Published on e-First 7 April 2021

CORPORATE SELF-REPRESENTATION IN THE SINGAPORE COURTS

Generally, a company may participate in court proceedings only through a lawyer and not through its officers. This procedural rule minimises disruption to proceedings and prevents unqualified persons from practising law. But these justifications do not always cohere. Further, a company is, like an individual, a person of full capacity, yet an individual has a nearly unfettered right of self-representation. These complications make the rule challenging to apply, as the experiences of the State Courts illustrate. The true reason for the rule is limited to ensuring only that the officer is authorised. Other policy concerns implicated by corporate self-representation are better addressed outside of litigation procedure.

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1 Traditionally, a company could participate in civil proceedings in Singapore only through a lawyer and not through its lay officers.[2] But

1 The authors are indebted to District Judge Lim Wee Ming for his guidance and comments. The authors are also grateful to the State Courts, Singapore, for its permission to use the data gleaned from the empirical research. All views expressed in this article are the authors' alone and are not those of the State Courts.

2 The rule against corporate self-representation in Singapore applies to all bodies corporate, including companies, limited liability partnerships, unincorporated associations, and registered trade unions (see O 1 r 9(1)(*a*), O 5 r 6(2) and O 12 r 1(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). But the company is the predominant corporate form in Singapore. Companies also bring most applications for leave for corporate self-representation. This article thus focuses on the self-representation by companies even as the opinions expressed apply, for the most part, equally to self-representation by other bodies corporate.

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the Rules of Court[3] ("ROC") now empower the court to permit an officer to conduct the litigation of a company. Even so, the company must show that such corporate self-representation would be "appropriate in the circumstances of the case".[4] And this inquiry, according to the seminal decision of the Singapore High Court in *Bulk Trading SA v Pevensey Pte Ltd*[5] ("*Bulk Trading*"), turns on the cogency of the reasons provided to justify the self-representation and the ability of the officer to conduct the proceedings.

2 It is suggested that this approach to applications for leave for corporate self-representation made under O 1 r 9 of the ROC ("O 1 r 9") merits re-examination. First, the traditional justifications for the general prohibition on corporate self-representation ("Prohibition") do not always cohere, and this incoherence complicates the operation of the Prohibition and its exceptions. Second, a wide Prohibition on corporate self-representation sits uneasily with the nearly unfettered right of an individual to represent himself,[6] especially when the law confers on a company "full capacity to carry on or undertake any business or activity, do any act or enter into any transaction".[7] Ultimately, the proper scope of the Prohibition should be limited to ensuring only that an officer nominated by a company to conduct its litigation has been properly authorised. While there are other policy concerns relating to authorisation of the officer and the unauthorised practice of law, the O 1 r 9 framework is ill-suited to address them.

Nevertheless, this article does not examine representation before the Small Claims Tribunals and Employment Claims Tribunals. There, legal representation is generally not allowed for individuals while bodies corporate must be represented by officers or full-time employees: see, *eg*, ss 23(3) and 23(2)(*c*) of the Small Claims Tribunals Act (Cap 308, 1998 Rev Ed); and ss 19(1) and 19(2)(*b*) of the Employment Claims Act 2016 (Act 21 of 2016). This is even though these tribunals are State Courts established under ss 3(1)(*d*)–3(1)(*e*) of the State Courts Act (Cap 321, 2007 Rev Ed).

3 Cap 322, R 5, 2014 Rev Ed.

4 Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 1 r 9(2)(*b*) (see also O 1 r 9(3)(*b*)).

5 [2015] 1 SLR 538.

6 An individual has the right to begin, carry on, appear in, and defend court proceedings to which he is a party "in person" at common law and under the Rules of Court (Cap 322, R 5, 2014 Rev Ed): see O 5 r 6(1) and O 12 r 1(1). This is subject only to the laws on capacity and disability (see O 76) and on vexatious litigation: see s 74 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed).

7 Companies Act (Cap 50, 2006 Rev Ed) s 23(1)(*a*).

I. Prohibition on corporate self-representation

3 The Prohibition, which has its roots in the common law is today enshrined in O 5 r 6(2) and O 12 r 1(2) of the ROC. These provisions prohibit a company from commencing or carrying on court proceedings, and from appearing in or resisting a writ action, otherwise than by a solicitor.[8] As observed by the Court of Appeal in *Offshoreworks Global (L) Ltd v Posh Semco Pte Ltd*[9] ("*Offshoreworks*"), the Prohibition extends to proceedings before the Singapore International Commercial Court ("SICC") and appeals therefrom.[10]

> **Right to sue in person (O. 5, r. 6)**
>
> **6.**—…
>
> (2) Subject to Order 1, Rule 9(2) and any other written law, and except in accordance with any practice directions for the time being issued by the Registrar, a body corporate may not begin or carry on any proceedings in Court otherwise than by a solicitor.
>
> **Mode of entering appearance (O. 12, r. 1)**
>
> **1.**—…
>
> (2) Subject to Order 1, Rule 9(2) and any other written law, and except in accordance with any practice directions for the time being issued by the Registrar, a defendant to an action begun by writ which is a body corporate may not enter an appearance in the action or defend it otherwise than by a solicitor.

4 The exceptions to the Prohibition are supposedly limited. Before 2011, a company could appeal only to the court's inherent power for leave to represent itself. However, such power would be exercised only in

8 There is an unusual asymmetry in that a corporate defendant may not appear in or resist a writ action without a solicitor but may resist an originating summons in person. The former O 12 r 9 of the Rules of Court, which generally required defendants to enter appearance in originating summonses just as they did in writs, was abolished in 2006 via r 2 of the Rules of Court (Amendment No 3) Rules 2005 (S 806/2005) and para 9 of the First Schedule. But there were no corresponding amendments to regulate self-represented corporate defendants in originating summonses.

9 [2021] 1 SLR 27.

10 *Offshoreworks Global (L) Ltd v Posh Semco Pte Ltd* [2021] 1 SLR 27 at [32].

"exceptional" circumstances.[11] Since 2011,[12] however, the Prohibition has apparently been relaxed by O 1 r 9, which empowers the court to grant a company leave to have its officer conduct its litigation where doing so would be "appropriate in the circumstances of the case".

> **Construction of references to party, etc., in person (O. 1, r. 9)**
>
> **9.**—…
>
> (2) For the purposes of section 34(1)(*ea*) of the Legal Profession Act (Cap. 161) and paragraph (1), the Court may, on an application by a company or a limited liability partnership, give leave for an officer of the company or limited liability partnership to act on behalf of the company or limited liability partnership in any relevant matter or proceeding to which the company or limited liability partnership is a party, if the Court is satisfied that —
>
> (*a*) the officer has been duly authorised by the company or limited liability partnership to act on behalf of the company or limited liability partnership in that matter or proceeding; and
>
> (*b*) it is appropriate to give such leave in the circumstances of the case.
>
> …
>
> (6) In this Rule —
>
> 'company' means a company incorporated under the Companies Act (Cap. 50)

5 That said, it is unclear how true these propositions are, and they have recently been cast into further doubt. Order 1 r 9 is unavailable to foreign companies, because a company is defined as one "incorporated under the Companies Act",[13] which outcome *Offshoreworks* described

11 *Lea Tool and Moulding Industries Pte Ltd v CGU International Insurance plc* [2000] 3 SLR(R) 745 at [16], *per* Lai Kew Chai J. See also *Ho Pak Kim Realty Co Pte Ltd v Attorney-General* [2014] SGHC 176 at [12], where Woo Bih Li J stated that he "did not [even] require" the corporate plaintiff to make an application under O 1 r 9 on the ground that the action could be struck out for a lack of substantive merit, and that it "would have incurred additional costs to make such an application".

Although the Rules of Court had even before 2011 allowed companies to commence and carry on proceedings or defend writ actions where provided for under written law or practice directions, corporate self-representation remained an option only pursuant to the inherent powers of the court. This was because there was no such written law in Singapore. Further, the Judiciary, the Attorney-General's Chambers and the Law Society were of the view that neither subsidiary legislation nor any practice direction could overcome the prohibition in the Legal Profession Act (Cap 161, 2009 Rev Ed), which is primary legislation, on the practice of law by non-lawyers: *Report of the Committee to Review and Update the Supreme Court of Judicature Act and the Subordinate Courts Act* (31 July 2009) at paras 294–296.

12 Rules of Court (Amendment No 3) Rules 2011 (S 224/2011).

13 *Offshoreworks Global (L) Ltd v Posh Semco Pte Ltd* [2021] 1 SLR 27 at [21] and [32].

as a lacuna that merited legislative intervention since it ran counter to the *raison d'être* of the establishment of the SICC,[14] even as the court apparently retains an inherent power to allow a foreign company to represent itself.[15] Conversely, the case law has always retained an inherent power to allow a company – even a foreign one – to represent itself. Although the inherent power of the court to grant leave for corporate self-representation is ostensibly exercisable only in "exceptional" circumstances, the power is in practice exercised, albeit in a limited fashion, in almost every application for corporate self-representation. The summons, while filed in the name of the company, is almost invariably argued by the putative representative of the company.[16] Even in *Offshoreworks*, the Court of Appeal, despite holding that O 1 r 9 did not apply to empower it to grant the foreign company leave for corporate self-representation, permitted the representative "to nevertheless proffer (in addition to the written submissions already tendered to this court) his oral submissions to us in fairness to [the company]", and considered "the respective parties' written and oral submissions" before dismissing the company's application "on its merits".[17] The main reason for this practice is that shutting out an unrepresented company at even the hearing for leave for corporate self-representation would effectively leave it without a voice in the proceedings to which it is a party.

6 For completeness, where a company is in liquidation and the powers of management are vested in the liquidator,[18] the liquidator was

14 *Offshoreworks Global (L) Ltd v Posh Semco Pte Ltd* [2021] 1 SLR 27 at [34]:

> However, it is unfortunate that the present legal regime does not permit foreign bodies corporate the possibility of availing themselves of the leave mechanism in O 1 r 9(2). As a result, the court is also deprived of its "important sieving function" to grant leave (see *Bulk Trading* at [48]). We observe that such an outcome is neither pragmatic nor desirable in the context of SICC matters, which … almost always involve at least one party who is a foreign body corporate. The imposition of such an onerous requirement on these parties runs counter to the very objective of establishing the SICC in the first place, which is to grow the legal services sector and to expand the scope for the internationalisation and export of Singapore law … We highlight this issue as a gap or lacuna in the current legal regime governing corporate self-representation, and are of the view that this issue is sufficiently significant to merit consideration for the introduction of appropriate legislative amendments in the future.

15 See *Offshoreworks Global (L) Ltd v Posh Semco Pte Ltd* [2021] 1 SLR 27 at [35].

16 This was the case not only in the 73 applications before the State Courts which are reviewed in this article, but also in *Bulk Trading* and the decisions that followed it, including *Offshoreworks Global (L) Ltd v Posh Semco Pte Ltd* [2021] 1 SLR 27. This is also the position in the UK: see *Graham v Eltham Conservative & Unionist Club* [2013] EWHC 979 (QB) at [29].

17 *Offshoreworks Global (L) Ltd v Posh Semco Pte Ltd* [2021] 1 SLR 27 at [35].

18 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 140; previously, Companies Act (Cap 50, 2006 Rev Ed) s 272.

permitted to represent the company in an application under O 1 r 9 by producing letters of authorisation signed by the liquidator himself.[19] However, it is not entirely clear whether such permission was granted under O 1 r 9 or the court's inherent power. Since the liquidator takes control of the causes of action of the company in liquidation pursuant to statute, the liquidator in prosecuting those causes of action may simply be pursuing personal litigation and, accordingly, require no leave for corporate self-representation.

7 Unlike at common law, there is supposedly no "default position"[20] under O 1 r 9 for or against allowing corporate self-representation. As *Bulk Trading* explained, the court adopts a "neutral outlook", balances all the relevant factors, and assesses whether there is "sufficient reason" to grant leave. The relevant factors include the formal compliance by the company with the procedural requirements in O 1 r 9, and several substantive considerations: the company's and/or its owners' financial position; the company's structure; the *bona fides* of the application; the complexity of the factual and legal issues in the substantive proceedings; the merits of the company's case/defence; the officer's competence; the amount in dispute; the stage of proceedings at which the application is made; and the company's role in the proceedings.[21]

II. Justifications for the Prohibition

8 This article begins by attempting to understand the justifications for the Prohibition. Such an understanding, as George Wei JC observed in *Allergan, Inc v Ferlandz Nutra Pte Ltd*[22] ("*Allergan*"), "shapes the manner and ease with which leave would be granted for an officer to act on behalf of a company in legal proceedings".[23] But reaching such an understanding is, as Wei JC continued, "difficult".[24]

9 The first reported decision in Singapore to examine the justifications for the Prohibition was *Bulk Trading*, which incisively and succinctly rejected seven such justifications, which in turn expressed five concerns:

> (a) A company comprises not a singular individual but a collection of individuals and cannot therefore appear in court

19 DC/DC 772/2018; DC/DC 576/2019.
20 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [44].
21 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [48], [79]–[80] and [100]–[102].
22 [2015] 2 SLR 94.
23 *Allergan, Inc v Ferlandz Nutra Pte Ltd* [2015] 2 SLR 94 at [36].
24 *Allergan, Inc v Ferlandz Nutra Pte Ltd* [2015] 2 SLR 94 at [36].

