



Aljunied- Hougang Town Council

Report on Improper Payments

KPMG LLP

31 October 2016

This report contains 68 pages



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Glossary

Defined terms used in this Report are tabulated below. They are not separately defined in the body of the Report.

| Term | Definition |
|-------------------------------------|---|
| ACRA | Accounting and Corporate Regulatory Authority |
| AGO | Auditor-General's Office of Singapore |
| AGO's Report | The Auditor-General's Office's report of its findings in respect of its review of AHPETC dated 6 February 2015 |
| AHPETC | Aljunied-Hougang-Punggol East Town Council |
| AHTC | Aljunied-Hougang Town Council |
| AIM | Action Information Management Pte Ltd |
| Audit Alliance | Audit Alliance LLP |
| Audit Points | Areas in which AHTC did not comply with s35(c) of the TCA and/or the TCFR as identified in the Audit Reports |
| Audit Reports | The following reports issued by: <ul style="list-style-type: none"> - FKT's independent audit report dated 19 November 2012 on AHTC's financial statements for FY 2012 - FKT's independent audit report dated 4 February 2014 on AHPETC's financial statements for FY 2013 - Audit Alliance's independent audit report dated 29 June 2015 on AHPETC's financial statements for FY 2014 - Audit Alliance's independent audit report dated 24 August 2015 on AHPETC's financial statements for FY 2015 - The AGO |
| BCA | Building & Construction Authority |
| Certificate of Statutory Completion | A certificate of statutory completion issued under section 12 of the Building Control Act (Chapter 29) |
| Conflicted Persons | Individuals having direct ownership interests in FMSS and/or FMSI concurrently holding management positions in the Town Council |
| Control Failures | The 115 Audit Points identified in the Audit Reports plus 71 further issues identified by KPMG |
| Court, Court of Appeal | The Court of Appeal of the Republic of Singapore |
| Court Order | Order of the Court in <i>Attorney-General v AHPETC</i> , Civil Appeal No. 114 of 2015 in respect of the appointment of accountants by AHTC |
| CPF | Central Provident Fund |
| CPG | CPG Facilities Management Pte Ltd |
| CPG Contract | The managing agent contract between the Town Council and CPG for the period 1 August 2010 to 31 July 2013, which was terminated on 1 August 2011 |
| DTZ | DTZ Debenham Tie Leung Property Management Services Pte Ltd |
| EMS | EM Services Private Limited |

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| Term | Definition |
|---------------------------------|--|
| EMSU | Essential Maintenance Service Unit |
| ESMACO | ESMACO Township Management Pte Ltd and/or ESMACO Pte Ltd |
| Final Completion Certificate | A document certifying that work has been completed satisfactorily, after one year of defect liability period |
| First EMSU Contract | The EMSU contract between the Town Council and FMSS for the period 1 October 2011 to 30 June 2012 |
| First Managing Agent Contract | The managing agent contract between the Town Council and FMSS for the period 15 July 2011 to 14 July 2012 |
| FKT | Foo Kon Tan Grant Thornton LLP |
| FMSI | FM Solutions & Integrated Services (a sole proprietorship) |
| FMSS | FM Solutions & Services Pte. Ltd. |
| FY | Financial year |
| GRC | Group Representation Constituency |
| GST | Goods & Services Tax |
| HDB | Housing Development Board |
| Kelly Services | Kelly Services (Singapore) Pte Ltd |
| KPMG | KPMG LLP |
| Lift Upgrading Programme | HDB programme to upgrade lift services |
| Maintenance Certificate | A document certifying that work has been completed satisfactorily, after one year of defect liability period |
| Mazars | Mazars LLP |
| MND | Ministry of National Development |
| Monthly Report | KPMG's monthly written progress report on the fifteenth day of each month, or the business day immediately preceding it where the fifteenth day is not a business day, commencing on 15 April 2016 |
| MP | Member of Parliament |
| Neighbourhood Renewal Programme | HDB project which focuses on block and precinct improvements |
| OPE | Out of pocket expense |
| Parliament | Parliament of Singapore |
| Penal Code | Penal Code (Cap. 224) |
| Recommendation Letter | A letter issued by estate staff in the Town Council to document the authority to incur expenditure for works by the relevant authorized person |
| Report | KPMG's report on payments by the Town Council during the Review Period |
| Review Period | 27 May 2011 to 27 November 2015 |
| RSM Ethos | RSM Ethos Pte. Ltd. |
| Second EMSU Contract | The EMSU contract between the Town Council and FMSS for the period 1 July 2012 to 30 June 2015 |
| Second Managing Agent Contract | The managing agent contract between the Town Council and FMSS for the period 15 July 2012 to 14 July 2015 |



