IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 6

Suit 2000/1995

Between

Lines International Holding (S) Pte Ltd

… *Plaintiff*

And

Singapore Tourist Promotion Board
Another

… *Defendant*

GROUNDS OF DECISION

Administrative Law — Administrative discretion; Administrative Law — Discretionary powers; Administrative Law — Discretionary powers; Administrative Law — Discretionary powers; Administrative Law — Judicial review — Ambit; Administrative Law — Natural justice; Contract — Formation; Tort — Inducement of breach of contract; Tort

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Lines International Holding (S) Pte Ltd v Singapore Tourist Promotion Board and Another

[1997] SGHC 6

Suit 2000/1995
Judith Prakash J
09 January 1997

1 The plaintiff company carries on business as a cruise operator. Between October 1994 and December 1995, it provided cruises from Singapore aboard its chartered vessel, Nautican. These cruises commenced from the Singapore Cruise Centre which was constructed and is run by the second defendants, the Port of Singapore Authority (`PSA`). At the material time, however, there were also two other organisations which were interested in cruises emanating from Singapore. They were the first defendants, Singapore Tourist Promotion Board (`STPB`), and the Gambling Suppression Branch (`GSB`) of the Criminal Investigation Department (`CID`) of the Police Force.

2 On 11 November 1995, the plaintiffs commenced this action and by the indorsement of claim on their writ, stated that, among other things, their claim was for:

3 (i) a declaration that the plaintiffs were entitled to berthing rights in respect of Nautican at the usual berths allocated to cruise liners calling into Singapore;

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4 (ii) a declaration that PSA and STPB had wrongfully and without basis refused and denied berthing rights to the plaintiffs;

5 (iii) an injunction to restrain PSA and STPB from wrongfully refusing and denying the plaintiffs berthing rights in respect of Nautican and an order for them to forthwith grant such rights to Nautican and allow Nautican to berth for such period as may be necessary.

6 On the same morning, the plaintiffs made an ex parte application for an injunction in terms of this last sub-paragraph.

7 I heard the application and made interim orders restraining STPB from issuing instructions to PSA to refuse and/or deny berthing rights to Nautican and restraining PSA from themselves refusing or denying berthing rights to that vessel until such date as the application could be heard on an inter-partes basis. The inter-partes hearing took place about three weeks later and, at its conclusion, I discharged the interim injunction with effect from 4 December 1995 and directed an early trial.

8 **The plaintiffs` claim**

9 The plaintiffs` claim as elaborated by their subsequently filed statement of claim rests on three main planks to wit, first an administrative law claim based on ultra vires and/or illegal action on the part of both defendants causing them damage, secondly breach of contract by PSA, and thirdly, various torts committed by both defendants.

10 Their statement of claim recites that on 22 June 1995 a meeting was held between companies in Singapore engaged in the cruise business (including the

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plaintiffs) and representatives of PSA, STPB and the GSB. At that meeting, one Mr Lee Loong Koon, an officer of STPB, stated that the three bodies in consultation with each other had agreed on a set of conditions to regulate and monitor casino activities on board cruise vessels, especially on vessels undertaking Cruises to Nowhere (`CNW`). The pleading goes on to state that the guidelines were then communicated orally to the attendees. These guidelines included a rule that CNW cruises should not exceed 30% of the voyages undertaken by a cruise vessel on a three monthly basis and that berths might not be allocated for CNW cruises in excess of the 30% limit. A definition was given of a CNW as being a cruise which lasted less than 36 hours from the time of departure from the berth in Singapore until re-berthing here and this was irrespective of whether the vessel called at any destination before its return.

11 The plaintiffs challenge the guidelines on several counts. First, they aver that PSA was not empowered in law to make or issue the guidelines. Secondly, they aver that in purporting to issue the guidelines PSA had acted in breach of its statutory duty. Thirdly, they assert that the guidelines were formulated by a Cruise Review Committee (which comprised PSA, STPB and the GSB) which committee had no existence in law and therefore the purported delegation by PSA to the Cruise Review Committee to formulate the guidelines was invalid. Fourthly, PSA erred in law in issuing the guidelines and fifthly, the guidelines were uncertain. In the alternative, they contend that PSA had improperly exercised powers conferred by its constitutive statute by exercising them in a way that constituted an abuse of power. Their conclusion is that the guidelines in themselves were ultra vires and inconsistent with the provisions of the legislation.

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12 As regards STPB, the plaintiffs contend that they were not empowered in law to make or issue the guidelines and/or that they erred in law in issuing the same. In the circumstances, STPB was acting outside its jurisdiction and ultra vires its constitutive statute in purporting to issue the guidelines.

13 The plaintiffs also contend that there were flaws in the actual decision to deny Nautican berthing facilities on the basis of an alleged breach of the CNW limit of 30%. First, PSA denied the plaintiffs natural justice and procedural fairness. Alternatively, this decision was made by PSA at the direction or behest of Mr Lee of STPB and PSA failed to properly exercise its discretion before making the decision. Thirdly, PSA decided to deny berthing facilities to Nautican without regard to the merits of the plaintiffs` case and also took into account irrelevant considerations when making that decision. They further assert that PSA`s decision was so unreasonable that no reasonable person in its place would have made it.

14 In the alternative, the plaintiffs aver that STPB and PSA purported to exercise powers which were conferred on them for the benefit of the public or a section of the public, either with intent to injure the plaintiffs or in the knowledge that the acts were ultra vires their respective constitutive statutes. This is the tort of misfeasance by a public servant.

15 The next ground, also a tortious one, is that STPB knowing, at all material times, that the plaintiffs had entered into contracts which required the plaintiffs to undertake CNWs on every Saturday and Sunday, wrongfully compelled or attempted to compel the plaintiffs to breach the said contracts. The plaintiffs were prevented from performing their contracts because they were not allowed to adhere to Nautican`s existing schedule for CNWs and as a result

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breached the said contracts and thereby suffered loss and damage. A similar allegation was made in respect of PSA.

16 The next ground, that founded in contract, is that there was a contract between the plaintiffs and PSA whereby PSA was obliged to provide berthing facilities to Nautican on a first-come-first-serve basis. PSA had breached this contract by denying Nautican its berth. In this connection, a further tortious ground is raised against STPB in that it is averred to have known of the contracts between the plaintiffs and PSA and to have wrongfully induced and procured PSA, in breach of the contract, to deny and/or suspend berthing facilities which otherwise would have been allocated to the plaintiffs.

17 The reliefs sought by the plaintiffs take the form of declarations and injunctions. The plaintiffs want the guidelines to be declared ultra vires and void. They also want the decision of PSA to deny Nautican a berth to be similarly declared ultra vires and void. They want a declaration that they are entitled not to be denied berthing facilities by PSA on account of their failure to comply with the guidelines. They want injunctions supporting the declarations so that they will be able to carry on their trade and provide as many cruises to nowhere as they deem fit. They also claim damages, interest and costs.

18 **The facts**

19 **Background**

20 STPB is a body corporate established under the Tourist Promotion Board Act (Cap 328) (`TPB Act`). Under the TPB Act, STPB has the power, inter alia, to engage in, assist or promote the improvement of facilities for visitors to Singapore and to make recommendations to the Government in

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relation to any measures which may be taken with a view to increasing the number of visitors to Singapore. STPB appears to have first recognised the potential for developing Singapore as an international and regional cruise centre in 1987. The next year, it established a Cruise Department to develop and implement a plan to promote international and regional passenger cruising in ASEAN with Singapore as the cruise hub.

21 There was a parallel development within PSA, a body corporate established under the Port of Singapore Authority Act (Cap 236) (`PSA Act`) and for this purpose they set up their Cruise Development Unit in 1988. PSA is the owner, operator and person in control of all wharves in Singapore. To further its objective of developing Singapore as a cruise hub, PSA constructed the International Passenger Terminal at the Singapore Cruise Centre (World Trade Centre) which has berths for cruise vessels to come alongside for disembarkation and embarkation of passengers. The Singapore Cruise Centre has been operational since 1992.

22 In February 1989, STPB and PSA established an ad hoc committee named `STPB/PSA Cruise Development Liaison Committee`. The objective of the committee was to develop and promote international passenger cruising in ASEAN with Singapore as the cruise hub.

23 The plaintiff company was incorporated in November 1990. Shortly afterwards, the plaintiffs applied to PSA to open an account with it in connection with their intended use of the port facilities and services provided by PSA. At the time of their application, the plaintiffs indicated that the services that they required related to passenger cruise vessels. The plaintiffs` application was approved by PSA on 10 November 1990.

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24 As the cruise industry developed, however, so did news reports that there was undue gambling on cruise ships and some of them operated as `floating casinos`. For example, in October 1992, the Hong Kong magazine ***Trade Winds*** , in an article which alleged that Singapore`s bureaucracy was affecting its ambition to become one of the world`s leading centres for cruise ships, also stated that the attempt to attract cruise operators to Singapore had met with limited success. A number of gambling ships which cruised out to international waters where they could legally run casinos had started operating from the port but no new dedicated cruise ships had started using it as a base. According to Mrs Kathleen Tan of PSA, this article alarmed PSA because it considered that Singapore was getting the wrong image.

25 In March 1993, there were further developments in this area. A number of advertisements were placed in the press in respect of the cruise ship, Regent Spirit. That month, PSA received a complaint from a member of the public who had responded to one such advertisement seeking to recruit `high powered sales agents`. The complainant alleged that he had been told to recruit gambling passengers to board the Regent Spirit. PSA wrote to the Ministry of Home Affairs drawing their attention to the advertisement. In response, PSA was contacted by the GSB and subsequently, these two organisations and STPB met Regal Cruises, the operators of Regent Spirit, to voice their disapproval of the advertisements which highlighted gambling on board the vessel. This meeting and other action taken by PSA were reported in the press which also announced that PSA would soon introduce new guidelines for cruise operations to re-emphasise its position on blatant selling of cruise ships as gambling ships.

26 It was also reported in the local press that PSA would not approve a cruise ship`s berthing application if its activities were considered `undesirable`.

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In court, Mrs Tan confirmed that a berth had actually been denied to the Regent Spirit. This action had been taken because PSA was very concerned with the image of the Cruise Centre. The factors which PSA took into account when it denied the Regent Spirit her berth were that first, there was an association of cruise ships with the Cruise Centre; secondly, the advertisements which had appeared which had given the impression that the ship was a floating casino; and thirdly, that PSA did not want Singapore to become a hub for floating casinos.

27 The contact between the three organisations in April 1993 led to them forming a committee (`the committee`) to deal with concerns that a growing number of CNW cruise packages were predominantly gambling cruises during which illegal activities such as gambling, prostitution and illegal money lending took place. PSA and STPB were concerned that such activities would tarnish the image of Singapore as an international cruise hub and would have a negative effect on the national economy in that there would be an outflow of foreign exchange leading to a negative multiplier for the economy. The main members of the committee were Mrs Kathleen Tan who was then the manager of PSA`s Cruise Development Department, Mr Lee Loong Koon, who held the position of Director of Events Management and Cruise Business Department at STPB, and the officer in charge of the GSB, Mr Tan Kheng Seng.

28 On 22 April 1993, PSA drew up a paper entitled `Guidelines on Cruise Ships based in Singapore` for the purposes of discussion at a senior management meeting to be held the following week. The intention of the paper as stated therein was to address measures to prevent floating casinos operating out of Singapore without over-regulating and stifling holiday/leisure cruises. Guidelines for ships operating out of Singapore had been discussed with STPB

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with the aim of encouraging ships which, besides providing wholesome cruise and leisure activities, would also give multiplier contributions to the Singapore economy.

29 The paper set out specific guidelines for cruise ships. Among these were:

30 (i) cruise lines were not to promote or organise gambling cruises;

31 (ii) the ratio of CNWs to destination cruises should be 30:70 in terms of cruise trips and CNWs should only be fillers to help the load factors in between destination cruises;

32 (iii) for destination cruises the ship should make a minimum of two port calls in two different countries (in addition to Singapore) per voyage in her itinerary. This would promote destination cruises and development of the region as a cruise area.

33 The paper noted that to test the guidelines PSA and STPB had met various cruise operators and had ascertained that these operators were generally in agreement with the guidelines.

34 Events leading up to the public announcement of the guidelines

35 In 1994, there were further newspaper reports on gambling activities aboard cruise ships. In April 1994, a Singapore registered cruise ship was apparently raided and detained by the police in Sabah for allowing Malaysians to patronise a casino on board while cruising in Malaysian waters. In June 1994, there was a report in ***The New Paper*** about children being allowed to operate

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the jackpot machines on board a cruise ship and in August the Malaysian authorities banned a casino ship from operating in Sabah.

36 In September 1994, the committee held its first meeting for that year. The GSB informed the other parties that it had received information about gambling syndicates on cruise ships, settlement talks and loan sharks and requested that all three bodies act collectively. STPB had no objections to this suggestion on the basis that any enforcement action came from the police force.