"in person". Further, allowing the company to be represented by an officer privileges the company *vis-à-vis* an individual who, if he does not represent himself, must engage legal representation to participate in court proceedings. This concern was rejected because a company is as much a person at law as any individual of full age and capacity, and the officer in conducting the litigation of the company embodies (rather than represents) the company.[25]

(b) A company enjoys the benefit of limited liability, unlike an individual. This concern was rejected because the opponent, if a defendant, can seek an order of security for its costs, and if a plaintiff, takes its chances that the company cannot compensate it just like any other plaintiff.[26]

(c) The corporate litigation could be irregular if the company was represented therein by an unqualified officer who is unable to cause it to undertake obligations. This concern was rejected because O 1 r 9(6) limits the classes of individuals who can conduct the litigation of a company, and O 1 r 9(4) requires proof that the officer has been authorised by the company to do so.[27]

(d) Allowing an officer to conduct the litigation of a company is in effect allowing him to practise law without a licence. This concern was rejected because the "appropriate legislation permits such representation as is addressed in Singapore by O 1 r 9(2) read with s 34(1)(*ea*) of the of the Legal Profession Act (Cap 161, 2009 Rev Ed)" ("LPA").[28]

(e) The officer of the company is not subject to rules of professional conduct, which may prejudice the administration of justice. This concern was rejected because such objections apply equally to individual self-representation, the validity of which has never been seriously challenged, and because other procedural safeguards weaken the force of this concern.[29]

10 Nevertheless, *Bulk Trading*, citing *Winn v Stewart Bros Construction Pty Ltd*[30] ("*Winn*"), concluded that there were three "sound reasons" ("the *Winn* Justifications") for the Prohibition based on the court's "inherent desire to ensure that justice is administered both fairly

25 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [26]–[27].
26 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [28].
27 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [29]–[30].
28 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [31].
29 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [32]–[33].
30 [2012] SASC 150 at [38], *per* Blue J.

and efficiently in the interests of the immediate parties and the wider public".[31] Those reasons, with which *Offshoreworks* and *Allergan* agreed, involved concerns about the potential prejudice to the opponent and the timely and fair administration of justice due to a lack of familiarity of an officer with the court process, and the absence of professional discipline that enjoins him to properly inform and not mislead the court:[32]

> 1. The opposite party may be disadvantaged by the time and cost of the proceeding being extended due to the company not being represented by a legally qualified advocate.
>
> 2. The public interest in the efficient and timely administration of justice may be prejudiced by the time and cost of the proceeding being extended due to the company not being represented by a legally qualified advocate.
>
> 3. The public interest in the fair administration of justice may be prejudiced by the fact that a lay advocate (unlike a legally qualified advocate) does not owe a duty to the court and to the parties in the litigation to ensure that the court is properly informed and not misled.

11 The authors of *Singapore Civil Procedure 2020*,[33] based presumably on the *Winn* Justifications, offer an instructive alternative conception of the Prohibition and O 1 r 9 as an exception thereto. They suggest that the Prohibition and O 1 r 9 represent a compromise between the competing policy concerns of facilitating access to justice by companies while protecting the wider administration of justice.[34]

12 Although *Bulk Trading* states that O 1 r 9 does not entail an officer practising law without a licence and that a summons may be viewed favourably where the officer is an in-house counsel who can assist with the issues in dispute,[35] a different view was taken in *Elbow Holdings Pte Ltd v Marina Bay Sands Pte Ltd*[36] ("*Elbow Holdings*"). There, Choo Han Teck J held that O 1 r 9 was also not designed to allow foreign counsel

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31 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [47].

32 *Offshoreworks Global (L) Ltd v Posh Semco Pte Ltd* [2021] 1 SLR 27 at [33]; *Allergan, Inc v Ferlandz Nutra Pte Ltd* [2015] 2 SLR 94 at [44]–[45].

33 *Singapore Civil Procedure 2020* (Chua Lee Ming J editor-in-chief; Paul Quan gen ed) (Sweet & Maxwell, 2020).

34 *Singapore Civil Procedure 2020* (Chua Lee Ming J editor-in-chief; Paul Quan gen ed) (Sweet & Maxwell, 2020) at para 5/6/2:

> There is a tension between two policy concerns: securing greater access to justice by allowing persons more latitude to represent themselves, and ensuring that the administration of justice is not impeded or prejudiced by allowing untrained and undisciplined persons to conduct litigation on behalf of companies …

35 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [113]; similar sentiments were expressed in *Allergan, Inc v Ferlandz Nutra Pte Ltd* [2015] 2 SLR 94 at [65].

36 [2015] 5 SLR 289.

to circumvent the admission requirements under the LPA.[37] Although Choo J did not frame this holding as a justification for the Prohibition, the holding closely approximates the views of the Committee to Review and Update the Supreme Court of Judicature Act and the Subordinate Courts Act ("SCJA/SCA Review Committee") as set out in its 2009 report,[38] which views informed the enactment of O 1 r 9.

13 The SCJA/SCA Review Committee opined that the Prohibition addressed two concerns. First, it ensured that the officer had been properly authorised by and could competently represent the interests of the company and would conduct himself properly in the proceedings. Second, it minimised any "uneven playing field" for Singapore lawyers from foreign lawyers and other unqualified persons conducting corporate litigation. But the Committee also thought that impecunious companies that could not afford legal representation should be able to represent themselves to preserve their access to justice. It thus made the following observations and recommendations:

> *The case for corporate self-representation*
>
> 333 The primary argument in favour of allowing corporate self-representation is to assist smaller or impecunious companies to seek justice before our Courts. Where the legal rights of a company are infringed, it should not be denied access to justice simply because of the costs of legal representation. Just as individuals are permitted to act in person, there seems no reason in principle why companies as independent legal entities ought not to be able to do the same. While a company is obviously a person only by way of legal fiction, it is not impossible to identify suitable representatives from within the company to act on its behalf.
>
> 334 This is not to say that there are no concerns with such liberalisation [in favour of self-representation], and some of these as mentioned above have been highlighted previously by the Law Society and the AGC [*ie*, the Attorney-General's Chambers]. On the difficulty with the LPA prohibiting a non-lawyer from acting on behalf of a company, this can be addressed by appropriate legislative amendments. As a matter of policy, the areas of concern can be broadly divided into: (a) whether the representative is properly authorized to act for the company; (b) whether the representative is able to adequately and competently represent the interests of the company; and (c) whether the representative will conduct himself or herself as well as the legal proceedings ethically, expeditiously and responsibly, especially since the representative may be a non-lawyer not bound by any professional rules or ethical obligations; or a foreign lawyer used to different norms. The third concern in particular can potentially create the problem of an uneven playing field, inasmuch as foreign lawyers (such as in-house counsel), who may be equally capable of conducting

37 *Elbow Holdings Pte Ltd v Marina Bay Sands Pte Ltd* [2015] 5 SLR 289 at [13]–[14].
38 *Report of the Committee to Review and Update the Supreme Court of Judicature Act and the Subordinate Courts Act* (31 July 2009).

the litigation and advancing legal submissions, **are however not subject to the same professional conduct rules as their Singaporean counterparts.**

335 These difficulties are legitimate but not insurmountable, and should not lead to a *blanket rule* that prevents corporate self-representation *in all cases*. Borrowing from the experience in other jurisdictions, it is proposed that an exception to be created to the general rule that companies can only be represented by lawyers. To address the concerns raised above, a two-pronged approach can be adopted. First, the group of individuals who qualify to act on behalf of the company in legal proceedings should be appropriately limited. In this regard, there is merit in the approach in Hong Kong and certain states in Australia of restricting the persons who can represent the company to the directors of the company. The intention behind allowing corporate self-representation is to enable smaller and impecunious companies to represent themselves, and such companies are typically run by only a few directors without many employees. The use of the more restrictive term of "directors" would also prevent foreign or local in-house counsel of large companies from representing them which would otherwise cause the potential problem of uneven playing field. Moreover, limiting representation to directors would go some way to ensuring that there is proper authorization. Finally, it can be argued that only persons who have the control and management of the company should be permitted to represent it. As the term 'director' may not be a term of art that has a fixed meaning in all contexts, it is proposed to refer to the terms 'director' and 'officer' as these are defined in the Companies Act (Cap 50). As a further safeguard to prevent any potential abuse, there should be a requirement that the company provides sufficient evidence that such directors and officers have the authority to act for the company, such as by means of an affidavit showing that a board resolution was passed to that effect.

336 In addition to restricting the class of persons who qualify to represent the company, the other control lies with the court itself. It is proposed, again in line with the practice in the other jurisdictions surveyed above, that the leave of the court must be obtained for corporate self-representation. By requiring the approval of the court, this will further ensure that companies are permitted to act on their own only in suitable cases. The approach places the onus on companies to persuade the court that sufficient reasons exist to justify a departure from the general rule. Nevertheless, it is suitably permissive because of the broad and flexible discretion vested in the court. We do not recommend legislatively providing for the factors that the court ought to consider in the exercise of its discretion as these are innumerable and depend on the circumstances of the individual case. However we can suggest several guiding considerations that may be taken into account by the courts, the most important of which is that the primary intent behind the change is to facilitate the access to justice for smaller companies who may otherwise not be able to have recourse to the courts due to the lack of finances to engage legal representation. The financial condition of the company would therefore be one of the main factors in the exercise of the court's discretion. Other relevant factors to consider would include *inter alia* (i) the nature and complexity of the dispute, (ii) the qualifications, experience

> and competence of the lay officer, and (iii) the position held and role played by the lay officer in the company.
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> [emphasis in original in italics; emphasis added in bold]

14 These recommendations were accepted by then-Chief Justice Chan Sek Keong.[39]

III. Approach in Singapore

15 Although the Prohibition has its roots in the common law, the present understanding of its rationale in Singapore is autochthonous.

16 The SCJA/SCA Review Committee, having surveyed the practice in the UK, Australia[40] and Hong Kong, noted only one policy consideration underpinning the Prohibition: "that the opportunities for those untrained in the law need to be restricted in the interests of justice".[41] But perhaps because the judicial decisions in Singapore do not appear to have had the benefit of the SCJA/SCA Review Committee's report, many have diverged from the Committee in their understanding of the rationale of the Prohibition. Further, as *Bulk Trading* and *Elbow Holdings* illustrate, the decisions differ as between themselves. The common ground that remains is that the Prohibition is grounded in the interests of the opponent and of the public. This is especially true of the three *Winn* Justifications, of which the third focuses on the public interest in the *fair* administration of justice while the first and the second concern, respectively, the opponent's interest in the cost-effective resolution of the dispute and the public interest in the *timely* and *efficient* administration of justice. The Committee similarly emphasised the public interest, albeit in regulating the supply of legal services, and the opponent's (and company's) interests in ensuring that the officer is a proper individual to conduct the corporate litigation.

17 If these rationales are correct, the court in an O 1 r 9 summons would presumably operate as a gatekeeper of the interests of the public, the opponent and the company, and scrutinise the competence of the officer and cogency of the substantive reasons offered in support of the application. However, an empirical survey of 73 applications filed in the State Courts in the five years from 2015 to 2019 reveals a different trend.

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39 *Supplementary Report of the Committee to Review and Update the Supreme Court of Judicature Act and the Subordinate Courts Act* (January 2010) at para 18.

40 Specifically, the Federal Court, New South Wales, Victoria and South Australia.

41 *Report of the Committee to Review and Update the Supreme Court of Judicature Act and the Subordinate Courts Act* (31 July 2009) at para 316.

The court frequently based its decision on formal grounds: the non-objection by the opponent (where the summons was granted) and/or the absence of the company and the failure by the company to fulfil the formal requirements[42] of O 1 r 9 (where the summons was not granted).

18 Where the opponent was present at the hearing but did not contest the application, the court was comfortable in granting leave for corporate self-representation. There were 19 cases that involved such non-objection by the opponent. All 19 (100%) were granted. This is a far higher percentage than the seven of 17 (41%) granted where the respondent was *absent*. Further, the summonses that were granted were mostly granted on formal grounds, especially where the opponent did not contest the summons. Of all the summonses that were granted, 36% were granted on formal grounds only (with 12% more granted on formal and substantive grounds). Finally, the summonses that were not granted were typically determined with few substantive grounds provided. Of all the summonses not granted, 48% were determined on formal grounds only (with 34% more determined on formal and substantive grounds).