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| Term | Definition |
|------------------------------------|---|
| SGD | Singapore dollar |
| Sinking Fund | Fund established and maintained by Town Councils for improvements, management and maintenance relating to residential and commercial properties in their towns |
| SMC | Single Member Constituency |
| Substantial Completion Certificate | A preliminary certification issued once works have been substantially completed but prior to the issuance of Certificate of Statutory Completion, Maintenance Certificate or a Final Completion Certificate |
| TCA | Town Councils Act (Cap. 329A) |
| TCFR | Town Councils Financial Rules |
| Tenders & Contracts Committee | The Town Council's committee for evaluation of tenders and contracts |
| Tender Evaluation Report | Report to the Tenders & Contracts Committee on tenders |
| Town Council | AHPETC and/or AHTC |
| Town Councillor | Town councillor of AHPETC and/or AHTC |
| Work Order | Issued on behalf of the Town Council as a certification by the Town Council that work and services had been duly provided and received |
| Written Instruction | Instructions issued to vendors for <i>ad hoc</i> works |



1 Executive Summary

1.1 Introduction

- 1.1.1 By a letter of engagement dated 1 March 2016, the Town Council appointed KPMG in compliance with the Order of the Court of Appeal in CA/CA 114 of 2015 to establish, *inter alia*, “whether any past payments made by AHPETC were improper and ought therefore to be recovered.”
- 1.1.2 Our appointment also required us to identify outstanding non-compliance with section 35(c) of the TCA detected by the AGO and the Town Council’s statutory auditors for FYs 2014 and 2015, advise on remediation steps required for such non-compliance, and report each month on the progress made in remedying the non-compliance.
- 1.1.3 Our scope as agreed by AHTC and HDB, detailed in our letter of engagement, is provided at section 2.2 of this Report. Our terms of reference, derived from the Court Order, are provided at **Annex A**.
- 1.1.4 Town councillors have control over public funds in circumstances which give rise to a relationship of trust and confidence. The members of a town council are not guided by a profit-making motive but a service motive. By comparison, a commercial organization has directors serving the organization in the interests of its owners, the shareholders. In a town council, the electorate of the division are the stakeholders whose interests the town councillors represent. Town councillors stand in the position of fiduciaries to both the government generally¹ and the public at large.
- 1.1.5 Accordingly, trust is reposed in town councillors to ensure that the monies and other assets at their disposal are used in a way that is compliant with section 35(c) of the TCA and the TCFR.
- 1.1.6 We have considered the Town Council’s payments against the legal framework of the TCA and the TCFR, and common law. The laws governing town council operations “give the elected MPs as much latitude as possible to run the [town councils] within broad and general rules”;² the intention of Parliament was to give elected MPs “the authority and responsibility to take charge of their constituents’ estate and allow each Town to develop its own distinctive character.”³

1.2 Preliminary observations

- 1.2.1 In our Monthly Reports, we described the actions taken by the Town Council to address the 115 instances of non-compliance raised by the AGO, and raised 71 additional issues.
- 1.2.2 While there are a number of discrete Control Failures that have been identified, it would be an error for the focus to be on individual failures. These Control Failures in the

¹ See *Magill v. Porter* [2001] 2 AC 357 and *Attorney General for Hong Kong v. Reid* [1993] 3 WLR 1143.

² Page 5, paragraph 4(c) of the MND Town Council Review Report, April 2013.

³ Page 29, paragraph 56(a) of the MND Town Council Review Report, April 2013.



Town Council cut across the key areas of governance, financial control, financial reporting, procurement and records management over the course of five years, and point to the fact that there is an issue larger than the sum of individual lapses; these Control Failures point to a failure in the Town Council's overall control environment. Indeed, the common theme running through our Monthly Reports is of serious flaws in the Town Council's governance.

- 1.2.3 The pervasive Control Failures in the Town Council exposed public funds to improper use and application. Improper payments were made to FMSS and FMSI in a control environment in which meaningful oversight by the Town Councillors was absent.

1.3 Scope and structure of the Report

- 1.3.1 We have taken into consideration the relevant provisions of, *inter alia*, the TCA, the TCFR and the Penal Code, as well as the Town Council's own controls, in defining the bounds of what might constitute improper in the context of payments made by a town council.
- 1.3.2 We have also directed the conclusions in this Report to whether such improper payments ought to be recovered. Some payments, while made improperly, may not necessarily be recoverable, for example, where no loss to the Town Council was in fact occasioned.
- 1.3.3 We address the issues in this Report by first identifying whether a given payment is improper and then consider whether any such payments ought to be recovered and in what quantum. The former is necessarily more straightforward than the latter.
- 1.3.4 In the context of the pervasive Control Failures at the Town Council in financial control, financial reporting, procurement and records management, we have applied judgement in presenting our findings in this Report, excluding matters where there is insufficient evidence to demonstrate a systemic problem or potentially recoverable payments.
- 1.3.5 This Report is therefore focussed upon the more significant findings from our review of the payments made by the Town Council during the Review Period. We have framed the issues by describing the more significant lapses and addressing them sequentially in approximate order of severity.
- 1.3.6 The lack of discipline in financial operations and record-keeping results in incomplete information to support payments, which caused the Town Council's auditors to disclaim their opinions, and is such that we are unable to conclude whether the improper payments identified in this Report are exhaustive and on the complete quantum of improper payments that ought to be recovered.

