

Pushing Back on Compliance – The Primacy of Text and the Purposive Approach



INTRODUCTION

In 2023, we published “[Pushing Back on Compliance](#)”, an article about how senior management of a financial institution can push back on a compliance officer’s views. In this companion article, we discuss the prevailing standard for statutory interpretation in Singapore, the Purposive Approach, and why it is necessary for compliance officers to start their regulatory interpretations with an analysis of the plain words of a statute.¹

This article has a lot of discussion of Singapore case law. It is easy to imagine how senior management might point to this arguably academic article and say it represents everything they hate about compliance. To address that potential complaint, if you want to skip the brilliant and painstakingly researched statutory and case law analysis and skip to practical advice, please click [here](#).

¹ Our article does not address all material principles of statutory interpretation in Singapore or nuances relating to the purposive approach. It should not be relied upon as a definitive or exhaustive analysis or description of the concepts and principles of statutory interpretation discussed herein. We wish to acknowledge, and would refer our readers, to the article “[Statutory Interpretation in Singapore – Another 10 Years On](#)”, written by Professor Benny Tan (the “**Tan Article**”). The Tan Article addresses additional and material nuances regarding the application of the purposive approach to statutory interpretation which our article omits.

WHAT IS THE PURPOSIVE APPROACH?

To quote Professor Benny Tan, the author of the article “[Statutory Interpretation in Singapore – Another 10 Years On](#)”: “The purposive approach refers simply to the need to treat the purpose or parliamentary intent underlying statutory text as paramount, over and above anything else such as the literal meaning of the words.”² The purposive approach should be applied to all statutory interpretation, as required by s 9A(1) of the Singapore Interpretation Act 1965 (the “**Interpretation Act**”),³ which states:

In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) is to be preferred to an interpretation that would not promote that purpose or object.

The Singapore High Court has stated: “The purposive approach towards statutory interpretation takes precedence over all other common law principles of interpretation”,⁴ including the principle of strict construction rule (ambiguities in penal statutes⁵ are resolved in favor of the defendant), the principle of rectifying construction (interpreting a statute to correct drafting errors and reflect the parties’ true intentions) and the principle of updating construction (construing a law to take into account new situations which were not within contemplation at the time of the law’s enactment).

HOW DO YOU EFFECT A PURPOSIVE INTERPETATION OF A STATUTE?

Based on s 9A(1) of the Interpretation Act⁶, there are three general steps that should be applied in any attempt at purposive interpretation:⁷

Step 1: ascertain the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law (that is, the statute) as a whole. Interpretations that do violence to or go against all possible and reasonable interpretations of the provision’s express wording should be excluded at this stage.

Step 2: ascertain the legislative purpose or object of the statute.

Step 3: compare the possible interpretations of the text against the purposes or object of the statute. The interpretation which furthers the purpose of the text should be preferred to the interpretation which does not.

² Tan Benny, “Statutory Interpretation in Singapore – Another 10 Years on” (2021) 33 Singapore Academy of Law Journal, para 14.

³ Id.

⁴ See *Public Prosecutor v Low Kok Heng*, [2007] 4 SLR (R), paragraph 57.

⁵ Many laws which apply to financial institutions, including the Securities and Futures Act 2001 and Payment Services Act 2019, contain penal provisions.

⁶ Although we have not reproduced a full extract of the Interpretation Act, we encourage readers to review section 9A in full which can be found [here](#).

⁷ Tan, op cit. para 15, citing *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [37] – [38] and *Anil Singh Gurm v J S Yeh & Co* [2020] 1 SLR 555 at [29].

HOW DO YOU DETERMINE THE PURPOSE OF A STATUTE?

The primacy of plain text

In *Tan Cheng Bock v Attorney-General (“Tan Cheng Bok”)*⁸, the Singapore Court of Appeal (the “Court of Appeal”) held: “The purpose [of a statute] should ordinarily be gleaned from the text itself [emphasis added].”⁹ The Court of Appeal further held: “in seeking to draw out the legislative purpose behind a provision, primacy should be accorded to the text of the provision and its statutory context over any extraneous material.”¹⁰

In terms of relevant sources of text, the Court of Appeal held:

There are three main textual sources from which one can derive the purpose of a particular legislative provision. First, the long title of a statute might give an indication of its purpose. If there is no contradiction between the general purpose of the statute and specific purpose of the legislative provision in question, the purpose stated in the long title may also shed light on the purpose of the specific legislative provision in question. Second, the words of the legislative provision in question will clearly be of critical importance. We agree with the Judge who noted (at [37(a)] of the Judgment) that if a provision is well-drafted, its purpose will emanate from its words. Third, other legislative provisions within the statute may be referred to, so far as they are relevant to ascertaining what Parliament was seeking to achieve and how. In particular, the structure of the statute as a whole and the location of the provision in question within the statute may be relevant considerations.¹¹

Applicable timing for ascertaining statutory purpose

In general, the relevant purpose of a law is to be found at the time the relevant law was enacted, or in certain circumstances when Parliament subsequently reaffirms the particular statutory provision in question.¹² We believe this standard has the ancillary benefit of strengthening the rule of law. If Parliament changes its policy intentions or goals over the passage of time, the original intent of the statute in question does not change (subject to the principle of updating construction). Instead, the way to effect a change in policy is to amend the law¹³.

