizes the Singapore Compact for CSR and endorses CSR.

The Guide includes a reference to the 15 principles of the Code of Corporate Governance, including the Board's Conduct of Affairs, The Boards Composition and Guidance, Division of Power and Responsibilities, Division of Powers, Appointment of Directors, Assessment of Board Performance, Internal Auditing, and Remuneration Policies and Levels.

Significantly, it states that companies should take into consideration and manage the impact of its activities on the environment, stakeholders and the community as a whole. It states that public interest and concern for the environment should be considered in tandem with economic profit generation, arguing that these are key parts of risk management and value creation. The guide also recommends that directors ensure that their company adopts socially responsible practices such as fair employment practices, non-discrimination towards employees and provision of a safe working environment.

Apart from explaining the purpose of the Global Compact (Human Rights, Labour, Environment and Anti-corruption), the guidelines also mention ISO 26000 and the Global Reporting Initiative (GRI).

The Guide appears to address company activity abroad, saying that consideration should be given to cultural and business impacts especially when conducting business in a foreign environment. In a reference to human rights, it states that 'in particular contexts, this also means respecting and

162 Singapore Exchange, *Sustainability Reporting Guide 2011*, at http://rulebook.sgx.com/net_file_store/new_rulebooks/s/g/SGX_Sustainability_Reporting_Guide_and_Policy_Statement_2011.pdf, accessed 8 Oct 2012.

163 ACRA, *Guidebook for Directors*, at <http://www.acra.gov.sg/NR/rdonlyres/F687FCD3-9485-497A-AE05-BC6881361B94/0/Section7.pdf>, Section 7, accessed 8 Oct 2012.

164 ACRA, *Guidebook for Directors*.

observing fundamental human rights in all aspects of operations,' although it gives no detail on what these rights are. It also does not make any mention of what would happen if a company failed to observe these recommendations.

In fact, the guide explicitly says that although there are laws that promote CSR such as employment laws and pollution regulations, not all aspects of CSR can be regulated. It says that 'by definition CSR implies a more proactive stance than mere compliance and is often a statement of a company's ethical capital.' Directors are urged to 'play a part by ensuring that the company adopts the best practices even if they are not mandated by law.'¹⁶⁵

This section of the guide sums up Singapore's attitude towards business and human rights. Though it appears to recognise a thin layer of rights exist, when it comes to corporate activity, it is reluctant to go beyond the traditional employment rights accorded to individuals, or develop the law to include these rights. Instead it relies on companies to take a proactive response in behaving ethically, without the legal obligation to do so.

4.6. Does the State require or encourage business enterprises to communicate their human rights impacts, as well as any action taken to address those impacts?

In Singapore, companies (whether listed or not) are required to annually disclose their annual accounts, management report and, if any, consolidated accounts and group management report. In these annual reports, companies shall state any liabilities affecting their financial situation, including liabilities arising from the impact of their operations on non-shareholders. In addition, under the *Listing Manual*, listed companies are required to describe in their annual reports their corporate governance practices with specific reference to the principles of the *Code of Corporate Governance*, as well as to disclose and explain any deviation from it.

¹⁶⁵ ACRA, *Guidebook for Directors*.

A listed company has an obligation, except under certain circumstances, to immediately disclose information that may have an effect on the market, and as such, information relating to their activities affecting non-shareholders, including human rights impacts, if they have an effect on the market.

There does not however, appear to be an obligation to disclose the impact of the company's operations on non-shareholders; for example, laws and regulations on the environment or corruption do not provide a statutory obligation to report or disclose.¹⁶⁶

Commentators and business figures responded to the revised Code of Corporate Governance released by the Monetary Authority of Singapore (MAS) at the end of 2011 and following a public consultation on its initial proposals in mid-2011, MAS published its proposed revisions, which emphasised increasing the responsibility on boards and directors.¹⁶⁷ On 2 May 2012, MAS accepted recommendations made by the Corporate Governance Council on the Code of Corporate Government and issued a revised Code which took effect on 1 November 2012. Compliance with the Code is not mandatory but listed companies are required under SGX Listing Rules to disclose their corporate government practices and give explanations for deviations from the Code in their annual reports.

Under the Global Reporting Initiative, as of 2009, no businesses were listed under the reporting framework. However, CSR Asia and Singapore Compact for CSR were listed under Singapore as GRI organisational stakeholders.¹⁶⁸ The SGX also emphasised the importance of the framework in its Mainboard Rules' Guide to Sustainability Reporting for Listed Companies. Rule 4.2 under this guide states that 'The exchange encourages the adoption

¹⁶⁶ ACRA, *Guidebook for Directors*.

¹⁶⁷ Singapore Compact, *Revisions to Code of Corporate Governance Will Increase Boardroom Accountability and Demands*, at <http://www.csrsgapore.org/c/news/98-revisions-to-code-of-corporate-governance-will-increase-boardroom-accountability-and-demands>, accessed 25 August 2012.

¹⁶⁸ CSR Digest, *The Global Reporting Initiative*, at <http://www.csrdigest.com/2009/04/the-global-reporting-index>, accessed 27 May 2012

of internationally accepted reporting frameworks, such as the Global Reporting Initiative (GRI) Sustainability Reporting Guidelines, in disclosing the company's sustainability performance.¹⁶⁹ With respect to industry-specific reporting, it similarly encourages listed companies to adopt the GRI Sector Supplements for selected industries.

4.7. Is/are the country's stock exchange regulator(s) taking steps to require or encourage business enterprises listed on the stock exchange to respect human rights? If so, what are these steps?