1.4 FMSS and FMSI

- 1.4.1 A significant part of our Report is devoted to addressing the relationship between the Town Council on the one hand and FMSS and FMSI on the other.
- 1.4.2 Between 2011 and 2015, the Town Council appointed and engaged a) FMSS as its managing agent; and b) FMSI and FMSS as EMSU service providers. This exposed

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the Town Council to serious conflicts of interest as the direct owners of FMSS and FMSI (with a profit motive) concurrently held key management and financial control positions in the Town Council (charged with a service motive).

- 1.4.3 The situation of FMSS is unlike that of the Town Council's previous managing agents. In the former case, those approving payments for the Town Councils were not beneficiaries engaging in a profit-motive transaction with the Town Council. The conflict involving FMSS is entirely different; the appointment of FMSS and FMSI introduced a personal profit motive for the Conflicted Persons, who would be, in effect, approving payments to themselves.
- 1.4.4 The Town Councillors relinquished an unacceptably high degree of financial responsibility to the Conflicted Persons. These Conflicted Persons sat at important gateways in the Town Council's payment approval processes, which meant that the Conflicted Persons were in effect in a position to approve payments to themselves at critical stages of the process without meaningful independent oversight.
- 1.4.5 In relation to the Town Council's appointment of FMSS and FMSI, our overriding observation is that the Town Council failed to manage these serious conflicts of interest over a number of years.
- 1.4.6 In addition, the failed control environment of the Town Council manifested itself in pervasive Control Failures, including a lack of discipline in the Town Council's financial operations and record-keeping.
- 1.4.7 This exposed public funds to risks of erroneous payments, overpayments, payments for which services had not been sufficiently verified and payments without proper authority, as well as the potential for actual misappropriation and civil or criminal breach of trust.
- 1.4.8 In this regard, payments with an aggregate financial value of at least SGD23m involved approvals by the Conflicted Persons of payments in effect to themselves through payment vouchers⁴, which is an important gateway in the Town Council's payment approval process. The approval routines for these payments were severely undermined by the involvement of the Conflicted Persons; it is of concern whether these payments are for services that were satisfactorily delivered by the suppliers owned by the Conflicted Persons and therefore whether some or all of these payments to them were fully justified.
- 1.4.9 In the context of these serious conflicts of interest and the failed control environment, there was a series of improper payments to FMSS and FMSI. These include, amongst others, overpayments to FMSS for project management fees⁵, overpayments to FMSS for purported overtime and CPF contributions,⁶ payments to FMSS without certification that work had been performed⁷, as well as payments to FMSS that were made without

⁴ See paragraph 5.4.2 *et seq.* of this Report. The remainder (approximately SGD10m) of the approximately SGD33m invoiced to FMSS or FMSI had no payment voucher or Work Order (approximately SGD8m) or was approved by other individuals (approximately SGD2m).

⁵ See paragraph 5.3.12 *et seq.* of this Report.

⁶ See paragraph 5.3.3 *et seq.* of this Report.

⁷ See paragraph 5.3.21 *et seq.* of this Report.

the requisite co-signature of members of the Town Council.⁸ Such improper payments have an aggregate financial value of approximately SGD1.5m⁹, of which at least SGD0.6m ought to be recovered by the Town Council.¹⁰

- 1.4.10 The tendering out of the contracts to FMSS and FMSI was also deficient in numerous respects.
- 1.4.11 In particular, in our view, the tender process for FMSS's initial appointment was waived without proper justification.¹¹ For the Second Managing Agent Contract, the Town Council failed to a) apply itself effectively to securing competitive rates, and b) address the serious conflicts of interest in FMSS's relationship with the Town Council.¹² These two contracts were worth SGD5.4m and SGD23.2m apiece and the shortcomings in FMSS's appointments potentially caused the Town Council to incur, directly and indirectly, significant additional costs.
- 1.4.12 FMSS was more expensive than the comparable contract with the former Aljunied Town Council managing agent for the First Managing Agent Contract. With the contract renewed into the Second Managing Agent Contract, the contracted rates increased significantly. The increase in the managing agent's costs in the first year under FMSS amounted to approximately SGD0.5m, while under the Second Managing Agent Contract the rates were, conservatively, SGD0.7m above that which might have been achievable by retaining CPG as the managing agent, as was provided for under the CPG Contract.
- 1.4.13 The failed control environment ought not to have been permitted by the Town Councillors, pointing to a flawed system of governance overall. On the basis that such individuals hold fiduciary duties and responsibilities in respect of public funds entrusted to the Town Council, the Town Councillors bear a personal and collective responsibility for improper payments enabled or permitted by such a flawed system.
- 1.4.14 Having fiduciary duties, Town Councillors are collectively responsible to the Town Council beyond improper payments directly handled by themselves individually. This consideration is relevant in determining the question of recovering improper payments from Town Councillors.

