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CHAMBERS

Our ref: AG/CIV/L/AGC/2020/9  
Your ref: -

(2 pages)

9 March 2022

**L F Violet Netto**  
10 Upper Cross Street  
#09-16 People's Park Centre  
Singapore 058357  
Attention: Ms L F Violet Netto

**BY EMAIL**

Dear Sirs,

**HC/OS 1224/2020 ("OS 1224")**

We refer to the above-captioned matter, and the Notice of Change of Solicitor filed on 1 March 2022, stating your appointment as the new solicitor for Dr Tan Seng Kee in OS 1224.

2. As your client would be aware, the Honourable Court of Appeal released its decision in *Tan Seng Kee v Attorney-General and other appeals* [2022] SGCA 16 ("**Decision**") on 28 February 2022. In the Decision at [150], the Honourable Court of Appeal addressed, amongst others, all of the issues raised by your client in OS 1224 (*viz.* s 424 of the Criminal Procedure Code, ss 119 and 176 of the Penal Code, and the right of the police to investigate), save that at [4] below (*viz.* the mandatory order at prayer 1 of OS 1224):

*"It naturally flows from our holding that prosecutions under provisions such as ss 119 and 176 of the PC should not be instituted where the underlying offence is one under s 377A. In the same vein, offences under s 424 of the CPC should not be prosecuted where the "arrestable offence" (as statutorily defined) is one under s 377A. However, nothing in our holding affects the right of the police to investigate all conduct, including any conduct falling within the Subset and/or amounting to an offence under s 377A (see [113] above). Nor does our holding constrain the PP's right to prosecute conduct falling outside the Subset where such conduct violates any other law, or impact the duties applicable to others arising, for instance, from their awareness of or participation in such conduct, whether actual or intended."*

3. Given the above, it is clear that your client's concerns in OS 1224 have been addressed in the Decision, and OS 1224 is now moot and/or unsustainable in view of the Honourable Court of Appeal's holdings.

4. As for the sole remaining issue of your client's application for leave to apply for "*a Mandatory Order compelling the members of the Cabinet to move a Bill in Parliament to repeal Section 377A of the Penal Code*" (prayer 1 of OS 1224), while this was not specifically addressed in the Decision, this is plainly and obviously unsustainable in law. As the Honourable Court of Appeal recognised, "*the doctrine of the separation of powers calls for each branch to respect the institutional space and legitimate prerogatives of the others*" (the Decision at [15]). It would plainly be contrary to the doctrine of separation of powers, for the Judiciary to mandate members of the Cabinet to move a Bill in Parliament.

5. In the circumstances, we write to invite your client to withdraw OS 1224. We will not seek costs from your client if OS 1224 is withdrawn at this stage. If OS 1224 is not withdrawn notwithstanding the clear holdings in the Decision, we intend to seek full costs from your client if he is unsuccessful in OS 1224.

6 Please let us have your response on [5] above by 23 March 2022.

Yours faithfully,



Hui Choon Kuen  
Senior State Counsel