The *Singapore Exchange* ('SGX') is both a regulator of the market and a listed company. As of April 2012 there were 769 companies listed in total – Industrial, Consumer Goods and Finance being the main sector.¹⁷⁰ It should be noted that the SGX signed a deed of undertaking in 2007 in favour of MAS (Monetary Authority of Singapore), which allows the MAS to make all decisions and take action in relation to SGX. The SGX is a corporation that has been designated by the Monetary Authority of Singapore ('MAS') as an approved exchange. The SGX is regulated by the Securities and Futures Act ('SFA'), of which Division 2 Subdivision 1 of the Act ('Obligations of approved exchanges') is of particular importance.

Section 8 of the SFA empowers the MAS, a government body, to approve the corporation as an approved exchange and specifies the conditions for qualifying as an 'approved exchange'. Section 16 of the SFA sets out the general obligations of an approved exchange, which include the duty to ensure that the market is fair, orderly and transparent under Section 16(1)(a), and to refrain

169 Singapore Exchange, *Rulebook*, at http://rulebook.sgx.com/en/display/display.html?rbid=3271&record_id=7615&element_id=5868&highlight=Global+Reporting+Initiative#r7615, accessed 7 May 2012

170 SGX, *Statistical Report 2012*, at <http://www.sgx.com/wps/wcm/connect/f66414804b1c0976b5e8b51561d4001f/SGX+Monthly+Statistics+%28April+2012%29.pdf?MOD=AJPERES&CACHEID=f66414804b1c0976b5e8b51561d4001f>, accessed 27 May 2012

from acting contrary to the interests of the public under Section 16(1)(d).¹⁷¹

The Code on Corporate Governance, which is monitored by MAS and SGX, provides principles and guidelines to listed companies and their boards to move them towards a higher standard of corporate governance, with the objective of creating sustainable and financially sound enterprises.

Under the Listing Manual, companies are required to describe their corporate governance practices with specific reference to the principles of the Code in their annual reports and to disclose any deviations from any guideline of the Code together with appropriate explanations. Principle 5 of the Code states that there should be a formal annual assessment of the effectiveness of the Board as a whole and its committees and the contribution by each director to the effectiveness of the Board. Section 1.1, which defines the board's role, includes the consideration of '...sustainability issues, e.g. environmental and social factors,' as part of its strategic formulation.¹⁷²

Some of SGX's statutory obligations under that section include ensuring that access for participation in its facilities in subject to criteria that are fair and objective and ensuring that it appoints or employs fit and proper persons as its chairman, chief executive officer, directors and key management officers.

As noted above, the current Code came into operation on 1 November 2012. Compliance with the Code is not mandatory but listed companies are required under SGX Listing Rules to disclose their corporate government practices and give explanations for deviations from the Code in their annual reports.

171 Attorney General's Chambers, *Statutes*, at <http://statutes.agc.gov.sg/aol/home.w3p>, accessed 27 May 2012

172 Global Reporting, *Current Corporate Social Responsibility Disclosure Efforts by National Governments and Stock Exchanges 2010*, at <http://www.globalreporting.org/NR/rdonlyres/649A345D-8BD7-413D-A696-7E12F6E-A37C5/4198/Carrrots2010final.pdf>, 61.

The SGX has powers to investigate and inspect broker-dealers under the *SGX Rules*. In the event of a violation of the SFA, *SGX Rules* or any other SGX requirements, disciplinary proceedings may be commenced. However, broker regulation is progressively falling under the scope of MAS. The SGX also has supervisory functions, including the supervision of listed companies, admission of members, market surveillance and risk management for the clearing of securities and derivatives trades.¹⁷³

The SGX does not have a responsible investment index, but private entities offer a wide range of services linked with corporate social responsibility and socially responsible investments. Firms like the Dow Jones Group or the FTSE Group provide indexes whose constituents are sometimes companies listed in Singapore. One private entity, OWW Consulting, provides a SRI Index specifically dedicated to Singapore.¹⁷⁴

The SGX announced a policy to encourage listed companies to disclose their environmental and social impacts. On 27 June 2011, The SGX Sustainability Reporting Guide represents a new initiative by the local Exchange to cultivate holistic disclosure by listed companies. The guide encourages but does not require that issuers assess and disclose the environmental and social aspects of their organisational performance, in addition to the financial and governance aspects that are already part of the customary and regulatory disclosure practiced.

Under SGX's Policy Statement on Sustainability Reporting, section 2 defines sustainability reporting as 'the publication of environmental, social and governance (ESG) information in a comprehensive and strategic manner that reflects the activities and outcomes across these three dimensions of an organisation's performance'. The guidelines could become legally binding in the future. SGX said it would start with voluntary reporting for its companies but hoped that the voluntary measures would become everyday practice, in the same way

173 CVM&L 2009 Report, 8

174 Ibid., 10.

Singapore companies follow guidance and rules on corporate governance under the Code of Corporate governance.¹⁷⁵

SGX encourages all listed companies to undertake sustainability reporting, stressing that this is particularly relevant to businesses that operate in industries susceptible to environmental and social risks, produce significant environmental pollutants, are heavy natural resource users, or are part of a supply chain where end-customers demand that businesses behave responsibly.

Prior to the release of SGX's voluntary guidelines for sustainability reporting, a research report by Singapore Compact found that only 79 out of 562 mainboard-listed companies at the end of 2010 had some form of non-financial reporting, with only a handful of reports approaching comprehensiveness.¹⁷⁶

5.1. Is the State implementing any non-binding initiatives requiring or encouraging business enterprises to respect human rights?

Though the State has not provided any guidance to business enterprises on how to respect human rights throughout their operations; the State provides guidance on implementation of corporate governance and corporate social responsibility where references and issues pertaining to human rights are mentioned.

Apart from the above, the government launched 'BizSAFE' – an initiative of the *Workplace Safety Health Advisory Committee* – to promote and offer assistance to small and medium enterprises to

175 SGX, *Policy Statement on Sustainability Reporting*, at http://rulebook.sgx.com/en/display/display_main.html?rbid=3271&element_id=5864, accessed 27 May 2012.