			Respondent absent	Respondent present	
				No objection	*Contested*
Adjudicated finally	***Granted***	*Substantive reasons only*	2	9	6
		Both formal & substantive reasons	1	3	–
		Formal reasons only	4	7	1
	Not granted	*Formal reasons only*	7	–	7
		Both formal & substantive reasons	1	–	9
		Substantive reasons only	2	–	3
Not adjudicated finally			2	3	6

42 Such non-compliance with the formal requirements of O 1 r 9 includes a failure to furnish the requisite basic information in O 1 rr 9(4)(*a*)(i)–9(4)(*a*)(ii) or r 9(4)(*b*), a failure to furnish *any supporting reason at all* under O 1 r 9(4)(*a*)(iii), a failure to have an officer other than the proposed representative depose the affidavit under O 1 r 9(4)(*c*), and a failure to furnish any evidence of authorisation under O 1 r 9(2)(*a*).

19 This trend does not sit easily with the *Winn* Justifications and the conception of the court thereunder as an active gatekeeper of the Prohibition with an "important sieving function".[43] Yet this uneasiness is perhaps symptomatic of a deeper problem: neither the case law nor the drafters of O 1 r 9 have sufficiently questioned the existence of the Prohibition. Hence, it is difficult to decide applications for leave for corporate self-representation in a principled way. An examination of the justifications for the Prohibition that remain popular today reveal that hardly any of them have true traction.

A. Delay and disruption

20 The most common justification for the Prohibition is the delay and disruption associated with the conduct of litigation by lay officers who struggle with the issues in dispute and who are not subject to the professional rules that bind lawyers. This features in the SCJA/SCA Review Committee report[44] and the *Winn* Justifications.

(1) Doctrinal analysis

21 There are three difficulties with defending the Prohibition based on the delay and disruption in corporate self-representation. First, these concerns might not be relevant. Second, these concerns apply equally to self-represented individuals. Third, corporate officers are likely as well equipped as individuals to conduct litigation expediently.

(a) Delay and disruption might not be relevant

22 In the first place, it is doubtful that an individual's competence and credibility should be a relevant consideration, whether he is before the court in his personal capacity or on behalf of his company. This is at least where, as is not infrequently the case, he is the company's sole or primary officer and the company has no one else to conduct its litigation.

23 First, the growing common law acceptance of self-representation, at least for individual litigants, diminishes the cogency of the concern about delay and disruption as a justification for the Prohibition.

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43 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [48]; endorsed in *Offshoreworks Global (L) Ltd v Posh Semco Pte Ltd* [2021] 1 SLR 27 at [34].

44 *Report of the Committee to Review and Update the Supreme Court of Judicature Act and the Subordinate Courts Act* (31 July 2009) at para 316, describing the necessity of limiting the opportunities of "those untrained in the law" to conduct litigation on behalf of companies.

(a) In Australia, the role of the judge as to the issues of law in a dispute is evolving. The South Australia Supreme Court has held that it is not inconsistent with the rule against bias for a judge to guide a self-represented litigant on procedural and substantive issues, based on the nature of the case and the circumstances of the litigant.[45] The Victoria Court of Appeal has stated that the efficient administration of justice permits a judge to assist a self-represented litigant by clarifying its position, defining the substantive issues, and explaining which issues give rise to a cause of action.[46] And the New South Wales Court of Appeal has accepted that a judge may explain the relevant law to a litigant on the ground that a litigant cannot discharge its duties or take advantage of its rights if it does not know the law.[47]

(b) In Canada, the Ontario Court of Appeal in *Moore*, after lamenting the challenges associated with self-representation, declared that self-representation "is the new reality" that "often requires a trial judge to take the time to ask those few extra questions to nail down, with clarity for all, the claims of the self-represented person upon which he will adjudicate. Trial fairness requires no less".[48]

(c) In the UK, the *Equal Treatment Bench Book* issued by the Judicial College recommends that judges ensure that self-represented litigants are made aware of the relevant law and have "proper opportunity" to make submissions on it. This includes directing the opponent to "produce any authorities to be relied on at the latest at the outset of a hearing" and ensuring that the self-represented litigant is "given proper opportunity to read such authorities and make submissions in relation to them".[49]

24 Looking ahead, this trend will only grow with the increasing conceptualisation of a judge as one who "works more actively with parties to find the best way to resolve a case".[50] Once a litigant has adduced its evidence, the judge will have to "do right for each individual case, and ensure that parties will not be denied justice because of accidental

45 *Kenny v Ritter* [2009] SASC 139.
46 *Trkulja v Markovic* [2015] VSCA 298; *Re F: Litigants in Person Guidelines* (2001) 161 FLR 189; *Neil v Nott* (1994) 68 ALJR 509.
47 *Hamod v State of New South Wales* [2011] NSWCA 375.
48 *Moore v Apollo Health & Beauty Care* 2017 ONCA 383 at [48].
49 United Kingdom, Judicial College, *Equal Treatment Bench Book* (February 2018) at para 55.
50 *Report of the Civil Justice Review Committee* (26 October 2018) at para 29.

procedural flaws".[51] These precepts sit uneasily with a rule that prohibits corporate self-representation on the ground of concerns as to the competence of the corporate officer.

25 Second, as *Bulk Trading* observed, the ROC and the common law contain safeguards to sanction those who conduct proceedings in a misguided or unsuitable manner.[52] In this light, there is reduced force in its observation that the ability of the officer to understand discovery obligations is important,[53] since a suite of consequences can attend a failure to comply with discovery obligations too.[54]

(b) Delay and disruption transcend individual and corporate self-representation

26 Even if there are concerns about delay and disruption to court proceedings, they are not unique to self-representation by companies, and apply equally to self-representation by individuals, who have a generally unfettered right to act in person. The common law is replete with comments on the delay and disruption associated with individual self-representation.

27 In the UK, the Court of Appeal in *Colin Wright v Michael Wright Supplies Ltd*[55] began its judgment by lamenting the "difficulties increasingly encountered by the judiciary at all levels when dealing with litigants in person".[56] In Canada, the Court of Appeal of Ontario

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51 *Public Consultation on Civil Justice Reforms: Recommendations of the Civil Justice Review Committee and Civil Justice Commission* (26 October 2018) at para 2(c).

52 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [33] and [113].

53 Nor is there much force in such concerns expressed in the authorities about officers who are undischarged bankrupts, who face language barriers, or who ordinarily reside outside Singapore: *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [115]. In the first place, an undischarged bankrupt, without the Official Assignee's sanction, can neither commence, continue or defend most proceedings in his own name, nor be a director: see s 148 of the Companies Act (Cap 50, 2006 Rev Ed). As for language barriers and residency *ex juris*, these are problems that attend both individual and corporate litigants.

54 See, *eg*, O 24 r 16(1) and O 108 r 2(9)(*a*) (dismissal of the action or striking out of the defence and entry of judgment), and O 24 r 16(2) and O 108 r 2(9)(*b*) (committal) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).

55 [2013] EWCA Civ 234.

56 *Colin Wright v Michael Wright Supplies Ltd* [2013] EWCA Civ 234 at [2]:

> What I find so depressing is that the case highlights the difficulties increasingly encountered by the judiciary at all levels when dealing with litigants in person. Two problems in particular are revealed. The first is how to bring order to the chaos which litigants in person invariably – and wholly understandably – manage to create in putting forward their claims and defences. Judges should not have to micro-manage cases, coaxing and cajoling the parties to focus on the

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in *Moore v Apollo Health & Beauty Care*[57] ("*Moore*") observed that self-representation "poses distinct challenges for a trial judge", who has to "manag[e] an adversarial proceeding when one party lacks formal training in the law and its procedures".[58] And this challenge is particularly acute in the first-instance courts, where judges "operate under significant time and volume pressures" and "daily face the challenge of trying to modify an adversarial civil litigation process historically predicated on representation by counsel to the increase in self-representation by parties".[59] In Australia, the High Court in *Cachia v Hanes*[60] described the difficulties caused by the increasing numbers of self-represented individuals as a "problem for the courts".[61] This sentiment was echoed by former Chief Justice of Australia, Murray Gleeson, who (extra-judicially) described unrepresented litigants as "a serious problem" due to their inability to understand the legal process and argue their cases, such that their self-representation delays and disrupts litigation.[62]

> issues that need to be resolved. … The expense of three judges of the Court of Appeal dealing with this kind of appeal is enormous. The consequences by way of delay of other appeals which need to be heard are unquantifiable. The appeal would certainly never have occurred if the litigants had been represented. With more and more self-represented litigants, this problem is not going to go away.

57 2017 ONCA 383.

58 *Moore v Apollo Health & Beauty Care* 2017 ONCA 383 at [43].

59 *Moore v Apollo Health & Beauty Care* 2017 ONCA 383 at [48].

60 (1994) 120 ALR 385.

61 *Cachia v Hanes* (1994) 120 ALR 385 at 391:

> Whilst the right of a litigant to appear in person is fundamental, it would be disregarding the obvious to fail to recognise that the presence of litigants in person in increasing numbers is creating a problem for the courts … All too frequently, the burden of ensuring that the necessary work of a litigant in person is done falls on the court administration or the court itself. Even so, litigation involving a litigant in person is usually less efficiently conducted and tends to be prolonged. The costs of legal representation for the opposing litigant are increased and the drain upon court resources is considerable.

62 Murray Gleeson, "The State of the Judicature", speech delivered at the Australian Legal Convention (10 October 1999):

> … the unrepresented litigant is a serious problem. People cannot be compelled to be legally represented. Some are unrepresented of their own choice, but most unrepresented litigants are unrepresented because they have been unable, usually for financial reasons, to obtain the services of a lawyer. The resulting problem has two aspects. The first relates to justice; the second relates to cost and efficiency.
>
> Our system proceeds upon the assumption that a just outcome is most likely to result from a contest in which strong arguments are put on both sides of the question, and the court adopts the role of a neutral and impartial adjudicator. If parties are not legally represented, then the assumption is often invalidated, partly or completely. …
>
> What is not so well understood outside the court system and the legal profession is the cost to the system, and the community, in terms of disruption and delay, of the unrepresented litigant. If the work which the courts routinely leave to be

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28 In Singapore, similar views were expressed by the Civil Justice Commission ("CJC") appointed by the Chief Justice in 2015 and the Civil Justice Review Committee ("CJRC") established by the Ministry of Law in 2016 to review and update the civil justice system. Among the problems plaguing civil litigation that they identified were pleadings that were inadequate or prolix, which problems were "exacerbated in cases involving litigants-in-person, who do not know which facts are relevant, and which facts should or should not be adduced in the pleadings".[63]

29 The delay and disruption used to justify prohibiting corporate self-representation is properly an argument against *all* self-representation and does not justify distinguishing between corporate self-representation and individual self-representation. The observations of the Supreme Court of Michigan in *Shy v Metro Passbook Inc*[64] are apposite:

> A person who is not an attorney is more likely than an attorney to burden other litigants and the court with time-consuming, meritless arguments and with time-consuming delays attributable to noncompliance with procedural requirements. But that is an argument against allowing persons who are not attorneys to appear at all, not for distinguishing between allowing a person who is not an attorney representation *in propria persona*, which is permitted, and allowing a person who is not an attorney to represent a corporation of which the person is the sole shareholder or has been held to be the *alter ego*.

30 Similarly, *Bulk Trading* rejected arguments that the Prohibition was justified because it ensured that corporate litigation was conducted by professional advocates familiar with court procedure and governed by disciplinary rules, and observed that these concerns "apply with equal force in individual self-representation".[65] Yet *Bulk Trading* concluded

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> done by lawyers is left in the hands of the litigants themselves, in most cases the work will either not be done at all, or it will be done slowly, wastefully, and ineffectively. If the judge or magistrate intervenes then his or her impartiality is likely to be compromised, and the time of the court will be occupied in activities which would ordinarily be unnecessary. The result is often confusion and delay in the instant case, with consequences for other litigants waiting their turn in overburdened court lists.

63 *Public Consultation on Civil Justice Reforms: Recommendations of the Civil Justice Review Committee and Civil Justice Commission* (26 October 2018) at paras 52–53.

64 *Shy v Metro Passbook Inc* 481 NW 2d 351 at 353 (1992).

65 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [32]–[33]:

> … it is also frequently said that the rationale for the rule is that it secures for the court the services of professional advocates familiar with court procedure and governed by disciplinary rules (see *Tritonia, Limited v Equity and Law Life Assurance Society* [1943] AC 584 at 587). Related to this is the idea that allowing companies to represent themselves would be unfair and burdensome to the other party, by forcing them to confront an opponent who does not appreciate and hence fails to abide by the normal rules of litigation (see *Worldwide Enterprises Pty Ltd v Silberman* (2010) 237 FLR 292 at [44]). The delay and

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that the *Winn* Justifications explain the Prohibition. But the *Winn* Justifications are not unique to corporate self-representation as distinct from individual self-representation. A self-representing individual, just like a self-representing company, not infrequently protracts proceedings to the detriment of the efficient and timely administration of justice. Nor does a self-representing individual bear the professional obligations of a lawyer to ensure that the court is properly informed and not misled. In fact, several authorities from which the *Winn* Justifications were distilled were the very same authorities that *Bulk Trading* had found to be unpersuasive.[66]

31 It seems, therefore, that either corporate self-representation should generally be allowed, or individual self-representation should generally be prohibited. A double standard would otherwise exist. And, as *Bulk Trading* noted, it has never been seriously suggested that individual self-representation should be disallowed.[67] This right of an individual to be heard in court – an aspect of natural justice – is, the authors suggest, so important and worthy of protection that delay and disruption should be slow (if at all) derogate from that right. Indeed, the CJC and CJRC, despite acknowledging the delay and disruption associated with self-representation, have proposed a system of civil procedure designed to further facilitate self-representation by individuals.

