

**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

Criminal Motion No. 5 of 2019

Criminal Motion No. 7 of 2019

WIRECARD ASIA HOLDING PTE LTD  
(UEN No. 201429281D)

WIRECARD SINGAPORE PTE LTD  
(formerly known as former  
SYSTEMS@WORK PTE LTD)

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(UEN No. 199906900E)

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WIRECARD ASIA HOLDING PTE LTD  
(UEN No. 201429281D)

...Applicant(s)

v

DIRECTOR, COMMERCIAL AFFAIRS  
DEPARTMENT

... Respondent

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**RESPONDENT'S SUBMISSIONS ON JURISDICTION**

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## TABLE OF CONTENTS

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<b>I.</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>II.</b>	<b>BACKGROUND.....</b>	<b>2</b>
A.	COMMENCEMENT OF INVESTIGATIONS .....	2
B.	CAD’S FIRST OPERATION, AND THE PRIMARY PRODUCTION ORDERS.....	4
C.	THE EMAIL ARCHIVES PRODUCTION ORDER .....	5
D.	CAD’S SECOND OPERATION, AND THE CROWN RECORDS MANAGEMENT PRODUCTION ORDER.....	6
E.	CAD’S THIRD OPERATION .....	8
<b>III.</b>	<b>RELIEF SOUGHT IN THE MOTION .....</b>	<b>10</b>
A.	HC/CM 5/2019 .....	10
B.	HC/CM 7/2019 .....	11
<b>IV.</b>	<b>SUBMISSION 1: THE APPLICANTS ARE ASKING THE HIGH COURT TO EXCEED ITS CRIMINAL JURISDICTION.....</b>	<b>13</b>
<b>V.</b>	<b>SUBMISSION 2: THE MOTIONS AMOUNT TO AN ABUSE OF PROCESS .....</b>	<b>19</b>
A.	THE APPLICANTS SHOULD NOT BE ALLOWED TO CIRCUMVENT THE REQUIREMENT FOR LEAVE IN JUDICIAL REVIEW PROCEEDINGS .....	19
B.	THE APPLICANTS SHOULD NOT BE ALLOWED TO CIRCUMVENT THE RULE IN CIVIL PROCEEDINGS THAT INJUNCTIONS CANNOT BE GRANTED AGAINST THE GOVERNMENT.....	21
<b>VI.</b>	<b>SUBMISSION 3: THE RELIEFS SOUGHT IN THE MOTIONS HAVE NO BASIS IN LAW .....</b>	<b>22</b>
A.	THE APPLICANTS IN HC/CM 5/2019 SEEK TO UNLAWFULLY LIMIT WHAT CAD SHOULD INVESTIGATE. ....	22

B.	HC/CM 7/2019 IS FUNDAMENTALLY FLAWED.....	23
<b>VII.</b>	<b>CONCLUSION .....</b>	<b>26</b>

## **I. INTRODUCTION**

1        These Motions are an attempt to challenge and restrict the Commercial Affairs Department (“CAD”) from acting on information that it has received and investigating the Applicants and/or its employees for suspected serious offences of fraud and money laundering. The Applicants’ Motions are supported by their Managing Director, who is himself a suspect under investigations. The reliefs that he has asked for are essentially to limit and/or nullify CAD’s orders to produce relevant information and to compel a disclosure of CAD’s investigations and a return of materials that have been lawfully seized and used in the investigations. By these Motions, the Applicants seek to limit the CAD’s investigations to what was stated in certain Financial Times articles. Not only is there absolutely no basis in law for such a prayer, it discloses their agenda of interfering with a legitimate investigation and stifling the exercise of police powers.

2        Without going into the merits, these Motions are dead in the water because they are fundamentally wrong. They urge the Court to exercise jurisdiction it does not have, and grant reliefs which it cannot give. The right procedure is judicial review, for which the Applicants need leave of court. Using Criminal Motions to circumvent the leave requirement in judicial review proceedings would amount to an abuse of process, and cannot be countenanced. These Motions must fail.