176 Singapore Compact, *Sustainability Reporting in Singapore: Non-financial reporting among mainboard listed companies in Singapore, A view of the Sustainability Reporting Landscape in 2010-2011*, at <http://www.csr.singapore.org/c/news/88-singapore-compact-releases-research-findings-on-sustainability-reporting-in-singapore>, accessed 27 May 2012.

improve their workplace safety and health standards through a certification process.¹⁷⁷ Prosecutions are routinely carried out against companies for unsafe practices.

To encourage business enterprises to respect human rights, the State has provided tax and financial incentives to companies and organisations.

In relation to the environment, the government has initiated a wide range of funding and incentive schemes related to energy efficiency, clean energy, green buildings, water and environmental technologies, green transport and shipping, waste minimisation, energy and greenhouse gas management, and environmental initiatives and training.¹⁷⁸

In February 2012, it was announced that employers who hire disabled workers will receive a pay out, with the government giving employers who hire special school graduates a credit of 16 per cent of the employees' wages. The incentive was in addition to a special employment credit of 16% that is granted to disabled workers.¹⁷⁹ In December 2012, it was announced that a total of 1,358 employed persons with disabilities received \$449,000 under the scheme, and 1,150 employers who hired 1,863 working persons with disabilities were allotted \$1.24 million under the SEC.¹⁸⁰

With respect to the protection of women and children, the Singapore government ratified CEDAW (Convention on the Elimination of All

Forms of Discrimination against Women) and the CRC (Convention on the Rights of the Child) in 1995. Subsequently, in 1996, the Inter-Ministry Committee (IMC) on CEDAW was set up to oversee the implantation of the Convention in Singapore. It comprises 16 ministries and public sector agencies, which coordinate and implement initiatives under their purview to better address the needs of women. An inter-ministry committee on the CRC was also established at the same time, as the national mechanism to co-ordinate policies relating to children, and to monitor the implementation of the Convention in Singapore¹⁸¹

5.2 Is the State providing guidance to business enterprises on how to respect human rights throughout their operations?

Although there has been some guidance on how business enterprises should respect human rights in their operations, the Singapore government appears keener to promote responsible business practice through the prism of Corporate Social Responsibility or 'CSR'. When it comes to Corporate Social Responsibility, some commentators suggest that the CSR movement in Singapore is largely government-led. According to Professor Eugene Tan, this means that the government maintains control and influence over how CSR is enforced. As such, there remains 'an aversion to undue CSR activism on the part of NGOs and civil society' which may 'detract from the business of generating profits.'¹⁸²

177 CVM&L 2009 Report, 44.

178 Eugene Tay, *2012 Guide to Singapore Government Funding and Incentives for the Environment*, at <http://www.greenfuture.sg/2012/05/30/2012-guide-to-singapore-government-funding-and-incentives-for-the-environment>, accessed 30 May 2012.

179 'Hire disabled workers and get pay out,' *Straits Times*, 18 Feb 2012, at <http://www.spring.gov.sg/NewsEvents/ITN/Pages/Hire-disabled-workers-and-get-payout-20120218.aspx>, accessed 30 May 2012.

180 Ministry of Social and Family Development, '\$1.7M Paid Out Under Special Employment Credit (SEC) and Workfare Income Supplement (WIS) for Persons with Disabilities,' 20 Dec 2012, at <http://app.msf.gov.sg/PressRoom/17MPaidOutUnderSpecialEmploymentCredit.aspx>, accessed 10 Feb 2013.

181 Ministry of Community Development, Youth and Sports (MSYC), *Singapore's Initial Report to the Committee on the Rights of the Child*, December 2011, at www.news.gov.sg/public/.../Media%20Release_Annexes.doc, accessed 7 May 2012.

182 Eugene Tan, *The State of Play of CSR in Singapore*, Lien Centre for Social Innovation, July 2011, at <http://www.lcsi.smu.edu.sg/downloads/TheStateOfPlayOfCSRinSingapore.pdf>, accessed 30 May 2012.

Bodies like the Singapore Compact have been encouraged to promote CSR in Singapore, and the National Trades Union Congress (NTUC), has also played a large role. According to the Singapore Compact, Corporate Social Responsibility is about businesses doing well and doing good at the same time. 'CSR is about the long term strategy of aligning business strategy and operations with universal values to achieve positive and sustainable outcomes for customers, suppliers, employees, shareholders, communities, other stakeholders and as well as the environment.'¹⁸³

At an event to introduce ISO 26000 to companies and CSR practitioners in February 2012, the Singapore Compact also made reference to the 3 pillars of protect, respect and remedy under the Ruggie Framework. During the session, 'due diligence' was discussed as an integral part of social responsibility. The Compact emphasised that the 3 pillars must be considered as part of the due diligence process.¹⁸⁴

As the 'the local focal point for the UN Global Compact (UNGC)', the Singapore Compact supports its members to become participants of the UNGC. The ten accepted principles of the UNGC cover the protection of internationally recognised human rights, labour, the environment and anti-corruption. The Compact educates members on the UNGC and helps them to complete their Communications on Progress, part of the reporting procedure of signatories. As of August 2011,

Singapore had 78 participants in the UNGC.¹⁸⁵

Though the Singapore Compact supports the UNGC, Singapore has yet to ratify some of the Conventions under its principles, such as the ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise.

The Singapore National Employers Federation represents the interests of employers and participates in studies on employment related issues. It is an independent, autonomous, non-profit organization funded by membership fees and revenue from consultancy, training, research and other activities, but mostly consults on industrial relations. Both NTUC and SNEF are founder members of the Singapore Compact.¹⁸⁶

Apart from the above, the Tripartite Alliance for Fair Employment Practices ensures that workers are hired on the basis of merit and are not discriminated against on the grounds of age, gender or other non-work-related factors.¹⁸⁷

Although awareness of CSR has grown, efforts to fully implement CSR have been limited in Singapore, as with other countries elsewhere, as many local companies remain indifferent to the cause. The CSR movement in Singapore is largely based on a three-part system involving the government, employers and unions, and most local businesses view CSR as a compliance issue, rather than as a way to do business. Singapore's approach to CSR coincides with Singapore's political and cultural values where the promotion of collective social responsibility (individual and group), harmony, cohesion, and stability are given priority. As such, rather than encompassing human rights, at least

183 Singapore Compact, *International Singapore Compact CSR Summit 2010*, at <http://www.csrsgroup.org/c/past-events/29-international-singapore-compact-csr-summit-2010>, accessed 23 Jan 2013.