(c) Corporate officers are no less competent than individuals

32 In any event, corporate officers are likely to be no less competent and credible than individuals before the court, given the qualifications on which their appointments are conditioned in the Companies Act[68]

> costs so occasioned, it is said, would also be unfair to the other parties in the court's docket, and is prejudicial to the administration of justice as a whole (see *Hubbard Association of Scientologists International v Anderson and Just* [1972] VR 340 at 343).
>
> However, such objections apply with equal force to individual self-representation. Yet, it has *never been seriously suggested that litigants in person should be prohibited from acting for themselves because it would be more helpful to their opponents and the court for them to be represented by counsel.*
>
> [emphasis added]

66 For example, *Winn v Stewart Bros Construction Pty Ltd* [2012] SASC 150 at fnn 43 and 44 had cited *Hubbard Association of Scientologists International v Anderson and Just* [1972] VR 340 at 343 (which *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 cited as having supported the fourth set of (rejected) justifications at [32]), and the judgment of Kirby P in *Bay Marine Pty Ltd v Clayton Country Properties Pty Ltd* (1986) 11 ACLR 326 (which parallels the judgment of Samuels JA, cited in support of the first set of (rejected) justifications in *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [27]).

67 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [33].

68 Cap 50, 2006 Rev Ed.

("CA") and other legislation. An "officer" of a company, as defined in O 1 r 9(6), "means any director or secretary of the company, or a person employed in an executive capacity by the company".[69] This substantially adopts the definition of an "officer" in the CA,[70] as the SCJA/SCA Review Committee recommended.[71] Unlike individual litigants, corporate officers must have fulfilled statutory requirements relating to their competence and credibility. A corporate director must be of full age and capacity,[72] and must not fall within any disqualifications such as dishonesty,[73] unfitness or impropriety,[74] and bankruptcy.[75] A corporate secretary will have satisfied the board of directors on his knowledge and ability to discharge the company's administrative functions,[76] and, in the case of a public company, will hold the relevant professional qualifications and have been vetted by the Registrar of Companies.[77] An officer employed in an executive capacity by the company will, even if not a director or a secretary, have been involved in the management of the company[78] and must have had the confidence of the shareholders and the board of directors to have been engaged to do so. By contrast, there are no qualification requirements for individual litigants beyond legal and mental capacity.[79] Short of a history of vexatious litigation,[80] there are no bars to individual self-representation.

33 A company acting rationally will also have chosen, to conduct its litigation, an officer whom it thinks will best represent its interests. If a company chooses an officer whose incompetent best does not meet the expectations of the court, it is difficult to see how any of its other officers would have fared any better. And if the company chooses not to field an

69 It is unclear whether a person who is a *de facto* director or a shadow director of a company is an "officer" within O 1 r 9(6) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). This is even as such a person falls within the definition of a "director" in s 4 of the Companies Act (Cap 50, 2006 Rev Ed).

70 Companies Act (Cap 50, 2006 Rev Ed) s 4.

71 *Report of the Committee to Review and Update the Supreme Court of Judicature Act and the Subordinate Courts Act* (31 July 2009) at para 335.

72 Companies Act (Cap 50, 2006 Rev Ed) s 145(2).

73 Companies Act (Cap 50, 2006 Rev Ed) s 154(1)(*a*)(i).

74 Companies Act (Cap 50, 2006 Rev Ed) s 145(6).

75 Companies Act (Cap 50, 2006 Rev Ed) s 148.

76 Companies Act (Cap 50, 2006 Rev Ed) s 171(1A).

77 Companies Act (Cap 50, 2006 Rev Ed) ss 171(1AA)(*a*)–171(1AA)(*b*). The provision as to long-term experience (*ie*, in s 171(1AA)(*a*)) is further subject to s 171(1C), while the provision as to experience, professional/academic requirements or membership in professional associations is the subject of reg 89 of the Companies Regulations (Cap 50, Rg 1, 1990 Rev Ed).

78 *Prima Bulkship Pte Ltd v Lim Say Wan* [2017] 3 SLR 839 at [45]; see also *Grinsted Edward John v Britannia Brands (Holding) Pte Ltd* [1996] 1 SLR(R) 743.

79 Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 76.

80 Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) s 74.

officer who might have better represented its interests, the court is ill-equipped to second-guess its choice.

34 Ultimately, if one compares an individual's right of self-representation, it is difficult to defend the Prohibition in its full stringency.

(2) Empirical survey

35 As *Allergan* suggests, an officer's competence and ability to assist the court with the issues in dispute is inextricably intertwined with the complexity of those issues.[81] Proceedings almost invariably involve identifying a cause of action, identifying the determinative issues, navigating the interlocutory process,[82] identifying and preparing evidence, and conducting the substantive hearing. These must be juxtaposed against the officer's familiarity with both procedural and substantive law.[83] These steps present challenges for non-lawyers and especial challenges for lay litigants who are personally involved in (often also anxious about) the relevant issues,[84] and these challenges heighten with the complexity of the issues in dispute.

36 Although an assessment of the complexity of the issues in a dispute is subjective, the matrix of daily costs tariffs in the Supreme Court Practice Directions[85] offers guidance on the relative complexities of different disputes. From left to right, higher tariffs are associated with matters of increased complexity. The following analysis of the complexity of the 73 summonses for corporate self-representation borrows from this matrix.

81 See *Allergan, Inc v Ferlandz Nutra Pte Ltd* [2015] 2 SLR 94 at [68]: "the apparent competence of the lay person to conduct the trial, and to present the case and assist the court is a factor of some relevance bearing in mind all the other circumstances, including the complexity of the matters raised".

82 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [106]–[107].

83 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [112].

84 Gary Hickinbottom *et al*, *Report of The Judicial Working Group on Litigants in Person* (Judiciary of England and Wales, July 2013) at paras 3.2 and 3.4.

85 Supreme Court Practice Directions, Appendix G (Guidelines for Party-and-Party Costs Awards in the Supreme Court of Singapore).

Daily tariff				
$10,000	**$15,000**	**$17,000**	**$20,000**	**$20,000–$30,000**
Motor accident	Simple tort, contract, corporate or company law disputes (no novel issues of law or complex facts)	Complex tort or contract	Defamation Medical negligence Complex corporate or company law disputes Judicial review, Public and administrative law	Admiralty Banking, letters of credit, or international finance Construction Equity & trusts Intellectual property

37 Of the 73 summonses analysed, ten were not pursued to a conclusion by the company. Of the remaining 63 summonses, the credibility and competence of the nominated officer was put in issue by the parties or expressly considered by the court in 49 cases (78%). Of the officers in these 49 cases, six could assist with both factual and legal issues (12%), 19 could assist with the facts but not the law (39%), while 24 were unqualified (49%).

38 A survey of these cases thus far reveals an inconsistent and troubling practice that casts doubt on whether the court can ever meaningfully assess an officer's competence. Here, there are four related observations to be gleaned.

39 Perhaps the most obvious one is that the court might never be able to meaningfully assess an officer's competence in the context of an O 1 r 9 application. While self-representation was not allowed in all 24 summonses where the officer was unqualified, the predominant reason for such a finding was repeated non-compliance with even the formal procedural requirements of O 1 r 9. Indeed, this assessment is often the best that the court can do in the circumstances. Applications under O 1 r 9 are typically decided on affidavit evidence before the company's submissions on the merits of the dispute are properly considered. This means that the court has virtually no opportunity to assess how familiar the officer is with substantive law, contrary to the exhortation in *Bulk Trading*. Given the somewhat *sui generis* nature of an O 1 r 9 application,[86] an officer's conduct of such an application might not be a reliable proxy to the conduct that the court or the opponent could expect of the rest of the litigation.

40 Second, this emphasis on procedural non-compliance seems to sit uneasily with the next category of 19 applications where the officer was

86 See paras 3–7 above.

found to be able to assist with the facts but not the law. In this category, 17 (or 89%) applications were allowed, even though two of these involved complex substantive proceedings while a further two involved moderately complex substantive proceedings.[87] This category of cases is explicable on the basis that the court regarded itself as being able to resolve issues of law once the relevant evidence (with which the officer is familiar) has been led and the facts have been found.

41 Third, the assessment of the complexity of the subject matter is, apart from being partly subjective, not always relied on by the court in its reasoning. Of the six applications where the officer could assist with both factual and legal issues, only three were allowed. Notably, all three involved complex proceedings: two involved unjust enrichment claims and one involved a claim for breach of an investment agreement. This is because two officers were professional liquidators familiar with the obligations of litigation, while the third was familiar with the ROC (and, in that case, the court made self-representation conditional on the officer personally bearing adverse costs orders). Yet, of all 63 adjudicated applications, the court explicitly considered the complexity of the subject matter in only one other case.

42 Fourth, and more parenthetically, it seems that the competence of an officer is subordinate to the concern of unauthorised practice of law. For the three applications which were dismissed even though the officer could assist with both factual and legal issues, the officer was in-house counsel.[88] This point is addressed below.[89]

43 Cumulatively, these concerns suggest that it is unsafe to rest a decision on corporate self-representation on the officer's ability and its impact on the timely, efficient and cost-effective disposal of the matter.

B. Conflict of interest

44 Relatedly, an officer competent and familiar with the facts of a dispute may likely be called as a witness in the litigation. Yet, acting "both as a witness and as counsel in the proceedings" is usually a "weighty

87 The remaining 13 (simple) substantive proceedings involved relatively straightforward breaches of contract or property damage arising out of motor accidents (DC 2911/2014; DC 2926/2014; DC/DC 1085/2017; MC 1576/2014; MC/MC 870/2016; MC/MC 8588/2016; MC/MC 15033/2017; MC/MC 10234/2018; MC/MC 16709/2018; MC/MC 16843/2018; MC/MC 4638/2019; MC/MC 5632/2019; OSS 152/2014 (two separate companies)). The familiarity of the officers with the facts was found to suffice for them to adequately conduct the litigation of their companies.

88 MC/MC 19296/2017; MC/MC 9221/2019; MC/MC 11367/2019.

89 See paras 64–76 below.

factor" against allowing corporate self-representation,[90] especially where the officer is also a party to the proceedings and adopts a position different from that taken by the company, thereby facing an "untenably irreconcilable conflict of interest".[91]

45 This concern has been articulated as a factor in the exercise by the court of its O 1 r 9 discretion. But if the concern is with protecting some interest underlying the Prohibition, it is more accurately classified as an extension of the fear that the officer may act unethically or irresponsibly in conducting the corporate litigation.

(1) Doctrinal analysis

46 Underlying the notion that an officer should not conduct corporate litigation in which he will also be giving evidence is a concern that the interests of the officer may be adverse to those of the company.[92] The Prohibition thus protects the company from the risk of the officer subordinating the interests of the company to those of himself. This concern is not unlike that that underlies r 11(3) of the Legal Profession (Professional Conduct) Rules 2015[93] ("LP(PC)R"), which prohibits a lawyer from representing any party to proceedings in which he will be giving evidence that is material to the determination of any issue in dispute.[94] Nevertheless, there are four limitations to justifying the Prohibition on this basis.

47 First, the giving of evidence by the officer in the proceedings does not automatically render his interests adverse to those of his company. As the empirical survey below demonstrates, the court has recognised this, and has when hearing O 1 r 9 summonses carefully examined the nature of the interests of companies and their officers, and has allowed corporate self-representation where the interests do not conflict.

48 Second, the company, in nominating an officer, has authorised the officer to conduct its litigation. An O 1 r 9 summons must be supported by an affidavit that states "the date on which, and the manner by which, the officer was authorised to act on behalf of the company … in that matter

90 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [118], citing *Bay Marine Pty Ltd v Clayton Country Properties Pty Ltd* (1986) 11 ACLR 326 and *Evajade Pty Ltd v National Australia Bank Ltd (No 2)* [2005] SASC 229.

91 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [119]; see also *HG Metal Manufacturing Ltd v Gayathri Steels Pte Ltd* [2016] 5 SLR 238 at [8].

92 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [119].

93 S 706/2015.

94 See also *Then Khek Khoon v Arjun Permanand Samtani* [2012] 2 SLR 451.

or proceeding".[95] The point is that such authorisation arguably amounts to a waiver by the company of any conflict of interest in respect of the officer in the conduct of the litigation. Why the court should look behind the authorisation to assess whether the corporate self-representation is in the interests of the body corporate is unclear. The shareholders and the directors of a company are the best judge of its interests, and absent exceptional circumstances, the court should not question the wisdom of their decisions.