## **II. BACKGROUND**

### **A. Commencement of investigations**

3 Based on information received prior to 8 February 2019, the Commercial Affairs Department (“CAD”) commenced investigations against the Applicants, its related entities, and transactional parties for several arrestable offences. These involved forgeries, falsified documents, money laundering, and the “round-tripping” of funds to support false transactions that were believed to have taken place between 2014 and 2018.

4 The entities related to the Applicants that were being investigated were:

- (a) Wirecard Payment Solutions Malaysia Sdn Bhd,
- (b) PT Aprisma Indonesia,
- (c) Hermes Tickets Private Ltd,
- (d) GI Philippines Corp,
- (e) GI Technology Private Limited, and
- (f) Wirecard Hong Kong Limited.

5 The transactional parties that were being investigated were:

- (a) Centurion Online Payments International
- (b) Maxcone Ltd

- (c) Right Momentum Consulting Sdn Bhd
- (d) Flexi Flex Abrasives Sdn Bhd
- (e) Invetures Technology Online Pte Ltd
- (f) Beroe Singapore Pte Ltd
- (g) International Techno Solutions Pte Ltd
- (h) Miles & Associates
- (i) Orbit Corporate Leisure Travels Private Limited
- (j) Mindlogicx, and
- (k) Matrimonial Global

6 Based on the investigations, various officers of the Applicants were also suspected to be concerned in the arrestable offences:

- (a) Edo Kurniawan (“**EK**”), Vice President, and Director of Wirecard Asia Holding Pte Ltd (“**WAH**”);
- (b) Chai Ai Lim (“**CAL**”) also known as Irene, Head, Finance of WAH;
- (c) James Wardhana (“**JW**”), International Finance Process Manager of WAH;
- (d) Ng Fook Sun (“**NFS**”), Managing Director of WAH, and director of Wirecard Singapore Pte Ltd (“**WS**”), who has affirmed three affidavits on behalf of the Applicants in support of these Motions;

- (e) Jeffry Ho Kok Hoong (“**HKH**”), Managing Director of the WS; and
- (f) Grigory Kuznetsov (“**GK**”), Executive Vice-President in charge of payment services licensing function in WAH.

**B. CAD’s first operation, and the Primary Production Orders**

7 On 8 February 2019, the CAD carried out its first operation at the Applicants’ premises to secure documents and things necessary for its investigations into the arrestable offences. CAD served the two production orders under s 20 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“**CPC**”)<sup>1</sup> on the Applicants<sup>2</sup> (“**Primary Production Orders**”). In response to the Primary Production Orders, CAL informed the CAD that the Applicants’ premises had files containing accounting documents from 2017 and 2018. CAL showed the CAD various files, and the CAD seized the files which were suspected to contain evidence of the arrestable offences, using powers under s 35 of the CPC<sup>3</sup>. CAD left behind files which did not appear to be relevant for investigations. CAL signed three Lists of Things Seized (“**LOTS**”) acknowledging the seizure of these documents.

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<sup>1</sup> RBA, Tab 1.

<sup>2</sup> Affidavit of Eugene Neo dated 8 March 2019, Tab 2 of NTY-1

<sup>3</sup> RBA, Tab 1.

8 In addition to seizing documents produced by CAL, NFS and HKH, the CAD also searched the premises to look for finance and accounting documents, agreements and correspondences related to or connected with the abovementioned entities and third parties, which might be in the possession of the suspects or other employees. Various documents and items were found as a result of the search, and seized under s 35 of the CPC as they were suspected to contain evidence of the suspected offences. The documents and items seized were documented in LOTS, and signed by the persons from whose possession the documents and items were seized.

### C. The Email Archives Production Order

9 On 8 February 2019, while going through the documents produced at the Applicants' premises following the service of the Primary Production Orders, CAD informed NFS and representatives of the Applicants' Information Technology department, Bernard Lee ("**Bernard**") and its Head, Steven Dover ("**Steven**"), that they required the email archives of the **five** suspects mentioned above – NFS, HKH, EK, CAL and JW. Bernard and Steven told CAD that their email archives reside in a server in Munich and that they needed assistance from staff in Munich to retrieve the data. They estimated that the retrieval of the email archives would take a few days.