37 In the meantime, the plaintiff company was undergoing a change of shareholders and management. Its then managing director, Mr Daniel Chui, visited Jakarta in June 1994 and negotiated with two Indonesians, a Mr Hassan and a Mr Sukardi, to take over the plaintiffs. He also introduced Nautican as a suitable vessel to be chartered for the plaintiffs` business. The two Indonesians became directors of the plaintiff company that same month and bought over its share capital in October 1994. They employed a Mr Purwadi, another Indonesian, to assist them in the cruise business. From October 1994, Mr Purwadi was permanently in Singapore as Vice President and Chief Executive Officer of the plaintiff company. Nautican was chartered by the plaintiffs as from 31 October 1994 for a period of two years.

38 On 6 October 1994, the plaintiffs met with PSA. Mr Chui and two colleagues represented the plaintiffs and PSA was represented by Mrs Tan and three others. Mr Chui informed PSA that Nautican would arrive in Singapore on its maiden voyage from Australia on 29 October 1994. Thereafter, Nautican would use Singapore as a hub and would be calling at Penang, Pulau Pangkor, Malacca, Semarang and Jakarta. Towards the end of the meeting, Mrs Tan reminded Mr Chui about the government`s view on gambling cruises. She

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advised him to have a lower proportion (30%) of CNWs and to have more destination cruises.

39 From 10 October 1995, the management of the plaintiff company was taken over entirely by the new shareholders and Mr Chui resigned as managing director. Nautican made its maiden call at the end of October and thereafter it settled into a regular sailing pattern using Singapore as its home base. According to Mr Purwadi, Nautican`s normal schedule was that on Saturday evening it would sail from Singapore on a CNW and return to port on Sunday morning. On Sunday evening it left for another CNW and returned again on Monday morning. Late Monday morning it would leave Singapore for Jakarta where it would arrive on Tuesday evening. Between Tuesday evening and Friday morning the vessel cruised to Semarang and Surabaya and sometimes to Bali. On Friday, it would leave Jakarta for Singapore, arriving on Saturday. It should be noted, however, that according to the sailing schedules which the plaintiffs submitted to PSA, there were some weeks in the first half of 1995 when the Nautican carried out two or three CNWs on weekdays in addition to its two weekend CNWs.

40 In January 1995, an inter office memorandum was circulated within PSA on the subject `CNW - Guidelines for Berth Allocation`. The following guidelines were put up for consideration:

41 (i) all cruises with a published duration of less than 48 hours were to be considered CNW voyages, regardless of whether a destination had been included;

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42 (ii) operators were to be given three months to reduce the number of CNWs to less than 30% per month of total calls for each ship and after six months the number of CNW voyages was to be reduced to 15%;

43 (iii) after the grace period, berths at the Cruise Centre would be allocated only for the quotas specified on a first-come-first serve basis.

44 The next development was that the GSB called a committee meeting for 15 February 1995. Prior to the meeting, it wrote to the other members of the committee. Its letter was headed `Gambling on the High Seas` and set out various measures to be discussed in order to `curb the illegal gambling activities on board cruise ships in (sic) the high seas`. Among these measures was a suggestion that PSA imposed a longer period for each cruise (a minimum of two nights) and that PSA should not grant berthing facilities to cruise ships that did only CNWs.

45 The committee meeting duly took place. As a follow-up, on 27 February, PSA sent an inter office memorandum entitled `Guidelines for Cruise Ships` to STPB and GSB. This memorandum set out the proposed conditions and the respective areas of responsibility of each organisation. It is not necessary to set out the conditions in detail here. Broadly, as regards PSA, it was in charge of allocating berths and was not to allocate berths to vessels which carried out only CNWs or had CNWs in excess of 30%. It would also refuse to allocate a berth to a vessel if GSB and STPB determined such action was necessary. STPB`s responsibility was to monitor both wholesome and undesirable activities on board cruise vessels through checks with the media, advertisements, and from other feedback and also to provide advice on the background of cruise lines and operators. GSB was to gather intelligence on gambling, vice, and other forms

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of illegal and undesirable activities on board cruise vessels and to take the necessary enforcement action to deter such undesirable activities.

46 Thereafter, there was further correspondence between the three parties and the guidelines were refined. They were finalised on 23 May 1995 and GSB then suggested to STPB that it might wish to organise a meeting with representatives of cruise operators based in Singapore so as to notify them of the guidelines. STPB duly invited all local cruise operators to a meeting at the premises of the CID on 22 June 1995. Mr Purwadi was unable to attend this meeting but he sent his technical superintendent, Mr Francis Wong and his crew manager, Mr William Woon, to it as the plaintiffs` representatives.

47 All three organisations were at the meeting. Mr Lee Loong Koon acted as moderator. He explained the rationale of PSA and STPB`s support for the development of the cruise business in Singapore but noted that despite constant communication by both of them to cruise operators based in Singapore, things were going in a direction which was contrary to the defendants` objective of developing wholesome family oriented and multi-destination cruises. The meeting was informed that the CID in consultation with STPB and PSA had agreed on a set of conditions to regulate and monitor casino activities on board cruise vessels especially those operating CNWs. Then, a representative from each organisation read out its conditions.

48 Mr Lee went first. The conditions he read out were as follows:

> (i) The Singapore Tourist Promotion Board shall monitor advertisements and the media on gaming activities on board cruise vessels and to (sic) liaise with the Port of Singapore Authority and the Gambling Suppression Branch, CID, if found in local, regional and international publications.

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> (ii) Advise cruise vessels to put up proper and adequate signages (sic) in or around the casino area.
>
> (iii) Advise cruise operators, charterers and port agents that persons of 18 years and below shall not be allowed to participate in any form of casino gaming on board cruise vessels.

49 Then Mrs Kathleen Tan took over. She read out the following conditions:

> (i) Cruise vessels will not be allocated berthing facilities if the operators, charterers or port agents submit only `Cruise-to-nowhere` in their schedule.
>
> (ii) For a schedule covering three months, CNW cruises should not exceed 30% initially. Berths may not be allocated for CNW cruises in excess of the 30% initial limit.
>
> (iii) Cruises-to-nowhere` will be defined as cruises on vessels that leave a berth and return within 36 hours period. This is irrespective of whether a vessel calls at any other destination before returning to Singapore.
>
> (iv) The Port of Singapore Authority will refuse allocation of berth to a vessel if the Gambling Suppression Branch, CID and Singapore Tourist Promotion Board so (sic) determine that such action is necessary.
>
> (v) The Port of Singapore Authority shall not grant berthing facilities to cruise vessels that only offer casino gambling as its (sic) main form of entertainment.

50 The cruise operators were told by Mrs Tan that the CNW guidelines would take effect from 1 July 1995 for all new vessels and, in respect of vessels already using the Cruise Centre, from 1 October 1995. This meant that existing owners and operators had three months` notice of the implementation by PSA of the guidelines.

51 Next the GSB`s conditions were read out by its representative. It had only two conditions. First, that it would work closely with PSA and STPB to

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collate and be responsible for gathering intelligence on gaming and other undesirable activities on board cruise vessels. Secondly, it would liaise with the other two organisations before taking enforcement action against cruise vessels for such activities. The representative also informed the meeting that the police would not hesitate to take enforcement action against anyone who was involved in such activities and that the police had the authority to take action under the provisions of the Common Gaming Houses Act against any Singaporean caught gambling on board a cruise ship, irrespective of whether the vessel was in Singapore or international waters.

52 After the three authorities had completed their briefings, comments were sought from the cruise operators. Some response was received. One operator mentioned that he had made a commitment to some corporations to operate CNW once or twice a week from then till December 1995. He was prepared to show the committee his contract for authentication and STPB told him that they would be happy to discuss the matter further. Neither Mr Woon nor Mr Wong said anything at all at the meeting. It should be noted that the briefing was entirely oral. None of the organisations concerned handed out any written copies of their respective guidelines. The terms `conditions` and `guidelines` appear to have been used interchangeably during the meeting.

53 Events from 23 June to end 1995

54 At the time of the meeting, Mr Purwadi was in Jakarta. He was, however, briefed on what had occurred by Mr Woon and Mr Wong. He then arranged to meet Mr Lee at STPB`s office. This meeting took place on 4 July 1995. According to Mr Purwadi, he informed Mr Lee that the new guidelines were of grave concern to the plaintiff company as the same would effectively mean that

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the plaintiffs would be compelled to breach contracts entered into with Indonesian parties in February and March 1995 which committed them to providing two CNWs from Singapore each week. Mr Lee said that he would revert on various matters raised but no further information was received from him or PSA on the matter until 27 September 1995. Mr Lee`s account of the meeting was somewhat different. He said that he had briefed Mr Purwadi on the guidelines and their rationale and had invited him to write in to make representations regarding the 30% CNW limit if the plaintiffs had any difficulties. Mr Purwadi had not mentioned the plaintiffs` contracts with the Indonesian parties during the meeting.

55 Other cruise operators were not so reticent. They made representations to PSA and STPB of difficulties in the short term in complying with the 30% CNW guideline. These cruise operators were referred to STPB initially but their representations were jointly considered by all three bodies on a case-by-case basis. Some concessions were made. For example, a company named Star Cruises was allowed to operate itineraries for its fleet of five vessels which resulted in a 42% CNW component for the period October to December 1995. Three other vessels were allowed a CNW component of 33%, one was allowed 45.9% CNW and the fifth was granted a 50% CNW allowance.

56 Since 1993, PSA had been issuing circulars to all cruise lines and port agents notifying them that notification of a cruise ship`s schedules for each year after 31 December 1994 should be submitted to PSA at least one year in advance. A copy of this circular was given to the plaintiffs` representatives at the meeting they had with PSA on 6 October 1994. The plaintiffs did not, however, submit their cruise ship`s schedule at least a year in advance as requested by PSA. Instead, during the period December 1994 to June 1995, the

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longest advance notice that the plaintiffs gave PSA was two months and, in most cases the ANOPSS (advance notification of passenger ship`s schedule) was submitted in one month in respect of sailings for the next. On 18 July 1995, however, Mr Woon, as the plaintiffs` port agent, submitted ANOPSS covering the rest of the year. Nautican`s itinerary as disclosed by these schedules remained as it had been before the 22 June meeting ie the plaintiffs intended to have three sailings a week from Singapore of which two would be CNWs. CNWs would therefore comprise 66% of total cruises.

57 Mr Woon testified that after he had submitted it, he was often told by Mr Hudson Lim, an employee of PSA with whom he had regular contact in the course of his duties, that the sailing schedule should be amended to take into account the `oral guidelines` that had been announced on 22 June. The officer told Mr Woon that the schedules should be amended in order to enable him to give the plaintiffs berthing facilities.

58 On 27 September, PSA wrote to the plaintiffs stating that despite several reminders from them they had yet to receive the plaintiffs` revised schedule for Nautican which would fully meet with the 30% CNW guidelines. Based on the schedules which the plaintiffs had submitted for the period October - December 1995 (which had only 13 departures with Jakarta as a destination) only six CNW departures would be allowed. Accordingly, until the plaintiffs submitted the revised ANOPSS, PSA was only able to allocate a berth for Nautican for the 13 destination cruises and the first six CNW voyages on the schedule.

59 The plaintiffs responded by asking for a meeting with STPB to discuss Nautican`s berthing schedule. On 4 October 1995, they wrote to PSA stating that they were very surprised by the 27 September letter and disclosing that they

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had entered into contracts with parties in Indonesia such that if they varied the current position they might be exposed to legal suits. On 9 October, PSA responded in writing and reiterated its position that `we (STPB/CID/PSA) are not prepared to allow further CNW after 21 Oct 95 without the revision of her Oct-Dec `95 schedule to include additional destination cruises`.

60 The plaintiffs wrote immediately to both PSA and STPB. Their letter stated they understood that the committee would decide on the berthing prospects of all cruise vessels calling at Singapore. They repeated their statement that they had signed contracts in February and March 1995 and that if they varied the current position the plaintiffs might be exposed to legal suits. The plaintiffs went on to state they understood the committee would be having a meeting that week to discuss and decide on Nautican`s berthing allocation based on various appeals the plaintiffs had made to STPB. The plaintiffs asked the committee to review their position in the coming meeting and wanted to `sit before the committee` to explain their position.

61 The committee meeting was held on 12 October 1995. The plaintiffs were not invited to attend. It was decided by all three bodies that, as a concession, the plaintiffs should be allowed to operate one CNW every week which would mean that they had a CNW component of 50%. The plaintiffs were informed of this decision the same day but they were not satisfied. On 13 October 1995, they wrote again to STPB and PSA stating that the 50% limit would still put them in a dilemma and therefore they wanted to sit before the committee to `further explain/discuss and find a mutually satisfactory solution to the situation`. The committee refused the plaintiffs` request for a meeting. Mr Lee wrote to Mr Purwadi on 14 October 1995 stating that the committee had already accommodated the plaintiffs` business interests by granting the 50%

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CNW concession for the period October to December 1995 notwithstanding the announcement of the 30% limit in June 1995. Thus, no further concessions would be granted. Mr Lee added that if the committee considered that a meeting with the plaintiffs was necessary, it would notify them accordingly.