1.5 Improper payments to third parties

- 1.5.1 Improper payments were also made by the Town Council to suppliers, consultants and contractors.
- 1.5.2 These payments include instances where the Town Council had, in breach of the TCFR, engaged a higher-priced consultant without calling for a tender for the project in question and in circumstances where no reasonable justification was recorded.¹³ This

⁸ See paragraph 5.3.27 *et seq.* of this Report.

⁹ Of which, approximately SGD1.1m was approved for payment by the Conflicted Persons.

¹⁰ For a summary of these payments, see paragraph 5.3.2 of this Report.

¹¹ See paragraph 5.5.3 *et seq.* of this Report.

¹² See paragraph 5.5.22 *et seq.* of this Report.

¹³ See section 6.2 of this Report.



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resulted in significant additional cost of SGD2.8m to the Town Council that would have been avoided had the lower-priced consultant been selected.

- 1.5.3 In addition, payments were made to third parties in the absence of adequate supporting documentation for the work and services provided (approximately SGD44k in aggregate)¹⁴, as well as payments that were improperly made as a result of weaknesses in the payment approval process (amounting to approximately SGD106k).¹⁵
- 1.5.4 Inadequate management and lax controls also led to expenditure being incurred in breach of prescribed levels of authority stipulated in the TCFR or as required by the Town Council's own internal controls. We identified, on a sample basis alone, payments without proper authority of an approximate total financial value of SGD2.5m.¹⁶ Other payments include an overpayment of SGD1.5k in allowances to a Town Councillor.¹⁷
- 1.5.5 In most instances, it is clear that services have been rendered or goods supplied but, due to the nature of the Control Failures, coupled with the lack of other objective records or documents, it is often impossible to ascertain whether these improper payments ought to be recovered, and to what extent. To the extent that such improper payments ought to be recovered, these ought in the first instance to be recovered from the third parties which received the payments. If this is not possible, then any prospect of recoverability would need to be separately determined by reference to the personal and collective responsibility of the Town Councillors as fiduciaries and custodians of the public funds entrusted to the Town Council.
- 1.5.6 While our work was not focussed on identifying potential criminal acts arising from the issues we observed, we are advised that, had the shortcomings in section 5 of this Report been committed deliberately, they could amount to criminal conduct, the implications of which the Town Council should consider.

¹⁴ See section 6.3 of this Report.

¹⁵ See section 6.4 of this Report.

¹⁶ See section 6.5 of this Report.

¹⁷ See section 6.6 of this Report.

2 Our engagement

2.1 This report

- 2.1.1 On 27 November 2015, the Court of Appeal, in CA/CA 114 of 2015, issued an order to AHPETC to appoint accountants to establish, inter alia, “whether any past payments made by AHPETC were improper and ought therefore to be recovered.”
- 2.1.2 The Town Council appointed KPMG as the accountants on 1 March 2016.
- 2.1.3 The relevant parts of the terms of reference for this Report, agreed between the Town Council and HDB, are, in summary:
- to establish whether any past payments made by the Town Council in the Review Period, were improper and ought to be recovered; and
 - to issue a report on findings as regards the past improper payments by such date as may be agreed with the Town Council (with the consent of HDB), or as ordered by the Court.

2.2 Our scope

- 2.2.1 Our scope, agreed with the Town Council and HDB, is as follows:
- identify the following:
 - payments made to FMSS and FMSI;
 - payments associated with issues arising from the Audit Points;
 - other questionable payments as identified from other procedures (e.g. forensic data analytics);
 - any other questionable payments identified in the Audit Reports;
 - obtain and review documentation in the possession of the Town Council relating to the above payments, including correspondence, accounting records, payment vouchers, purchase orders, contracts, invoices, debit and credit notes and variation orders;
 - identify all parties involved in the above payments;
 - conduct interviews of the Town Council staff (including, if necessary and possible, past employees) involved in or exercising roles relevant to the above payments;
 - where possible, arrange for and conduct interviews of parties involved in the above payments or with information potentially relevant to the above payments;
 - assess the above payments for any failure to comply with internal controls, apparent material inaccuracy in information or documentation, or unreported related parties;
 - assess the need for further review action in respect of any failure to comply with internal controls, apparent material inaccuracy in information or documentation, or unreported related-parties, which may include the following:



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- forensic data analytics on other payments to identify any potential similar trends or anomalies for further review;
 - further interviews or documentation review;
 - forensic technology procedures on Town Council electronic devices assigned to Town Council staff members or former staff members involved in or exercising roles pertaining to the relevant payment;
 - corporate intelligence procedures;
- with advice from Solicitors if necessary, assess whether any payment should be:
- considered “improper”; and
 - recovered.