10 CAD did not seize the laptops of **seven** staff members of WAH's Finance Department, so as to facilitate the Applicants' business operations, and instead

requested for their email archives. From the investigations carried out on 8 February 2019 and the documents seized, the CAD learnt that **three** more of the Applicants' employees could potentially be relevant to the ongoing investigations. Therefore on the evening of 8 February 2019, the CAD requested from Bernard from the Applicants' IT department the email archives of a total of **15** employees. CAD's request to the Applicants on 8 February 2019 was therefore for the email archives of 15 employees, and not five as the Applicants claim. In response to CAD's request, Steven told the CAD to make a "formal request" for the email archives of the 15 employees. The CAD thus issued the Email Archive Production Order<sup>4</sup> on Monday, 11 February 2019.

**D. CAD's second operation, and the Crown Records Management Production Order**

11 From the first operation, CAD learnt the Applicants had stored documents with Crown Records Management ("**Crown Records**"), a document storage and management company and maintained a list of these documents. However, CAD was provided with an incomplete list of the documents during the first operation by the Applicants and told that the rest of the list could not be retrieved as there was no access to the local server. On the same day, 8 February 2019, the CAD served a production order under s 20 of the CPC on Crown Records Management ("the

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<sup>4</sup> Affidavit of Ng Fook Sun dated 18 February 2019, NFS-8

**Crown Records Management Production Order”)** for the production of the Applicants’ documents.

12 On 11 February 2019, the CAD therefore asked NFS for the complete list of documents stored with Crown Records in order to identify the accounting or finance-related documents which would be relevant to the CAD’s investigations. NFS referred the CAD to one Eric Tan (“**Eric**”), the General Manager of WS.

13 After two days, on 13 February 2019, Eric sent an email to the CAD attaching two excel sheets. Each excel sheet contained a list of numerical barcodes and an alpha-numeric account code, such as “RW777” or “RP905” without any description of the documents, unlike the incomplete list of documents previously provided by the Applicants. CAD was unable to determine from the excel sheets which ones would be relevant to their investigations.

14 CAD also discovered that the excel sheets from Eric were similar to those later provided by Crown Records. The Applicants never extended the full list of documents stored at Crown Records to CAD.

15 Given that, and the developments that were unfolding in the ongoing investigations since 8 February 2019, CAD went to the Crown Records’ warehouse on 15 February 2019. There, the CAD took stock of the 245 boxes produced by Crown Records at the warehouse in response to the Crown Records Management Production Order issued to Crown Records earlier on 8 February 2019. The CAD

team at the site reviewed the documents produced and seized 229 boxes. 16 boxes were not seized. A representative from Crown Records signed two Lists of Things Seized<sup>5</sup> dated 15 February 2019 to acknowledge the seizure of the 229 boxes.

**E. CAD's third operation**

16 In response to the Email Archives Production Order, the Applicants' solicitors informed in their letter to CAD of 12 February 2019 that the email archives were not in the Applicants' "possession". However, they were silent on whether the email archives were in their "power" (i.e. whether they had the ability to access the email archives). CAD had to conduct further investigations into whether anyone with the Applicants could access the archives from Singapore.

17 Thus, on 20 February 2019, the CAD went to the Applicants' premises to access the computers that contained the email archives sought in the Email Archives Production Order. Based on the ongoing investigations, the CAD had reason to suspect that these email archives contained evidence of the arrestable offences that were being investigated. CAD ordered nine employees<sup>6</sup> to provide assistance under section 39(2A) CPC,<sup>7</sup> and obtained their email archives.

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<sup>5</sup> Affidavit of Eugene Neo dated 8 March 2019, Tab 11 of NTY-1

<sup>6</sup> NFS, CAL, JW, Chew Shu Yin, Wendy Goh Yi Zhen, See Lee Wee Krystal, Svenson John Doss, Surbhi Sulaja and Cecilia Ong Guat Cheng

<sup>7</sup> Affidavit of Ng Fook Sun dated 26 February 2019, NFS-15

18 In the course of obtaining access to the employees' computers, CAD discovered that there were financial and accounting data and documents in the Applicants' SAGE accounting software, that were suspected to contain evidence of the arrestable offences.