184 Singapore Compact, Introduction to ISO 26000 International Guidance Standard to Social Responsibility – A Practical Introduction to Implementing CSR in All Types of Organizations, at <http://www.csrsgroup.org/c/past-events/111-introduction-to-iso-26000-international-guidance-standard-to-social-responsibility-a-practical-introduction-to-implementing-csr-in-all-types-of-organizations>, accessed 14 Apr 2012.

185 Singapore Compact, *United Nations Global Compact (UNGC)*, at <http://www.csrsgroup.org/c/ungc>, accessed 20 May 2012.

186 Singapore Compact, *Singapore Compact for CSR*, at <http://www.singaporecsrsummit.org/about.asp>, accessed 9 Apr 2012.

187 Singapore UPR Report 2011, 9.

one commentator believes that CSR in Singapore to date has been focused on philanthropy or ‘checkbox-book’ CSR and corporate governance issues.¹⁸⁸

6. Is the State taking steps to require or encourage business respect for human rights in its own relationships and dealings with businesses?

6.1. Does the State require or encourage State-owned or controlled business enterprises to respect human rights?

Singapore has thus far preferred a consensual approach over enacting law to regulate businesses, (e.g. Guidelines for Directors and the Code on Corporate Governance). Even so, more and more measures have been adopted to enhance corporate governance and corporate social responsibility (‘CSR’) via guidelines (non-binding), incentives, awards and certifications. In practice, statutory boards and ministries take most of the actions.¹⁸⁹ There is some coordination between government bodies to ensure consistency between human rights obligations and business practice, but the extent of such coordination is unclear.

One example is the 2010 initiative by the Ministry of Manpower and the Ministry of Home Affairs, to form an Inter-agency Taskforce on Trafficking in Persons. Civil society was asked to participate in a 3-month consultation process with the Inter-agency taskforce, in which a number of forums were held to feedback into the creation process of a National Plan of Action (NPA) on Trafficking in Persons. The taskforce has also received information, training and support in respect of observing human rights

¹⁸⁸ Eugene Tan, *The State of Play of CSR in Singapore*, Lien Centre for Social Innovation, July 2011, at <http://www.lcsi.smu.edu.sg/downloads/TheStateOfPlayOfCSRinSingapore.pdf>, accessed 30 May 2012.

¹⁸⁹ CVM&L 2009 Report, 15.

obligations when fulfilling their mandates.¹⁹⁰

6.2. Does the State require or encourage businesses that receive substantial support and services from State agencies(‘beneficiary enterprises’) to respect human rights?

There are no explicit State guidelines or regulations requiring or encouraging businesses receiving substantial support and services from State agencies to respect human rights. However, as noted above, the government works hard to promote better CSR practices amongst companies without legislating. Guidelines on Family Friendly Workplace Practices; Non-Discriminatory Job Advertisements; Flexible Work Schedules, and Best Work-Life Practices are a few examples, of recommendations that are encouraged. Awards to encourage better employment practices such as the work-life excellence award, family friendly organisation award and workplace safety and health awards have also been instituted. All organisations, including Government linked companies and beneficiary enterprises are encouraged to apply.¹⁹¹

¹⁹⁰ Ministry of Manpower, *Singapore Inter-Agency Taskforce on Trafficking in Persons*, at <http://www.mom.gov.sg/foreign-manpower/trafficking-in-persons/Pages/default.aspx>, accessed 23 January 2013.

¹⁹¹ Melissa Ong, *Contextualising Corporate Social Responsibility in Singapore*, September 2009, at <http://www.spp.nus.edu.sg/docs/wp/2009/wp0916.pdf>

6.3. When services that may impact upon the enjoyment of human rights are privatized, is the State taking steps to ensure that the business enterprises performing these privatized services respect human rights?

There are no specific laws that apply to the privatisation of services that may impact on the enjoyment of human rights. Instead, Singapore relies on political, rather than legal checks to govern privatised services. The State takes measures to regulate the cost of housing and other services, including water. The rising cost of living has been a top concern for Singaporeans, and high property prices, pushed up by increased demand from a growing population, has contributed significantly to the problem.¹⁹² In January 2013, the government took further measures to introduce stamp duties on foreign property buyers and announced that it was building 700,000 new government homes, in an effort to combat rising housing costs.¹⁹³

6.4. Does the State require or encourage respect for human rights in carrying out public procurement?

Singapore is a member to the WTO General Procurement Agreement. When issuing public tenders, State bodies usually include 'detailed guidelines' which outline stipulations, prohibitions and restrictions on contractor obligations, particularly in relation to the environment. For example, in a tender on the lease of state land for a fish export centre, the detailed guidelines stipulated that 'Activities shall not produce any toxic

192 Dara Ranasinghe, *Singapore's High Cost of Living May Come at a Cost*, 30 January 2013, at <http://www.cnn.com/id/100418370>, accessed 31 January 2013.

193 Imelda Saad, *5,200 hectares more land to accommodate projected 6.9m population: govt*, 31 January 2013, at <http://www.channelnewsasia.com/stories/singaporelocalnews/view/1251352/1.html>, accessed 31 January 2013.

product/s or by-product/s that can adversely affect surrounding use.¹⁹⁴

7. Is the State taking steps to support business respect for human rights in conflict-affected and high-risk areas?

Not applicable.