62 Further correspondence followed. On 20 October 1995 the plaintiffs appealed again for a change in the committee`s decision. This time they sent STPB a five page document setting out their arguments and the reasons why they should be allowed to maintain a 66% CNW component. In support, copies of their Indonesian contracts and the correspondence with their Indonesian contractors on the guidelines were attached.

63 In their letter of 16 October notifying the plaintiffs that they had been allowed to operate one CNW per week from Singapore up till 31 December 1995, PSA had suggested that to minimise the effect on the vessel`s existing schedule, Nautican did the CNW only on Sundays. PSA would facilitate this by allocating a berth for the vessel on its arrival from Jakarta each Saturday evening and it could then remain alongside until its CNW departure the next morning. The letter further stated that the arrangement could be effective from 28 October 1995 and asked the plaintiffs to submit their amended schedule on the ANOPSS form. No amended schedule was submitted by the plaintiffs.

64 On 26 October 1995, Mr Woon ascertained that PSA had not allocated any berths to Nautican for the weekend commencing 28 October. He telephoned Mr Hudson Lim about this and was told that Mr Pang Seng Joon of PSA had given instructions that all data relating to the scheduled visits of Nautican for the forthcoming weekend was to be deleted from PSA`s portnet system, the online computer database which gives details of the arrival and departure dates

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of vessels and the berths to which they have been allocated, if any. Mr Lim stated that the information on Nautican had been deleted as the plaintiffs had not amended its schedule to reflect the reduced number of CNWs.

65 On 28 October 1995, the plaintiffs` solicitors visited Mr Lee Loong Koon. According to Mr Lee, the solicitors asked for a 10 day grace period in order to enable them to go to Jakarta to explain the situation to the plaintiffs` contractors. Mr Lee indicated that he was prepared to support this request subject to PSA`s concurrence. PSA agreed and accordingly, later that morning, Mr Pang Seng Joon verbally informed Mr Woon that the ten-day extension had been granted. As a result, Nautican was allocated a berth for the weekend 28/29 October and the following weekend 4/5 November. The CNWs operated by the plaintiffs over those weekends were over and above the 50% quota the committee had previously granted.

66 The ten-day grace period expired on 6 November 1995. Mr Woon informed Mr Pang Seng Joon that he had no instructions regarding any change in schedule. PSA therefore wrote to STPB and GSB seeking their agreement to PSA`s proposal to deny a berth to Nautican for the weekend of 11/12 November. Both concurred with PSA`s proposal. On 7 November STPB informed the plaintiffs that PSA would deny Nautican berthing rights on 11 November. Despite requests made by the plaintiffs for a further extension on the basis that their director Mr Hassan was scheduled to meet Mr Lee Loong Koon on 14 November, PSA did not change its decision to deny the berth.

67 On 11 November 1995, the plaintiffs started this action and obtained an interim injunction against the denial of the berth. Nautican arrived in Singapore that evening and duly berthed at the Cruise Centre. It continued to berth in

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accordance with the plaintiffs` desired schedule until the injunction was discharged on 4 December 1995. In order, however, to assist the plaintiffs in making arrangements for the vessel, PSA informed them on 5 December 1995 that they were prepared to allow the plaintiffs to maintain their berth applications as originally submitted for berths for CNW until 18 December 1995 although the vessel had already exceeded its CNW quota. The plaintiffs availed themselves of this concession and the vessel used PSA`s berths for embarkation and disembarkation for passengers from Singapore for CNW on 9, 10 and 11 December 1995 and 16, 17 and 18 December 1995. Since 19 December 1995, Nautican has not called at Singapore at all.

68 On 2 January PSA issued `Singapore Cruise Centre Circular 1 of 1996`. This reduced what had formally been oral guidelines into writing. The Circular states:

> 1 With a view to promoting wholesome family oriented activities and multi-destination cruises:
>
> (a) Cruise vessels that only offer casino gambling as its (sic) main form of entertainment shall not be granted any berthing facilities by the PSA.
>
> (b) No cruise vessel shall be allowed any berth without the express written permission of the PSA.
>
> (c) The PSA will not allocate any berthing facilities to a cruise vessel if the operators or their agents submit only Cruises-To-Nowhere in their schedule.
>
> (d) Cruises-To-Nowhere is defined as cruises on vessels that leave a berth and return within 36-hour period. This is irrespective [of] whether a vessel calls at any other foreign destination before returning to Singapore within the 36-hour period.
>
> (e) All cruise vessel must submit their schedule at least three months in advance. Cruises-To-Nowhere shall not exceed 30% of the total cruises over any three-month period for each vessel

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> submitted in the proposed schedule. The PSA reserves its right not to grant any berth to any vessel for Cruises-To-Nowhere in excess of the 30% limit.
>
> (f) These guidelines may be revised at any time by the PSA, if in their sole and absolute discretion, they deem appropriate.
>
> (g) These guidelines are without prejudice to the PSA`s rights to refuse to provide berthing facilities to any cruise vessel for any other reason which, in their sole and absolute discretion, they deem appropriate.

69 **Legal background**

70 As I have stated, the plaintiffs found their case in three branches of the law: public law, contract and tort. The public law branch is the one which engendered the main issues in the case. It is the most material branch because the basic question which has to be decided here relates to the use and regulation of the port. The plaintiffs, founding themselves on common law principles, maintained from the outset that they had a common law right to berthing facilities available in the Port of Singapore subject to payment of tariffs and compliance with properly promulgated regulations. A variation of this argument was that they had statutory and common law rights not to be denied such berthing facilities subject to the two matters mentioned earlier.

71 The basic legal position is that the public ports of a country belong, prima facie, to the sovereign or, in our context, the state. It is the state which has the exclusive right of erecting ports and harbours and assigning their limits. Once erected, a port ought to be free and open to all to go and come subject to the payment of proper tolls and dues since as an incident to a port there may be a right to take tolls and dues for its use. The public right of navigation in tidal waters includes a right of anchoring, mooring and grounding in the ordinary course of navigation. Sea ports, such as the ports of Singapore, are open in time

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of peace to all ships. See 36 ***Halsbury`s Laws of England*** (4th Ed) paras 402, 403 and 406 and Vol 8 para 1014.. This common law principle may, however, be overridden by appropriate legislation especially where the matter of usage of the port`s facilities constructed by the state is concerned. The regulation of ports is, generally, vested in the state. As para 1016 of Vol 36 of ***Halsbury`s Laws of England*** states:

> *By the prerogative the Sovereign has the conservancy of all ports and harbours and is entrusted with the protection of public rights in such places. The grantee of a port takes its subject to the same obligations. The conservancy of ports is today largely regulated by statutory provisions. Every owner of a port is bound to conserve it so that it is reasonably fit for use as a port.*

72 It is common ground that, at least until the Maritime and Port Authority of Singapore Act 1996 (`the MPA Act`) came into effect in February 1996 (I will discuss the implications of that later), in Singapore PSA was the statutory corporation established to operate and regulate the port. This is clear from s 9 of the PSA Act, which imposes on PSA the duty, inter alia, to provide and maintain adequate and efficient port services and facilities in the port; to regulate and control navigation within the limits of the port; and to promote the use, improvement and the development of the port.

73 In order to fulfil its duties, PSA is by s 10 of the PSA Act, empowered to carry on such activities as appear to it to be advantageous, necessary or convenient for it to carry on for or in connection with the discharge of its duties. PSA is also authorised to exercise all or any of the powers specified in the Second Schedule of the PSA Act and any other written law. Of relevance here is cl 12 of that Schedule (`the Schedule`) which gives PSA the power `to control the erection and use of wharves, docks and any other works below high water mark within the limits of the port or the approaches to the port.` Further, the

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Singapore Port Regulations (Cap 236, 1990 Ed) reg 36 (`the Regulations`) provide, inter alia, as follows:

> *Vessels Berthed Alongside*
>
> (1) No vessel shall occupy a berth at any Authority wharf except with the permission of the [PSA].
>
> (2) Application for a berth shall be made by the owner, agent or master of the vessel in such form as may be approved by the [PSA].
>
> (3) Such application shall be made at least 24 hours before the berth is required.

74 The term `Authority wharf` is defined in the Regulations as a `wharf, jetty or landing place owned, operated or controlled by the [PSA]`. In this connection it could not be disputed that the berths of the Singapore Cruise Centre fell within the definition of `authority wharf` since they had been built, and were operated, by PSA.

75 The plaintiffs, building on the duties of PSA as set out in the PSA Act, contend that PSA has a duty to provide port facilities, which would include berthing facilities, to the plaintiffs. As members of the public, the plaintiffs are entitled to insist on PSA complying with their statutory duty. They say PSA cannot deny berthing facilities to them unless they have proper reasons in law for doing so. As a body created by statute, PSA is subject to the doctrine of ultra vires, that is to say it can only do what is expressly authorised by or under the PSA Act or such things as are reasonably incidental to what is expressly authorised. As a public body, PSA`s actions are subject to judicial review and the court can intervene in its decisions and/or the implementation of such decisions on grounds that it has acted ultra vires the PSA Act and/or there has been illegality, irrationality or procedural impropriety in the manner in which it

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has made or implemented its decisions. The important limitation here, which the plaintiffs recognise, is that judicial review is confined to a review of the decision making process and does not extend to a review of the decision itself. Even the findings of fact on which a decision is reached are generally not within the scope of the review. This is because the court`s power of judicial review of administrative action is a supervisory and not an appellate jurisdiction. See ***Chan Hiang Leng Colin & Ors v PP*** [1994] 3 SLR 662 and ***R v Secretary of State for the Home Department, ex p Brind*** [1991] 1 AC 696. As STPB is also a body created by statute, its decisions and actions are similarly subject to judicial review on the same basis.

76 **Legal issues arising in connection with judicial review**

77 Bearing in mind the facts of this case and the complaints of the plaintiffs, the issues that have to be determined in the judicial review process here are first, whether PSA and STPB were acting lawfully and within their powers when they announced their respective guidelines on 22 June 1995. This issue involves a consideration of the powers of each organisation, including its ability to set guidelines to be observed by itself and/or third parties, and whether to be lawful such guidelines had to be contained in duly promulgated subsidiary legislation. The decision making process has also to be considered, ie whether there was any error of law or irrationality in the formulation of the guidelines. If these issues are resolved in favour of PSA and/or STPB, the next issue to be considered would be whether the PSA`s action in denying a berth to Nautican can be impugned in that PSA was not acting independently but under instructions from STPB and/or the GSB. The final issue in this regard is whether in making the decision to deny Nautican its berth, PSA acted in breach of the rules of natural justice.

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78 **Legality of the various guidelines**

79 I should make it clear that from hereon when I use the term `guidelines` I am referring to the conditions which the representatives of PSA and STPB read out to the seven local cruise operators who attended the meeting of 22 June 1995 as set out in paras 33 and 34 above. The guidelines were referred to in the documents, the evidence and in argument variously as `conditions`, `guidelines` and `berthing policy`, but their distinguishing characteristic is that although the internal documents of the defendants adduced in court show that they were drafted with some care, after discussion among the members of the committee, as far as the cruise operators were concerned they were not reduced to writing but were simply notified orally. Further, they were never the subject of any subsidiary legislation or written regulations issued by either of the defendants.

80 The first issue is whether PSA had the power to control the use of the berths at the Cruise Centre and what this power extended to. The Schedule, as recited above, empowers PSA to control the use of wharves within the limits of the port. Under reg 36 vessels are prohibited from using berths at authority wharves except with PSA`s permission and such permission must be sought by an application for a berth in PSA`s approved form. The construction which the plaintiffs put on these provisions is that PSA`s powers in relation to the occupation of berths are purely regulatory to ensure the proper physical use of the port and do not empower PSA to issue guidelines which deal with policy and the preferability of one type of cruise business over another.

81 As the plaintiffs read the PSA Act, it imposes a duty on PSA to maintain efficient port services and facilities, which facilities include berthing facilities for all vessels calling into Singapore. Section 9(c) of the PSA Act which states

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that it is PSA`s duty `to promote the use, improvement and development of the port` is relied on by the plaintiffs to buttress their argument that PSA`s duty is to promote the use of the port and by `use` the plaintiffs infer that what is meant is simply physical use and quantum of use. They say that neither s 9 nor s 10 nor any other provision of the PSA Act empowers PSA to issue guidelines to regulate or control gambling activities on the high seas and the regulation of such activities is totally extraneous to PSA`s powers and duties. In announcing the guidelines for the purpose of controlling gambling on the high seas, the plaintiffs contend that PSA has breached its statutory duties to provide and maintain efficient port services and facilities to promote the use of the port.