19 CAD ordered CAL to provide assistance under section 39(2A) CPC to access the financial and accounting data and information of six entities, namely the Applicants, Wirecard Hong Kong Limited; Wirecard Payment Solution Hong Kong Limited; Wirecard Payment Solution Malaysia Sdn Bhd; and Wirecard eMoney Philippines, Inc.

20 Despite CAD only asking for assistance to copy data in relation to the said six entities, CAL said she was unable to extract the accounting data only for those six entities. CAL thus provided the accounting data for all eight entities set out in Annex B of HC/CM 7/2019 in a thumbdrive<sup>8</sup>.

21 Nevertheless, CAD is not able to access the financial and accounting data of two entities, Wirecard Australia A&I Pty Ltd ("**Wirecard Australia**") and Wirecard Thailand. The financial and accounting data of all eight entities can only be viewed in the SAGE software, which is managed by the service provider StoneForest IT Pte Ltd ("**StoneForest IT**"). In this regard, CAD specifically informed StoneForest IT that it only needs to access the data for the six entities

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<sup>8</sup> Affidavit of Eugene Neo dated 8 March 2019, Tab 12 of NTY-1

stipulated in the s 39 notice. CAD does not have access or viewing rights for Wirecard Australia and Wirecard Thailand.

22 The CAD found out from NFS during the third operation that the Applicants had lost contact with EK. But it was only revealed to CAD on 22 February 2019 via via the Applicant’s solicitors letter that the Applicants had “lost contact” with EK since about 9 February 2019.

### **III. RELIEF SOUGHT IN THE MOTION**

#### **A. HC/CM 5/2019**

23 In HC/CM 5/2019, the Applicants seek an order in relation to the following orders issued by the Respondent under section 20 of the CPC:

(a) The **Primary Production Orders** dated 8 February 2019 referred to at paragraphs 7 to 8 above;

(b) The **Email Archives Production Order** dated 11 February 2019 referred to at paragraphs 9 to 10 above; and

(c) The **Crown Records Management Production Order** dated 8 February 2019 referred to at paragraphs 11 to 15 above.

24 Specifically, the Applicants seek an order that the documents required to be produced pursuant to the three sets of orders above:

(a) be limited to the subject matter of the “**FT Allegations**”, defined in NFS’ affidavit of 18 February 2019 as the allegations in four Financial Times articles published between 30 January and 4 February 2019, or such investigations as the CAD is able to demonstrate are presently ongoing; and

(b) be precisely and specifically enumerated,

failing which the orders should be set aside.

**B. HC/CM 7/2019**

25 In HC/CM 7/2019, the Applicants essentially seek two types of orders, namely:

(a) An order that the information, documents or other evidence required to be produced pursuant to CAD’s Notice to Provide Assistance issued to the nine employees<sup>9</sup> on 20 February 2019 (“section 39 notices”) mentioned at paragraphs 16 to 21 above:

(A) be limited to the subject matter of the “**FT Allegations**” (as described in paragraph 24(a) above), or such investigations as the CAD is able to demonstrate are presently ongoing; and

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<sup>9</sup> James Wardhana, Surbhi Sulaja, Wendy Goh Yi Zhen, Cecilia Goh Guat Cheng, See Lee Wee, Svenson John Doss, Ng Fook Sun, Chai Ai Lim Irene, and Chew Shu Yin.

(B) be precisely and specifically enumerated,

failing which the section 39 notices be set aside; and

(b) three interim orders:

(i) for the return of all information, documents, or other evidence (including all current and archived emails and mailboxes — the “Email Evidence”) obtained by the CAD pursuant to the section 39 notices, upon the Applicants’ undertaking to preserve the Email Evidence until HC/CM 5/2019 and HC/CM 7/2019 are determined;

(ii) for the return of all information, documents, or other evidence in relation to financial transactions of eight entities, including accounting records, entries and financial transactions found in the Applicants’ SAGE and CODA software (the “**Financial Records**”), obtained by the CAD pursuant to the Primary Production Orders of 8 February 2019, upon the Applicants’ undertaking to preserve the Financial Records until the final determination of HC/CM 5/2019, or otherwise; and

(iii) To restrain CAD from further seizures of information, documents or other evidence from the Applicants and their

employees, unless CAD is able to demonstrate that the intended seizures are

(A) be limited to the subject matter of the “FT Allegations” (as described in paragraph 24(a) above), or such investigations as the CAD is able to demonstrate are presently ongoing; and

(B) be precisely and specifically enumerated,

Pending the final determination of HC/CM 5/2019 and HC/CM 7/2019.