49 Third, the Prohibition does not fully address a conflict between the interests of the officer and the company, especially in a small company with few officers. Such a company may have for the purpose of corporate self-representation only its sole director,[96] who may also be its sole employee and even its sole shareholder. Any lawyer engaged by the company is likely to take instructions from that same director. The consequences of restricting the conduct of a company's litigation by such an officer are not commensurate with those of restricting the conduct of a client's litigation by a lawyer who will be giving evidence on a material issue in dispute. The client can always engage another lawyer for his litigation, and if he cannot afford to do so, represent himself in the proceedings.[97] The company, if it is precluded from having the officer conduct its litigation and cannot afford to engage a lawyer to conduct its litigation, is effectively shut out from the proceedings.[98]

50 Fourth, even if an officer has interests that intractably conflict with those of the company, restricting *all* corporate self-representation by that company is an excessive means of assuaging the conflict. Such a conflict between the interests of the officer and the company justifies, at best, restricting corporate self-representation by *that officer*. It should not *ipso facto* preclude corporate self-representation by another officer

95 Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 1 r 9(4).

96 Strictly speaking, a company should have at least two natural persons as its officers, because a sole director in a company may not also be the secretary of the company: Companies Act (Cap 50, 2006 Rev Ed) s 171(1E). However, a company may be without a secretary for a short period of time, given that the office of secretary can be vacant for up to six months: Companies Act (Cap 50, 2006 Rev Ed) s 171(4).

97 At least where the client is an individual.

98 As observed in *Offshoreworks Global (L) Ltd v Posh Semco Pte Ltd* [2021] 1 SLR 27 at [35]:

> … even though [the officer] applies to appear as an authorised representative on behalf of [the company] at the hearing before us, [the company] has failed to appear by an advocate and this court could exercise its discretion to dismiss the appeal pursuant to O 57 r 18(1) of the Rules, which provides that '[i]f on any day fixed for the hearing of an appeal, the appellant does not appear in person or by an advocate, the appeal may be dismissed'.

(whose interests are not in conflict with those of the company) or require the company to appoint a solicitor to conduct its litigation.

(2) Empirical survey

51 The decisions surveyed reveal a reluctance to dismiss an application using this ground as a tiebreaker.

52 In the State Courts, of the 25 officers who were competent as to the facts of the dispute, eight were also likely to be a witness in their substantive proceedings. All eight were permitted to conduct the litigation of their companies. In each case, the officer was the primary, if not the sole, officer in the company. In five cases, the officer was the sole director (and the sole shareholder) of the company.[99] In two other cases, the officer was the liquidator of the company, the company having been placed in liquidation.[100] In the last case, the officer was a director and oversaw the day-to-day management of the company, and no objection was raised by the opponent to the corporate self-representation.[101]

53 In all eight cases, too, the companies were in a poor financial condition and struggled to engage legal representation. Self-representation was thus the only practicable way for the companies to have their day in court. As observed in DC/DC 1045/2019, where the company had only one director who was also its sole shareholder (and the officer to conduct the litigation), the company is akin to a self-represented individual who would ordinarily be permitted to represent himself, and that it would be "unfair to shut him out simply because as sole director and shareholder, he will necessarily also be a witness".

54 Moreover, the courts have focused more on whether the interests of the officer are in conflict of those of the company than on whether the officer will be a witness *per se*. In DC 3124/2013, which involved a claim in dishonest assistance and knowing receipt against a company and its sole director, the court found that the interests of the company and its director were aligned and granted leave for corporate self-representation. In MC/MC 16843/2018, which involved a claim for breach of contract against a company, the court observed that although the officer was the sole director and shareholder of the company, "there was no suggestion of wrongdoing" by her and that her interests would not be so divergent from those of the company as to disqualify her even if she was called as a

99 DC/DC 1085/2017; DC/DC 3716/2018; DC/DC 1045/2019; MC/MC 16843/2018; MC/MC 5632/2019.
100 DC/DC 772/2018; DC/DC 576/2019.
101 MC/MC 2149/2018.

witness. In DC/DC 3716/2018, which involved a claim for construction progress payments by a company, the court found that the officer, "being the sole director of the [company], and having the relevant documents in his possession, is an appropriate person to represent the [company]".

C. Authorisation of the officer

55 The SCJA/SCA Review Committee observed that a key question with corporate self-representation is whether the officer has been properly authorised to act for the company. Similarly, *Bulk Trading* observed that "those who act for a company must be in a position to cause the company to undertake obligations" in the litigation.[102] The corporate officer must thus be able to make decisions and admissions on behalf of his company,[103] and is to that extent not unlike a self-representing individual making decisions for himself. This minimises wastage of the resources of the court and of the opponent due to the irregular conduct of corporate litigation by officers who lack instructions or authority.

56 Still, O 1 r 9(4) mitigates these concerns by requiring proof that the officer has been duly authorised by the company to conduct its litigation.[104] Thereunder, an O 1 r 9 summons must be supported by an affidavit that states "the manner by which, the officer was authorised to act on behalf of the company".[105] Further, the company must exhibit the instrument of authorisation: "any document of the company … by which the officer was authorised to act on behalf of the company … in that matter or proceeding".[106] In most cases, this instrument of authorisation is a resolution of the board of directors of the company.

(1) Doctrinal issues

57 Overall, the authors suggest that securing such authorisation is the strongest justification for restricting corporate self-representation. A valid and material difference between a corporate litigant and an individual litigant is that a company often has more than one person by whom it can appear in court proceedings. Still, questions remain about the value of O 1 r 9 in addressing these concerns.

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102 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [30], citing *Bay Marine Pty Ltd v Clayton Country Properties Pty Ltd* (1986) 11 ACLR 326.

103 *Manong & Associates (Pty) Ltd v Minister of Public Works* [2009] ZASCA 110 (South Africa).

104 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [30].

105 Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 1 r 9(4)(*a*).

106 Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 1 r 9(4)(*b*).

58 As *Bulk Trading* recognises, the concern about authorisation is easily addressed by limiting the range (and even number) of the person(s) who can appear on behalf of the company, and by requiring that those persons furnish evidence of their authorisation.[107] First, O 1 r 9(6) limits the classes of individuals who can conduct corporate litigation to corporate officers: "any director or secretary of the company, or a person employed in an executive capacity by the company". Second, O 1 rr 9(2) and 9(2)(*a*) minimise doubt as to the identity of the officer, by requiring the company to single out a specific officer to do so through their references, respectively, to "an officer" and "the officer". Third, O 1 r 9(4)(*c*) mitigates the risk of unauthorised self-nominations by requiring the affidavit to be deposed by an officer other than the proposed representative. With these formal requirements, little can be made of the additional requirement in O 1 r 9(2)(*b*) that it be "appropriate" to give leave in the circumstances.

59 Having the company identify one specific officer for corporate self-representation might offer two benefits. First, it prevents a company from putting forward different officers at each hearing of the proceedings, especially where not every officer is appraised of the facts of the dispute. This disrupts proceedings, as seen in the Small Claims Tribunals and Employment Claims Tribunals at the State Courts. Still, these delays and disruptions can be addressed by costs and peremptory orders. Second, and more importantly, it helps to avoid the situation where multiple officers, each representing a different and competing faction within a company, purport to conduct the corporate litigation. Presumably, the leave mechanism in O 1 r 9 could give the court a platform to hear and resolve such disputes. Where multiple O 1 r 9 summonses have been filed, each nominating a different officer, the separate summonses can be fixed before the same judge to decide, after hearing the various factions (and the opponent), whether and if so which officer should conduct the corporate litigation. Where leave for corporate self-representation has already been granted in respect of an officer, who is subsequently found to lack authority to conduct the corporate litigation, it appears that the leave can be revoked,[108] and another officer appointed in his place. Hence, as Choo J suggested in *Ding Horng Industrial Pte Ltd v Sulzer Singapore Pte Ltd*,[109] O 1 r 9 can operate as a "fair and practical rule" to "ensure that there will be no unnecessary dispute as to who ought

107 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [29]–[30].

108 The power of the court to revoke leave for corporate self-representation was recognised and exercised by the court in DC/DC 3502/2017. Although the leave for corporate self-representation there had been granted only conditionally, which conditions the company was unable to fulfil, the court on the subsequent application of the company "discharged" its prior order granting leave for corporate self-representation.

109 [2019] SGHC 160.

to be entitled to represent the company in legal proceedings involving the company as a litigant".[110] Even so, the general principle of majority decision-making in company law addresses such disputes at both the ownership (shareholder) and management (board of directors) levels, and the law on minority oppression provides a further safeguard. This is in addition to the requirement in O 1 r 9(4)(*c*) that the affidavit in support of an O 1 r 9 summons be deposed by an officer other than the officer nominated by the company to conduct the litigation. In any event, the existing framework of the company bringing the O 1 r 9 summons and the opponent to the litigation resisting the same appears ill-suited for addressing the concern, because the dispute is not between the company and the opponent but between the factions within the company that have put forward those officers.

(2) Empirical survey

60 The empirical experiences in the State Courts show that, apart from ensuring that an officer who purports to conduct corporate litigation has been properly authorised to do so, this concern is not a pressing concern addressed by the Prohibition and the leave mechanism in O 1 r 9. In this regard, three key observations are offered.

61 First, none of these summonses involved a situation where multiple individuals with competing or antagonistic interests have sought to represent the company. There was one case where a company nominated three individuals (its director, secretary and manager) in its O 1 r 9 summons.[111] But all three officers were aligned as to the conduct of the corporate litigation, and the secretary and the manager explained that they wanted to be present simply to "help" the director, who would have been the primary officer conducting the corporate litigation. In any event, this summons was dismissed because no affidavit had been deposed in support of the summons.

62 Second, only five summonses involved a situation where, in some sense, a different officer attended each hearing. However, in four cases,[112] this was the result of the court's directions or remarks as to who should appear before it. In the fifth case,[113] while the attendances were split between the director and manager of the company, notably, both attended the first hearing and, apart from one other hearing, all the hearings were attended by the manager. There was no suggestion that

110 *Ding Horng Industrial Pte Ltd v Sulzer Singapore Pte Ltd* [2019] SGHC 160 at [9].
111 MC/MC 9594/2018.
112 MC/MC 870/2016; two applications in DC/DC 1524/2016; and MC/MC 6483/2019.
113 MC/MC 16843/2018.

delays were occasioned by the substitution of officers. In one other case,[114] the sole hearing was attended by an individual who was neither the deponent nor the proposed officer. In these cases, the court did not have to resort to costs and peremptory orders to address delays or disruptions caused by substituting representatives at each hearing before the civil courts. There is also nothing to suggest that costs and peremptory orders are insufficient to address such situations.

63 Third, even the concerns over authorisation are not insurmountable. Of the 73 summonses analysed, 45 were not accompanied by an instrument of authorisation (62%). Of these 45 summonses, 30 were not granted, five were conditionally granted, while ten were granted. In the five summonses that were conditionally granted, the court imposed conditions apparently designed to protect the company from incurring unnecessary costs and the opponent from having the proceedings set aside for procedural irregularity. As was ordered in *Bulk Trading*,[115] the courts in most of these five summonses commonly required that the officer personally bear any costs ordered against the company and even disclose assets in Singapore sufficient to meet his potential exposure to such adverse cost orders. In the ten summonses that were unconditionally granted, the court appeared to find that the officer had been authorised in substance if not in form to conduct the corporate litigation, and that the corporate self-representation did not prejudice the company. In all ten cases too, the opponent did not object to the application. Presumably, the conduct of the litigation by the officer did not present an unacceptable risk of prejudice to the opponent. Striking, too, was that in a majority of these ten cases, the contemporaneous business profiles, corporate records and other evidence of the company showed that the officer was the primary individual managing the company and/or had the confidence of a majority of its shareholders. Similarly, the court permitted corporate self-representation in one of two summonses where the affidavit was deposed by a non-officer of the company (in this case, conditional leave was given), and in 22 of 50 summonses where the affidavit was deposed by the proposed representative.

D. Unauthorised practice of law

64 The final justification commonly offered for the Prohibition is that it minimises the unauthorised practice of law. This assumes that the company and its officer are separate legal persons, and that corporate self-representation entails the officer "representing" the company before

114 DC/DC 3183/2016.

115 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [123]–[125].

the court,[116] which representation of another person is the essence of the practice of law. Pursuant to the LPA, such practice of law is the "exclusive right" of lawyers, who are individuals subject to the discipline of the court.[117]

65 A related concern is a fear that corporate self-representation may be a "backdoor" for in-house counsel to conduct litigation before the Singapore courts. An in-house counsel is an individual who has been "employed to undertake the provision of legal advice or assistance in connection with the application of the law or any form of resolution of legal disputes"[118] to a company. Regardless of his formal title,[119] such an individual is an in-house counsel even if he was not employed exclusively to provide legal advice.[120] Because such in-house counsel are "not subject to the same professional conduct rules as their Singaporean counterparts",[121] permitting them to conduct litigation in Singapore would create an "uneven playing field" for Singapore lawyers.

