

RESPONSE BY CHIEF JUSTICE SUNDARESH MENON

OPENING OF THE LEGAL YEAR 2022

Monday, 10 January 2022

Mr Attorney,

Mr Tan,

Honoured Guests,

Members of the Bar,

Ladies and Gentlemen:

I. INTRODUCTION

1. On behalf of the Judiciary, I welcome you to the Opening of this Legal Year.

I am grateful to all of you, including our friends and colleagues from abroad, especially the Right Honourable Tun Tengku Maimun binti Tuan Mat, Chief Justice of Malaysia, and the Honourable Chief Justice Alexander G. Gesmundo of the Supreme Court of the Philippines, for having taken the time to join us this morning.

2. For the second time in our history, we open the Legal Year using a remote conferencing platform. This is a sign of the times; but as difficult as the past two years have been, I am confident that when we look back on all that has happened one day, we shall especially recall the remarkable spirit of

collaboration that made possible what seemed impossibly daunting at times. The Attorney-General's Chambers ("**AGC**"), the Bar and the Judiciary have worked together tirelessly over the past two years with the support of the Ministry of Law, to meet the many challenges posed by the pandemic in order to keep the engine of justice running smoothly. For this, I thank you both, Mr Attorney, Mr Tan, and the institutions you each represent, and the Ministry of Law.

II. FELICITATIONS

3. Before I turn to address the rapidly changing environment that confronts us all, let me briefly recount the changes affecting the senior ranks of the profession since the Opening of the last Legal Year.
4. First, Justices Mavis Chionh, S. Mohan, Andre Maniam and Philip Jeyaretnam were appointed Judges of the High Court. We also retained the expertise of eight of our Supreme Court Judges, who have had their tenures extended. Although Justice Chan Seng Onn has retired as a Judge of the High Court, I am pleased that he will continue to serve as a Senior Judge of the Supreme Court. I also thank Mr Tan Puay Boon, whose term as a Judicial Commissioner ended in March last year. In the course of a long career in the Legal Service, he made many contributions to the Judiciary, notably in the area of Family Justice.
5. Second, the Singapore International Commercial Court ("**SICC**") Bench will be further strengthened with the addition of two eminent International

Judges: Justice Yuko Miyazaki, whose term commenced on 5 January 2022, and Justice Christopher Scott Sontchi, whose term will commence on 4 July this year. Justice Miyazaki previously served as a Justice of the Supreme Court of Japan, while Justice Sontchi was, until recently, the Chief Judge of the United States Bankruptcy Court for the District of Delaware.

6. I extend my heartiest congratulations to my colleagues on their respective appointments and extensions. They each make an invaluable contribution to the extraordinary breadth, diversity and strength of our Bench.
7. As you have observed, Mr Tan, last year also marked the passing of Mr Goh Joon Seng. I had the pleasure of appearing before him as an advocate. His was a warm and worthy face of justice: wise, patient, empathetic, kind, and yet, firm. We are privileged to have had him grace our Bench and shall miss him greatly.
8. I also congratulate you, Mr Tan, on your election as President of the Law Society. You succeed Mr Vijayendran, who holds the distinction of being the Law Society's longest-serving president. During his five-year term, Mr Vijayendran undoubtedly helped further strengthen the constructive relationship between the Bench and the Bar. Mr Tan, you described Mr Vijayendran as the Society's "war-time" President. There is no doubt that his willingness to work closely with all stakeholders to navigate uncharted territory at many points over the last two years has been extremely helpful. With his long background in social service, Mr Vijayendran's term as President was inevitably marked by a deep and growing consciousness of

the Law Society's responsibility to the wider community. I fully expect that this will continue. I extend the Bench's appreciation to Mr Vijayendran for the service he has rendered to the profession and we wish you, Mr Tan, all the best, as you take the helm from him.