#### **IV. SUBMISSION 1: THE APPLICANTS ARE ASKING THE HIGH COURT TO EXCEED ITS CRIMINAL JURISDICTION**

26 These Motions must fail as they are procedurally defective and improper. The Applicants are evidently challenging the exercise of police powers in the course of investigations, and are seeking Quashing (asking for the orders to be set aside) and Mandatory (asking for the return of seized evidence) Orders in relation to the police orders. These challenges fall squarely outside of the High Court’s criminal jurisdiction, and within the ambit of judicial review, which has been defined to “[concern] an area of law in which the courts review the lawfulness of acts

undertaken by other branches of the government” (*Tan Seet Eng v AG* [2016] 1 SLR 779<sup>10</sup> at [47]).

27 In *Muhammad Ridzuan bin Md Ali v PP and other matters* [2014] 3 SLR 721,<sup>11</sup> the Court of Appeal made the following observations in relation to its jurisdiction:

96 It is now trite law that the Court of Appeal is a creature of statute and hence is *only seised of the jurisdiction that has been conferred upon it by the relevant provisions in the legislation creating it*. Such a jurisdiction-conferring power is an essential prerequisite that an applicant before this court *must* satisfy in order to have a legal basis upon which to canvass the substantive merits of his or her application. Buttressing this point, this court clarified in its recent decision of *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 (at [34]) that references to the “inherent jurisdiction of the court” were in fact references to the exercise by the court of its fund of powers *conferred on it by virtue of its institutional role to dispense justice*, rather than an inherent “authority” to hear and determine a matter.

[Emphasis in italics in original; emphasis added in bold italics]

28 The observations above emphasise the fundamental importance of establishing the court’s jurisdiction in each case. There are only two relevant pieces

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<sup>10</sup> RBA, Tab 8.

<sup>11</sup> RBA, Tab 6.

of legislation that would give the court criminal jurisdiction: the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed)<sup>12</sup> (“SCJA”) and the CPC.

29 The SCJA which sets out the constitution and powers of the Supreme Court, expressly provides for the High Court’s criminal jurisdiction and also powers under any written law under s 18 of the SCJA. We submit firstly that none of the provisions give the High Court power to hear the application in the exercise of its criminal jurisdiction.

30 Section 3(a) of the SCJA provides that the High Court shall exercise *original* and *appellate* criminal jurisdiction. There is no appeal before the court and the High Court is not being asked to exercise its *appellate* criminal jurisdiction. Section 15 SCJA lists the types of cases in which the High Court has original criminal *trial* jurisdiction, and none of them applies in this case.

31 Next, s 23 SCJA gives the High Court powers of revision in respect of criminal proceedings and matters in subordinate courts, but it does not apply as there are no criminal proceedings or matters in any subordinate court in relation to the Applicants.

32 Section 18 of the SCJA states that:

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<sup>12</sup> RBA, Tab 4.

### **Powers of High Court**

18.—(1) The High Court shall have such powers as are vested in it by any **written law** for the time being in force in Singapore.

(2) Without prejudice to the generality of subsection (1), the High Court shall have the powers set out in the First Schedule.

(3) The powers referred to in subsection (2) shall be exercised in accordance with any written law, Rules of Court or Family Justice Rules relating to them.

[Emphasis added in bold]

33 To rely on this provision, the Applicants would either have to show under s 18(1) that there is a written law vesting a power in the High Court, or that its power invoked comes within ss 18(2) and 18(3) i.e. an exercise of the powers in the First Schedule in accordance with any written law: *Kulwant v PP* [1986] SLR 239<sup>13</sup>, at 242E.