(1) Doctrinal issues

66 There are three difficulties with prohibiting in-house counsel from conducting corporate litigation. First, an in-house counsel may be a corporate "officer" within O 1 r 9. Second, a desire to have litigation conducted without delay or disruption is at odds with a reluctance to contemplate the conduct of corporate litigation by in-house counsel. Third, the concern about in-house counsel enjoying an "uneven playing field" *vis-à-vis* Singapore lawyers must be balanced against countervailing concerns.

(a) In-house counsel may be corporate officers

67 The LPA and the ROC expressly contemplate corporate self-representation by corporate officers, and do not distinguish between in-house counsel and other officers. The general prohibition on the unauthorised practice of law is found in s 33(1) of the LPA, which criminalises the practice of law by "unauthorised persons". But this prohibition is qualified by s 34(1) of the LPA, which exempts an unrepresented individual and an "officer" of a company "acting on behalf

116 See, *eg*, *Dutch Village Mall LLC v Pelletti* 162 Wash App 531; 256 P 3d 1251 (2011) and *Brown v Kelton* 380 SW 3d 361 (2011).
117 Legal Profession Act (Cap 161, 2009 Rev Ed) s 29.
118 Evidence Act (Cap 97, 1997 Rev Ed) s 3(7).
119 Legal Profession Act (Cap 161, 2009 Rev Ed) s 34(1)(*ec*).
120 *Asplenium Land Pte Ltd v Lam Chye Shing* [2019] 5 SLR 130 at [39].
121 *Report of the Committee to Review and Update the Supreme Court of Judicature Act and the Subordinate Courts Act* (31 July 2009) at para 334.

of the company … in accordance with the Family Justice Rules or the Rules of Court, in [a] matter or proceeding".

68 Section 34(1)(*ea*) of the LPA, which was introduced together with O 1 r 9,[122] provides that s 33 of the LPA does not extend to an officer of a company acting on behalf of the company in accordance with the ROC.[123] Order 1 r 9(2), in turn, provides that corporate self-representation with the leave of the court is an exception to s 34(1)(*ea*) of the LPA. Hence, as *Bulk Trading* notes, O 1 r 9(2) read with s 34(1)(*ea*) of the LPA renders corporate self-representation one of the permitted exceptions to the general prohibition on the unauthorised practice of law.[124]

69 Order 1 r 9 permits the conduct of corporate litigation by an "officer", which means "any director or secretary of the company, or a person employed in an executive capacity by the company".[125] An in-house counsel may, besides providing legal advice, perform other business functions for a company.[126] He may also be a director of a company, or he may be employed by and participate in its day-to-day control and management such as to be "a person employed in an executive capacity by the company". He may thus be an "officer" of the company within O 1 r 9(6).

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122 Order 1 r 9 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) was first introduced via r 2 of the Rules of Court (Amendment No 3) Rules 2011 (S 224/2011), while ss 34(1)(*ea*)–34(1)(*ec*) of the Legal Profession Act (Cap 161, 2009 Rev Ed) were first introduced via s 10 of the Legal Profession (Amendment) Act 2011 (Act 8 of 2011); both came into effect on 3 May 2011.

123 Legal Profession Act (Cap 161, 2009 Rev Ed) s 34(1)(*ea*):

> **Qualifications to section 33**
>
> **34.**—(1) Section 33 does not extend to —
>
> …
>
> (*ea*) any officer of a company or limited liability partnership who is duly authorised by the company or limited liability partnership to act on its behalf in any relevant matter or proceeding to which it is a party, in respect only of that officer acting on behalf of the company or limited liability partnership, in accordance with the Family Justice Rules or the Rules of Court, in that matter or proceeding; …

124 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [31]:

> Sixth … as an extension of the prohibition against corporations being represented by its officers in court proceedings, the position in the US is that to allow such officers to represent corporations would in effect permit a non-lawyer to practice law without a license. Such an objection becomes irrelevant when appropriate legislation permits such representation as is addressed in Singapore by O 1 r 9(2) read with s 34(1)(*ea*) of the Legal Profession Act (Cap 161, 2009 Rev Ed).

125 Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 1 r 9(6).

126 *Asplenium Land Pte Ltd v Lam Chye Shing* [2019] 5 SLR 130 at [39].

70 When such an in-house counsel conducts the litigation of his company, he practises law no more than a lay officer who conducts the litigation of that company or even an individual who represents himself in court. In casual speech, such conduct of litigation is commonly described as the in-house counsel "representing" the company in the litigation. But strictly speaking, the in-house counsel is not an actor external to but one within the company. Unlike a lawyer, the in-house counsel is not the representative but the embodiment of the company, and acts *in the person of* the company.[127]

(b) Tension between favouring competence and disfavouring in-house counsel

71 Legal training equips an individual to conduct proceedings competently, expeditiously, ethically and responsibly. Even if foreign-trained in-house counsel have not undergone the same training as Singapore lawyers, the rules of professional ethics are "universal and timeless, even if the way the rules are organised and expressed have changed to keep in touch with the trends affecting the legal sector today".[128] Hence, a corporate officer who possesses legal training or qualification should, *ceteris paribus*, not be less suitable for corporate self-representation than one who does not. It may also be better to focus less on whether an officer is an in-house counsel, and more on his credibility and competence, which go directly to the concerns about delay and disruption occasioned by self-representation. This may better address the criticism that the Prohibition "appears to serve no purpose other than to protect the monopoly of the legal profession".[129]

(c) Countervailing concerns to an "uneven playing field" for Singapore lawyers

72 For the concern that in-house counsel or foreign-qualified lawyers conducting corporate litigation enjoy an "uneven playing field" *vis-à-vis* Singapore lawyers, there are three counterpoints.

73 The first point deals with the "uneven playing field" envisaged by the SCJA/SCA Review Committee Report, that is, that foreign lawyers/in-house counsel are not subject to the same professional conduct

127 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [27] citing *British Columbia Telephone Co v Rueben* (1982) 38 BCLR 392.

128 The Honourable the Chief Justice Sundaresh Menon, *Foreword* to Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (Academy Publishing, 2016).

129 Laurence Cecil Bartlett Gower *et al*, *Gower's Principles of Modern Company Law* (Sweet & Maxwell, 5th Ed, 1992) at p 195.

rules as their counterparts. The simple reason is that in-house counsel appears *qua* officer and not *qua* counsel. The *quid pro quo* is that he is not entitled to any of the professional privileges or courtesies that a Singapore lawyer enjoys. For example, a represented plaintiff need not give a self-represented corporate defendant, whose litigation is conducted by an in-house counsel, written notice of its intention to enter default judgment.[130] The in-house counsel is also subject to the same obligations and liabilities that befall any other lay officer of the company. Next, in-house counsel are not automatically subject to the same professional standards to which Singapore lawyers are held.[131] A third aspect of this *quid pro quo* is the fact that a company represented by in-house counsel can only claim compensatory costs as a litigant-in-person[132] and not costs as if represented by counsel.

74 The second point deals with a broader conception of an "uneven playing field", in the sense that in-house counsel can use O 1 r 9 to bypass the usual admission requirements to appear in court. While this might be a valid policy concern, it is unclear why this concern should be a common law foundation for the Prohibition when it is simply an expression of domestic legal or economic policy (by the SCJA/SCA Review Committee) on how the legal profession is organised. The natural place to express restrictions on in-house counsel is the LPA, which "consolidate[s] the law relating to the legal profession" in Singapore,[133] and not the ROC, which "regulat[es] and prescrib[es] the procedure … and the practice to be followed" in the courts.[134] But, far from so restricting the conduct of corporate litigation by foreign-qualified in-house counsel, s 34(1)(*ec*) of the LPA allows them to "appear" and "plead" on behalf of their companies before the Singapore courts, as long as such appearance or pleading is permitted under any written law[135] (although there does

130 Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) r 28.

131 See, *eg*, rr 5–6 (honesty, competence, diligence, timeliness, and confidentiality) and rr 16–26 (handling of client moneys, conflicts of interest) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015).

132 Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 59 r 18A.

133 See Long Title of the Legal Profession Act (Cap 161, 2009 Rev Ed).

134 Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) s 80(1); State Courts Act (Cap 321, 2007 Rev Ed) s 69(1).

135 Legal Profession Act (Cap 161, 2009 Rev Ed) s 34(1)(*ec*):

> **Qualifications to section 33**
>
> **34**.—(1) Section 33 does not extend to —
>
> …
>
> (*ec*) any legal counsel (by whatever name called) in an entity acting solely for the entity in any matter to which it is a party, other than by —
>
> (i) appearing or pleading in any court of justice in Singapore, except where such appearance or pleading is otherwise permitted under any written law; …

not appear to be any such "written law" pursuant to s 34(1)(*ec*)).[136] Notably, s 34(1)(*ec*) of the LPA was enacted to address the "uncertainty whether their activities as in-house counsel would be considered illegal since they do not hold practising certificates".[137] Yet if *any* appearance in court by in-house counsel on behalf of a company was a concern, Parliament could have simply removed the proviso in s 34(1)(*ec*)(i) of the LPA. A blanket prohibition on in-house counsel appearing in court or conducting proceedings is not unprecedented. The Small Claims Tribunals Act,[138] in relatively clear language, prohibits an advocate and solicitor from representing any party, even if he is an officer or employee of a company involved in the proceedings.[139] Yet, this is not the position for civil litigation under the LPA.

75 Third, and relatedly, the O 1 r 9 mechanism is ill-suited to address concerns about an uneven playing field for Singapore lawyers. This subject is more within the domain of the Law Society[140] and/or the Attorney-General,[141] and less of that of the opponent to adversarial litigation, to address. As an analogy, the *ad hoc* admission regime for Queen's Counsel in the LPA requires the application to be served on the Attorney-General

136 Order 1 r 9(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) is expressed to permit corporate self-representation only through s 34(1)(*ea*) (and not s 34(1)(*ec*)) of the Legal Profession Act (Cap 161, 2009 Rev Ed). Hence, the Legal Profession Act (Cap 161, 2009 Rev Ed) in effect distinguishes between the capacities in which an in-house counsel who is otherwise an "officer" of a company may conduct the litigation of the company. Where the in-house counsel purports to do so *qua* director, secretary or in an executive capacity, O 1 r 9 applies to empower the court to grant leave for corporate self-representation thereunder. But where the in-house counsel purports to do so *qua* in-house counsel (other than *qua* "officer" within O 1 r 9(6)), O 1 r 9 does not apply and the in-house counsel would be engaging in the unauthorised practice of law.

Such a conceptual distinction between the different capacities of a corporate officer, even if conceptually attractive, is artificial and difficult to enforce. It is impracticable to require a legally qualified corporate officer to set aside his legal training and conduct litigation as if he were not legally qualified. Nor is there any clear purpose that such a rule would serve, especially given the concerns about the delay and disruption caused by officers conducting corporate litigation.

137 Opening Speech of the Second Reading of the Legal Profession (Amendment) Bill 2011 (Bill 3 of 2011): *Singapore Parliamentary Debates, Official Report* (14 February 2011) vol 87 at col 2590 (K Shanmugam, Minister for Law).

138 Cap 308, 1998 Rev Ed.

139 Small Claims Tribunals Act (Cap 308, 1998 Rev Ed) s 21(3).

140 The Law Society "assist[s] the Government and the courts in … the administration and practice of the law in Singapore": Legal Profession Act (Cap 161, 2009 Rev Ed) s 38(1)(*c*).

141 The Attorney-General advises the Government on legal matters, and, alongside the Law Society, may object to the admission of any person to practise as an advocate and solicitor.

and the Law Society,[142] who may make submissions on the necessity for the services of a foreign senior counsel. In contrast, the opponent to the litigation is unlikely to know much about (or even have interest in) the officer put forward by the company, or whether the conduct of the corporate litigation by that officer will produce an uneven playing field for Singapore lawyers. The court also seems ill-placed to consider the effects of hearing in-house counsel on the market for law practices. If, nonetheless, the court has to address the risk that O 1 r 9 operates as a backdoor for foreign lawyers and other unqualified persons to practise law in Singapore,[143] the court can examine the reason for purportedly appointing in-house counsel as an "officer", and the work that in-house counsel does, to assess if the designation as an officer is a *bona fide* one or a sham.

(2) Empirical survey

76 In the State Courts, there has been a small but increasing number of applications for corporate self-representation by in-house counsel. Of the 73 summonses analysed, three of the officers were in-house counsel who were also foreign-qualified lawyers.[144] None of the summonses was granted, although the doctrinal concerns were not rigorously tested in court. All three companies appeared to accept that O 1 r 9(2) should not be read to allow a foreign lawyer to circumvent the requirements of the

142 Legal Profession Act (Cap 161, 2009 Rev Ed) s 15.

143 This might arise from a need to balance the concern about an uneven playing field for Singapore lawyers against the importance of access to justice for impecunious companies that cannot afford legal representation: *Report of the Committee to Review and Update the Supreme Court of Judicature Act and the Subordinate Courts Act* (31 July 2009) at para 335.