Assessing the purpose of a provision within a statute vs the overall statute

In the words of Professor Tan, “There may be a purpose underlying a particular provision in a statute (known as the specific purpose), as well as the purpose(s) underlying a statute as a whole or the relevant purpose of the statute (known as the general purpose)”.¹⁴ As held by the Court of Appeal in *Tan Cheng Bock*, “Casting the

⁸ [2017] 2 SLR 850.

⁹ *Id.* at, para 54(c)(ii).

¹⁰ *Id.* at para 43.

¹¹ *Id.* at para 44

¹² Tan, *op cit.* para 16, citing *Tan Cheng Bock*, para 58(c)(i).

¹³ In the content of a government agency, see Paragraph 23 of “[The Rule of Law and the duty of the Legal Service](#)”, 9 January 2023, speech by the Attorney General Lucien Wong S.C.

¹⁴ Tan, *op cit.* para 17.

legislative purpose differently or at different levels of generality may result in varying and even conflicting interpretations.”¹⁵ However, statutory interpretation should begin by presuming that a statute is a coherent whole, and that any specific purpose does not go against the grain of the relevant general purpose, but rather is subsumed under, related or complementary to it.¹⁶

WHEN CAN EXTRINSIC MATERIALS BE CONSIDERED IN THE COURSE OF PURPOSIVE INTERPRETATION?

Notwithstanding the primacy of plain statutory text, as a result of practical realities of language and drafting, the plain words of text are not always the best evidence of purpose, and instead stronger evidence is found in extrinsic material.¹⁷ Any material not forming part of a written statute would be considered extrinsic material with respect to that statute. S 9A(3) of the Interpretation Act gives examples of extrinsic material including parliamentary debates and the explanatory statement to a bill. The views of a regulator also have been utilized as extrinsic material to establish the purpose of a regulatory provision.¹⁸ We think a regulator’s views are particularly relevant to ascertain the purpose of subsidiary legislation (written by ministers or other administrative agencies and having the force of law).

In general, extrinsic material can only be relied on “after one has relied on intrinsic material to determine whether the ordinary meaning of the disputed text is clear, ambiguous or will lead to a manifestly absurd outcome.”¹⁹ Nevertheless, we understand that this restriction is not always followed and there are various cases where dictionaries or other extrinsic materials have been relied on to interpret the ordinary meaning of disputed text.²⁰

In terms of the weight to be accorded to extrinsic material, a court will consider three core factors: (1) whether the material is clear and unequivocal, (2) whether the material discloses the mischief aimed at or the legislative intention underlying the statutory provision and (3) whether the material is directed to the very point of statutory interpretation in dispute.²¹

ADDITIONAL CONSIDERATIONS

Interpreting laws and regulations can be challenging, particularly if the relevant financial products are newly regulated or involve the innovative use of technology. Such products can blur the lines between regulatory regimes and result in conflicting legal and regulatory interpretations among similarly situated financial institutions.

Singapore benefits from users of legislation, including financial institutions, being able to rely on the ordinary meaning of statutory text, taking into account its context in the written law and the purpose or object

¹⁵ *Tan Cheng Bock*, para 39

¹⁶ *Tan Cheng Bok*, para 41

¹⁷ Tan, *op cit*, para 58(a) Benny para 58a citing Ruth Sullivan, *Statutory Interpretation* (Irwin Law, 3rd Ed, 2016) at pp 71-82.

¹⁸ See *Nam Hong Construction & Engineering Pte Ltd v Korii Construction (S) Pte Ltd* [2016] 4 SLR 604 at [3] – [4] and [50].

¹⁹ Tan, *op cit*. para 25

²⁰ *Id.* para 30

²¹ *Id.* para 20



underlying the written law.²² When a statutory interpretation results in a decision that is not aligned with the ordinary meaning of statutory text, there can be adverse societal consequences, including legal uncertainty and undermined legislative intent.

Finally, s 9A(4) of the Interpretation Act provides that a factor in statutory interpretation is whether considering extrinsic materials outside the plain words of statutory text will “prolong legal or other proceedings without compensating advantage”. While that is a subjective standard, we expect that many people would support principles of statutory construction that simplify and expedite the process.

HOW CAN MANAGEMENT USE THE PURPOSIVE APPROACH TO PUSH BACK ON COMPLIANCE?

The purposive approach brings legal and regulatory interpretation back to first principles, including the primacy of text. In implementing the purposive approach, in many cases it is not necessary for a compliance officer to look beyond the plain words of the statute. Instead, a compliance officer should first determine the meaning of the text in question from its context (the written law as a whole) which would often give sufficient indication of the objects and purposes of the law as a whole and the specific provision in question.²³ **The primary source of information as to legislative intent should be the text itself.**²⁴

CONCLUSION

We believe in simplifying compliance for faster and better outcomes. We hope that we have convinced you that implementing the purposive approach makes compliance simpler because it re-enforces the primacy of text when interpreting statutes and regulations and attempting to discern legislative intent.

If we have not convinced you or you are on the fence, we would be thrilled if you gave us a chance to sway you over coffee. For those of you who we have convinced, we would be glad to buy you a coffee as a thank you for finishing the article!

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²² See S 9A(4) of the Interpretation Act.

²³ See the minority judgement of *Attorney-General v Ting Choong Meng* [2017] 1 SLR 373, para 66.

²⁴ *Tan Cheng Bock*, op cit, para 45.