34 Having brought these criminal Motions, no doubt the Applicants are relying on the CPC as the written law under s 18(1) SCJA which gives the High Court power to make the orders sought. There are two fundamental problems with this that are fatal to the applications in the Motions. Firstly, there are no CPC provisions that give the High Court power to make these orders against the police when investigations are underway. On the contrary, the High Court would have to exercise its powers under s 18(2) SCJA i.e. the powers to issue prerogative orders

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<sup>13</sup> RBA, Tab 5.

under the First Schedule of the SCJA in the form of a Quashing Order or Prohibiting Order issued to any person or authority, in accordance with Order 53 Rules of Court governing judicial reviews.

35 Secondly, the Motions are based on s 405 CPC, which says:

**Motion**

405.—(1) A motion to the High Court or the Court of Appeal in respect of any **criminal matter** must be made in accordance with this Division.

(2) In this Division, the relevant court is the court to which the motion is made.

[emphasis added in bold]

36 A criminal motion must be in respect of a criminal matter. In the present case there is no criminal matter before any court, as no one has been formally charged yet. It follows that there is no “criminal matter” before the courts from which these Motions can arise. This is illustrated in *PP v Goldring Timothy Nicholas and others* [2014] 1 SLR 586<sup>14</sup> (“*Goldring*”), where the Court of Appeal held that where an accused who has not been charged wishes to challenge the denial by the police of his request to access and make copies of documents seized by the police, the only procedural option available is an application for judicial review:

91 To reiterate, Question 4 is as follows:

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<sup>14</sup> RBA, Tab 7.

If the answer to Question 1 is positive, whether a criminal motion is the appropriate procedure to be adopted by a person seeking to enforce his right of access to, or to make copies of, the documents seized, if the police decline to permit such access or copying.

92 We would first point out that Question 4 is ambiguous. The reference to the scenario where the *police* decline to permit access or copying appears to confine the question to the period *before* the accused is charged. For completeness, we will set out what in our view would be the appropriate procedural mechanisms for such interlocutory matters both before *and* after the accused is charged, based on our existing criminal procedure rules.

93 We turn first to the scenario where the accused person is being investigated for an offence and has *not yet* been charged. First, the accused person should make his request to the police. If the police: (a) grants this request, or (b) denies the request on the ground that there is cogent evidence of a reasonable prospect of prejudice or harm to the public interest in the administration of criminal justice and the accused person accepts this, then this would obviously be the end of the matter. ***However, if the accused person wishes to challenge the denial by the police of his request then, procedurally, the only option currently available to the accused appears to be an application for judicial review of the decision by the police.*** That having been said, it seems to us that given the nature of such an application which, we would point out: (a) is for access to one's own documents, (b) is in effect an interlocutory matter, and (c) puts the legal and practical burden on the accused person to seek the leave of court to bring judicial review *and* prove his substantive case, it seems to us that it would be fair and meaningful for there to be a more straightforward process consistent with applications made *after* being charged (see below at [94]–[97]).

[Emphasis in italics in original; emphasis added in bold italics]

37 Although the Court of Appeal in *Goldring* noted that it would be fair and meaningful for there to be a more straightforward process than judicial review for

the scenario set out above, it must be recognised that the nature of the exercise of discretion by the police in that scenario and the present case is very different. The *Goldring* excerpt above contemplates a situation in which the police, having seized documents from the accused, deny him his right to even access and make copies of the documents. The present Applications, however, concern what the police can even consider as “necessary or desirable for any investigation”.

38 While one can understand the Court of Appeal’s reluctance to find that judicial review is the only available procedure for an accused to access documents seized from him by the police, it is submitted that that same reluctance would not apply to challenges as to what the police may rightly consider “necessary or desirable for any investigation”. If such challenges were easily made, police investigations would be easily stymied, and the police would be hindered from pursuing effective investigations.