Although O 1 r 9 is silent on the financial position of the company, the authorities have emphasised the (in)ability of the company to afford legal representation in O 1 r 9 summonses. *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [95] treated such financial impecuniosity as a strong factor in deciding whether to permit corporate self-representation, and declined to do so where it was unclear that the company involved "necessarily does not have access to funds to engage a solicitor". *Allergan, Inc v Ferlandz Nutra Pte Ltd* [2015] 2 SLR 94 at [51] held that "proof of financial constraint or impecuniosity appears to be, if not essential, at least an important, albeit not necessarily always sufficient, condition". *Elbow Holdings Pte Ltd v Marina Bay Sands Pte Ltd* [2015] 5 SLR 289 at [15] criticised a company that had discharged its Singapore lawyer and sought corporate self-representation by its in-house counsel due to its impecuniosity, and observed that the company should have released its in-house counsel and not its Singapore lawyer. Lastly, in MC/MC 19712/2017, the court found "no reason in this case for corporate self-representation" where a corporate plaintiff conceded that it was not in financial difficulties and had brought the O 1 r 9 summons on the *sole* ground that "the law firm charges at a quite high service fee around S$5,000 which is not bearable and worth for company".

144 MC/MC 19296/2017; MC/MC 9221/2019; MC/MC 11367/2019.

LPA and represent parties in court.[145] Further, two companies assumed that they had to show that they could not afford legal representation before corporate self-representation could be allowed.[146]

IV. Conclusion

77 To facilitate access to justice, the law permits persons to represent themselves in court proceedings. But self-representation implicates a spectrum of policy concerns, including delay and disruption to the proceedings that prejudices the opponent and the wider administration of justice, and the unauthorised practice of law. Yet, the Prohibition and O 1 r 9 are blunt tools for addressing these concerns. Ultimately, the best justification for the Prohibition is narrow: ensuring that the officer has been properly authorised. Although this is achieved by the formal requirements in O 1 r 9, it has been obscured by an exercise of attempting to balance multiple factors that implicate wide-ranging (and even conflicting) policy imperatives. The Prohibition and O 1 r 9, as they currently operate, have demonstrated the potential to be wielded by opponents as tactical tools to terminate the proceedings even before the merits are heard.

78 In the final analysis, it is submitted that there is no place for this multi-factorial weighing exercise. The O 1 r 9 application should then truly acquire the "neutral outlook" that *Bulk Trading* ascribes to it,[147] that is, once the formal requirements as regards authorisation are met, a *subjective* desire to act in person is all that is needed to succeed.

79 It is perhaps opportune to re-examine O 1 r 9 or at least the approach thereto in *Bulk Trading*. The invitation by the Court of Appeal in *Offshoreworks* to legislatively amend O 1 r 9 may provide helpful leverage to that end. Even so, O 1 r 9 may soon be supplanted by a new set of civil procedure rules ("the Proposed Rules"),[148] which were proposed by the CJC and the CJRC and are annexed to their report entitled *Public Consultation on Civil Justice Reforms: Recommendations of the Civil Justice Review Committee and Civil Justice Commission*.[149] The Proposed Rules will introduce a suite of transformative changes

145 MC/MC 11367/2019.

146 MC/MC 19296/2017 and MC/MC 9221/2019.

147 *Bulk Trading SA v Pevensey Pte Ltd* [2015] 1 SLR 538 at [44(c)] and [79].

148 Ministry of Law, "Public Consultation on Proposed Reforms to the Civil Justice System", press release (26 October 2018) Annex D (draft Rules of Court) (hereinafter "Proposed Rules").

149 *Public Consultation on Civil Justice Reforms: Recommendations of the Civil Justice Review Committee and Civil Justice Commission* (26 October 2018).

to the civil litigation process in Singapore.[150] Thereunder, the general features of the Prohibition have been maintained, but the process and requirements for applying for leave for corporate self-representation have been simplified.[151]

> **Representation by solicitor**
>
> **3.**— …
>
> (2) On an application by an entity stated in paragraph 3(1)(*b*), the Court may allow an officer of that entity to represent the entity, if the Court is satisfied that—
>
> (*a*) the officer has been duly authorised by the entity to act on its behalf; and
>
> (*b*) the officer has sufficient executive or administrative capacity or is a proper person to represent the entity.

80 Neither the CJC nor CJRC explained this provision in their respective reports. Nevertheless, absent from this provision is the requirement in O 1 r 9(3)(*b*) that corporate self-representation must be "appropriate" before leave can be granted for an officer to conduct corporate litigation.[152] If *Bulk Trading* is not reconsidered in time for these paradigm shifts in civil litigation brought about by the Proposed Rules, then this new provision may facilitate a reconceptualisation of the Prohibition and a start on a clean slate.

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150 *Public Consultation on Civil Justice Reforms: Recommendations of the Civil Justice Review Committee and Civil Justice Commission* (26 October 2018) at paras 1 and 2.

151 Proposed Rules, Ch 2 r 3.

152 Another notable absence from the Proposed Rules is the set of formal requirements of the affidavit in O 1 r 9(4) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (*ie*, that it be made by any other officer (r 9(4)(*c*)); that it exhibit a copy of the document that authorises the proposed representative to act (r 9(4)(*b*)); and that it state the officer's position/office in the company, the date on which he was so authorised to act, and the reasons why leave should be given for him to represent the company (rr 9(4)(*a*)(i)–9(4)(*a*)(iii))).
Also gone is the asymmetry between O 5 r 6 (which generally prohibits an unrepresented company from beginning and carrying on proceedings (which would clearly include both writs and originating summonses)) and O 12 r 1 (which prohibits an unrepresented company from entering an appearance in and defending a writ action, but does not impose a prohibition in defending an originating summons).

Annex

Company as corporate plaintiff

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
MC/MC 15033/2017	No objection	Officer as Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Simple (claim for breach of contract)	Competent (factual)	Granted on condition that representative files letter of authority	Opponent did not object
DC/DC 1085/2017	Opponent absent	No defect	Lack of funds (detailed financial statements exhibited)	Simple (garnishee proceedings)	Competent (factual)	Granted	Opponent absent; Company impecunious
DC 2911/2014	Opponent absent	No defect	Not expressly considered	Simple (claim for breach of director duties in approving payments without authority)	Competent (factual)	Granted	Opponent absent
DC 2926/2014	Opponent absent	No defect	Not expressly considered	Simple (claim for breach of employee duties in approving payments without authority)	Competent (factual)	Granted	Opponent absent
DC/DC 3716/2018	Opponent absent	Officer as Deponent; No Letter of Authority	Lack of funds (oral evidence only)	Complex (claim for construction payments)	Competent (factual)	Granted	Officer as sole director after other director had resigned; Company impecunious; Officer was qualified person to represent Company
DC/DC 576/2019	Consented	Officer as Deponent	No lack of funds	Complex (claim in unjust enrichment)	Competent (factual and legal)	Granted	Opponent consented

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
MC/MC 11994/2018	Opponent absent	Officer as Deponent; No Letter of Authority	Not expressly considered	Simple (claim for breach of instalment payment agreement)	Not expressly considered	Granted	Opponent absent
MC/MC 1424/2019	No objection	Officer as Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Simple (claim for unpaid rental)	Not expressly considered	Granted	Opponent did not object.
MC/MC 16709/2018	No objection	Officer as Deponent	Lack of funds (detailed financial statements exhibited)	Simple (claim for unpaid rental)	Competent (factual)	Granted	Company impecunious; Simple claim for unpaid rental that Officer could manage with interpretation **Note:** Court gave leave for supplementary affidavit after expressing its concerns that (a) Officer not conversant in English; (b) amount claimed substantially exceeded likely costs of instructing lawyer
MC/MC 2149/2018	Opponent absent	No defect	Lack of funds (bare assertion only)	Complex (claim for construction payments)	Competent (factual)	Granted	Opponent absent
MC/MC 870/2016	Opponent absent	No Letter of Authority	Lack of funds (bare assertion only)	Simple (claim for unpaid rental)	Competent (factual)	Granted	Company impecunious; Small claim amount; Simple claim; Officer was qualified (chartered accountant); Officer had been personally following through matter and liaising with opponent
DC/DC 3717/2018	Opponent absent	Officer as Deponent; No Letter of Authority	Lack of funds (oral evidence only)	Simple (claim for return of payment)	Not expressly considered	Not granted	O 1 r 9 summons filed then matter discontinued

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
DC/DC 2034/2016	Contested	Officer as Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Moderate (claim for payment for services)	Not expressly considered	Withdrawn	Company appointed lawyer
DC/DC 3589/2018	Opponent absent	Unqualified Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Simple (claim for purchase price)	Unqualified	Dismissed	Affidavit deposed by HR Manager not Officer; Officer could not nominate self; Corporate Registry (ACRA) search not exhibited on affidavit
DC/DC 587/2017	Contested	Officer as Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Complex (claim for construction payments)	Unqualified	Dismissed	Company failed to comply with O 1 r 9 affidavit directions; Officer attempted to make submissions by correspondence demonstrating inability "to do the legal work required in this case" and for "understanding and discharging the obligations of disclosure"
MC/MC 1051/2018	Opponent absent	No defect	No lack of funds	Simple (claim for unpaid rental)	Competent (factual)	Dismissed	Small size of Company was insufficient reason; Inability of opponent to pay judgment and costs irrelevant
MC/MC 10629/2017	Contested	Officer as Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Moderate (claim for return of deposit; claim for harassment)	Unqualified	Dismissed	No evidence of lack of funds; No explanation of role of Company in proceedings and structure of Company; Officer not familiar with legal process; Potential conflict of interest between Company and proposed Officer in respect of harassment claim

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
MC 12370/2014	Opponent absent	Officer as Deponent; No Letter of Authority	Not expressly considered	Simple (claim for loan repayment)	Not expressly considered	Struck off	Company absent (although entity appeared to be sole proprietorship)
MC/MC 13228/2016	Opponent absent	Officer as Deponent	Lack of funds (bare assertion only)	Moderate (claim for payment for services)	Unqualified	Dismissed	Parties absent **Note:** Company failed to comply with O 1 r 9 even after Court highlighted requirements at earlier hearings
MC 15987/2014	Contested	Officer as Deponent	Not expressly considered	Moderate (claim against Town Council in negligence)	Unqualified	Withdrawn	**Note:** Court adjourned 7 hearings, at which it repeatedly guided Company through the requirements of O 1 r 9
MC/MC 17172/2018	Opponent absent	Officer as Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Moderate (claim for payment for services)	Unqualified	No order	Company given multiple opportunities to justify need for self-representation but could not satisfy court; Officer should not have deposed affidavit in breach of O 1 r 9 **Note**: Court at 8th hearing indicated that application was unlikely to be granted
MC/MC 19712/2017	Opponent absent	No defect	No lack of funds	Simple (claim for vehicle lease payments)	Not expressly considered	Dismissed	Company could afford lawyer; Allegedly high charges of lawyer irrelevant

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
MC/MC **2182/2017**	Opponent absent	No Letter of Authority	Not expressly considered	Moderate (claim for damage to property)	Unqualified	Struck off	Parties absent **Note:** Court initially made no order because: (a) Writ preceded letter of authorisation and appeared to have been filed without proper authorisation; (b) not clear that MCST Chairman could sign authorisation letter; (c) no information on position of Officer in MCST; (d) no reasons given for application
MC/MC **5570/2019**	Opponent absent	Officer as Deponent; No Letter of Authority	Lack of funds (bank statement exhibited)	Complex (claim for construction payments)	Unqualified	Dismissed	Company's affidavit was filed by wrong deponent even though it was on "affidavit that the [C]company does not have any company secretary or employees due to business losses and cashflow difficulties"; No information provided on accounts of Company or on financial position of its sole shareholder; Company's pleadings lacked material facts making it difficult for opponent to know case to meet; Complex factual and legal issues; Officer could not understand substantive requirements of O 1 r 9 application

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
MC/MC 6483/2019	Opponent absent	No Letter of Authority	Not expressly considered	Simple (claim for loan repayment)	Unqualified	Dismissed	Company failed to comply with O 1 r 9 **Note:** This was the Company's second summons. In the first summons (which sought the same relief), the hearing had been adjourned after the Court highlighted *Bulk Trading*.
MC/MC 874/2019	Opponent absent	Officer as Deponent; No Letter of Authority	Not expressly considered	Simple (claim for purchase price)	Unqualified	Dismissed	Company failed to comply with O 1 r 9 even after Court highlighted requirements
MC/OSS 29/2018	Opponent absent	Officer as Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Simple (garnishee proceedings)	Unqualified	Dismissed	Company failed to comply with O 1 r 9 even after Court highlighted requirements
MC/MC 12563/2019	Contested	Officer as Deponent; No Letter of Authority	Lack of funds (bank statement exhibited)	Moderate (claim for services)	Unqualified	Dismissed	Company absent **Note:** At the earlier hearing, Officer could not understand substantive requirements of O 1 r 9 application