2.2.2 For a summary of the payments reviewed and other work performed for this Report, refer to **Appendix B**.

2.3 Agreement to KPMG’s independence

2.3.1 Clause 7.3 of our letter of engagement provides:

AHTC agrees to confirm its agreement with our objectivity and independence prior to issuance of our reports. Additionally, you agree to raise any concerns you may have as to KPMG’s objectivity immediately that they arise.

2.3.2 Appendix A to our letter of engagement provides for us to issue our draft Monthly Report to the Town Council for confirmation of the factual accuracy within two business days of its provision to the Town Council. Clause C(iv) of Appendix A provides:

Should AHTC disagree with any factual findings in the draft Monthly Report, AHTC will provide details of the disagreement and substantiating documentation, if applicable, concurrently. Where this occurs, we will discuss and agree the factual accuracy of the draft report within two business days of AHTC’s observations. Where it is not possible to agree the factual accuracy of the draft Monthly Report, KPMG may choose to not issue a Monthly Report and withdraw from the engagement, or may issue the Monthly Report with AHTC’s disagreements noted in the report. Where a Monthly Report is not issued at all, or is not issued by its due date, KPMG will write to AHTC and HDB by that date stating that it is not able to issue a Monthly Report and the reason(s) why it is unable to do so.

2.3.3 This process gives advance notice to the Town Council of our tentative views and permits it an opportunity to respond and submit representations for our consideration, if necessary. This exercise, known as *Maxwellisation*,¹⁸ ensures that a party criticized is given an opportunity to respond to the criticism.

¹⁸ After the English case of *Maxwell v. Department of Trade & Industry* [1974] 1 QB 523.



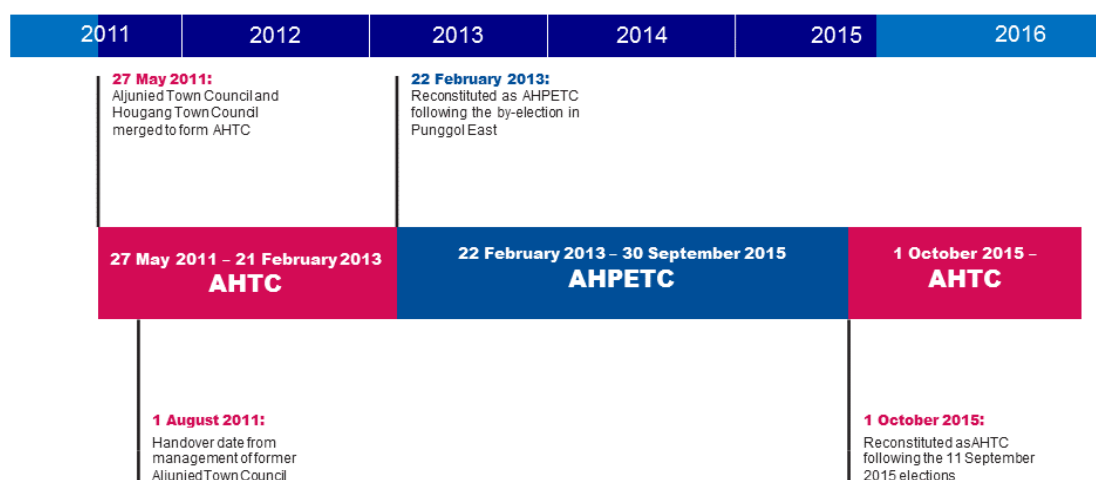
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- 2.3.4 While this Report is not a Monthly Report, we have adopted a similar process of Maxwellisation, save that we have, in acknowledging the more contentious nature of the contents of this Report, given the Town Council one week to reply.
- 2.3.5 By correspondence between our solicitors, Shook Lin & Bok LLP, and the Town Council's solicitors, Peter Low LLC, between 20 September 2016 and 7 October 2016, we invited the elected councillors to attend formal interviews with us. The Town Council's elected councillors chose to provide a written response in lieu of interview. The Town Council has also, through their solicitors, in a letter dated 7 October 2016, confirmed the Town Council's agreement to our independence as follows:
2. [...] we confirm that our client does not call into question your client's independence or objectivity, within the meaning of paragraph 7.3 of your client's Engagement Letter dated 1 March 2016.
 3. On the contrary, our client has had a good working relationship with your client. Our client's representatives have given your client their utmost cooperation and will continue to do so in good faith and to the best of their abilities.
- 2.3.6 This correspondence is attached at **Annex B** to this Report. Where appropriate, the written replies of the Town Council have been incorporated into this Report along with our responses.
- 2.3.7 By a letter dated 17 October 2016, we issued our draft report, which represented our work in progress at that date on our preliminary conclusions.
- 2.3.8 In preparing this Report, we have taken into consideration all such representations in finalizing our Report and the conclusion drawn in it. In some instances, we have revised our tentative views or observations to take into account the responses, not necessarily because we accepted or agreed with the explanations or clarification provided in the responses. Where it has been appropriate, we have set out the substance of the written representations received and given our reasons as to why we agree or disagree with the representations made.

