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LAW UPDATE
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CONSTITUTIONAL CHALLENGE AGAINST VDS AND WVM (HC/OS 156/2022)

LOCUS STANDI, REAL CONTROVERSY AND PRACTICAL SIGNIFICANCE WHEN MEASURES ARE PARTIALLY DROPPED

INTRODUCTION

This update provides a commentary on the Singapore High Court's recent decision (made in respect of two interlocutory applications filed in HC/OS 156/2022 ("**OS 156**")) on the standing / "real controversy" requirement in the context of constitutional challenges against vaccine-differentiated safe management measures ("**VDS**") and Workforce Vaccination Measures ("**WVM**"), where the law, policies, regulations, statistics and science are constantly evolving.

In particular, where an applicant has standing at the time of filing a constitutional challenge, does the applicant lose that standing with respect to the VDS / WVM which are dropped prior to the Court hearing? If so, what are the practical implications arising from this?

Characterist LLC's Dominic Chan, Daniel Ng and Daniel Goh acted for the five Applicants in OS 156.

OS 156 – CONSTITUTIONAL LAW AND JUDICIAL REVIEW CHALLENGE AGAINST VDS AND WVM

On 18 February 2022, five Applicants filed a constitutional law and judicial review challenge (i.e. OS 156) against VDS (in relation to unvaccinated[1] citizens) and WVM (in relation to unvaccinated workers).[2]

[1] By virtue of the Government's definition of being fully vaccinated, VDS and WVM had applied not only to unvaccinated persons, but also to partially vaccinated persons, those who did not qualify for medical exemptions, as well as vaccinated persons who did not receive their necessary booster to maintain their vaccination status.

[2] VDS and WVM as announced by the Multi-Ministry Taskforce ("**MTF**") and related ministries on 6 August 2021, 9 October 2021, 23 October 2021, 20 November 2021, 14 December 2021, and 26 and 27 December 2021 (collectively, the "**Decisions**"), and embodied in *inter alia* the following regulations: (1) Workplace Safety and Health (COVID-19 Safe Workplace) Regulations 2021, Regulations 9 to 13, and 30; (2) Infectious Diseases (COVID-19 Access Restrictions and Clearance) Regulations 2021, Regulations 6, 7A, and 9, and the Second Schedule; (3) COVID-19 (Temporary Measures) (Control Order) Regulations 2020, Regulations 6 and 8, and the First Schedule and Third Schedule; (4) COVID-19 (Temporary Measures) (Sporting Events and Activities – Control Order) Regulations 2021, Regulations 5, 7, and 14; (5)

The challenge was based on the Applicants' constitutional rights of freedom of movement, right to life or livelihood, freedom of assembly, equal protection and freedom of religion (see **Annex A** for a summary of the arguments set out in the Statement in support of OS 156). The affidavits of the Applicants, followed subsequently by the expert affidavits of Dr. Harvey Risch and Dr. Peter McCullough (opining on *inter alia* the efficacy and safety profile of the Covid-19 mRNA vaccines), were filed in support of OS 156.

26 APRIL 2022 STOOD DOWN MEASURES, AMENDMENT AND STRIKING OUT APPLICATIONS

Before OS 156 was heard, on 22 April 2022, the MTF announced that it would be easing VDS measures from 26 April 2022, by lifting WVM and removing VDS from all settings save for 4 settings ("**Stood Down Measures**").[3] In the light of this development, the Applicants filed an amendment application (HC/SUM 2073/2022),[4] while the Attorney-General (the "**Respondent**") filed a striking out application (HC/SUM 2295/2022).

HEARING BEFORE THE AR, CENTRAL ISSUE, AND THE PARTIES' KEY ARGUMENTS

Both applications were heard before an Assistant Registrar (the "**AR**") on 12 August 2022. The central issue was whether the Applicants, who had standing when they filed the OS, continued to have standing (in latin, "*locus standi*") to challenge the Stood Down Measures. One critical element of *locus standi*, is that there must be a "real controversy" between the parties. This element goes to the Court's discretion, and not jurisdiction.[5] "Where the circumstances of a case are such that a declaration will be of value to the parties or to the

COVID-19 (Temporary Measures) (Business Events — Control Order) Regulations 2021, Regulations 4 and 8; (6) COVID-19 (Temporary Measures) (Performances and Other Activities — Control Order) Regulations 2020, Regulations 7A, 12A, 14, and 21A; (7) COVID-19 (Temporary Measures) (Religious Gatherings — Control Order) Regulations 2021, Regulations 8, 15, and 28A (collectively, the "**Statutes / Regulations Embodying the Decisions**").