82 PSA, however, takes a wider view of its duties and abilities at the material time. It argues, and I agree, that its discretion under para 12 of the Schedule and reg 36 was not limited to control of navigation, vessel movements and cargo operations. This is because under s 9 of the PSA Act, PSA was given various specific duties in regard to navigation including regulating it and disseminating navigational information and was also given in separate sub-sections the duties to provide and maintain port services and facilities and to promote the use, improvement and development of the port. As these duties have been differentiated in the legislation, I do not think that PSA`s duty to develop and improve the port and promote its use can be limited to simply the provision of physical services and acts relating to the control of navigation. Those duties must be read more widely than the plaintiffs contend. Further, there is nothing in s 10(1) of the PSA Act or in any other provision of the legislation requiring such limitation to be implied.

83 From the natural and ordinary meaning of the words in para 12 of the Schedule and reg 36, it is clear that PSA has a discretion in deciding which

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vessels can use which berths. In particular, the formulation of reg 36 gives PSA ample power to refuse permission to any vessel to use a berth. The only limitation which has to be read into PSA`s discretion in giving or refusing permission to a cruise vessel to use a berth is the requirement that the discretion must be exercised for the discharge of PSA`s duties under the PSA Act and there must not be any irrationality or procedural impropriety in the exercise of the discretion. Nothing in the governing legislation requires PSA in deciding whether to allocate a berth to a cruise vessel to have regard only to navigational matters or to the physical availability of the berth or to the requirement of filling up as many berths as possible at any time.

84 The plaintiffs relied on the English cases of ***The Guelder Rose*** (1927) 136 LT 226 and ***Pearn v Sargent*** [1973] 2 Lloyd`s Rep 141 and certain passages from ***The Law of Harbours and Pilotage*** (4th Ed) by Douglas and Geen to support their contention that the discretion of PSA under para 12 of the Schedule and reg 36 was limited to controlling navigation, vessel movement and cargo operation. I agree, however, with the submission made on behalf of PSA, that these authorities are not helpful because of the different statutory regimes governing the situations in England and Singapore. The cases turned on the interpretation of the English Harbours, Docks and Piers Clauses Act 1847. The relevant sections of that statute were worded differently from the legislation which is in issue here and, as far as the overall regime was concerned, s 33 of the English Act provided:

> *Harbour, dock and pier to be free to the public on payment of rates.*
>
> *Upon payment of the rates made payable by this and the Special Act, and subject to the other provisions thereof, the harbour, dock and pier shall be open to all persons for the shipping and unshipping of goods, and the embarking and landing of passengers.*

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85 It would be noted from the above that the English scheme in relation to the use of harbours, docks and piers was worded positively and gave the public the right to use the facilities subject to the payment of the prescribed rates. The Singapore scheme is, on the other hand, phrased rather negatively in that reg 36 expressly provides that no vessel shall occupy a berth at a PSA wharf except with PSA`s permission. This form of wording gives PSA a discretion in formulating conditions for the use of the wharves which discretion was not available to the authority which managed the harbours, docks and piers governed by s 33 of the English Act. In this connection, I do not find any merit in the plaintiffs` point that by reason of para 27(a) of PSA`s defence, PSA cannot rely on reg 36. Paragraph 13 of PSA`s defence specifically states that PSA is relying on this regulation and when that defence is read as a whole it is clear that nothing in para 27(a) prejudices para 13.

86 I now turn to the impact of the MPA Act upon the powers and duties of PSA. The plaintiffs submit that this Act, which came into force on 2 February 1996, completely divests PSA of its regulatory functions on matters relating to port services, berthing and denials of berths. Therefore, all denials of berth after 2 February 1996 by PSA based on policy considerations relating to CNW and gambling on the high seas would be illegal.

87 According to its preamble, the MPA Act was passed to establish and incorporate the Maritime and Port Authority of Singapore (`MPA`) and to provide for its functions and powers. Under s 7 of the MPA Act, it is the duty of MPA, among other things, to promote the use, improvement and development of the port and to regulate and control navigation within the port, to provide navigational information and aids, and to exercise licensing and regulatory functions in respect of marine and port services and facilities.

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88 When the MPA Act came into force, s 9 of the PSA Act was amended by removing all references to the regulation of navigation and provision of navigational aids and information. This is because those functions had been transferred to MPA. The PSA Act was not repealed in its entirety and PSA continues to exist and to perform several statutory functions. Of particular relevance to this case is the fact that sub-clauses (a) and (c) of s 9 remain intact and it continues to be the duty of PSA to promote the use, improvement and development of the port. Section 10(1) of the PSA Act and para 12 of the Schedule were not affected either.

89 Regulation 36 also remains in force although s 66 of the PSA Act, the section under which the Regulations were initially promulgated, has been substantially amended by the deletion of several of the sub-paragraphs detailing the matters in respect of which regulations may be made. This is because first, under s 121(2) of the MPA Act, any subsidiary legislation made under the repealed provisions of the PSA Act and in force immediately before 2 February 1996 shall, insofar as it is not inconsistent with the provisions of the MPA Act, continue in force until it is revoked or repealed by subsidiary legislation made under that Act. So far there has been no subsidiary legislation under the MPA Act revoking or repealing reg 36 and that regulation is not inconsistent with any provision of the MPA Act. Secondly, various sub-paragraphs of s 66(1) of the PSA Act dealing with the regulation and use of wharves and docks still remain as part of that section and have not been affected by the repeal of the other sub-paragraphs which are those relating to matters, especially navigation, which are now under the control of MPA. Accordingly, at all material times both before and after the coming into force of the MPA Act, PSA had the power under s 66 of the PSA Act to make regulations governing the use of its berths and the manner in which it would exercise the discretion it had properly given itself to

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grant or refuse permission for cruise vessels to use the berths at the Singapore Cruise Centre.

90 The plaintiffs` next argument is that even if the court accepts that PSA had the power to control the use of its berths, that power had to be exercised through the promulgation of regulations pursuant to s 66 and since the guidelines were never officially promulgated regulations, they were not enforceable and could not be relied upon by PSA to justify the denial of a berth to Nautican. Before I go on to consider this issue I will deal with the position of STPB.

91 It is the plaintiffs` contention that STPB lacks the power to do the things that it did in relation to this action including its participation in the committee and its contribution to the formulation of the guidelines. They also contend that the TPB Act contains a very `restrictive` scheme of things. In fact, the STPB has very wide statutory powers set out in s 14 of the TPB Act. These powers are not limited by any section imposing duties on STPB. The primary function of STPB is to promote tourism for Singapore and consequently it has been conferred by Parliament with powers to:

92 (i) engage in, assist or promote the improvement of facilities for visitors to Singapore and the development of Singapore as a holiday resort: s 14(b);

93 (ii) secure overseas publicity for Singapore`s tourist attractions: s 14(c);

94 (iii) co-ordinate the activities of persons providing services for visitors to Singapore: s 14(d);

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95 (iv) make recommendations to the government in relation to any measures which may be taken with a view to increasing the number of visitors to Singapore: s 14(j);

96 (v) generally do all such matters and things as may be incidental or consequential upon the exercise of its powers or in the discharge of its duties under the TPB Act: s 14(p).

97 Since the cruise industry can be a major tourist industry, the powers granted to STPB under s 14 clearly allowed it: to develop the cruise industry; to form views as to the direction in which this industry would move and how it should develop; to form views as to what was considered desirable for the development of the industry; to take note of what it considered was an adverse development; to form a view as to what it felt was a good image for Singapore as a cruise centre and hub for the region and good for Singapore as a tourist destination; to give advice or make recommendations to other government bodies or statutory boards on matters pertaining to tourism and tourist enterprises; to form a view whether having cruise vessels performing too many CNWs was bad for the development of the cruise industry of Singapore; to form a view as to what should be done to cut down the incidence of CNWs from Singapore and to participate in the committee (as an ad hoc grouping of governmental organisations) and its deliberations on the problem of excessive gambling on CNWs.

98 Section 25 of the TPB Act provides that STPB may, with the approval of the minister, make regulations generally for carrying out the provisions of the TPB Act. Because of this, in relation to STPB too, the plaintiffs argue that any activity on the part of TPB to promote or regulate the cruise industry had to be

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effected through the medium of a properly passed regulation. It should be pointed out here that in relation to the making of the Regulations, the language used both in s 25 of the TPB Act and s 66(1) of the PSA Act is `may, with the approval of the Minister, make resolutions `. The word `may` in this context is permissive and has an empowering rather than a mandatory effect. Neither PSA nor STPB is required by the relevant legislation to pass regulations unless they deem fit.

99 As counsel for STPB pointed out, the plaintiffs` submission that if a statutory corporation like PSA or STPB wished to form a view or a policy or a guideline on the number of CNWs cruise vessels could operate or on the promotion of wholesome oriented activities on cruise ships, then it must do so by way of a duly promulgated regulation, is an astounding one. If this is the way government and statutory boards have to work then everything would come to a grinding halt while policy decisions had to be communicated to the Attorney-General`s Chambers, then drafted into regulations and then the drafts approved by the organisation concerned before being sent on to Parliament and effected by gazette notification. That is not the way the executive arm of any common law country functions.

100 The plaintiffs` submission, in fact, shows a misunderstanding of `executive` or `administrative` acts, and the functions of government or government agencies and the legislature. As explained in para A-011 of ***Judicial Review of Administrative Action*** by de Smith, Woolf and Jowell (5th Ed) at p 1006:

> *A distinction often made between legislative and administrative acts is that between the general and the particular. A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases: an administrative act*

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> *cannot be exactly defined, but it includes the adoption of a policy, the making and issue of a specific direction, and the application of a general rule to a particular case in accordance with the requirements of policy of expediency or administrative practice.*

101 Government policy is regularly effected through quasi autonomous organisations operating more or less at arm`s length from government (ibid at pp 28 and 29).

102 The legislative framework provides that STPB is to engage in assist or promote the improvement of facilities for visitors to Singapore and the development of Singapore as a holiday resort, to secure overseas publicity for the tourist attractions of Singapore and to make recommendations as to measures which would increase the number of visitors to Singapore. However, how and what facilities are to be promoted or improved or what channels or devices are employed to secure overseas publicity for the tourist attraction of Singapore are left to STPB to decide. Which countries STPB targets to publicise Singapore in is policy and an administrative decision left to STPB to decide.

103 Similarly the legislative framework provides that PSA is to provide and maintain adequate and efficient port facilities and services and to promote the use, improvement and development of the port. However, how and what facilities and services are to be promoted or improved and what the best use would be for the port in the context of Singapore as a whole are policy and administrative matters left to PSA to decide and implement in whatever manner is most appropriate in the circumstances.

104 The legal authorities also confirm that STPB and PSA being charged with a discretionary power, albeit within a statutory framework, to carry out their functions and duties, are entitled to adopt a general policy in the exercise

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of their statutory duties and powers without having to pass regulations or by laws for each policy, a fortiori when a policy only deals with a few individual cases of a very special and small segment of the industries within their respective jurisdictions. For example, in ***Re Findlay*** [1985] AC 318 at pp 335-336, Lord Scarman discussing the plaintiffs` challenges to a policy adopted by the English Home Secretary in relation to the release of prisoners on parole, stated:

> *For myself, I have difficulty in understanding how a Secretary of State could properly manage the complexities of his statutory duty without a policy*
>
> *the duty of the Secretary of State in this case is, as I have shown, a very complex one. Indeed the complexities are such that an approach based on a carefully formulated policy could be said to be called for. There is, as I understand the law, nothing to prevent such an approach, where it is appropriate.*
>
> *The legitimacy of adopting a policy in the exercise of an administrative decision has been recognised by the court. In a tribunal case Banks LJ. had this to say,* ***R v Port of London Authority, ex p Kynoch Ltd****. [1919] 1 K.B. 176, 184:*
>
> *`In the present case there is another case to be borne in mind. There are on the one hand cases where a tribunal in the honest exercise of its discretion has adopted a policy, and, without refusing to hear an applicant, intimates to him what its policy is, and that after hearing him it will in accordance with its policy decide against him, unless there is something exceptional in his case. I think counsel for the applicants would admit that, if the policy has been adopted for reasons which the tribunal may legitimately entertain, no objection could be taken to such a course. On the other hand there are cases where a tribunal has passed a rule, or come to a determination, not to hear any application of a particular character by whomsoever made. There is a wide distinction to be drawn between these two classes.`*

105 ***Associated Provincial Picture Houses v Wednesbury Corporation Council of .Civil .Service .Unions. v Minister for the Civil Service Wednesbury Chan Hiang Leng Colin v PP Chan Findlay British Oxygen Co Ltd v Minister of Technology*** The cases show that the adoption of

a general policy by a body exercising an administrative discretion is perfectly valid provided that:

106 (i) the policy is not unreasonable in the special sense given to the term in [1948] 1 KB 176, ie it is not a decision that is so outrageous in its defiance of logic or accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at it or that no reasonable person could have come to such a view: see also [1985] 1 AC 374

107 (ii) in considering unreasonableness in the sense, the courts are not entitled to substitute their views of how the discretion should be exercised with that actually taken: see [1994] 3 SLR 662 nor is unreasonableness established if the courts merely come to the view that such a policy or guideline may not work effectively as another since the courts are not exercising an appellate function in respect of administrative decisions (supra, note 9 at p 414); and the burden of proving that the policy or guideline is illegal or ultra vires is on the plaintiffs: see `s case;

108 (iii) they are made known to the persons so affected; and

109 (iv) neither PSA nor STPB fetters its discretion in the future and is prepared to hear out individual cases or is prepared to deal with exceptional cases: see `s case and also [1971] AC 610.