III. THE PAST YEAR

9. Let me next mention just three of the major developments over the course of the past year.

10. First, as part of our continuing quest to refine our justice system, the Appellate Division of the High Court commenced operations on 2 January last year under the charge of Justice Belinda Ang. Since then, the Appellate Division has heard and decided many matters and now carries a substantial caseload. This, in turn, is helping to relieve some of the load carried by the Court of Appeal. We also saw the passage of the Courts (Civil and Criminal Justice) Reform Act 2021 ("**the Act**"). Among other things, the Act empowers us to conduct proceedings asynchronously without oral arguments and to require the parties to attempt amicable resolution in appropriate circumstances. The Act reflects a very important step towards the transformation of our justice system and towards enhancing access to justice. At the same time, the new Rules of Court 2021 and the new SICC Rules have been gazetted and will be brought into effect on 1 April 2022; I will say more on these shortly.

11. Second, we have continued to engage significantly with our foreign counterparts. This has culminated in various past and forthcoming engagements, including the following:

- (a) We successfully hosted the 3rd meeting of the Standing International Forum of Commercial Courts last March, bringing together more than 30 commercial courts from around the world. For the first time, the meeting had to be hosted on a virtual platform, but it was nonetheless very well received. The Standing International Forum continues to grow from strength to strength as it strives to advance dialogue and thought leadership among commercial courts in developing and implementing best practices for transnational commercial litigation;
- (b) Towards the end of last year, we participated in the 5th Singapore-China Legal and Judicial Roundtable, at which we signed the Memorandum of Understanding on Cooperation on Information on Foreign Law with the Supreme People's Court of the People's Republic of China ("**SPC**"). This establishes a mechanism for referring questions of foreign law between the two courts in civil and commercial cases. This is the first such instrument that the SPC has concluded, reflecting the depth and strength of our mutual engagement. In keeping with this, we also renewed our shared commitment to promote and advance cooperation in judicial education and we continue to work together to develop a legal infrastructure for the resolution of transnational commercial disputes arising out of the Belt and Road Initiative;

- (c) We enjoy an especially close relationship with our Malaysian counterparts and have been working on several significant initiatives with them. Last year, we implemented two sets of protocols to facilitate communication and cooperation with the Federal Court of Malaysia in proceedings concerning admiralty and cross-border corporate insolvency matters;
- (d) This year, we will host the 7th Judicial Seminar on Commercial Litigation in February. The Seminar is convened by the Judiciaries of Hong Kong, New South Wales and Singapore and we will be joined this year by representatives from nine other invited courts;
- (e) We also established the International Judicial Dispute Resolution Network and later this year will host its inaugural meeting. This is a network of judiciaries which share the common objective of promoting the early, amicable and fair resolution of court disputes without trial through the use of Judge-led dispute resolution tools as a core case management strategy. These tools include judicial mediation, early neutral evaluation and Judge-directed negotiations;
- (f) And in addition to these engagements, we established and deepened our links with the Supreme Courts of the Republic of Korea and of Rwanda. At the same time, through the State Courts, we continue to play a leading role in the International Consortium for Court Excellence, which we co-founded some years ago.

12. Finally, numerous significant initiatives were realised through the collaborative efforts of the AGC, the Bar and the Judiciary over the past year. The new Rules of Court 2021 and the new SICC Rules are major examples to which I will turn, but there are others, of which I mention updating the costs guidelines with the benefit of feedback from more than 60 law firms.

IV. LOOKING AHEAD

13. Let me turn next to major developments on the horizon, which fall into three broad categories.

A. *New civil procedural rules*

14. The first is the coming into force of our new civil procedural rules. The new Rules of Court 2021 and the new SICC Rules are the product of blue-sky thinking, informed by international best practices. They reflect our earnest desire to modernise the civil justice landscape.

15. The new Rules of Court 2021 have had a long period of gestation that also incorporated a public consultation exercise. They reflect the labours of a great many people. I want to express my heartfelt appreciation to each of them. There are too many to name individually, but I must at least express my deep gratitude to my colleagues, Justices Tay Yong Kwang, Chua Lee Ming and Ang Cheng Hock, who amongst them have generously led the work of the Civil Justice Commission from inception to implementation and were most ably supported by the Registry. The Rules are guided by five

worthwhile ideals, namely: fair access to justice, expeditious proceedings, cost-effective and proportionate processes, efficient use of court resources and fair and practical results suited to the needs of the parties.