[3] Namely, (1) Events with more than 500 participants at any one time; (2) Nightlife establishments where dancing among patrons is one of the intended activities; (3) F&B establishments, including restaurants, coffeeshops and hawker centres; and (4) Casinos (collectively, the "**4 Remaining VDS**").

[4] To pivot the main relief sought, from a quashing order (a remedy under judicial review) to freestanding declaratory relief (under O.15, r.16 of the Rules of Court, 2014) on the constitutionality of VDS / WVM (with respect to the Stood Down Measures, as well as the 4 Remaining VDS) as the *main relief* (in the original OS 156, this was a further relief sought under the facilitative provision under Order 53 of the Rules of Court, 2014), while maintaining the prayer for a quashing order with respect to the 4 Remaining VDS.

[5] *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 ("***Tan Eng Hong***") at [115] and [137].

public, the court may proceed to hear the case and grant declaratory relief even though the facts on which the action is based are theoretical."[6]

Respondent's Arguments: The Respondent's central argument (amongst other arguments) is that in the light of the Stood Down Measures, OS 156 had become hypothetical, academic or moot with respect to the Stood Down Measures, that there was no "real controversy" remaining between the parties and the Applicants no longer have standing in this regard, and therefore, the striking out application should be allowed. The Respondent made no submissions on: (1) the constitutionality of VDS / WVM; (2) the reasonableness or rationality of VDS / WVM (from an administrative law standpoint); or (3) the efficacy or safety profile of the Covid-19 vaccines.

Applicants' Arguments: The Applicants argued (amongst other arguments) that the primary relief sought under the proposed amended OS, namely, a vindication of the Applicants' constitutional rights, have substantial, personal and/or practical significance to the Applicants. In particular, the declaratory relief sought will be of great importance to the Applicants for the purposes of reversing or removing the stigma and ostracization (which the Applicants face),[7] as well as various harms,[8] which was set in motion, caused or contributed to by VDS / WVM, and which continue to remain notwithstanding the Stood Down Measures. In this regard, the Applicants pointed out to *inter alia* the following:

(1) Stronger Stance: The Ministry of Health's press release "Calibrated Adjustments in Stabilisation Phase" (8 November 2021) where they stated:

> "We are taking a **stronger stance** against those who choose not to be vaccinated, be it through the VDS, or by requiring them to pay for their medical bills."[9]

(2) Step Down but Not Dismantle: The MTF had expressly reserved the right to implement and/or step up VDS or WVM again depending on the situation. In

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[6] *Tan Eng Hong* at [143].

[7] Namely, that VDS and/or WVM exposed the Applicants to alienation, segregation, marginalization, ridicule, contempt and/or avoidance by or from the rest of society, effectively making them into 2nd class citizens and/or a new substratum of society.

[8] See [6] of **Annex A** for an elaboration of such harms.

[9] Emphasis in bold added.

summary, the MTF had taken a "step down but not dismantle" posture (see e.g. the MTF's 22 April announcement, and the Minister of Health's statement made in Parliament on 9 May 2022). These statements confirm that VDS and/or WVM may come back, either in full force or in part.

(3) VDS which Remained in Force: The 4 Remaining VDS continued to remain in force.

(4) Empower, Embolden, Encourage: The Ministry of Manpower ("**MOM**") [10] had stated on 25 April 2022 (see the "Updated Advisory on COVID-19 Vaccination at the Workplace" dated 25 April 2022 ("**25 April 2022 Workplace Advisory**")) that employers may continue to implement VDS and/or WVM on their own accord,[11] thereby effectively making vaccination status an acceptable or permitted ground of discrimination for hiring. The Applicants submitted that this has or will effectively empower, embolden and/or encourage employers to continue the imposition of VDS and/or WVM against unvaccinated workers (including some of the Applicants) in various circumstances in terms of current and/or future employment.

(5) Cloud of Fear and Uncertainty: In addition, in the light of the above, the Applicants continued to live under a cloud of fear and uncertainty that VDS / WVM may come back anytime to severely and suddenly upend their lives (and their families' lives) again.

THE AR'S DECISION, THE APPEALS AND SUBSEQUENT DEVELOPMENTS

At the hearing of the applications on 2 September 2022, the AR preferred the Respondent's arguments over the Applicant's arguments, and followed various recent UK and Canadian court decisions cited by the Respondent[12] over various Malaysian and US cases cited by the

[10] Together with the National Trades Union Congress ("**NTUC**") and the Singapore National Employers Federation ("**SNEF**"), etc.