110 **Were the guidelines unreasonable?**

111 Having decided that PSA had the power to formulate a policy on the use of the berths at the Cruise Centre and that STPB had the power to formulate policies relating to the cruise industry as a tourist related industry, the next issue

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which arises is whether the policies that they arrived at as evidenced by the guidelines can be challenged on the basis that they were unreasonable in the ***Wednesbury*** sense or that in formulating them the defendants took into account irrelevant matters or disregarded relevant matters.

112 PSA`s duty under s 9(c) of the PSA Act is to promote the use, improvement and development of the port. I have said that this duty has to be construed widely and that PSA would not be doing its duty if the sole aim of its policies was to increase the amount of tonnage which uses the port and the amount of revenue that it could collect from the port`s services and facilities. PSA is entitled when considering the promotion of the port to have regard to wider considerations such as the promotion of desirable businesses and the restriction of undesirable businesses. In deciding what businesses are desirable and what are not, PSA is entitled to take into account the views of other government bodies like the police.

113 It was clear from the evidence that in relation to the cruise industry, PSA`s objective from the outset was to develop the port into a cruise hub for multi-destination cruising in the ASEAN region with major cruise operators positioning their cruise vessels here. As the industry developed, however, PSA became concerned that the prevalence of undesirable activities in that industry would impede its efforts at promoting and developing the port as a cruise hub. The term `undesirable activities` refers to gambling, loan sharking and prostitution on cruise ships on the high seas. The purpose of the guidelines was to curtail the undesirable activities.

114 Mrs Tan`s evidence was that PSA`s concerns were based on the following factors:

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115 (i) That the undesirable activities would tarnish the image and reputation of the port as it would become known as a hub for gambling cruises. This would discourage major cruise operators from positioning their vessels here as they would not be convinced that there is a potential market for their wholesome family oriented cruise products.

116 (ii) Mrs Tan`s information was that major cruise operators are discouraged from using Singapore as a cruise hub by the information they are getting about gambling activities taking place on vessels plying from Singapore. This is because such operators are unable to compete in a market where others offer low basic cruise fares to attract passengers and rely on high gambling revenue for profit.

117 (iii) If Singapore becomes a hub for gambling cruises, habitual gamblers will form a high proportion of passengers taking cruises from Singapore. This will deter other people, who form a potentially larger market of passengers for cruises than habitual gamblers, from taking cruises from Singapore.

118 According to Mrs Tan, PSA decided that to protect and promote the image and reputation of the port and to attract major cruise operators to use the port as a cruise hub, it would have to curtail the undesirable activities, at least in relation to their connection with Singapore. At the same time it wished to promote more multi-destination cruises with wholesome family activities from Singapore because this would help attract passengers from mature cruise markets such as America and Europe to join cruises in this region. This in turn would bring major cruise operators to our port.

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119 The evidence, both oral and documentary, which PSA presented confirmed that the guidelines were formulated and adopted by PSA for the foregoing reasons. It was PSA`s submission that in formulating and adopting the guidelines especially the 30% limit on CNWs emanating from Singapore, it took into account the following matters:

120 (i) that the undesirable activities occurred mainly on cruise vessels engaged in CNWs from Singapore. PSA`s belief that this was so was based on press reports, articles in trade journals, feedback from members of the public and feedback from STPB and GSB.

121 (ii) to allow CNWs to proliferate would be contrary to PSA`s objective of having more multi-destination cruises from Singapore.

122 (iii) a restriction of the number of CNWs each cruise could undertake would, it was hoped, both curtail the undesirable activities and, at the same time, promote more multi-destination cruises.

123 (iv) a certain number of CNWs would be beneficial for three reasons: first, as a filler to minimise idle time of cruise vessels in between destination cruises; secondly to introduce passengers from Singapore and the region who had never cruised to the cruise experience; and finally, to cater for company charters.

124 (v) since the local cruise industry was at an infant stage to completely prohibit CNWs would stifle its growth.

125 (vi) the 30% limit on CNWs was not, PSA submitted, an arbitrary figure but was based on the following factors:

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126 (a) as it was PSA`s objective to promote more multi-destination cruises, the number of multi-destination cruises undertaken by any cruise vessel from Singapore would have to be more than its CNWs from here;

127 (b) in PSA`s view a ratio of two destination cruise departure to one CNW departure from Singapore per week was a fair ratio to start with in order to provide for the legitimate CNWs;

128 (c) the 2:1 ratio which worked out to about 30% of CNW departures over a three month period was a ratio which had been achieved by the cruise vessel Song of Flower;

129 (vii) finally, PSA and STPB had met with cruise operators to discuss the 30% limit and these operators had, generally, been agreeable to that limit.

130 In his evidence Mr Purwadi suggested that the way in which PSA had calculated the 30% limit on CNWs was unfair. In his view, a fairer calculation would be based on the ratio of the number of days on which a cruise vessel was actually engaged on CNWs to the number of days on which it was actually engaged on destination cruises (the daily basis). The basis adopted by PSA, the call basis, was on the ratio of the number of CNW departures from Singapore to the number of destination cruise departures from Singapore. Its justification for adopting the call basis, according to Mrs Tan, was:

131 (i) if the daily basis is used then it would be possible for a cruise vessel to depart from Singapore on a single destination cruise to say Penang, and remain there for 30 days and thereafter claim to be entitled to undertake 10 CNWs from Singapore;

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132 (ii) PSA would not know what activities the cruise vessel would be engaged in during the 30 days during which it was away from Singapore but would still have to allow that vessel 10 CNW departures from Singapore for undertaking that single destination cruise. The result would be contrary to PSA`s objective of promoting more multi-destination cruises from Singapore;

133 (iii) the call basis would ensure that each cruise vessel maintained a 2:1 ratio of destination cruise departures to CNW departures from Singapore per week and therefore would serve the aim of promoting more multi-destination cruises from Singapore.

134 In my judgment PSA`s reasons do stand up to scrutiny. In any event, bearing the circumstances in mind, it cannot be seriously contended that the call basis is so outrageous in its defiance of logic that no sensible person in the position of PSA could have arrived at it.

135 The main basis on which the plaintiffs attack the formulation of the guidelines is their contention that an irrelevant factor was taken into account when the guidelines was drawn up. They point out that it is clear from PSA`s defence and from the evidence given by Mrs Tan that PSA viewed the activities of gambling, money-lending and prostitution even when conducted on the high seas, as `illegal activities`. Part of PSA`s pleaded position is because these activities are illegal, they would tarnish the image of Singapore, which would adversely affect PSA`s effort to develop and promote the port. Further, STPB also considered that gambling on board cruise ships was illegal. In his affidavit of evidence in chief, Mr Lee stated that STPB`s concerns relating to undesirable developments on board cruise vessels culminated suggestions by the CID in February 1995 that a multi-agency approach be taken by STPB, PSA and the

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CID `to curb illegal gambling activities on board cruise ships`. He further states `to this end, conditions were proposed and agreed upon by the three bodies as to the role to be performed by each body in curbing illegal gambling activities on board cruise ships`.

136 Mrs Tan confirmed that the GSB had told her that the undesirable activities were illegal and she accepted this as being the correct position. She also stated that based on what GSB had told her, she believed that the activities would be illegal so long as they were undertaken by Singaporeans who had boarded the cruise ship in Singapore. Mrs Tan took GSB`s communications as being official communicates that these activities would be illegal even when conducted in international waters. She also admitted that the perception that the activities were illegal was one of the considerations for PSA when it worked out its policy on berthing.

137 The plaintiffs point out that no evidence was introduced to establish that when gambling, prostitution and money-lending take place on vessels cruising on the high seas, these activities are illegal under Singapore law per se. Neither was any evidence introduced to establish that such activities undertaken on the high seas by Singaporean passengers on cruise ships originating from Singapore are illegal. That being the case, neither PSA nor STPB was able to establish any legal basis for its belief that the undesirable activities are also illegal and that to allow such illegal activities to continue would tarnish the image of the Port of Singapore. Accordingly, the plaintiffs argue that whatever the defendants may say were the other factors taken into account in formulating the guidelines, the main consideration which swayed the defendants and led to their implementation was their perception that the activities were illegal. As this perception had no basis in fact, it was an irrelevant factor and thus there was a

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serious defect in the decision making process which must affect the validity of the decision made.

138 I have considered the plaintiffs` arguments on this issue with some care. It cannot be denied that at the time the guidelines were drawn up both defendants considered, on the advice of the GSB, a government body which could reasonably be presumed to know the law on such matters, that gambling on the high seas by Singaporeans who had boarded a cruise vessel in Singapore was illegal. Neither can the defendants deny that they were influenced to some extent by this belief. The point is whether that belief was the substantial reason for the implementation of the guidelines. The evidence is that it was not. It was one of the factors but not the only one and certainly not the deciding factor. If it had been a really substantial factor, PSA would, I believe, have banned CNWs altogether as requested by GSB instead of allowing a 30% quota. I accept the evidence of the defendants as given above that various considerations went into the formulation of the guidelines in general and the 30% limit in particular and, having regard to those considerations and the objectives of both PSA and STPB in relation to the development of the cruise industry in Singapore, I cannot come to the conclusion that the guidelines are so irrational and outrageous in their defiance of logic that, even on the basis that the undesirable activities were perfectly legal, no reasonable authority would ever have drawn them up.

139 The fact remains that howsoever legal the activities might have been the defendants had grounds for their firm belief that to allow the activities to continue unchecked would be counterproductive to the declared aims of the defendants in promoting the development of the cruise industry in Singapore and would give the Port of Singapore an unenviable reputation, to say the least, in international cruise circles. The defendants` views on the undesirability of

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allowing gambling cruises to proliferate were not formed on the basis of any belief engendered by GSB that gambling in international waters was illegal. The evidence shows that as far back as in the first year of operation of the Singapore Cruise Centre, PSA had noted the appearance of gambling cruises and had formed the view that Singapore`s image as a cruise hub could be tainted, and PSA`s objective of developing the industry could be stymied, if Singapore was associated with gambling cruises.

140 I should also point out that although Mrs Tan was pressed during cross-examination to admit that the basis for the introduction of a quota on CNWs was excessive illegal activities, irrespective of whether they were conducted within the territorial waters of Singapore or on the high seas, she refuted the suggestion firmly. She asserted, and I believed, that the basis of the quota system was the curbing of undesirable activities occurring on cruises undertaken by cruise ships which use the port of Singapore. Later, in her re-examination, she confirmed that the reason for the quota decision was the prevalence of the undesirable activities and not their illegal nature and that even if she were informed now that the activities were legal, the quota would remain. The evidence adduced substantiates this. PSA`s concerns had been indicated as far back as April 1993 in a management paper which was produced to explain the need for guidelines for the cruise industry.

141 The plaintiffs also attacked the guidelines on the basis that they had been drawn up and implemented by a committee that had no existence at law and therefore were invalid. This is a non issue for two reasons. First, there is nothing unlawful or illegal or even intrinsically wrong in PSA and/or STPB and/or the GSB setting up an ad hoc committee to discuss matters of relevance to their respective jurisdictions as long as each organisation makes its own decisions

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within the ambit of its own statutory powers. The evidence is that the organisations first got together in April 1993 to deal with the problem of the Regent Spirit. More than a year later, as reports of gambling activities continued, the GSB contacted the other two bodies again and the ad hoc committee was formed to exchange ideas and adopt a `multi-agency` approach to consider and deal with a situation which all three, for varying reasons, considered to be of concern to them. The three organisations discussed matters and exchanged information and opinions and by consensus arrived at some conclusions as to the best course of action to be adopted by each body which was within its respective powers and jurisdiction.

142 Secondly, the committee did not act as an entity in itself. Enforcement and appropriate action to be taken was, as the evidence establishes, left to each organisation to implement what was within its respective powers. There was no chairman at the 22 June 1995 meeting, as one would expect if the committee had functioned as an entity. There was only a moderator and each party read out the guidelines which it would itself be adopting and implementing. The plaintiffs` own evidence confirmed the defendants` accounts of what occurred at the meeting.

143 I am satisfied from the evidence that each of the defendants had the final say on what its role would be and on the form the guidelines it would implement would take. In relation to each of PSA and STPB the guidelines were self-initiated and although all the members of the committee discussed the various drafts no views were imposed by any one, or indeed by the committee as an entity, on any other member. Mr Lee testified that he would not presume to tell or order PSA to deny or grant a berth to any vessel and Mrs Tan, for her part,

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said that even if the committee as an entity came to a decision, it could only be implemented if approved by her superior officer in PSA.