16. While the new Rules are largely aligned with the draft that was released for public consultation in October 2018, we also recognise that practitioners will benefit from having some time to get acquainted with the finer details. And so, when we published the Rules on 1 December 2021, we acceded to the Law Society's request and deferred their effective commencement to 1 April 2022.

17. In addition, there will be a transitional learning phase from 1 April to 30 June 2022. During this period, the Courts will generally be more sympathetic when dealing with non-compliance occasioned by a genuine lack of familiarity with the new procedural framework, and will, in deserving cases, afford greater leeway when considering:

- a. the appropriate orders to be made in the face of such non-compliance;
- b. the exercise of discretion in striking out matters, or making unless orders or granting requests for refunds and waivers of filing fees; and
- c. granting extensions of time to file an appeal or to apply for permission to appeal, or generally in dealing with incorrect appellate filings.

18. We must all approach the transitional learning phase in the spirit in which this is intended and do our best to understand, comply with and implement

the new Rules, so that together we may achieve the ideals that animate them.

20. When the new Rules become effective, we will also usher in the new SICC Rules. These standard-setting and customised rules draw from international best practices and are driven by some key principles: the expeditious and efficient administration of justice according to law, procedural flexibility, and fair, impartial and practical processes and procedures compatible with and responsive to the needs and realities of international commerce. They also build on existing innovative practices of the SICC, such as the additional case management features for matters placed on the Technology, Infrastructure and Construction List (“**TIC List**”), which are designed for the effective and efficient resolution of technically complex disputes. The SICC Rules and the TIC List and protocols are the fruits of the joint efforts of several of our Singapore and International Judges and I am deeply grateful to all of them. These initiatives will enhance the SICC’s status as a leading commercial court and, in turn, Singapore’s standing as a major centre for legal services.

B. Innovations to better support practitioners

21. The second set of major developments relates to innovations to support the profession and others seeking to access legal resources and tools. I highlight three of these:

- (a) First, the new LawNet will be launched this year. This will serve as a single digital hub to access all of the contents and services provided by the Singapore Academy of Law (“**SAL**”). Users will continue to be able to access LawNet to conduct legal research on content such as case law. In addition, the material that may be researched through the platform will be expanded to include Asian content. To further support practitioners, users will also be able to subscribe to a digital library on LawNet containing all Academy Publishing books under the Law Practice Series, the Law Practice Casebook Series and the Monograph Series.
- (b) Second, the Singapore Mediation Centre expects to launch an Online Dispute Resolution service towards the end of the first quarter of this year. This will also be accessible to the public and it promises to reduce the cost of resolving lower value cases, such as consumer disputes, by using technology and automation.
- (c) Third, we expect to finalise the Data and Digital Economy Specialist Accreditation Scheme in the second quarter of this year. Along with the two existing schemes for specialist accreditation – namely, building and construction and shipping and maritime law – this will expand the opportunities for lawyers to advance their professional competence and standing and provide users of such services with some indication of special experience.

22. These are important aspects of the SAL's efforts to support the profession in its digital transformation journey. But more can and should be done to maximise the potential for the SAL to support us as we venture into the future. The Senate has therefore decided that the SAL will, in the coming year, establish a wholly owned subsidiary. This will be led by a separate board that will be well equipped to oversee and steer the development of bold and innovative products and services that more fully harness technologies in knowledge management and legal analytics.

C. *Establishment of the Judicial Service Commission*

23. The third major development is the imminent restructuring of the existing Legal Service into the reconstituted Singapore Legal Service and the dedicated Singapore Judicial Service with effect from this Friday, 14 January 2022. Mr Attorney, you have rightly devoted much of your address this morning to what this means for the Legal Service. Like you, I cherish and value the outstanding ability of the Officers we have been able to attract, retain and develop over the years. And that is as it should be: the work of advising the Government and representing the State in all legal matters and of administering justice through the fair and impartial adjudication of disputes are two of the most basic and indispensable foundations for the rule of law. This did not happen fortuitously but is the result of careful planning and intentional human capital development efforts on the part of the Legal Service Commission since its inception in 1959, and indeed, as you have

noted, we owe a debt of gratitude to all those who have served as Commission members and staff.