[11] The material portions of the 25 April 2022 Workplace Advisory (at [6]) include: "Taking into consideration the workplace health and safety and operational needs of their respective companies or sectors, **employers may implement vaccination-differentiated requirements for their employees (such as disallowing unvaccinated employees from entering the workplace), as a matter of company policy and in accordance with employment law.** For unvaccinated employees whose jobs require working on-site as determined by the employers under such a company policy, employers may … [redeploy them or place them on no-pay leave based on mutually agreeable terms, or]… As a last resort after exploring options above, terminate their employment (with notice) in accordance with the employment contract. If the termination of employment is due to employees' inability to be at the workplace to perform their contracted work, **such termination of employment would not be considered as wrongful dismissal.**" [Emphasis in bold added].

[12] The applicants in the UK and Canadian cases were held to have lost their standing to challenge the COVID-19 regulations once they had been removed from the statute books.

Applicants.[13] Accordingly, the AR disallowed the Applicants' amendment application, and struck out OS 156, save for the dining VDS under OS 156 (in respect of which the Respondent did not challenge the Applicants' standing).

The Applicants appealed to a High Court Judge in chambers, and the appeals were fixed for hearing on 18 October 2022.

On 7 October 2022, the MTF announced that they "will lift VDS fully" from 10 October 2022.[14] On 7 October 2022, the MOM[15] also updated its advisory on Covid-19 vaccination at the workplace ("**7 October 2022 Workplace Advisory**").[16] In the light of these latest developments, the Applicants withdrew the appeals and OS 156.

COMMENTARY

First, it is important to note that the various announcements of the MTF and related ministries, including the ones which communicate clear decisions implementing VDS / WVM, are not susceptible to judicial review or constitutional challenge until and unless they are enshrined in subsidiary legislation or regulations.[17] This is because until such time, they do

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[13] In the Malaysian case, the Court held that a person had standing to challenge a revoked criminal law even after it had been repealed, while in the US case, the Court held that the applicant had standing to challenge the revoked COVID-19 visitor policy (barring Catholic clergy from ministering in-person to the spiritual needs of inmates) even after it had been removed (the AR held that this case was of limited relevance to the present matter, as, amongst other things, the standard for finding that a case is justiciable under US law appears to be different from Singapore law).

[14] The MTF elaborated that this "means that VDS will no longer be required for (i) events with more than 500 participants at any one time, (ii) nightlife establishments where dancing among patrons is one of the intended activities, and (iii) dining in at F&B establishments, including hawker centres."

[15] Together with the NTUC and the SNEF, etc.

[16] Amongst other things, the 7 October 2022 Workplace Advisory provides (at [4]-[5]) that:

> "4. **With the lifting of VDS, the tripartite partners are of the view that employers should take the decision to remove vaccination-differentiated requirements for access to the workplace.** However, employers may consider whether the situations in para 5 below are applicable.
>
> Vaccination-differentiated requirements for specific occupations
>
> 5. **If there are genuine occupational requirements**, employers, taking into consideration the workplace health and safety and operational needs of their business, may continue implementing vaccination-differentiated requirements for their employees to access the workplace (such as deploying only vaccinated individuals), as a matter of company policy and in accordance with employment law. For example, employers may require their employees to be fully vaccinated before entering the workplace because their employees have to work closely with vulnerable individuals (which may be the case for allied healthcare professionals, nurses and doctors in hospitals and clinics); or the employees' job scope involves travelling to countries with vaccination-differentiated entry requirements."
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> [Emphasis in bold original].

[17] The AR applied *Han Hui Hui and ors v Attorney-General* [2022] SGHC 141 ("***Han Hui Hui***") at [58]-[59] (see footnote 18 below for an elaboration), and held that the prayers to challenge *inter alia* the Decisions of the MTF do not disclose any reasonable cause of action and should be struck out.

not have legal effect. This legal position is different from how the average layperson would likely perceive the way Covid-19 measures have been implemented. Even though the enshrining of VDS / WVM in the various regulations typically takes place a few days after each announcement of the MTF, and appear to be mere formalities flowing from clear executive decisions, the legal position established by the Singapore courts is that only the legislation or regulations are susceptible to judicial review.