8. Is the State taking steps to ensure coherence in its policies domestically and internationally such that it is able to implement its international human rights obligations?

Though it has a strong domestic regulatory framework for businesses, Singapore's framework for the regulation of business overseas is more limited.

Child Sex Tourism

Under the Convention of the Rights of the Child, Singapore has international treaty obligations to enact extraterritorial law to cover child sex offences.

From 2004-2006, public support for government proposed extraterritorial legislation was tremendous. A State media poll showed that 1 in 5 pollsters knew of at least one Singaporean man who had sex with under-age prostitutes abroad.¹⁹⁵ As a result, in 2006 the Singapore government decided to take firm action and amend the laws to extend extra-

194 Singapore Land Authority, *Tender for State Land - Lorong Chencharu*, at http://www.sla.gov.sg/Land_Sales/lorong_chencharu/Parcel%2010%20_FULL%20COT%20with%20APPENDICES_.pdf, accessed 14 April 2012.

195 AWARE Singapore, *Beyond Borders: Sex with Children, Implementing extraterritorial legislation for Singaporeans*, January 2006, at <http://www.aware.org.sg/wp-content/uploads/Beyond-Borders-Sex-with-Children.pdf>

territorial jurisdiction over Singapore nationals who sexually exploit minors overseas. The Penal Code was amended in 2007 to make it an offence for any person who is either a citizen or permanent resident of Singapore to engage in commercial sex with a minor under the age of 18 outside of Singapore.¹⁹⁶ These amendments hold liable any person who organises any travel arrangements for another person with the intention of facilitating the commission of such an offence (sex tourism).¹⁹⁷ Although the law has now been in effect for over 5 years, there have yet been no reported prosecutions of any Singapore national or permanent resident for child sex tourism.¹⁹⁸

Prevention of Corruption

Before enacting laws against child sex tourism, Singapore had already implemented extra-territorial laws to address other business and human rights concerns, including the Prevention of Corruption Act¹⁹⁹ and the Computers Misuse Act.²⁰⁰

The Prevention of Corruption Act addresses acts of corruption taking place outside and within Singapore and is actionable against Singapore citizens only. The extraterritorial dimension was added to the 1966 Amendment bill, which was passed without much debate.

The extremely broad legislation can tackle acts of corruption abroad by a Singaporean, which have no impact on Singapore. A citizen can fly to Indonesia for example, and participate in corrupt activities and

can be prosecuted in Singapore upon his return.²⁰¹

Other Business Activities

Despite its relatively strong business regulatory framework, Singapore came under fire in 2010, when the NGO Global Witness released a report alleging that Singapore's sand imports from Cambodia had a devastating effect on Cambodia's ecosystems and its citizens' livelihoods.²⁰²

Although the Cambodian government banned sand exports, the country's sand industry is largely unregulated and continues to export sand. Dredging operations from one province alone, worth an estimated US\$248 million annually, were carried out in rivers and estuaries along Cambodia's coastline, inside protected areas and in close proximity to ecosystems and habitats that are home to endangered aquatic species. There were also complaints from fishermen that their livelihoods have been adversely affected as seafood harvests diminished once dredging was carried out.²⁰³

Singapore's response was that the sand was not imported by the Singapore government but rather by private companies. The government also stated that the companies in Cambodia that had concessions and that they operated within Cambodia's laws and regulations to legally procure the sand. As long as the sand was not smuggled or illegally procured, Singapore said it would not stop the import of the sand.

The Singapore government maintained that all government agencies constantly reminded the

196 Penal Code, Section 376C; Singapore Statutes (Cap 224). Under section 376B, a person convicted of this offence may be punished with imprisonment of up to 7 years, or with a fine, or both.

197 Ibid., Section 376D.

198 United States Department of State, *Trafficking in Persons Report*, June 2011, at www.state.gov/j/tip/rls/tiprpt/2011

199 Singapore Statutes, Cap 241.

200 Ibid., Cap 50A.

201 AWARE Singapore, *Beyond Borders: Sex with Children: Implementing Extraterritorial Legislation for Singaporeans*, accessed 30 Dec 2012.

202 Global Witness, *Shifting Sand: How Singapore's demand for Cambodian sand threatens ecosystems and undermines good governance*, at http://www.globalwitness.org/sites/default/files/pdfs/shifting_sand_final.pdf, 4, accessed 30 Dec 2012.

203 Ibid., 15.

contract vendors for their projects to act responsibly while delivering their projects. Checks for valid documents and licenses were constantly carried out by the government agencies and the Singapore customs investigated all imported goods for the legality of documentation and procurement.

The Ministry of National Development further stated that it was not up to Singapore to police or enforce such laws on exporters; such responsibility lay with Cambodia as a sovereign state with control over access to these resources. The press statement, however, did state that sand needed to be extracted in an environmentally sustainable manner.²⁰⁴

Relationship with Myanmar

Singapore's cumulative foreign direct investment into Myanmar between 1989-2012 was USD1818 million, making it the second largest direct foreign investor in the country from the Association of Southeast Asian Nations as of 2012.

However, as there exists no international extraterritorial human rights obligations that govern the financial and investment relationships of states, it is unclear how this relationship should be addressed. As a large foreign creditor of Myanmar, Singapore is well placed to insist on responsible investment, now that reforms in the country are underway.²⁰⁵

204 Fazlin Abdullah and Goh Ann Tat, *The Dirty Business of Sand – The Case of Cambodia Sand Dredging*, at http://www.spp.nus.edu.sg/docs/case/LKYSPPCaseStudy12-01_Dirty_Business_of_Sand.pdf

205 Mahdev Mohan, Lan Shiow Tsai & Salil Tripathi, 'Human Rights Challenges Amidst Myanmar's Gold Rush', 28 Sep, 2012, at <http://www.ihrb.org/publications/op-eds/human-rights-challenges-amidst-myanmars-gold-rush.html>, accessed 8 Oct 2012.

