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PRESS RELEASE

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THE EXERCISE OF PROSECUTORIAL DISCRETION

The exercise of prosecutorial discretion has been a matter of interest in the media and the public, especially following the recent decision of the Court of Appeal in *Ramalingam Ravinthran v The Attorney-General* CM 60 of 2011 (“Ramalingam’s case”).

2 The exercise of prosecutorial discretion conferred by the Constitution on the Attorney-General under Article 35(8) is a responsibility that is undertaken with full recognition of its impact and importance for society. The public should be assured that each decision is made carefully, with full consideration of the facts and due regard to what is required in the public interest.

3 In every day matters, prosecutorial discretion is exercised by a team of officers, working under the close supervision of the Chief Prosecutors of the various crime divisions, who in turn act in accordance with the direction of the Solicitors-General and the Attorney-General. Every decision to charge an individual for an offence is taken carefully and after consideration by at least two officers of the Attorney-General’s Chambers, with at least one separate higher level of review in all cases. In many cases, including capital cases, there are multiple levels of review including personal review by the Attorney-General.

4 At each review stage, officers apply their mind to the sufficiency of evidence, the application of the facts to the law, the sufficiency of investigations and the public interest in prosecuting the individual.

5 While like cases are treated alike, there may be cases where two offenders with apparently similar levels of culpability or who offended in apparently similar circumstances are charged with different offences. This stems from the fact that a wide range of factors are carefully weighed by the Attorney-General in determining the charges to prefer. These include all the facts surrounding each accused person's offending behaviour in each case, the strength of evidence against each accused person, the level of cooperation provided by accused persons to the investigation authorities as well as the existence of personal mitigating circumstances, including for instance, any mental impairment or even physical illness which might warrant the taking of a compassionate approach.

6 To ensure consistency, internal prosecution guidelines are referred to and wherever appropriate these are adhered to in determining the appropriate course of action to take in each case, including who to charge and what charges to prefer.

7 These guidelines are not published to the general public and the Attorney-General does not generally explain the basis for his prosecution decisions. This is because, in evaluating whether it is in the public interest to take a particular prosecution decision, the Attorney-General and his officers consider a large number of often competing interests, including those of the victim, the accused person and society as a whole. Information from a wide variety of sources is also taken into account. With the inevitable resource constraints of the Attorney-General's Chambers and the investigation authorities, it is necessary to prioritise and the Attorney-General takes into account enforcement priorities and other factors including the prevalence of the offence in question.

8 The fact that internal guidelines are not published also enables the Attorney-General's Chambers to retain flexibility to depart from the guidelines when the interests of justice call for this in any given case, while keeping to a broadly consistent path. The ability of the Attorney-General's Chambers to retain this flexibility is critical so that each case can truly be considered on its own merits at a nuanced level, which is the cornerstone of prosecutorial discretion. Any attempt to publish guidelines is likely to

result in vague guidelines so that these do not impede the ability to deal with each case on its own merits. The use of vague guidelines would, in turn, have the undesirable effect of reducing, rather than enhancing, consistency.

9 The publication of specific guidelines on the other hand would identify prosecution priorities as well as areas where the prosecution might exercise restraint; and this in turn can lead to an increase in offending in the latter areas as accused persons might then be incentivised to commit such crimes expecting that they probably would not face the full force of the law.

10 In *Ramalingam's* case, the Singapore Court of Appeal accepted the Attorney-General's position that he has no general obligation to disclose his reasons for a particular prosecutorial decision. This is in line with the position adopted in the United States, where the Supreme Court has been reluctant to examine the basis of a prosecution on the ground that this a function entrusted to the executive branch of government and it is exercised with access to material that the judicial branch would not always have. Indeed, there is a broad range of factors and information, including not only traditional forms of evidence but also intelligence and other sensitive information that are relevant to the making of such decisions. The Constitution vests prosecutorial discretion in the Attorney-General who is part of the executive branch of Government. An approach which runs counter to the judicial deference shown by the courts to the Attorney-General's discretion would impair the performance of a core executive function designated in the Constitution.

11 Any requirement for reasons to be given in every case would also delay criminal proceedings and undermine prosecutorial effectiveness. Delay and ineffectiveness is likely to result as the publication of reasons for all cases would likely lead to frequent challenge in the courts by persons unhappy with specific decisions. Each decision considers multiple factors; it is unlikely that any decision will be able to satisfy all parties.

12 Notwithstanding these concerns, in those circumstances, where the reason for prosecuting or not prosecuting raises a question of importance for the public and disclosure would not impact the proper resolution of the case, the Attorney-General's Chambers does consider providing at least brief reasons for its decision, so that confidence in the justice system may be maintained.

13 Ultimately, it is important to recognise that the Attorney-General does not determine the guilt of an accused person and the sentence which should follow that finding of guilt. While the Attorney-General determines who is charged and what charge is preferred, the determination of guilt or innocence, and consequently, punishment, is solely within the province of the court after it has considered the evidence and heard full arguments.

14 It also bears remembering that the Attorney-General's powers are not immune to correction by way of judicial review if they are shown to have been exercised arbitrarily or in breach of an accused person's constitutional rights. This would include a situation where, for example, the prosecutorial discretion to charge an accused was motivated by the prosecutor's personal bias against the accused. As such, there are clear remedies in cases where prosecutorial discretion has been exercised unlawfully or contrary to the Constitution.

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