**V. SUBMISSION 2: THE MOTIONS AMOUNT TO AN ABUSE OF PROCESS**

**A. The Applicants should not be allowed to circumvent the requirement for leave in judicial review proceedings**

39 The correct procedure for the Applicants to challenge the CAD’s exercise of its powers of investigations is by way of judicial review, which requires leave to be granted. Returning to s 18 SCJA, the High Court has power to issue the Quashing

and Mandatory orders that the Applicants are applying for under s 18(2) SCJA, as they are listed in the First Schedule of the SCJA. However, under s 18(3) SCJA, these powers must be exercised in accordance with Order 53<sup>15</sup> of the Rules of Court.

40 Following Order 53 r 1 of the Rules of Court, the Applicants can seek the orders it is applying for *only* if they have leave from the High Court:

**No application for Mandatory Order<sup>7</sup>, etc., without leave (O. 53, r. 1)**

1.—(1) An application for a Mandatory Order<sup>7</sup>, Prohibiting Order<sup>9</sup> or Quashing Order<sup>10</sup> (referred to in this paragraph as the principal application) —

(a) may include an application for a declaration; but

(b) shall not be made, unless leave to make the principal application has been granted in accordance with this Rule.

41 The Applicants should not be allowed to use these improperly instituted Motions to circumvent the requirement for leave in judicial review proceedings.

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<sup>15</sup> RBA, Tab 3.

**B. The Applicants should not be allowed to circumvent the rule in civil proceedings that injunctions cannot be granted against the Government**

42 Further, in the proper context of a judicial review, it would be clear that paragraph 4 of the order sought in HC/CM 7/2019 is really an interim injunction. Section 27 of the Government Proceedings Act (Cap 121, 1985 Rev Ed)<sup>16</sup> makes it clear that injunctions cannot be granted against the Government:

**Nature of relief**

27.-(1) In any civil proceedings by or against the Government the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between private persons, and otherwise to give such appropriate relief as the case may require:

Provided that –

(a) **where in any proceedings against the Government any such relief is sought as might in proceedings between private persons be granted by way of injunction or specific performance, the court shall not grant an injunction** or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and

(b) in any proceedings against the Government for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Government to the land or property or to the possession thereof.

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<sup>16</sup> RBA, Tab 2.

**(2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government.**

[Emphasis added in bold]

43 The Applicants should not be allowed to use these improperly instituted Motions to seek relief that would be otherwise unavailable in civil, judicial review proceedings.

**VI. SUBMISSION 3: THE RELIEFS SOUGHT IN THE MOTIONS  
HAVE NO BASIS IN LAW**

**A. The Applicants in HC/CM 5/2019 seek to unlawfully limit what CAD should investigate.**

44 The Applicants have sought an order from the court to either limit the documents that could be produced under the s 20 CPC production orders to what the Applicants determine to be relevant (which in this case appears to be certain Financial Times articles) or to investigations that they want the CAD to disclose. There is no basis in law for such orders to be made against law enforcement agencies who are vested with powers to investigate facts and circumstances of any arrestable offence.

45 Quite apart from the unlawful basis of the reliefs sought in HC/CM 5/2019, the basis of CM 5/2019 to challenge the productions orders is any event no longer relevant or necessary because whatever information, documents and evidence that was produced in response to those orders has already been validly seized by the CAD, in exercise of powers conferred under s 35 of the CPC.

**B. HC/CM 7/2019 is fundamentally flawed**

46 Leaving aside the three interim orders in paragraphs 1, 3 and 4 of the CM 7/2019, the only substantive order that HC/CM 7/2019 seeks is to **limit the information, documents or other evidence required to be produced — pursuant to the section 39 notices — to the “FT Allegations”, and for the notices to be precisely and specifically enumerated, failing which they should be set aside.**

47 The relief sought has no legal basis is therefore fundamentally flawed. The CAD did not require the Applicants to produce anything under the s 39 CPC notices. In the first place, s 39 CPC does not give the CAD power to require the Applicants to produce anything. Rather, what s 39 CPC provides is that a police officer investigating an arrestable offence may access (vide s 39(1)(a)) a computer (whether in Singapore or elsewhere) that he has reasonable cause to suspect contains evidence relating to the arrestable offence, and he can use or cause to be used (vide s 39(1)(b)) such a computer to search *any data contained in or available to such computer*, and to make a copy of such data.