8.1. Is the State taking steps to ensure that governmental departments, agencies, and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates?

It is not known to what extent human rights and business feature as part of discussions and coordination between governmental departments, agencies and other State-based institutions in Singapore. However, Singapore's Civil Service College is the public sector's core institution for training, learning, research and staff development, and offers public servants in Singapore courses in a wide range of areas, including governance, management practices and social policy, including racial discrimination among others.²⁰⁶

8.2. Is the State taking steps to maintain adequate domestic policy space to meet its human rights obligations when concluding economic agreements with other States or business enterprises?

When concluding economic agreements with other States or business enterprises, it is not clear if the Singapore government has proactively taken steps to ensure adequate domestic policy space.

As a member of ASEAN, Singapore has been part of ASEAN-Asia FTAs, which mention labour and environmental standards.²⁰⁷

The US-Singapore FTA is the first FTA which the US has with an Asian country. It is the only FTA (of a total of 18), which requires Singapore to adhere

206 Civil Service College Singapore, *Programmes*, at <http://www.cscollege.gov.sg/Programmes/Pages/Default.aspx>

207 IE Singapore, *Singapore FTAs*, at http://www.fta.gov.sg/fta_acfta.asp?hl=2, accessed 27 May 2012.

to certain protocols, which govern human or labour rights. In Chapter 17 of the FTA, entitled 'Labour', both governments were required to reaffirm their respective obligations as members of the International Labour Organization (ILO) and their commitment to the ILO Declaration of Fundamental Principles and Rights at Work. The agreement also requires that both governments ensure that they do not waive domestic labour laws in a manner that weakens the country's adherence to internationally recognized labour rights so as to encourage trade or investment. In addition, Chapter 18 of the agreement dictates that both countries need ensure that they undertake environmental measures necessary to protect human, animal, or plant life or health, and do not weaken domestic environmental protections to encourage trade or investment.

However, there have been concerns that the agreement 'Integrated Sourcing Initiative' (ISI) has created a loophole by allowing products produced in the Indonesian islands of Bintan and Batam to be treated as if they were of Singaporean origin, even though the labour laws and environmental protection schemes under the FTA do not apply to these islands.²⁰⁸ That said, the production from these two islands is largely in the hands of Singaporean companies or multinationals headquartered in Singapore.²⁰⁹

Negotiations for the EU-Singapore FTA concluded in 2012. The EU Trade Commissioner Karel De Gucht previously said that a Partnership and Cooperation Agreement (PCA) would be needed before the EU would enter into FTA talks with any country. This is of significance because PCAs normally include significant political clauses, including the respect

208 Carnegie Endowment Fund, *Serious Flaw in U.S.-Singapore Trade Agreement Must Be Addressed*, 1 April 2003, at <http://www.carnegieendowment.org/2003/04/01/serious-flaw-in-u.s.-singapore-trade-agreement-must-be-addressed/eit>, accessed 27 May 2012.

209 IE Singapore, *Overview of United States (USSFTA)*, at http://www.fta.gov.sg/fta_ussfta.asp?hl=13, accessed 27 May 2012.

for democratic principles and fundamental human rights.²¹⁰

As noted above, Singapore is a member to the WTO General Procurement Agreement, which encourages State bodies to issue detailed guidelines when issuing public tenders.

8.3. Is the State taking steps to ensure and promote business respect for human rights when acting as members of multilateral institutions that deal with business-related issues?

Singapore is a member of the International Monetary Fund (IMF), World Bank, Asian Development Bank (ADB), and ASEAN. Apart from as a member of ASEAN, it is not known if Singapore has referred to business and human rights principles in its statements at other institutions.

Within ASEAN, Singapore has engaged with business and human rights through its former representative to the ASEAN Intergovernmental Committee on Human Rights, Richard Magnus. In 2010, the Special Advisor of the SRSG met with the ASEAN Intergovernmental Commission on Human Rights during its visit to the United States and in March 2011 there was a further meeting in Singapore. Singapore, Indonesia and Malaysia were part of the SRSG's Corporate Law Project involving independent submissions from over 20 leading corporate law firms on how corporate and securities law in over 40 jurisdictions encourages companies to respect human rights.²¹¹

210 EU Centre in Singapore, 'The EU-Korea FTA and its Implications for the Future EU Singapore FTA', June 2011, at <http://www.eucentre.sg/articles/296/downloads/BackgroundBrief-The%20EU-Korea%20FTA%20and%20its%20Implications%20for%20the%20Future%20EU-Singapore%20FTA.pdf>, 31, accessed 27 May 2012.

211 Business and Human Rights Resource Centre, *SRSG Corporate Law Project*, at <http://www.businesshumanrights.org/SpecialRepPortal/Home/CorporateLawTools>, accessed: 14 Apr 2012.

Singapore is a member of the International Finance Corporation (IFC), an institution of the World Bank Group. The IFC recently reviewed and updated its 2006 Sustainability Framework, which includes a thematic area of business and human rights; it explicitly acknowledges the responsibility of the private sector to respect human rights and to recognise that it may be appropriate for clients to undertake additional due diligence in some high risk circumstances.

The updated 2012 edition of IFC's Sustainability Framework applies to all investment and advisory clients whose projects go through IFC's initial credit review process after 1 January 2012; this would presumably mean that Singapore would need to ensure that investments by IFC in Singapore abide by the IFC Sustainability Framework, particularly, the Performance Standards on Assessment and Management of Environmental and Social Risks and Impacts; Labour and Working Conditions; Resource Efficiency and Pollution Prevention; Community Health, Safety, and Security; Land Acquisition and Involuntary Resettlement; Biodiversity Conservation and Sustainable Management of Living Natural Resources; Indigenous Peoples; and Cultural Heritage. In February 2012, it was announced that the IFC plans to tie up with GIC (Government of Singapore Investment Corporation) Singapore to set up a US\$1 billion infrastructure fund to further the adoption of sustainability by banks.²¹²

212 Rachel Kelly, 'Financial institutions heeding call to address climate change,' *Channel News Asia*, 9 Feb 2012, at <http://www.channelnewsasia.com/stories/singaporebusinessnews/view/1182016/1/.html>, accessed 30 May 2012.