Second, and flowing from the first point above, it is dissatisfactory that weighty advisories (made by the MOM amongst others) such as the 25 April 2022 Workplace Advisory are not susceptible to court challenge,[18] especially insofar as it had or would have had an impact on how employers behaved vis-à-vis their unvaccinated employees and thus affecting actual legal rights, *albeit* indirectly. Importantly, insofar as such an advisory has had the effect of perpetuating the stigma and ostracization which unvaccinated workers faced in terms of current and/or future employment, Singapore's narrow approach to the "real controversy" issue, whereby *locus standi* to challenge the constitutionality of WVM was lost due to the revocation of the regulations embodying WVM, would make it exceedingly difficult for such workers to seek redress from the Court.

Third, given that standing may be lost once the regulations (embodying the VDS and/or WVM) being challenged are revoked, insofar as VDS and/or WVM are reimplemented (whether in a similar or different form), it is imperative for any future constitutional challenge and/or judicial review application to be filed, *and heard and determined* on an *urgent and expedited* basis.[19] This would mean that interested applicants would have to marshal

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[18] In this regard, see *Han Hui Hui* at [58]-[59], where the High Court held that the "Updated Advisory on COVID-19 Vaccination at the Workplace" dated 23 October 2021 (the "**October Advisory**") does not amount to a policy directive, nor does it carry legal effect. It is also not the source of any legal obligations to comply with the WVMs as it merely reiterated the Government's announcement of the WVMs. The WVMs were instead implemented by subsidiary legislation and derive their legal force from them. For the lack of legal effect, the October Advisory cannot be subject to a quashing order. Applying *Han Hui Hui*, as well as the AR's decision (applying *Han Hui Hui* at [58]-[59]) that even the MTF's Decisions do not have legal effect and cannot be subject to a quashing order (see footnote 17 above), the 25 April 2022 Workplace Advisory would likewise lack legal effect, and cannot be subject to a quashing order.

[19] In this regard, see [31]-[32] of *R (on the application of Hussain) v Secretary of State for Health and Social Care* [2022] EWHC 82:

> "31. … Whether expedition and an urgent rolled up hearing would be appropriate in the context of any future PCW [i.e. prohibition on collective worship, in response to the Covid-19 pandemic in UK, in conjunction with the "lockdown"] and any future prompt challenge to its legality invoking Article 9, is an open question. **But if those steps are appropriate in those future circumstances, in the judgment of the Court dealing with that situation, then they will be granted**. If they are not granted, it is because they are not appropriate. That is as it should be. There is nothing here approaching any deficit in the Court's ability to provide an appropriate response which would justify, in the public interest, allowing the present claim to proceed by means of an "historic" analysis of the justification for the PCW in the circumstances as they were in and after March 2020 or May 2020. **The correct position in principle is – and has to be – that the Courts have, and will always seek to discharge, the responsibility of delivering practical and effective justice, consistently with the overriding objective**…

substantial resources very quickly, to prepare their case based on the latest laws, policies, facts, statistics and/or expert scientific evidence.

The Health Minister Mr. Ong Ye Kung has said that "when the situation requires, we may have to step up VDS to an appropriate level, in order to protect those who are not up to date with their vaccination."[20] There is a real likelihood that VDS and/or WVM, in various permutations or forms, may continue being reimplemented in the future. They may also be revoked at short notice, thereby making any substantial constitutional and/or judicial review by the Court highly elusive. To ensure that the Court is able to engage in any substantive constitutional and/or judicial review of VDS and/or WVM, the law effectively requires any applicants to proceed on an expedited basis, and to seek urgent hearing dates as far as possible.

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32. A claim challenging a future PCW – if the Claimant considers a challenge to be justified and if he seeks his 'day in court' – **could be pursued with conspicuous and demonstrable promptness**, pointing to all these considerations. Instead of pressing for interim relief, **the Claimant could be asking for the Court's resources to be channelled into an expedited 'rolled-up' hearing**. There would need to be a reworked JRG [i.e. judicial review grounds]. But that is as it should be, to ensure a disciplined focus and to engage judicial review remedies designed to be practical and effective. **The Court will respond in the way that it judges promotes the interests of justice and the public interest**. That is a good and sufficient answer … This is an important recognition. If there were to be a future PCW, and if the Claimant sought promptly to challenge its Article 9 compatibility, **the Defendant would need to think carefully about what position it takes in the proceedings – given the duty of (candour and) cooperation – so far as concerns the facilitation of prompt resolution of the substantive legal merits.**"

[Emphasis in bold added]

[20] See [19] of the Minister's Opening Remarks at the MOH Press Conference to Update on the Covid-19 Situation on 15 October 2022.