24. It is unsurprising then that the possibility of such a restructuring is something that the Commission has considered from time to time, given the growing complexity of legal work and the concomitant need for specialisation. Indeed, as you have observed, Mr Attorney, this led to the establishment in 2014 of separate legal and judicial career tracks for Legal Service Officers in the middle ranks. The existing personnel boards were then restructured with separate boards overseeing each branch, within an overall structure that remained integrated.

25. The restructuring that will shortly take effect will advance this to the next level and it will enhance the ability of each Service to provide specialist training and development. For those in the Judiciary, this presents the opportunity to go beyond the adjudication of disputes and embrace the vision of being a part of the national institution entrusted with the administration of justice. This will involve work along several distinct facets, of which I mention three.

26. The first is to enhance, deepen and broaden the judicial skill set. Our Judges and Judicial Service Officers must acquire and develop the highest level of forensic skills. In a world of ever-increasing complexity, law and the administration of justice are affected by that same trend. The enhancement of forensic skills will inevitably demand the ability to deal effectively with ever more complex and technical expert evidence given trends such as the

scientisation of proof. Because lawyers of the future will be flanked by allied legal professionals trained in complementary fields, as I suggested two years ago and as you, Mr Tan, have just alluded to, our Judges too will need some familiarity with related fields of knowledge, such as psychiatry, statistics, financial accounting, technology, public policy, and criminology. Some of this will entail formal academic training; some will come from suitable professional exposure. And so, it will be essential for us to plan a career path for our Judicial Service Officers, some of whom will be younger than we have generally been accustomed to, to ensure that they get the necessary skills and expertise.

27. The second is to integrate, within the judicial mindset, the critical importance of securing and enhancing access to justice. Every judge must be exercised by the need to overcome the many barriers that persist in the way of accessing justice, if necessary, through the adoption of innovative measures. Let me outline some examples of things we have already done or are working on:

- (a) We have developed an outcome simulator that will provide those involved in motor accident cases with information such as possible liability findings and awards for different types of personal injuries. This is to help the parties, especially those without representation, make assessments of their positions, even before engaging lawyers.
- (b) In very much the same vein, we launched the Divorce e-Service last year. This is an online portal that will assist litigants-in-person with

preparing and filing court papers in uncontested divorce applications.

A similar portal is being developed for certain probate applications.

(c) We created the SG Courts App, which is available without charge to e-Litigation subscribers. The App is being enhanced on a continuing basis to add features and to respond to user feedback. The aim is to simplify various aspects of the litigation journey – from gaining access to the case file, taking queue numbers for hearings and even attending hearings remotely.

(d) We will also strive to help court users better understand and navigate court processes using materials such as the digests and the primer video on the new Rules of Court 2021 and the updated Guidebook for Accused in Person. The Family Justice Courts will also look into providing case summaries of important precedents to assist the many litigants who conduct their own cases in this area. And we will continue to harness the energy and enthusiasm of law students, who – under the supervision of qualified lawyers – can assist those not eligible for criminal legal aid, prepare their mitigation pleas.

We can expect more such efforts, all directed at bringing justice closer to those who seek it.

28. Third, we should – wherever appropriate – develop bespoke models of justice having regard to the contours of different classes of dispute, including

their size, nature, complexity and the types of interests at play. I can illustrate this with two examples.

(a) First, family justice. We have long recognised that family justice calls for a very different approach than the traditional adversarial model. Simply put, a zero-sum win-loss approach is unsuitable and ultimately destructive when it comes to dealing with familial relations that are already distressed. Our approach to family justice has evolved over the years. Last year, we took the very important step of implementing the Therapeutic Justice model. We will continue to build on this with initiatives like:

- i. docketing selected high conflict divorce cases to multi-disciplinary teams comprising a hearing judge, a judge-mediator, a case manager and other specialists, working together to facilitate a positive and durable outcome;
- ii. establishing a standing Panel of Financial Experts, following the successful pilot that was conducted last year, so that neutral experts may be appointed to assist the court and the parties with financial planning, division of matrimonial assets and maintenance; and
- iii. piloting a Panel of Therapeutic Specialists, comprising qualified mental health and social science professionals, to provide specialised clinical and therapeutic services to support

families in need. This was first announced in September last year, and a Memorandum of Understanding was signed with the associated professional associations last Wednesday.