9. **Is the State taking steps to ensure, through judicial, administrative, legislative or other appropriate means, that when business-related human rights abuses occur within their territory and/or jurisdiction those affected have access to effective remedy?**

9.1. **What are the legal and non-legal State-based grievance mechanisms available to those seeking remedy for business-related human rights abuses?**

Singapore does not have a formal state-administered Human Rights Institution. Its existing legislative framework addresses most of the relevant corporate related human rights concerns in the country. See 3.2 above.

However, the Singapore judicial system has expanded beyond the traditional scope of judicial adjudication and actively promulgates court-based mediation or out-of-court settlement mechanisms with capabilities to address human rights issues, including corporate-related human rights abuses. These private and state-administered institutions form a loose network of grievance mechanisms in Singapore, with huge potential to provide remedies for victims of business-related human rights abuses in the country.

Private Commercial Arbitration/Mediation

The Singapore International Arbitration Centre handles civil and commercial arbitration.

The Singapore Mediation Centre (SMC) handles any civil matter so long as parties agree to mediation. It has handled a wide range of cases, which include probate disputes, construction disputes, corporate disputes and tenancy disputes. Mediation aims for parties to come to an agreement on an outcome that

is acceptable to both parties. If there is an agreed outcome after the mediation, the mediator will draft a contract known as the Settlement Agreement and both parties will have a chance to review this Agreement. Once both parties have signed the Settlement Agreement, they are bound by the terms of the contract. If any party refuses to adhere to any term in the Settlement Agreement, the Agreement can be enforced via usual methods of enforcing a contract e.g. bringing the defaulting party to court.

In terms of business and human rights issues, to date, SMC has not been involved in disputes between companies and communities, nor corporate-related human rights disputes for the community. Three main obstacles to a corporate-related human rights abuse case being brought to SMC have been identified. First, the publicity for SMC's services has been on commercial entities and thus victims of corporate-related human rights abuse might not be aware of this mechanism. Second, the relatively high mediation fees might be an unbearable financial hurdle for most victims of corporate human rights abuse. Third, as the concept of 'mediation' is promised on the consensus, both parties in a disagreement must agree and commit to the mediation process in order for it to be successful. Without due leverage to persuade corporate entities to participate in mediation conducted by SMC, using SMC as a platform to address issues of corporate human rights abuse may pose challenges.

Court-Based Mediation

Court-based mediation takes place after the commencement of litigation proceedings in the Subordinate Courts, where the Primary Dispute Resolution Centre (PDRC) coordinates it. Upon written application for court dispute resolution (CDR), the PDRC Administrator will fix a CDR session and parties concerned will be notified by

letter to appear before a Settlement Judge on a given date and time.

In certain CDR processes, the Settlement Judge will conduct an early neutral evaluation and give a non-binding indication of how he sees the merits of the case based upon the evidence presented by parties or their lawyers at the time of the CDR process. This indication is not binding on the parties but may function as a guide to the parties on the terms of a settlement.

Alternatively, the parties may wish to obtain a binding evaluation from the judge. Parties can agree, by writing, to be bound by the Settlement Judge's evaluation.

There is also the mediation-arbitration procedure, by which if a Settlement Judge has settled most of the issues in a dispute, the Settlement Judge can direct, if parties agree, to refer the outstanding issues for hearing in chambers before a Deputy Registrar of the Subordinate Courts.

9.2 What barriers to access to remedy through these State-based grievance mechanisms have been reported?

In Singapore, the Courts remain one of the main remedies for any violations of the law, including violations of human rights. Although many Singapore laws guard against violations of business and human rights and allow access to remedy, there remains room for the improvement of legislation, particularly in relation to the protection of migrant workers.

According to the CEDAW Committee's 2011 Report on Singapore, the Committee said that it remained concerned at the continuing prevalence of trafficking in women and girls in the country. It also said that such issues will always be sensitive to Singapore, and

a balance must be struck between free expression and preservation of race and religious harmony.²¹³

To combat discrimination in the workplace, the Committee recommended that Singapore remove the indication of one's ethnic background on identification documents, so as not to perpetuate ethnic categorization of citizens and to lessen the significance of ethnic identity in one's interactions with the State and within Singaporean society at large. In addition, the Committee recommended a stand-alone law dedicated to the prohibition of racism, racial discrimination, xenophobia and related intolerance in the country.²¹⁴ In response, the Singapore government asserted that existing provisions are sufficient to prevent and combat racism and discrimination and that a non-discrimination statute of a general nature might not be the best option for the country. It also said that such issues will always be sensitive to Singapore, and a balance must be struck between free expression and preservation of race and religious harmony.²¹⁵

Apart from ethnic and religious groups, the discrimination of other minorities in the workplace, including LGBT persons,²¹⁶ as well as the disabled, has been raised by civil society.²¹⁷ In

213 Imelda Saad & Jeremy Koh, 'Maintaining racial harmony imperative to Singapore's survival', *Channel News Asia*, 28 Apr 2010, at <http://www.channelnewsasia.com/stories/singaporelocalnews/view/1053184/1.html>, accessed 27 Oct 2012.

214 UN CEDAW Committee, *Concluding Observations of the Committee of All Forms of Discrimination against Women*, at <http://app1.mcys.gov.sg/Portals/0/Files/CEDAW-C-SGP-CO-4.pdf>, accessed 24 Jul 2012.