3 Background

3.1 Aljunied-Hougang Town Council

- 3.1.1 Following the General Election on 7 May 2011, Aljunied Town Council and Hougang Town Council merged to form AHTC on 27 May 2011, with a handover date of 1 August 2011.¹⁹ AHTC was subsequently reconstituted as AHPETC with effect from 22 February 2013, following the by-election for Punggol East SMC.
- 3.1.2 Following the General Election on 11 September 2015, AHPETC was reconstituted as AHTC on 1 October 2015. A summary timeline²⁰ of the Town Council’s establishment is below.



- 3.1.3 The Town Council manages HDB estates in Aljunied Group Representation Constituency (which consists of Bedok Reservoir – Punggol, Eunos, Kaki Bukit, Paya Lebar and Serangoon Divisions) and Hougang Single Member Constituency.

3.2 The Audit Reports

- 3.2.1 AHTC’s inaugural financial report was for FY 2012, for the period from 1 April 2011 to 31 March 2012, and includes the financial statements for the period 1 April 2011 to 31 July 2011 of the former Aljunied Town Council, which was audited by Mazars.²¹

¹⁹ Under the TCA, where an area within one town is being transferred to another town, the Minister for National Development may specify that the town council of the first town continue to maintain and manage the area for a period not exceeding 90 days. There are no other provisions in the TCA for transition when there is a change of MPs. Newly elected MPs assume office as town councillors once the election results are published, and assume legal responsibility for the town when the relevant Orders are gazetted (page 8, paragraph 7 of the MND Town Council Review Report, April 2013).

²⁰ Unless stated otherwise, dates shown in the charts in this Report are to the end of the Review Period.

²¹ Mazars was engaged in July 2011 to perform an audit of the financial statements for the period 1 April 2011 to 31 July 2011 for the handover of precincts from the former Aljunied Town Council to AHTC, Ang Mo Kio Town Council and Pasir Ris-Punggol Town Council.

3.2.2 The Town Council's external auditors issued "disclaimers of opinion" for each of its financial statements for FY 2012 to 2015 summarized as follows:

| FY | External auditor | Type of audit opinion | Date of audit report |
|------|------------------|-----------------------|----------------------|
| 2012 | FKT | Disclaimer of opinion | 19 November 2012 |
| 2013 | FKT | Disclaimer of opinion | 4 February 2014 |
| 2014 | Audit Alliance | Disclaimer of opinion | 29 June 2015 |
| 2015 | Audit Alliance | Disclaimer of opinion | 24 August 2015 |

3.2.3 A disclaimer of opinion is a statement by an auditor that it does not express an opinion on the financial performance and position of the subject entity. Such a statement is issued when:

- an auditor is unable to obtain sufficient appropriate audit evidence on which to base its opinion and concludes that the possible effects on the financial statements due to undetected misstatements, if any, could be both material and pervasive; or
- there are multiple uncertainties, and the auditor concludes that, notwithstanding having obtained sufficient appropriate audit evidence regarding each of the individual uncertainties, it is not possible to form an opinion on the financial statements due to the potential interaction of the uncertainties and their possible cumulative effect on the financial statements.²²

3.3 The AGO's Report

3.3.1 The AGO's Report on the AGO's audit of AHPETC identified areas in which AHPETC was not compliant with section 35(c) of the TCA or the TCFR.

3.3.2 In particular, the AGO's Report raised, *inter alia*, the following issues relating to the governance of transactions with FMSS and FMSI:

- incomplete disclosure of transactions with FMSS and FMSI in the Town Council's financial statements;
- inadequate management of conflicts of interests arising from ownership interests of the Town Council's key officers in FMSS and FMSI;
- inappropriate waiver of open tenders and competitive quotations for services provided by FMSS and FMSI;
- lack of disclosures, due diligence and assessment of potential conflicts of interest prior to awarding contracts to FMSS and FMSI;
- weaknesses in the approval of payments to FMSS and FMSI; and
- approvals for services obtained and written agreements executed after the awarding and commencement of services provided by FMSS and FMSI.