(b) Another area that calls for careful attention concerns what may be called “hypercomplex disputes”. These are *technically* complex in subject matter and *evidentially* complex by virtue of the volume of evidence involved. We will inevitably see more of these disputes. They can be very difficult to grapple with and place a real strain on our legal and adjudicative resources. To optimally manage such disputes, we must re-examine some of the long-held assumptions underlying our adjudicative approaches and consider alternative strategies that can help contain and downsize disputes. We have taken some initial steps with the SICC’s TIC List, which aims to downsize complex disputes through two voluntary protocols that I alluded to earlier: the first streamlines the resolution of smaller-value claims in cases containing many distinct claims, while the second encourages the frank and early exchange of information between the parties.

29. The three facets that I have outlined are complex and intertwined and reflect the sorts of issues that the Judiciary will have to contend with in the coming years. The establishment of the Judicial Service will help us meet them in a considered and intentional way, with carefully customised policies and practices to train and develop our human capital.

30. A key focus will be to ensure that we can secure a strong pipeline of talent within the Judicial Service. This will entail bringing in suitable officers at all levels of seniority, as well as providing the necessary training, development and resources to ensure that they find meaning and satisfaction in the course of their judicial careers. To this end, one of the most important developments will be to significantly expand the role and capacity of the Singapore Judicial College. A team led by Justice Philip Jeyaretnam and Judicial Commissioner Kwek Mean Luck, who together bring extensive senior experience in the private and public legal sectors, will look specifically into developing a world-class programme for the College. The training effort will be accompanied by structuring a planned career path for Judicial Service Officers that will equip them for this work. This might comprise an initial period of broad-based training within the Courts, likely with some external attachments, and be followed by a subsequent period of more specialised, vocational training and mentoring.

31. We will concurrently enhance our efforts to professionalise our court administrators, who play a vital role in supporting the Judiciary. As a step in this direction, we convened the inaugural Conference of our Court Administrators last December to afford them a platform to exchange best practices across all our courts and to provide training in digital skills. In common with all judicial officers, our court administrators are also supported by the Learn@Judiciary training program. And we are strengthening our

supporting infrastructure by developing our knowledge management and corporate communications functions.

32. I very much look forward to the next phase of our journey. There is certainly much to do. Indeed, the realisation of our vision for the Judiciary will surely be among our most significant projects in the coming years. I have formed a core team to assist me in planning and implementing the systemic changes that will be required and I am greatly assured in the knowledge that I shall have the counsel, support and assistance of an outstanding team of Commission members comprising a mix of Judges and other experienced professionals. We will keep the profession informed of these developments as they take shape and will continue to consult our stakeholders at suitable points in the process.

V. APPOINTMENT OF SENIOR COUNSEL

33. I have reached the point where I announce the appointment of Senior Counsel. The Selection Committee has this year decided to appoint:

(a) Mr Tan Puay Boon, following the completion of his term as Judicial Commissioner, as Senior Counsel, *Honoris Causa*; and

(b) Ms Marina Chin Li Yuen and Ms Koh Swee Yen as Senior Counsel.

34. I congratulate them and look forward to their continued contributions to the profession.

VI. CONCLUSION

35. The profession and our justice system are in a time of transition. The Law Society will be led by a new President; and as the separate Judicial and Legal Services come into being, they will each undertake important initiatives to meet the challenges that lie ahead. I am confident that in all this, we will continue working together to further strengthen our justice system by moving in the same collaborative spirit that has long served us well.

36. Thank you all very much, once again, for your presence this morning. On behalf of the Judiciary, I wish all of you a happy, healthy and fulfilling New Year.