215 Imelda Saad & Jeremy Koh, 'Maintaining racial harmony imperative to Singapore's survival.'

216 Sayoni, 'Shadow Report (CEDAW) on Discrimination against Women in Singapore based on Sexual Orientation and Gender Identity Version,' 8 Aug 2011, at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Sayoni_Singapore49.pdf, accessed 27 Oct 2012.

217 Disabled People Association, '2nd Consultation on the Convention on the Rights of People with Disabilities,' 2 Dec 2012, at <http://www.dpa.org.sg/?our-event=2nd-consultation-on-the-convention-on-the-rights-of-people-with-disabilities>, accessed 10 Feb 2013.

an effort to improve the rights of the disabled in the workplace, Singapore acceded to the United Nations Convention on the Rights of Persons with Disabilities on 30 November 2012.

9.3. Are there laws, regulations, policies and/or initiatives requiring or encouraging the establishment of non-State-based grievance mechanisms?

There are no laws, regulations, policies and/or initiatives requiring or encouraging the establishment of non-State-based grievance mechanisms.

10. Is the State giving the country's National Human Rights Institution powers to enable it to contribute to the area of business and human rights?

Singapore does not have an NHRI, though the Human Rights Committee recommended that one be established during the Universal Periodic Review in July 2011. Singapore's response was that UN member countries continue to have different approaches to the idea of a National Human Rights Institution.

It further stated that it prefers a decentralised, but inter-locking and mutually reinforcing system of human rights protection, which from its experience, has worked well. However, it is unclear what this purported 'inter-locking and mutually-reinforcing system of human rights protection' involves or includes. In fact, the need to have a centralised supervising body is enhanced, not diminished by an 'interlocking and mutually-reinforcing' system of human rights protection.

11. What are the efforts that are being made by non-State actors to foster State engagement with the Framework and the Guiding Principles?

In July 2012, the Singapore Management University joined forces with the East-West Centre, Honolulu, the University of Zurich, the War Crimes Study Centre at the University, Berkely, the Human Rights Resource Centre, and the International Institute for Child Reights and Development to host the Summer Institute on Business and Human Rights, which brought together distinguished experts from 19 countries in the Asia-Pacific, Latin America, Europe and the United States, including lawyers, policy-makers, United Nations (UN) and ASEAN officials, NGO practitioners and key business representatives, to discuss and examine issues relating to ‘Business and Human Rights’ in the Asia-Pacific region. A representative of the ASEAN Intergovernmental Commission was also present.²¹⁸

In November 2011, the Lee Kuan Yew School of Public Policy at the National University of Singapore hosted Salil Tripathi, Director of Policy at the Institute for Human Rights and Business in London, at a lunchtime talk. His lecture on ‘The Protect-Respect-Remedy Framework for Business and Human Rights’ outlined the Ruggie Framework and its various challenges.²¹⁹

Finally, non-governmental organisations that focus on migrant worker rights reached out to business in April 2012, at an event entitled ‘Developing Business Partnerships to Combat Human Trafficking’. The event brought together senior level business executives, Singapore Compact, NGOs

and a Singapore Minister of State to discuss human trafficking in Singapore, however as the Framework and Guiding Principles are not yet well known, the event did not refer to them explicitly.²²⁰

218 Singapore Management University, ‘SMU hosts Summer Institute on Business and Human Rights,’ 16 Jul 2012, at http://www.smu.edu.sg/news_room/press_releases/2012/20120716.asp, accessed 24 Jul 2012.

219 Asif Mehmood & Salil Tripathi, ‘The Protect-Respect-Remedy Framework For Business and Human Rights,’ Lee Kuan Yew School of Public Policy, at http://www.spp.nus.edu.sg/20111114_Salil_Tripathi.aspx, accessed 24 Jul 2012.

220 One Singapore, ‘Developing Business Partnerships to Combat Human Trafficking,’ 27 Apr 2012, at <http://www.onesingapore.org/events/developing-business-partnerships-to-combat-human-trafficking>, accessed 24 Jul 2012.

Summary

Although the Singapore Constitution does not contain an explicit recognition of the State's Duty to Protect, the generality of the language of fundamental liberties provisions in the Singapore Constitution may provide the basis for judicial the courts to read into the Constitution, the State Duty to Protect. While there is no single law or set of regulations in Singapore that explicitly require business enterprises to avoid causing or contributing to adverse human rights impacts through their activities, operations, products or services, there are several laws and regulations that could be said to have this effect despite the lack of specific wording.

Singapore has done well in promoting the rule of law, and preventing and combating corruption. However, it has not acceded to most of the core international human rights conventions. It has only acceded to and ratified the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), among the nine core conventions. In addition, it has acceded to and ratified the Convention on the Prevention and Punishment of the Crime of Genocide and most recently acceded to but not yet ratified the Convention on the Rights of Disabled Persons. Business and human rights issues include labour rights of migrant workers; especially that of foreign domestic workers and unskilled or low-skilled foreign workers; and sexual harassment.

Singapore has a number of State agencies with responsibility to prevent, investigate, punish and redress business-related human rights abuses such as the Accounting and Corporate Regulatory Authority ("ACRA"), Ministry of Manpower and the Ministry of Environment and Water Resources. These agencies are charged with the responsibility of examining a range of issues that fall within the spectrum of human rights abuses, such as corruption, labour rights and environmental protection. In terms of directors' duties, there is no duty or obligation in common law or in legislation requiring directors to consider businesses human

rights impacts in carrying out their role. However, directors are required to act in the company's best interests, and correspondingly, have regard to the interests of the company's employees generally, as well as the interests of its members.

As part of awareness initiatives, State agencies have released and constantly updated guidelines on corporate governance and social responsibility. For the most part, Singapore relies on companies to take a proactive response in behaving ethically, without the legal obligation to do so. With a strong record in implementing and enforcing the rule of law, Singapore is well placed to implement the Ruggie Framework and the State Duty to Protect against business and human rights abuses.