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Characterist LLC's roots were established in 1978 by Mr Lie Kee Pong, who founded Lie Kee Pong Partnership. In 2007, Lie Kee Pong Partnership merged with Characterist LLC.

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Annex A

Summary of the Statement Filed in Support of HC/OS 156/2022

1. The constitutional and administrative law challenge against vaccine-differentiated safe management measures ("**VDS**") (in relation to unvaccinated citizens) and Workforce Vaccination Measures ("**WVM**") (in relation to unvaccinated workers) is based on the following articles of the Singapore Constitution:

   - **Article 13(2)** (the Applicants' constitutional right of freedom of movement);
   - **Article 12(1)** (the Applicants' constitutional right to be equal before the law and their entitlement to the equal protection of the law);
   - **Article 9(1)** (the Applicants' constitutional right to life or personal liberty, in particular, the right to work/livelihood);
   - **Article 14(1)(b)** (the Applicants' constitutional right to assemble peaceably, in particular, the right to assemble at the workplace for work and/or to the right to assemble to attend congregational worship); and/or
   - **Article 15(1)** (the Applicants' constitutional right to freedom of religion, in particular, the right to assemble at religious venues to practice the religion / worship)

Article 13(2)

2. The denial and/or restriction of the Applicants' right to freedom of movement (and their access to the goods, services, events, activities and/or opportunities, etc., provided at prohibited places, including the ability to work), on the grounds of public health, is subject to the test of reasonableness. None of the grounds relied on or alluded to by the MTF to justify VDS / WVM meets this test of reasonableness.

Ground 1 – Protect the Unvaccinated

3. Vaccination is voluntary (as affirmed on numerous occasions by the Government, the MTF and related ministries). However, vaccination has been effectively made mandatory, through direct or indirect consequences imposed on the unvaccinated. It is unreasonable to forcefully protect the unvaccinated against their own will. The decision of the unvaccinated on whether to vaccinate are private health decisions for which there is no constitutionally permitted derogation from the right to freedom of movement.

4. In any event, it is unreasonable to effectively mandate vaccination:

   - The vaccines are still in trial phase and/or still under monitoring after emergency use approval, and no long-term data on the safety of the vaccines are yet available.
   - There are emerging peer-reviewed evidence and/or international, regional or other Governmental acknowledgements of serious adverse events and/or death associated with the vaccines (in particular, the Pfizer-BioNTech vaccine and the Moderna vaccine), which were not known at the start of the vaccination program.
   - The Omicron variant is not as deadly as compared to the Delta variant, even as the Omicron variant is more transmissible than the Delta variant.
   - Natural immunity may or should be considered to be a *permanent* exception to vaccination (rather than only being a time-limited exception).

- There are approved and/or reliable therapeutics, therapies, vitamins or drugs to prevent, treat or reduce the severity and/or duration of symptoms, and/or to prevent death, in Covid-19 patients.

5. It is unreasonable to continue to differentiate the vaccinated from the unvaccinated. It is also unreasonable not to stratify the risks of serious Covid or death depending on age and/or underlying conditions, and to indiscriminately apply VDS and/or WVM even to those who are in the far less risky categories.

6. It is unreasonable to fail to consider the harms and/or detrimental effects to the social, economic, mental, spiritual and/or emotional wellbeing of the Applicants (both as individuals, and as part of the class of the unvaccinated population) arising from or associated with the imposition and continued imposition of VDS and/or WVM. Such harms include but are not limited to the denial or restriction on the freedom of movement, the denial and/or restriction to access to the goods, services, events, activities and/or opportunities provided at such prohibited places, and also exposure, both individually as Applicants and as part of the class of the unvaccinated population, to alienation, segregation, marginalization, ridicule, contempt and/or avoidance by or from the rest of society, effectively making them into 2nd class citizens and/or a new substratum of society (collectively, the "**Harms to Unvaccinated**").

7. It is unreasonable to impose VDS and/or WVM, with the consequential serious and/or potentially long lasting or even permanent Harms to Unvaccinated, to avoid the extremely low or low *actual risks* to the unvaccinated, which are in any event risks which the unvaccinated have each personally decided to bear. Any *relative risks* differential are meaningless without considering actual risks.