48 Section 39(2) further provides that the police officer may order certain persons to assist him to gain access to the computer (s 39(2) read with s 39(2A)(a)).

The relevant provisions are set out below:

**Power to access computer**

39.-(1) A police officer or an authorised person investigating an arrestable offence may, at any time –

**(a) access, inspect and check the operation in or from Singapore of a computer (whether in Singapore or elsewhere) that the police officer or authorised person has reasonable cause to suspect is or has been used in connection with, or contains or contained evidence relating to, the arrestable offence;**

**(b) use any such computer in or from Singapore, or cause any such computer to be used in or from Singapore –**

**(i) to search any data contained in or available to such computer; and**

**(ii) to make a copy of any such data;**

(c) prevent any other person from gaining access to, or using, any such computer (including by changing any username, password or other authentication information required to gain access to the computer); or

(d) order any person —

(i) to stop accessing or using or to not access or use any such computer; or

(ii) to access or use any such computer only under such conditions as the police officer or authorised person may specify.

**(2) The police officer or authorised person may also order any of the following persons to provide any assistance mentioned in subsection (2A):**

(a) any person whom the police officer or authorised person reasonably suspects of using, or of having used, the computer in connection with the arrestable offence;

(b) any person having charge of, or otherwise concerned with the operation of, the computer;

(c) any person whom the police officer or authorised person reasonably believes has knowledge of or access to any username, password or other authentication information required to gain access to the computer.

**(2A) For the purposes of subsection (2), the types of assistance are as follows:**

**(a) assistance to gain access to the computer (including assistance through the provision of any username, password or other authentication information required to gain access to the computer);**

(b) assistance to prevent a person (other than the police officer or authorised person) from gaining access to, or using, the computer, including assistance in changing any username, password or other authentication information required to gain access to the computer.

[Emphasis added in bold]

49 Therefore the CAD did not require anything to be produced under s 39 CPC. The CAD was empowered under s 39 CPC to access computers which it had reasonable cause to suspect contained evidence relating to arrestable offences and also to order certain individuals to assist the CAD to gain access to such computers.

It makes no sense for the Applicants to ask for an order limiting what the Applicants are required to produce under s 39 CPC.

## VII. CONCLUSION

50 NFS' latest affidavit dated 7 March 2019 is most telling. He makes reference to a recent seizure by CAD of a pedestal belonging to EK whom the CAD has reason to suspect to be involved in the arrestable offences. According to NFS, since the CAD did not know what EK's locked pedestal drawer and safe contained, the CAD cannot suspect that they contain evidence.<sup>17</sup> That is an absurd assertion. If that were true, then the police would not be able to seize any suspect's bag or its contents because "it stands to reason that not knowing the contents of [the bag], the [police] could not possibly" suspect that it contained loot or evidence. NFS' logic contradicts his claims that the Applicants seek to cooperate with CAD.

51 It is difficult to understand why NFS would raise the issue of EK's property, which are not even NFS' or the Applicants'. There are two possibilities: either the Applicants do not wish to cooperate with the CAD, or they do, but NFS does not, and NFS is using the Applicants as a proxy to advance his own personal agenda. In this regard, the Applicants should disclose whether NFS, or any other individuals being investigated, are directing or giving instructions in respect of these legal proceedings.

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<sup>17</sup> Affidavit of Ng Fook Sun dated 7 March 2019, paragraph 14.

52 The Applicants seek to curb the CAD's investigations into them and their employees by asking the High Court to determine issues that it is not empowered to determine in the exercise of its criminal jurisdiction. Either the Applicants have misconstrued the extent of this jurisdiction, or they are deliberately using criminal proceedings improperly to circumvent the requirement for leave, and to seek relief that would otherwise be unavailable in civil proceedings. The Motions amount to an abuse of process. They also have no legal basis, because they seek to unlawfully limit the investigations of CAD and have misconstrued the nature of the orders that CAD made under s 39(2). These Motions must be dismissed.

Dated this 8<sup>th</sup> day of March 2019



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GORDON OH, KELVIN KOW & GENEVIEVE PANG  
DEPUTY PUBLIC PROSECUTORS  
SINGAPORE