144 Other considerations relating to adoption of a general policy

145 As I mentioned earlier one of the other conditions for the validity of the adoption of a general policy by a body exercising an administrative discretion is that that policy must be made known to the persons affected by it. In this case there is overwhelming evidence that the guidelines were made known to and understood by all persons who could possibly be affected by them although they were announced orally and no written formulation was given to anyone prior to January 1996.

146 The plaintiffs themselves confirmed that they knew as early as 6 October 1994 that PSA was encouraging cruise operators to adopt a 30% limit for their CNWs. Mr Purwadi admitted this in court. Further, at the time STPB informed all cruise operators of the proposed meeting on 22 June 1995, the plaintiffs were aware that at this meeting guidelines were going to be introduced which would affect their cruising itineraries. As the evidence demonstrated, all affected cruise operators attended that meeting and heard the announcement of the guidelines. They were then asked for their comments and questions were taken and answered. Mr Woon agreed that he was given an opportunity to give the plaintiffs` comments but did not do so as he wished to refer the matter to his senior management. He confirmed, however, that at the end of the meeting he was clear as to what the guidelines were all about. Mr Purwadi also confirmed that he was clear as well as to what the 30% CNW restriction was.

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147 The next consideration is whether there was any fettering of the administrative discretion vested in the defendants. The first point here can be dealt with briefly. It is obvious from the evidence that the guidelines were not rigidly enforced. From the very beginning PSA made it clear that it was willing to consider representations from cruise operators and make exceptions to the 30% restriction if the circumstances so required. The cruise operators were asked to contact STPB which in turn put up their cases before the committee. The evidence shows that a number of concessions were made and that the guidelines were applied in a flexible manner. Exceptional cases were given due consideration.

148 The second point here is the plaintiffs` contention that vis a vis PSA the guidelines are illegal in that PSA has purported to fetter its own discretion by agreeing to take instructions from STPB and GSB on the denial of berths to cruise ships. This challenge is based on condition (iv) which reads:

> *The Port of Singapore Authority will refuse allocation of berth to a vessel if the Gambling Suppression Branch, CID and Singapore Tourist Promotion Board so (sic) determine that such action is necessary.*

149 The plaintiffs are correct in their submission that PSA as the authority entrusted with the control over berths and, accordingly, the discretion as to how such berths are to be allocated, has also the duty to exercise that discretion itself after considering various relevant factors. It cannot abrogate this responsibility by taking orders from other statutory boards unless it is under a legal duty to do so. PSA did not contend that it was under any legal duty to obey orders from either GSB or STPB in regard to the allocation or denial of berths in the cruise centre. I must therefore agree with the plaintiffs` submission that in so far as condition (iv) appears to be a direction by PSA to itself to take orders from

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either GSB or STPB to deny berths to cruise vessels it is a fetter on the proper exercise by PSA of its discretion and is therefore invalid.

150 I do not agree, however, that condition (iv) in itself invalidates all the guidelines as they are capable of being implemented without reference at all to condition (iv). Whilst theoretically PSA has agreed to take orders from GSB and STPB, whether it in fact does so is another matter. If PSA`s decision to deny Nautican a berth was made on the basis of condition (iv), ie that it had been ordered by STPB and GSB to do so, then that decision would be invalid as PSA had not exercised its discretion in coming to the decision. If, however, the decision was PSA`s alone, then condition (iv) would be irrelevant and would not operate to invalidate it. This brings me to the next issue which relates to the manner in which Nautican was denied a berth.

151 Did PSA exercise its discretion in refusing Nautican a berth?

152 It is the plaintiffs` case that PSA did not exercise its discretion itself not only with regard to the denial of a berth to Nautican on 11 November 1995 but also in all subsequent decisions. The basis of this latter allegation is that after 11 November 1995 PSA continued to seek recommendations from STPB and GSB although there was no formal meeting of the committee after the interim injunction was issued. The plaintiffs do not contend, however, that PSA acted at the behest of GSB. Their case is that it acted on the directions of Mr Lee of the STPB. This allegation calls for a detailed examination of the evidence.

153 The guidelines were announced on 22 June 1995. As Nautican was already operating from Singapore, under the guidelines as announced, it would have to observe the 30% CNW limit as from 1 October 1995 unless a concession

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was granted. The defendants had made it clear to the cruise operators at the June meeting that they were prepared to consider representations from the operators as to problems that the guidelines would cause them.

154 On 4 July 1995, Mr Purwadi met Mr Lee. Here was a perfect opportunity for the plaintiffs to inform the defendants of the difficulties caused by the guidelines. According to Mr Purwadi, he took this opportunity and told Mr Lee and Mr Poon about his difficulties, his Indonesian contracts and his contractual obligations. Mr Lee`s reply was that he would look into it and explain the situation to PSA. Thereafter Mr Purwadi was waiting for a reply and for that reason that the plaintiffs did nothing further until late September. Instead they submitted an ANOPSS form under which Nautican would carry on as usual up to the end of 1995. STPB`s version, on the other hand, is that no indication was given by Mr Purwadi of the existence of the Indonesian contracts which the plaintiffs were obliged to perform. All that happened was that Mr Lee told Mr Purwadi that the plaintiffs were free to write in to make representations regarding the 30% CNW limit and that any representations made would be given due consideration.

155 Mr Purwadi had also claimed that before he chartered Nautican he had met Mr Pang Seng Joon, Mr Robert Soo and Mr Michael Loh from PSA at PSA`s office. During this meeting, Mr Purwadi informed PSA of the plaintiffs` plans to charter Nautican and operate her as a cruise ship from Singapore. He showed the PSA officers a copy of the plaintiffs` brochure and told them that his sailing schedule had two CNWs a week. The PSA officers told him specifically that his schedule was all right.

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156 I am not able to accept Mr Purwadi`s evidence on what occurred either at the meeting with PSA in 1994 or at the July 1995 meeting with STPB. His assertions do not accord with the way he actually behaved. On 27 September 1995, PSA sent the plaintiffs a letter asking them to amend their sailing schedule as otherwise it would not be able to allocate a berth for CNW departures after 21 October 1995. Instead of replying immediately to say first, that he had been assured in 1994 that two CNWs a week were perfectly in order and, secondly, that he had made representations to Mr Lee on which he was awaiting a reply, Mr Purwadi wrote to PSA only on 4 October 1995. His letter simply stated that the plaintiffs were surprised by PSA`s communication and wanted to know whether it was a PSA or STPB imposition. In none of the subsequent correspondence was there any mention of the two meetings and their purported contents.

157 Further, in his evidence Mr Purwadi maintained that he was very surprised and shocked at the imposition of the guidelines. Under cross-examination, however, he admitted that he had known about the meeting of 6 October 1994 between PSA and Daniel Chui and the restriction that was told to the latter because it affected the charter and that he had raised the charter and the restriction with Mr Chui shortly after that meeting. He admitted also that he had been briefed quite comprehensively by his employees about the June 1995 meeting and that after the 4 July meeting, PSA`s Hudson Lim had often asked him to amend his schedule.

158 I find it incredible that after all the above had happened, Mr Purwadi could insist that he was surprised and shocked at the guidelines. What is even more telling is that no mention or protest was made in any of the correspondence of the incidents referred to above or the intrinsic unfairness of PSA`s going back

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on its word. All that Mr Purwadi could give as an explanation for his non-action was that since the assurances had been given to him verbally, it was not good for him to protest in writing. This explanation cannot be believed because after PSA`s `ultimatum` he generated voluminous correspondence in the course of his protests and requests that Nautican be allowed to follow its original schedule.

159 In my judgment, the first time that the plaintiffs informed the defendants of their alleged contractual obligations to Indonesian parties was by their letter of 4 October 1995 which stated `We must disclose that we have entered into contracts with parties in Indonesia such that if we vary the current position, our company may be exposed to legal suits.` The use of the words `we must disclose` is significant. Those words categorically imply that the information is being given for the first time. Further, the plaintiffs merely asserted the fact of existing contractual obligations. No details whatsoever of the same were given to the defendants, even in the plaintiffs` follow up letter of 9 October 1995.

160 Notwithstanding the dearth of information and lack of substantiating documents, the defendants decided to re-consider the position of the plaintiffs. A committee meeting was held on 12 October 1995 and, after considering the plaintiffs` appeal, the committee decided to grant the plaintiffs the 50% CNW concession for the period from October to December 1995. This concession, which was the highest given to any of the cruise operators, was made on the basis of the alleged Indonesian contracts. I find that the decision of the committee was a consensual one made by the representatives of all three parties. It is pertinent to note that Mr Lee was not present at the meeting and that STPB was represented by Mr Liow who only advised Mr Lee of the concession after the latter`s return from his trip abroad. There is no evidence to support any

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contention that PSA in acceding to the concession was acting under the direction of STPB or that it did not come to its decision on the point on an independent basis.

161 The plaintiffs, as stated earlier, were not satisfied with the concession and wrote numerous letters asking for the original position to be restored. Among these was the letter of 20 October 1995 which was accompanied by a five page list of `Points` in which the plaintiffs set out all the arguments which they wished to put forward. However, no fresh facts were disclosed in that document. The plaintiffs then retained solicitors and requested a meeting. Mr Lee acceded to the request and met Mr Manjit Singh and Mr Samuel Chacko on 28 October 1995. He explained to them the reasons for the policy and Mr Singh asked for a ten-day grace period to go to Jakarta to explain matters to the Indonesian parties. Mr Lee`s evidence, which was unchallenged, was that he was prepared to support and to agree to this but that he had to check with PSA and GSB. If Mr Lee were indeed directing the actions of the committee as the plaintiffs contended, he would not have indicated the necessity of consulting the other two parties.

162 In fact, the evidence shows that after meeting Mr Manjit Singh, Mr Lee contacted Mr Soo of PSA and recommended that the ten-day extension be granted to the plaintiffs. Mr Soo accepted Mr Lee`s recommendation and PSA`s agreement to it is shown in the documents. The decision to grant the extension was not made unilaterally by Mr Lee or STPB. The extension was given with the express agreement of PSA upon recommendation by STPB.

163 The evidence also shows that after 12 October 1995 Mr Lee was not directing matters to deny the plaintiffs the opportunity to be heard. Instead,

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whenever the plaintiffs` requests for an opportunity to meet were turned down, those decisions were based on telephone calls between the committee members to decide if it was necessary to meet the plaintiffs. Mr Lee never signed any letter as chairman of the committee and although there is one letter where the author or person sending it is stated as `for Chairman, Cruise Review Committee`, that letter emanated from PSA and the drafter could not have considered Mr Lee as the chairman since the letter was copied to him.

164 The plaintiffs made something of the fact that they were told to write in to STPB if they had any representations for the committee`s consideration. PSA`s explanation for this, as given by Mrs Tan, was that letters were to be sent to STPB not because Mr Lee was in charge but because any evaluation of cruise products fell within the expertise of STPB. PSA considered its own expertise to lie more with the infrastructure of the cruise centre. STPB would evaluate the cruise product first and the committee would then consider the matter. I accept PSA`s explanation as the documentation shows that from very early on PSA had sought the advice and expertise of STPB in developing the cruise industry since STPB had the experience and contacts in tourist related businesses.

165 The plaintiffs made several requests in October 1995 for a meeting with the committee to put forward their position. The committee did not accept any of these requests. As far as requests made before 12 October were concerned, the view taken by the committee was that since the plaintiffs` representatives had already met PSA on 28 September 1995 and the committee had decided to meet on 12 October 1995 to discuss the plaintiffs` representations, there was no need for a meeting with the plaintiffs` representatives. After the decision of 12 October 1995, the committee decided not to meet the plaintiffs since they had not put forward any new points for consideration. The evidence before the court

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supports this conclusion. In deciding to increase the CNW quota to 50%, the committee had acted on the basis of the information provided by the plaintiffs that their contractual obligations committed them to the schedule already submitted (ie 66% CNW). There was nothing in the subsequent correspondence which significantly added to this information. The plaintiffs had no other reasons to support their request that the 30% guidelines should not be applied to them. When I asked Mr Purwadi what other reasons he had in mind at that time to persuade PSA to change its mind, he said he could not remember what other reasons he had had. If there had in fact been other reasons, it is inconceivable that Mr Purwadi could have forgotten them.

166 In these circumstances, the committee was not obliged to re-consider the same matters on several occasions especially since there were no fresh facts justifying all the consideration. See ***R v Shropshire Health Authority & Ors, ex p Duffus*** (***The Times*** , 16 August 1989). This case makes it clear that an administrative authority is under no duty to consider the same matter on several occasions based on the same set of facts. To require repeated re-consideration would endanger the administrative process by rendering it unworkable and the body is only obliged to re-consider its decision if there is new or different material to support such a request.