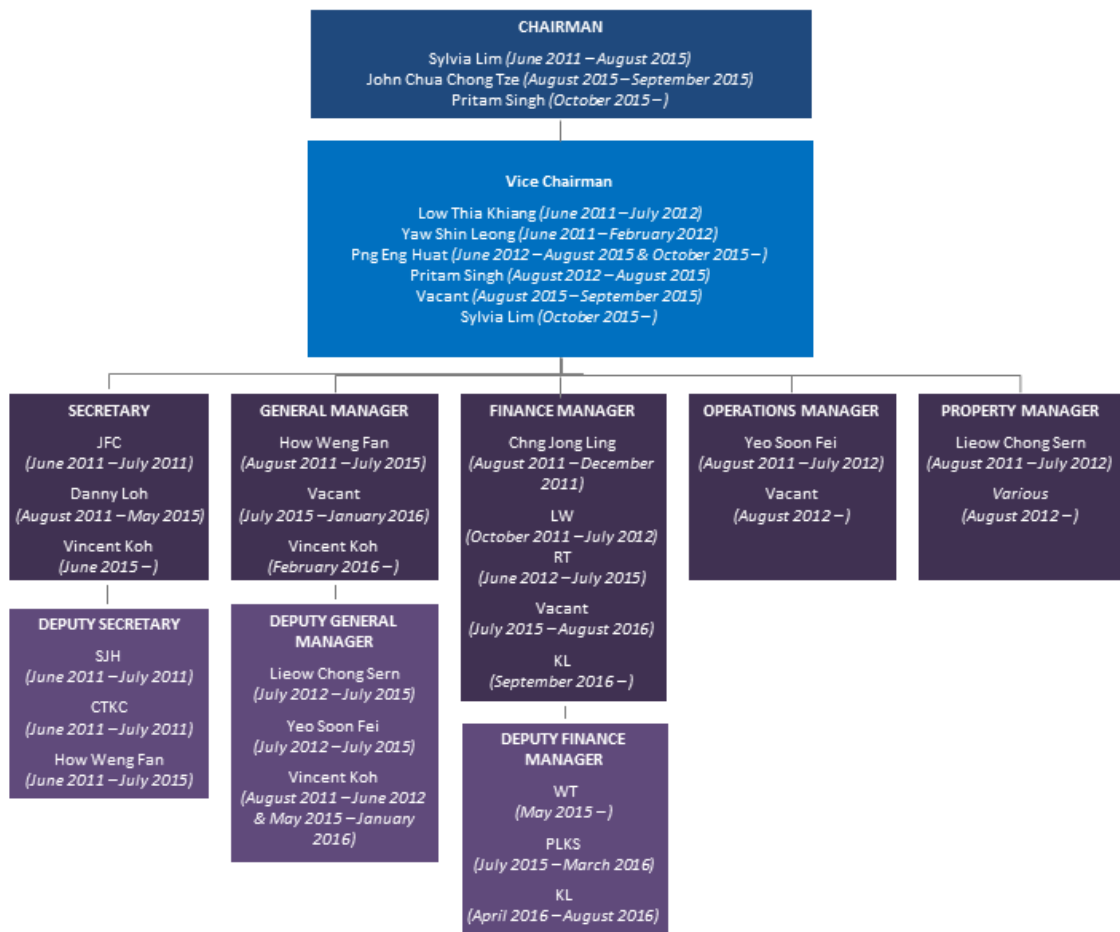
²² Paragraphs 9 and 10 of Singapore Standard on Auditing 705 *Modifications to the Opinion in the Independent Auditor's Report*.

3.4 The Court Order

3.4.1 On 27 November 2015, the Court of Appeal ordered the Town Council to appoint accountants to assist with, among other things, identifying outstanding Audit Points and advising on measures to remedy them, and reviewing payments made by the Town Council during the Review Period. KPMG was appointed as the accountants by the Town Council on 1 March 2016 pursuant to the Court Order.

3.5 The Town Council

3.5.1 An overview of the Town Council, its MPs, its committees and its management²³ is provided below:



3.5.2 The Town Council members comprise the elected MPs and appointed Town Councillors, from whose ranks the Chairman and Vice Chairman are chosen. During the Review Period, the Town Council’s Chairmen and Vice Chairmen were as overleaf:

²³ In this Report, for FMSS and Town Council employees other than the Conflicted Persons, we have used the initials and, where applicable, job title of the staff member concerned.