Company as corporate defendant

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
DC/DC 1524/2016	Contested	Officer as Deponent; No Letter of Authority	Not expressly considered	Complex (claim for fraud)	Unqualified	Dismissed	Officer lacked proper authorisation for O 1 r 9; Officer lacked competence; Officer (director) was co-defendant and potential conflict of interest between Officer and Company
DC/DC 3502/2017	Contested	No defect	Lack of funds (short statement of accounts provided)	Moderate (claim for payment for goods)	Not expressly considered	**First summons**: Granted only for imminent summons for directions **Second summons**: Granted fully on the three conditions as in *Bulk Trading* at [125], with liberty to opponent to apply to terminate the self-representation at any point in time	**First summons**: Lack of finances not supported by evidence of 1-page balance of accounts and no explanation of $900,000 reduction in funds by way of "doubtful debts"; Company had a counterclaim and had not simply been involuntarily dragged into proceedings; Issues of fact were technical even as legal issues were uncomplicated **Second summons:** Conditions imposed: (a) proposed Officer provide address for service of court papers; (b) shareholders of Company bear all legal costs ordered against Company; (c) shareholders disclose assets in Singapore to which recourse could be had to meet such costs orders **Note:** Company subsequently applied to discharge O 1 r 9 order for inability to comply with conditions

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
DC/DC 651/2019	Contested	No Letter of Authority; Deponent's authority contested	Lack of funds (bank statement exhibited)	Moderate (claim for employment salary)	Not expressly considered	Granted on the condition that the Officer personally bears all costs ordered against the Company	Opponent did not object
DC/DC 244/2017	Contested	Officer as Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Simple (claim for return of payment)	Unqualified	Dismissed	Officer had difficulty understanding English; Officer unfamiliar with conduct of litigation and unable to comply with O 1 r 9; Bare assertions of impecuniosity of Company did not meet evidentiary threshold; Unwillingness of Officer to personally bear costs of litigation
MC/MC 18904/2015	Contested	No defect	Lack of funds (financial statements exhibited)	Moderate (claim for payment for services)	Competent (factual and legal)	Granted on condition that Officer bears any costs ordered against Company	Officer had shown ability to comply with ROC
DC/BCS 30/2018	No objection	Officer as Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Moderate (taxation)	Not expressly considered	Granted	Opponent did not object; Company impecunious (lack of funds to continue paying for lawyers after conclusion of Suit)
OSS 152/2014	No objection	Officer as Deponent	Lack of funds (bare assertion only)	Simple (claim for rectification of damage to common property)	Competent (factual)	Granted	No dispute as to credibility of Officer
DC/DC 2485/2017	No objection	Officer as Deponent	Lack of funds (financial statements exhibited)	Complex (claim for construction payments)	Not expressly considered	Granted	Opponent did not object; Company impecunious

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
DC/DC 2533/2019	Contested	Officer as Deponent; No Letter of Authority	Lack of funds (financial statements exhibited)	Complex (claim for construction payments)	Unqualified	Dismissed	Officer unable to fully comprehend and/or comply with O 1 r 9; No evidence on impecuniosity of Company; Officer appeared to be a material witness who was the person who entered into the contract on behalf of Company, was the only person who was "behind" the renovation project, was one of two shareholders and would have to play the role of both Counsel and a witness if leave was granted in a matter in which the renovation he had carried out was alleged to have defects for which the Defendant company would be responsible
OSS 152/2014	No objection	Officer as Deponent	Lack of funds (bare assertion only)	Simple (claim for rectification of damage to common property)	Competent (factual)	Granted	No dispute as to credibility of Officer
DC/DC 2673/2016	No objection	Officer as Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Moderate (claim for supply of ship management services)	Not expressly considered	Granted unconditionally for an appeal by the Company and, in other cases, on the condition that that another officer files affidavit in compliance with O 1 r 9	Opponent did not object **Note:** The appeal for which leave was granted unconditionally was fixed later on the same day

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
DC/DC 2923/2017	Contested	Officer as Deponent	Lack of funds (bank statement exhibited)	Simple (claim for salary; counterclaim for wrongdoing as employee)	Unqualified	Dismissed, with costs of $1,500 ordered against Officer personally	Company absent (Officer appeared at hearing but stormed out midway)
MC 1576/2014	No objection	Officer as Deponent; No Letter of Authority	Not expressly considered	Simple (claim for motor accident property damage)	Competent (factual)	Granted	Opponent did not object
MC/MC 16843/2018	No objection	Officer as Deponent	Lack of funds (financial statements exhibited)	Simple (claim for breach of contract)	Competent (factual)	Granted	Officer able to assist court; Officer was credible and competent; Mere fact that Officer might be called as a witness was not *ipso facto* conflict of interest
DC/DC 3060/2017	Contested	Officer as Deponent	Lack of funds (financial statements exhibited)	Complex (claim for return of investment moneys)	Unqualified	Dismissed	Unclear that Officer able to adequately represent Company in these proceedings
DC 3124/2013	No objection	Officer as Deponent; No Letter of Authority	Not expressly considered	Complex (claim for dishonest assistance and knowing receipt)	Not expressly considered	Granted	Opponent did not object
DC/DC 3167/2017	Contested	Officer as Deponent; No Letter of Authority	No lack of funds	Moderate (claim for breach of contract and for return of deposit)	Unqualified	Dismissed	Company affidavit bare and devoid of details required under O 1 r 9; No evidence of lack of funds; Financial statements filed by Company in related summons showed no financial difficulties
DC/DC 3183/2016	Contested	Officer as Deponent; No Letter of Authority	No lack of funds	Complex (claim for construction payments)	Unqualified	Dismissed	Company did not provide supporting reasons in affidavit; Company failed to comply with ROC by entering appearance by director before applying for leave; Company had weak defence given that progress payment claims by opponent had already been certified

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
DC/DC 3685/2018	No objection	Officer as Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Simple (claim for unpaid rental)	Not expressly considered	Granted	Opponent did not object; Other director had resigned before application
DC/DC 39/2017	Contested	Officer as Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Moderate (claim for breach of rental contract)	Not expressly considered	Stayed	Company entered liquidation
DC/DC 3908/2015	Contested	Officer as Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Moderate (claim for mis-representation)	Unqualified	Dismissed	Company did not provide supporting reasons in affidavit; No reason why Company could not appoint a lawyer; Inability of Company to appoint lawyer of its own doing
DC/DC 1524/2016	Contested	Officer as Deponent; No Letter of Authority	Not expressly considered	Complex (claim for fraud)	Unqualified	Dismissed	Officer not properly authorised; Officer not competent; Officer was co-defendant and potential conflict of interest between Officer and Company
DC/DC 772/2018	No objection	Officer as Deponent	No lack of funds	Moderate (claim for breach of investment contract)	Competent (factual and legal)	Granted	Corporate self-representation would save legal costs; Company only nominal defendant with Suit primarily against other defendant; No other officers available to make affidavit because appointment of all officers had been terminated pursuant to s 294(2) of the CA
DC 2676/2014	Contested	Officer as Deponent; No Letter of Authority	Not expressly considered	Moderate (claim for return of investment moneys)	Not expressly considered	Dismissed	Company absent

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
MC/MC 10234/2018	No objection	No defect	Lack of funds (financial statements exhibited)	Simple (claim for purchase price)	Competent (factual)	Granted	Opponent did not object; Company impecunious; Relatively uncomplicated proceedings of resisting garnishee application **Note**: The leave was granted for a garnishee to show cause hearing, and also implicitly for setting aside hearing for default judgment
MC/MC 11367/2019	Contested	No defect	Lack of funds (bank statement exhibited)	Simple (claim for unpaid rental)	Competent (factual and legal)	Not granted	Company agreed that O 1 r 9 was not "special corridor" for foreign counsel to represent companies - especially where foreign counsel was appointed as director simply for purpose of proceedings; Company appeared to submit matter was not straightforward and that instructing local counsel would not be practicable
MC/MC 1393/2018	Consented	No defect	Lack of funds (tax returns exhibited)	Simple (garnishee proceedings)	Not expressly considered	Granted	Opponent consented
MC/MC 18661/2018	Contested	Officer as Deponent; No Letter of Authority	Not expressly considered	Simple (claim for purchase price of goods)	Not expressly considered	Withdrawn	**Note:** Application was withdrawn after Court explained O 1 r 9 requirements
DC 3500/2011	Contested	No affidavit	Not expressly considered	Simple (claim for possession of tenanted premises)	Unqualified	Dismissed	Company failed to file supporting affidavit even after Court highlighted O 1 r 9 requirements

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
MC/MC 18743/2015	Contested	Officer as Deponent; No Letter of Authority	Not expressly considered	Simple (claim for rental payment)	Not expressly considered	Struck off	Company absent **Note:** At the first hearing, which was adjourned, the Court explained the O 1 r 9 requirements to Company
MC/MC 23775/2015	No objection	Officer as Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Simple (claim for rental payment)	Not expressly considered	Granted implicitly	Officer appeared at Case Management Conference and recorded settlement
MC/MC 115/2017	No objection	No affidavit	Not expressly considered	Moderate (claim for repayment of loan)	Unqualified	Withdrawn	
MC/MC 11852/2018	No objection	Officer as Deponent; No Letter of Authority	Not expressly considered	Simple (claim for dishonoured cheque)	Not expressly considered	Withdrawn	
MC/MC 1577/2015	No objection	Officer as Deponent; No Letter of Authority	Not expressly considered	Moderate (claim for purchase price of goods)	Not expressly considered	Withdrawn	
MC/MC 18173/2017	Contested	No affidavit	Not expressly considered	Simple (claim for hire-purchase payments)	Not expressly considered	Dismissed	Company absent; Officer was co-defendant and also guarantor of liabilities of Company to opponent
MC/MC 3289/2016	No objection	Officer as Deponent	Lack of funds (bare assertion only)	Moderate (claim for payment for legal services)	Competent (factual)	Granted implicitly	**Note**: Leave was granted implicitly for Director to appear at Case Management Conference and to admit to claim on behalf of Company
MC/MC 4638/2019	Contested	Officer as Deponent	Lack of funds (bare assertion only)	Simple (garnishee proceedings)	Competent (factual)	Granted	Company impecunious; Advanced stage of proceedings; Simple matter of garnishee application

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
MC/MC 19296/2017	Contested	No defect	No lack of funds	Complex (claim for construction payments)	Competent (factual and legal)	Dismissed	Company failed to provide reasons for self-representation; Legal contract manager not an appropriate Officer even though he was Hong Kong-admitted lawyer; No evidence of lack of funds by Company; No merits in attempt by Company to challenge settlement agreement entered into after court dispute resolution
MC/MC 5632/2019	Contested	No defect	Lack of funds (bare assertion only)	Simple (claim for unpaid rental)	Competent (factual)	Withdrawn; Granted implicitly for Court Dispute Resolution	Potential conflict of interest given that Officer was co-defendant
MC/MC 707/2018	No objection	No Letter of Authority	Not expressly considered	Simple (claim for payment for services)	Not expressly considered	Granted	Opponent did not object
MC/MC 852/2018	No objection	Officer as Deponent	Lack of funds (bare assertion only)	Simple (claim for motor accident property damage)	Not expressly considered	Granted	Opponent did not object
MC/MC 8588/2016	Contested	Officer as Deponent; No Letter of Authority	Lack of funds (bare assertion only)	Simple (claim for dishonoured cheque)	Competent (factual)	Granted on the condition that Officer personally bears all costs and damages ordered against Company	Officer familiar with facts of case having been personally involved in events leading up to action; Small claim amount; Officer undertook to bear all costs/damages ordered against Company
MC/MC 9594/2018	Contested	Officer as Deponent; No Letter of Authority	No lack of funds	Simple (claim for repayment of loans)	Unqualified	Dismissed	Company failed to provide reasons in affidavit

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
MC/MC 9221/2019	Contested	No defect	Lack of funds (financial statements exhibited)	Moderate (claim for return of tenancy security deposit)	Competent (factual and legal)	Dismissed	Fact that Officer was referred to as a Legal Manager gave no indication as to whether he was an employee; No explanation as to why there was no current or up-to-date profit and loss statement, and it was therefore unclear what the current financial position of Company was, and no explanation why no further financial information disclosed; No documentary evidence of Officer's professed qualifications; Complex legal issues of estoppel and set-off

Case number	Opponent's position	Company's affidavit	Financial position	Complexity of case	Officer's competence	Outcome	Grounds of decision or other remarks
DC/DC 1045/2019	Contested	Officer as Deponent; No Letter of Authority	Lack of funds (financial statements exhibited)	Moderate (claim for rental payments)	Competent (factual)	Granted on the condition that Officer personally bears all costs ordered against Company	Company impecunious; Company had arguable defence because bar should not be set too high and there was no controlling authority rendering purported defence a non-starter; Officer competent to represent Company and unfair to shut him out simply because as sole director and shareholder, he would necessarily also be a witness – Officer akin to a litigant in person who would ordinarily be permitted to represent himself But compelling grounds that warrant requiring Officer to undertake to bear costs ordered against Company: (a) Company had entered into current lease without intention to be responsible for payment since a different company (Fortunate Era) was responsible for that pursuant to a service agreement; (b) while this would be evidence of the new franchise model that Officer was innovating to allow companies to start up with minimal capital, fact Officer was sole shareholder of both Company and Fortunate Era raised serious concerns.