167 By 6 November 1995, the ten-day extension had expired. The plaintiffs did not amend their schedule to comply with the 30% guideline. Neither did they nor their solicitors inform the defendants of the outcome of their meeting with the Indonesian parties. At that time Nautican`s next call here was scheduled for 11 November 1995.

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168 On 6 November itself, PSA wrote to STPB informing the latter that no amended schedule had been submitted by the plaintiffs and asking for STPB`s concurrence to deny Nautican a berth for her CNW voyages from Saturday, 11 November onwards. The next morning, Mr Tan Hock Lye, a deputy director (commercial) of the PSA, to whom Mrs Tan reported, discussed the matter with her and made the decision to refuse permission for Nautican to use the cruise berths thereafter. Mr Liow of STPB spoke with Mrs Tan later that morning and was told of Mr Tan Hock Lye`s decision. Mrs Tan then told Mr Liow that since the plaintiffs had contacted STPB on the matter, it would be preferable for them to convey PSA`s decision to the plaintiffs. This resulted in STPB`s letter of 7 November to the plaintiffs` solicitors informing them that PSA would be denying berthing rights to Nautican on 11 November 1995. The letter asked the solicitors to `convey PSA`s decision` to the plaintiffs so that the necessary arrangements would be made. On 10 November PSA cancelled the berth applications of Nautican with effect from 11 November 1995.

169 Having considered the evidence, I am satisfied that the decision to deny Nautican a berth on 11 November 1995 was made by PSA itself. Whilst it had asked STPB for its concurrence in that decision, it did not act under STPB`s direction and made the decision on its own account based on the facts available to it as at that date. STPB itself recognised that it had not been the deciding body as the reference in its letter to `PSA`s decision` clearly indicates.

170 The effect of PSA`s decision was negated by the injunction which I granted. In compliance with that injunction order, Nautican was granted a berth on 11 November and thereafter until 4 December 1995 when I discharged the injunction. On 5 December 1995, PSA granted the plaintiffs a two-week grace period so as to give them some time to make appropriate arrangements

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following the discharge of the injunction. Nautican was allowed to maintain its berth applications as originally submitted for berths for CNW until 18 December 1995.

171 There is no evidence that STPB or the GSB were in any way involved in the granting of this grace period. Neither is there any evidence to suggest that either of these parties directed PSA to deny a berth to Nautican after 18 December. I was told in court, and I believe, that the committee stopped all their meetings in relation to CNWs following the injunction. Whilst the evidence also was that PSA officers continued to speak and to write to STPB and/or GSB thereafter, this does not mean that the decisions to grant the grace period and to thereafter deny the berth were decisions made by anyone other than PSA itself. In court, Mr Lee stated that STPB played no part in the granting of the two week grace period. He also confirmed that it was not involved in any of the subsequent decisions to refuse to allow Nautican to use the cruise berths thereafter. I accept his testimony.

172 Since 2 January 1996, the guidelines have, as far as PSA is concerned, been incorporated in the Singapore Cruise Centre Circular No. 1 of 1996. This recasts the guidelines in the manner set out in full in para 53 above. A comparison between the contents of the Circular and the original guidelines shows that condition (iv) has been dropped and that the Circular contains the express provision that no cruise vessel will be allowed any berth without the express written consent of PSA (para 1(b) of the Circular). Also under para 1(f), PSA states that it may revise the guidelines at any time if it deems appropriate and para 1(g) is a catch-all paragraph stating that the guidelines are without prejudice to PSA`s rights to refuse to provide berthing facilities to any cruise vessel for any other reason it deems appropriate.

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173 The plaintiffs criticise the inclusion of para 1(b) on the basis that no equivalent power can be found in PSA Act or the Regulations. They say that by virtue of para 1(b), PSA has arrogated to itself a power which Parliament has not given it in the Act. Thus, para 1(b) is itself ultra vires and would affect the whole of the Circular. Also the effect of paras 1(f) and 1(g) is to say that PSA has additional powers which allows it to revise Circular No 1 of 1996 and which allows them to refuse berthing facilities for reasons which PSA in its sole and absolute discretion deems proper. The plaintiffs contend that this cannot be right as PSA does not have such power and the Circular cannot to allocate to PSA more powers than provided for under the PSA Act.

174 I do not accept the plaintiffs` criticisms of the Circular. In substance, PSA`s berthing policy as set out in the guidelines orally announced on 22 June 1995 has been reproduced in written form in the Circular. PSA has, however, taken the opportunity to rescind condition (iv) which, as I have pointed out, is not a valid provision since PSA cannot fetter its own discretion. In my judgment, para 1(b) of the Circular is simply declaratory of the power which PSA has under the PSA Act and the Regulations. As regards paras 1(f) and 1(g), these were necessitated by the fact that the guidelines had been reduced to writing and therefore had assumed a more rigid form. The two new paragraphs serve as reminders that the guidelines are subject to change and that PSA`s discretion cannot be restricted by the guidelines though, of course, if PSA was going to deny a berth for other reasons, it would have to be able to justify such denial if and when challenged.

175 In my judgment, the Circular cannot be attacked on the basis of ultra vires. Further, in view of the contents of the Circular, it is clear that as from 2 January 1996, decisions on the allocation and denial of berths to cruise ships

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were made by PSA itself and that even the spectre of control being exercised by either STPB or GSB had been completely dissipated. In fact, there is no evidence that after its issue the decision to continue denying Nautican a berth until it complied with the CNW limit was made by anyone other than PSA.

176 Was there a breach of natural justice by PSA and was Nautican treated unfairly?

177 The first allegation which the plaintiffs made in this connection was that the 30% restriction on CNWs was incapable of being accurately ascertained or verified and that its ambit, applicability, interpretation and enforcement was uncertain. This contention was not supported by the evidence. As stated earlier, the plaintiffs` own witnesses confirmed in court that after the meeting of 22 June 1995, they understood the terms of the 30% guideline and the restriction on berthing allocations for CNWs in excess of that limit and how these guidelines would affect the business of the plaintiffs. Further, prior to the filing of the statement of claim, the plaintiffs in their correspondence with the defendants did not express any uncertainty as to the terms of the guidelines or their extent and effect.

178 The second allegation in this connection is that the plaintiffs were denied the right to be heard. In this connection it is correct that the plaintiffs were never given the opportunity to appear personally before a meeting of the committee to present their case. The evidence as a whole, however, shows that the plaintiffs had, on separate occasions, meetings with both PSA and STPB personnel on the issue of the guidelines and also had telephone conversations with these officers on the same matter. Additionally, the plaintiffs submitted several letters on their position. They had many opportunities to make both written and oral

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representations to the defendants starting from the meeting of 22 June 1995 itself. The 4 July meeting at STPB was another such opportunity which Mr Purwadi could have exploited but did not. Then there was a meeting at the PSA on 28 September 1995 between the plaintiffs` representatives and PSA personnel. At these three meetings, however, no mention was made of the Indonesian contracts and why the CNW restriction should not be applied to the plaintiffs.

179 As I have stated earlier, there was no duty on the committee to accede to the plaintiffs` repeated requests for an opportunity to personally present their case before the committee since there was no evidence that at such a meeting anything new would be tendered and the committee had already considered the plaintiffs` arguments. There was in my view no denial of natural justice by reason of the committee`s refusal to entertain personal representations from the plaintiffs.

180 The plaintiffs have also claimed in the statement of claim that PSA decided to deny berthing facilities to Nautican without regard to the merits of the plaintiffs` case and took into account irrelevant considerations when coming to that decision. They suggested that there was no direct evidence before the court that there were any illegal activities taking place on Nautican in Singapore and therefore it was not correct for PSA to apply the guidelines to their vessel. In closing, the plaintiffs asserted that the decision to deny berthing facilities was, in any event, so unreasonable that no reasonable person could have come to it.

181 The evidence shows, however, that the guidelines had been adopted by PSA as a general policy in order to guide itself in the exercise of its discretion

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in the allocation and denial of berthing facilities at the Singapore Cruise Centre. As the guidelines formed a general policy, PSA was entitled to apply them across the board to all cruise operators and cruise vessels. It was not necessary for PSA to satisfy itself that illegal activities were taking place on board Nautican before applying the CNW limit to that vessel. It was sufficient to justify PSA`s decision that Nautican`s schedule as proposed by the plaintiffs would have meant that more than 50% of its voyages from Singapore would have been CNWs. There was nothing unfair in PSA applying the guidelines to Nautican once all representations made had been given due consideration.

182 The plaintiffs suggested that there was no evidence before the court that the predominant activities on board Nautican were gambling or other undesirable activities and, given that PSA had stated that the main aim of the guidelines was to curb such undesirable activities on board cruise ships, it was wrong to apply the 30% CNW restriction to Nautican. The suggestion is not sustainable. Once the guidelines had been adopted on a rational basis, as they were, PSA was entitled to apply them across the board to CNWs carried out by all cruise ships and irrespective of whether in any particular case the cruise ship concerned did not operate a casino. That latter fact would only be relevant to the question whether an exception to the application of the 30% restriction should be made to the vessel concerned.

183 If the plaintiffs were contending that they should have been exempted entirely from the application of the restriction because they were not a gambling ship, then it was up to them to provide PSA with material and reasons to support this. The only factor which the plaintiffs relied on to support their request for more CNWs was their alleged contracts with the Indonesian parties. They did not contend, either directly to PSA or before me, that no gambling or hardly any

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gambling took place on board Nautican so that it would be unfair to restrict their CNWs. As the evidence suggests strongly that gambling was an important activity, if not the main activity, on board the vessel when it carried out a CNW, the plaintiffs were probably in no position to make such an argument.

184 The weekly sailing schedule of Nautican was as follows:

185 (i) the vessel would leave Jakarta on Friday morning and arrive in Singapore on Saturday evening;

186 (ii) on Saturday evening, it would leave on a CNW after dinner and return to Singapore on the following Sunday morning;

187 (iii) it would leave on another CNW on Sunday evening and return to Singapore on the following Monday morning;

188 (iv) it would leave for Jakarta on Monday morning and arrive in Jakarta late Tuesday morning.

189 This schedule makes it clear that all Nautican`s CNWs were overnight cruises. It is difficult to imagine what activity other than gambling could have attracted the passengers to a CNW cruise on Nautican when nearly the entire cruise took place at night. The passengers might possibly have been there to watch a movie, eat, or enjoy themselves in the karaoke lounge or disco but these were all activities which they could equally have enjoyed on shore without the nuisance of having to board a vessel with their passports and without paying any cabin charges. It appeared to me that the main attraction for such passengers had to be the gambling facilities on board which were not available in Singapore.

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190 Further, as the evidence showed, more passengers boarded the vessel for a CNW than could be properly accommodated in Nautican`s cabins. The cabin allocation documents for the CNW voyage on 11 November 1995 shows that there were 27 passengers who were not allocated any cabins at all. Further, there were instances where more than three passengers were allocated to a single cabin and some cabins even had up to seven or eight passengers allocated to them. This was despite Mr Purwadi`s testimony that usually the cabins are only able to accommodate two persons and that he would be surprised if there were more than four or five passengers in a cabin.

191 Mr Purwadi`s initial explanation for the over-allocation of passengers to a cabin was that it was because those persons may have been members of the same family. The manifest belied his explanation. For example, cabin no. 231 had two Thai females, one Thai male, two Singaporean males and one Chinese female allocated to it. When this was pointed out, Mr Purwadi suggested that there had been a mistake by his counter staff as they sometimes allocated passengers to cabins there were already occupied. He explained that the cabin allocation would be sorted out once the passengers were on board. This explanation was not credible given that the manifest showed many similar mistakes which would have taken hours to rectify since there were more than 500 passengers on board that evening. There would be chaos if so many passengers needed their cabins sorted out after they boarded and, since the CNWs were overnight cruises, if the explanation were true it would mean that many passengers would be without cabins for a greater part of the CNW while waiting for the muddle to be resolved. It would appear that most of these passengers were not on board for the cruise experience but were there to gamble in the casino and therefore did not require a proper allocation of cabins.

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192 From the revenue point of view also, Nautican appeared to be a vastly losing enterprise if revenue from gambling was factored out entirely. The evidence is that, on average, the number of passengers from Jakarta was about 200. The number returning there on Monday was about 100-170 and the number of passengers on a CNW would be about 400 on a Saturday and less than 300 on Sunday. Using the figures for cabin sales given in the Indonesian contracts, it would appear that the revenue from the passengers travelling from Jakarta to Singapore and back would be about $65,000 a week whilst the revenue from passengers embarking on CNWs would be about $61,250 per week. As such, total weekly revenue from cruise fares would be about $130,000. On the other hand, the vessel`s daily operating expense was $80,000 which made the plaintiffs` weekly operating expenses at least $560,000.