Ground 2 – Protect "Others"

8. The MTF does not appear to rely on Ground 2 anymore.

9. Insofar as they continue to rely on Ground 2:

- It is unreasonable to rely on Ground 2 because the vaccinated are *already protected* by virtue of being vaccinated.
- *Both* the vaccinated and the unvaccinated can transmit Covid. The vaccines do not prevent infection or transmission, even amongst the vaccinated at the prohibited places.
- The Pre-Event Testing (PET) "concession" (insofar as there are concerns that the unvaccinated may infect the vaccinated) would have sufficed to protect the vaccinated at prohibited places (even assuming that the vaccinated still needs to be protected, and that the unvaccinated alone spread Covid – both of which are denied). The removal of this "concession" exacerbates the unreasonableness of relying on Ground 2 to justify VDS / WVM.

Ground 3 – Protect the Healthcare System from Being Strained or Overwhelmed

10. Healthcare system strain must be defined in a fair, objective and transparent manner. The MTF and related ministries have not done so.

11. In any event, there is no basis to, and it is unreasonable to, impose / continue to apply VDS and WVM on the unvaccinated for the purposes of reducing or preventing the healthcare system from being strained or overwhelmed:

    - It is unprecedented for the freedom of movement of any citizen to be restricted solely on account of that citizen's *potential* to contract an allegedly preventable serious illness which would allegedly add to the healthcare system strain, as there is no principled basis why any other preventable serious illness which adds or contributes strain to the healthcare system (other than Covid-19) should not be dealt with likewise.
    - The MTF and related ministries are obliged to but have failed to demonstrate that the unvaccinated are the *sole* or *predominant* cause of or contributor to the *current incremental* strain on the healthcare system, and that there are no other relevant causes or contributors.
    - It is unreasonable not to stratify the risks of serious Covid or death depending on age and/or underlying conditions, and to indiscriminately apply VDS / WVM even to those who are in the far less risky categories, and are thus far less likely to add to the strain to the healthcare system.
    - It is unreasonable for the MTF and related ministries not to set a clear time limit, or at all, for the application of VDS / WVM on Ground 3.
    - As compared to Oct-Dec 2021, the vaccinated breakthrough cases are recently beginning to form a large or larger proportion of those requiring oxygen supplementation and ICU for Covid-19, whereas the unvaccinated are forming a smaller and smaller proportion (and there is a substantial reduction in absolute numbers) of the overall cases.

Ground 4 – To Compel the Unvaccinated

12. The MTF and related ministries have not officially supported VDS / WVM on Ground 4. However, the effect or implication is that Ground 4 is one of their grounds justifying VDS / WVM. In any event, compelling a citizen to vaccinate or to punish a citizen for failing to vaccinate is not a constitutionally permitted derogation from the constitutional right of freedom of movement, particularly since vaccination is and ought to be voluntary.

Article 12(1)

13. Grounds 1-4 above would also breach Article 12(1) of the Constitution.

14. VDS / WVM are either under-inclusive or over-inclusive in various ways (for e.g. applying VDS / WVM only to the unvaccinated even though there are other causes / contributors to the current incremental strain on the healthcare system, and/or the vaccinated can also be infected and transmit Covid), and lacks a rational relation to the object sought to be achieved, and would fail the reasonable classification test.

Article 9(1)

15. The Applicants' constitutional right to life or personal liberty under Article 9(1) of the Constitution includes a right to livelihood / work. VDS (insofar as entry into various prohibited places is necessary for work) and/or WVM contravene the aforesaid right, and is unconstitutional.

Article 14(1)(b)

16. The Applicants' constitutional right to peaceful assembly under Article 14(1)(b) of the Constitution includes a right to assemble for a common purpose such as work, socialization and worship. "Public health" is not a constitutionally-recognised derogation from the right to peaceful assembly, under Article 14(2)(b) of the Constitution. VDS (insofar as entry into various prohibited places is necessary for work) and/or WVM contravene the aforesaid rights, and are unconstitutional.

Article 15(1)

17. VDS / WVM contravene the Applicants' constitutional right to freedom of religion under Article 15(1) of the Constitution, in particular, the right to assemble at religious venues to practice the religion / worship. In reality, it is impractical for religious organisations and/or there are insufficient religious workers to facilitate worship in groups of 5. The right to worship has been negated substantially.

Ultra Vires

18. VDS / WVM are *ultra vires* the abovementioned articles of the Constitution, and are thereby illegal (from an administrative law standpoint), and should be quashed.

Irrationality

19. In enacting VDS / WVM, the MTF and related ministries failed to take into account or misunderstood relevant matter(s), including but not limited to the Applicants' constitutional rights, and/or have taken into account irrelevant matter(s), as set out above. The enactment of VDS / WVM are thus irrational and/or unreasonable (from an administrative law standpoint), and should be quashed.