193 The above figures mean that the plaintiffs needed to make over $400,000 a week simply to break even. When asked whether the plaintiffs made that amount of money from their one mid-week trip to Semarang, Surabaya or Bali, Mr Purwadi said he was not sure. In any event, since the plaintiffs needed three trips over the weekends to make $130,000 from passenger fares, it would have been impossible for them to have made $400,000 from one mid-week voyage. The necessary inference is that the plaintiffs must have had alternative sources of revenue to support their operations. Mr Purwadi told me that the plaintiffs earned income from the other activities on board like the karaoke rooms, beauty salon, the bar, food, night-club and the cinema. It appears highly unlikely to me that these activities could have generated $400,000 a week. In any event, making that amount would have only allowed the plaintiffs to break even on their operating costs for the vessel. To make profits, they would have to generate even greater revenue. It appears highly probable that since the plaintiffs were able to continue in operation for more than a year after chartering Nautican, it

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must have been because Nautican had substantial revenue from gambling. Even a paid up capital of $6 million would not have been able to sustain the plaintiffs for long if they were making losses of around $400,000 a week.

194 In all the circumstances, the plaintiffs are not able to substantiate their contention that the decision to deny Nautican further berthing rights after it exhausted its CNW quota was so unreasonable that no reasonable authority would have come to it. Neither have they established any of the other administrative law grounds which they raised. I now turn to their other heads of claim.

195 **Claims arising in tort**

196 In their statement of claim, the plaintiffs raised four claims in tort. In their closing submissions, however, they relied principally on the tort of misfeasance in a public office. I will therefore deal with it first. As explained in Judicial Remedies in Public Law by Clive Lewis (Ch 14 pp 59-64) the essence of this tort is an act done by a public officer or public body where:

197 (i) the act is done maliciously or with the knowledge that it is ultra vires the powers of the public body;

198 (ii) it is foreseeable that the act would cause damage to the plaintiffs; and

199 (iii) the act actually does cause damage to the plaintiffs.

200 The act complained of in this case is the act of denying Nautican a berth for its CNW cruises from 11 November 1995. As regards the first ingredient, in

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his submissions, counsel for the plaintiffs expressly stated that the plaintiffs were not relying on malice. Instead, he emphasised that this ingredient was made out because the defendants knew that their actions were ultra vires. In view of my finding that the defendants were not acting ultra vires in formulating the guidelines or in enforcing them once so formulated, the plaintiffs cannot make out this ingredient. The plaintiffs also have difficulty with the third ingredient which is that damage was caused by the denial of the berth.

201 The plaintiffs did not plead nor adduce any evidence of the actual financial damage which they had sustained or would probably sustain by reason of the defendants` actions. Up to the time of trial, no letters of demand had been received, no action had been commenced against them and Mr Purwadi could not confirm that he was being sued for breaching his contract with the Indonesian parties. No document was produced relating to the financial particulars of their loss. There was nothing before me to help me assess the financial impact of the denial of the berth on the plaintiffs` operations.

202 The plaintiffs` main plank in relation to damages was the existence of the contracts with the Indonesian parties. However, they did not discharge the onus of proving that these Indonesian contracts had the contractual force which they alleged. Whilst the documents appeared to show that the plaintiffs had agreed to sell a certain number of cabins in the vessel to the Indonesian parties, no evidence was provided by the plaintiffs that the Indonesian parties had actually purchased these cabins in advance for the duration of the alleged contracts or had on sold them to actual passengers so as to render the plaintiffs liable in damages once they were unable to supply the cabins because of the imposition of the 30% restriction. Further, the conduct of the Indonesian parties

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after the discharge of the injunction was not consistent with their having an enforceable claim for damages against the plaintiffs:

203 (i) no correspondence whatsoever appears to have been exchanged with the Indonesian parties after the discharge of the injunction;

204 (ii) no correspondence whatsoever was, at any time, received from the Indonesian parties providing details of their alleged claims against the plaintiffs;

205 (iii) no action was started;

206 (iv) according to Mr Purwadi, following the strict implementation of the 30% restriction, the Indonesian contracts were terminated but no document or correspondence was exchanged with the Indonesians on the alleged termination of the contracts and this despite the fact that the Indonesians were represented by lawyers.

207 The plaintiffs` answer to the points made by the defendants on damages was that it was not necessary for them to prove damages at the trial but that if their claim was found to be substantiated then I could make an order for damages to be assessed by the Registrar. I cannot accept this argument in relation to the tort of misfeasance since proof of actual damage is an essential ingredient of the tort. This is in addition to proving that it is foreseeable that damages will be sustained by reason of the tortious act. As the plaintiffs have not made out an essential plank of this cause of action, it must fail.

208 The more substantial tort pleaded by the plaintiffs was that the defendants wrongfully interfered with their contractual relationships. In relation to PSA, the allegation was that it had compelled the plaintiffs to breach their

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two contracts with the Indonesian parties which required them to supply two CNWs per weekend by insisting that they amend Nautican`s sailing schedules so that it undertook only one CNW per week for the period October to December 1995. In relation to STPB, the allegation was that it had wrongfully compelled or attempted to compel the plaintiffs to breach the same Indonesian contracts or had prevented the plaintiffs from performing the contracts. Although the plaintiffs did not develop these allegations substantially in their submissions, I think that I should deal with them.

209 The essence of the tort of inducing a breach of contract is that **A** knowingly and by unlawful means induces **B** who has a contract with **C** to commit a breach of that contract or hinders the performance of that contract so that **C** suffers damage; in such a case, **A** has committed a wrong and is liable to **C** unless the inducement is justified: see 45 ***Halsbury`s Laws of England*** (4th Ed) paras 1518, 1525. In this case, **A** would be PSA/STPB while **B** would be the plaintiffs and **C** would be the Indonesian parties. Thus, the plaintiffs` action against the defendants for inducing breach of contract with their Indonesian parties is clearly misconceived because the right is vested in the innocent party **C** and not in the person of **B** who is the party breaching the contract. Further, the plaintiffs have not proved that either defendant knew at the time that the guidelines were formulated that the Indonesian contracts existed. On the contrary, the evidence establishes that the defendants were only made aware of these contracts in September 1995 well after the guidelines were introduced. Also, the plaintiffs themselves acted recklessly in that from their own evidence they knew in late 1994 that PSA wanted CNWs restricted to 30% of a cruise vessel`s voyages and yet they still entered into contracts which would violate the restriction. They can hardly accuse the defendants of inducing them to breach contracts which they should not have made in the first place since they

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knew of the probability of action being taken by PSA which would prevent them from carrying out the terms of the contracts.

210 In relation to STPB, there is a further allegation of inducement of breach of contract. This is in respect of the alleged contract for berthing facilities between PSA and the plaintiffs. The plaintiffs` assertion in their statement of claim is that STPB wrongfully induced or procured PSA to breach this contract. This claim cannot succeed. Quite apart with the difficulties that the plaintiffs have in substantiating their contention of a contractual relationship with PSA (which is dealt with later in this judgment), my finding above was that STPB did not make the decision that the plaintiffs should be denied a berth. This decision was made by PSA and the fact that it had STPB`s concurrence in the decision does not change the reality that PSA was the deciding body. Accordingly, the plaintiffs cannot substantiate the allegation of inducement or procurement by STPB.

211 A connected allegation in the statement of claim was that STPB had threatened and intended, unless restrained, to continue to procure or induce breaches of contracts of the plaintiffs. This ground was not developed in submissions probably because there was no evidence to support it. Neither did the plaintiffs develop their pleaded assertions of an unlawful interference with their trade or business. Therefore, it is not necessary to deal with either of these claims here.

212 ***Is PSA under a contractual obligation to provide berthing facilities to Nautican?***

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213 The plaintiffs rely on three documents to evidence the contractual arrangements between themselves and PSA whereby they contend that PSA is obliged to provide a berth for Nautican as and when requested by the plaintiffs subject only to the physical availability of such berth. The first is an `Application for opening an account with Port of Singapore Authority` which the plaintiffs submitted to PSA in November 1990. In this application form, the plaintiffs indicated that berthing/unberthing facilities were among the categories of services provided by PSA that they wished to utilise. The second document is PSA`s letter dated 10 November 1990 to the plaintiffs whereby they accepted the application for an account and asked the plaintiffs to submit a letter of guarantee in the form enclosed. Thirdly, there was correspondence in October 1995 in connection with an amended letter of guarantee which PSA required the plaintiffs to furnish.

214 The plaintiffs` submission is that when commercial parties come together and funds are released and taken, the ordinary presumption is that the parties have entered into a contract. Monies would not be placed with PSA unless the parties had agreed to the basis on which the funds were placed, the basis on which the funds were to be deducted by PSA and the basis on which additional funds are to be furnished when required. The documents referred to in para 144 (`the said documents`) do not provide anywhere that PSA has a right to deny a berth. Further, the said documents must be read with PSA`s indications prior to June 1995 by way of circulars to cruise operators that allocation of berths was on a first-come-first-served basis and that therefore berthing schedules should be submitted a year in advance. These formed contractual arrangements whereby PSA was obliged to allocate berths only in accordance to the first-come-first-served policy and was not entitled to refuse berths on the basis of excessive CNWs.

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215 I find it difficult to translate the account and payment arrangements as evidenced by the said documents into a contract whereby PSA is obliged to provide berthing facilities to Nautican whenever required by the plaintiffs. First, it is clear that the account was opened and operated for the sole purpose of facilitating settlement of accounts between the plaintiffs and PSA in respect of PSA`s charges for its port services provided to vessels at the plaintiffs` requests. Such accounts, as Mrs Tan confirmed, are opened by all port agents operating in Singapore for all types of vessels which call at Singapore.

216 Secondly, there is nothing in any of the said documents which relates specifically to the manner in which berths are to be provided whether on a first-come-first-served basis or at all. The said documents do not refer to the terms on which any of PSA`s port services are to be provided to the plaintiffs` vessels. Such terms as are incorporated in the said documents relate purely to financial arrangements for the payment of such services as are in fact provided by PSA upon the plaintiffs` request. It is therefore difficult to extract from the said documents any contractual obligation on PSA to provide berthing facilities to Nautican.

217 Mr Purwadi himself was somewhat diffident on this aspect. In one of his affidavits, after referring to the account and the bank guarantee provided, he suggested that there was a `contractual relationship` between the plaintiffs and PSA. However, he did not go on to assert that PSA was under a contractual obligation to provide berthing facilities to Nautican. In any event, cl 9 of the terms and conditions which were attached to the application for an account with PSA provide that `the opening of the account shall not in any way abrogate or prejudice any of the powers conferred on the PSA by the Port of Singapore Authority Act or by any statute, bye-laws or regulations`. Accordingly, even if

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there was a contractual relationship between the plaintiffs and PSA constituted by the existence of the account, such relationship does not impose any obligation on PSA to provide berthing facilities to Nautican since under the Schedule and the Regulations, PSA has the power to refuse permission for Nautican to use the berths.

218 Although prior to June 1995, PSA allocated berthing facilities to Nautican on a first-come-first-served basis in accordance with her sailing schedule, such conduct does not in my view create a contract requiring PSA to provide berthing facilities to Nautican on that basis ad infinitum and without regard to other relevant factors. It is clear from reg 36 that PSA has the discretion to decide (i) whether to grant or refuse permission to any cruise vessel to use its berths and, (ii) having decided to give permission to any particular vessel to berth, how to allocate a berth to that vessel. PSA`s general policy, as stated in para 6 of the Singapore Cruise Centre Circulars issued in 1993, 1994 and 1995, is that `allocation of berths is on a first-come-first-served basis`. This general policy is obviously for the purpose of guiding PSA in the exercise of its discretion on how to allocate berths among those vessels which have been given permission to berth and does not mean that willy-nilly PSA has to provide a berth to any vessel that requests one regardless of any other relevant consideration. It is notable that even this general policy is subject to exceptions, for example, when a cruise vessel is on a maiden call or when ship inspections have been carried out.

219 I agree therefore with the submission of PSA that it is incorrect for the plaintiffs to suggest that application of PSA`s general policy of allocating berths to Nautican on previous occasions on a first-come-first-served basis when at that time Nautican fell within the class of vessels entitled to berth, gave rise to

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a contractual obligation on PSA to provide berthing facilities to Nautican. The evidence was that in cases where PSA had agreed to be bound by a contractual obligation to provide berths to vessels, it had entered into express agreements to give effect to this obligation and to regulate the terms of the obligation. In fact in 1995 PSA had drawn up a standard form agreement entitled `Terminal Service Agreement` for this purpose. No such tailor-made contract existed in this case and, in my view, the plaintiffs` attempt to convert the said documents into such a contract by cobbling them together with a general berthing policy was misguided and completely beyond the express (and even implied) bounds of the said documents.

220 **Conclusion**

221 In the result, the plaintiffs have been unable to establish their case under any of the heads which they have advanced. Accordingly, I dismiss the plaintiffs` claim as against each of the defendants with costs.

222 ***Plaintiffs` claims dismissed.***

Judith Prakash J

Manjit Singh and Samuel Chacko (Manjit & Partners) for the plaintiffs
Quentin Loh and Hilda Lee (Cooma Lau & Loh) for the first defendants

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Steven Chong and Collin Seah (Drew & Napier) for the second defendants

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