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| | 2011 | 2012 | 2013 | 2014 | 2015 | |
|---------------------|-------------------------|--|--|------|-------------|---------------------------------------|
| Sylvia Lim | 1 Jun 2011 ¹ | Chairman | | | 24 Aug 2015 | 1 Oct 2015 – Vice Chairman |
| Pritam Singh | | 1 Aug 2012 | Vice Chairman | | 24 Aug 2015 | 1 Oct 2015 – Chairman |
| John Chua Chong Tze | | | | | | 28 Aug 2015 – 30 Sep 2015 Chairman |
| Png Eng Huat | | 1 Jun 2012 ¹ | Vice Chairman | | 24 Aug 2015 | 1 Oct 2015 – Vice Chairman |
| Low Thia Kiang | | Vice Chairman | 1 Jun 2011 ¹ – 31 Jul 2012 ¹ | | | |
| Yaw Shin Leong | | 1 Jun 2011 ¹ – 14 Feb 2012 ¹ | Vice Chairman | | | |

¹Source: Town Council management

3.5.3 Additionally, the Town Council was supported by the following committees during the Review Period:

| | | | |
|--|--|---|--|
| Estates & Community Liaison Committee | Date of formation: 14 June 2012 Chairman: Muhamad Faisal bin Abdul Manap (June 2012 –) | Tenders & Contracts Committee | Date of formation: 14 June 2012 Chairman: Pritam Singh (June 2012 –) |
| Audit Committee | Date of formation: 15 August 2013 Chairman: Png Eng Huat (August 2013 –) | Finance & Investment Committee | Date of formation: 14 June 2012 Chairman: Chen Show Mao (June 2012 – October 2015) Chairman: Sylvia Lim (October 2015 –) |

3.6 FMSI

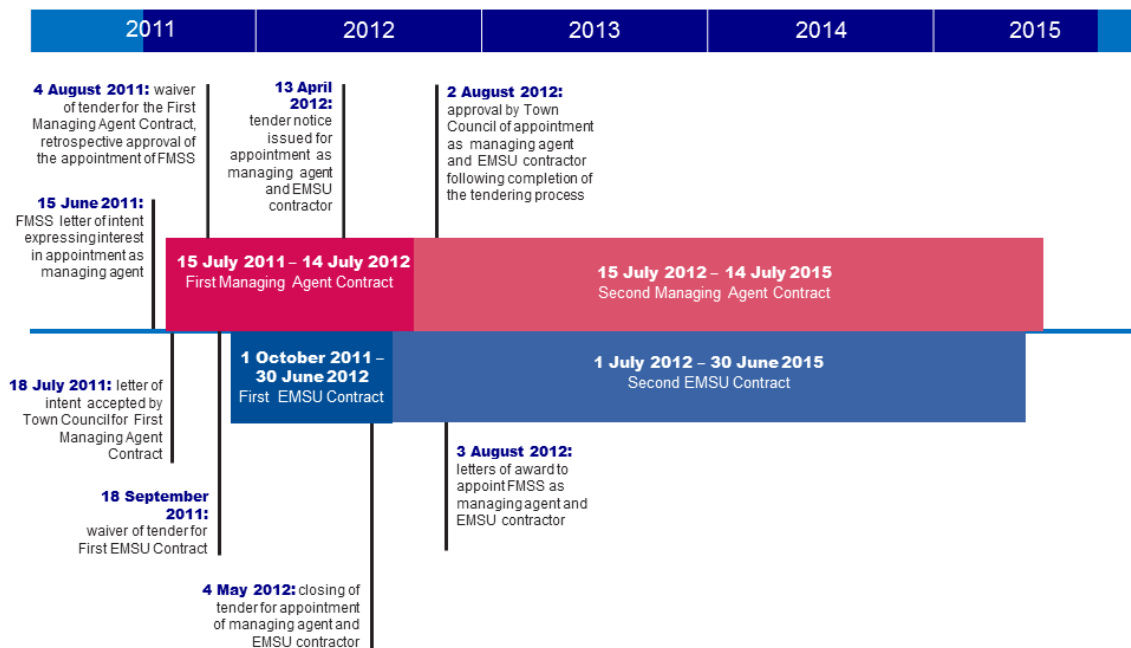
3.6.1 FMSI was a sole proprietorship registered by Danny Loh on 4 August 2004, which ceased trading on 4 August 2015. According to its ACRA Corporate Profile, FMSI's principal activities were building maintenance and management. FMSI was engaged by the former Hougang Town Council to provide EMSU services for the period from 15 October 2007 to 14 October 2012, although the contract was terminated by notice on 30 June 2012.

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3.7 FMSS

3.7.1 FMSS was incorporated on 15 May 2011. According to its ACRA Corporate Profile²⁴, FMSS’s principal activity is “town councils”. FMSS was engaged by the Town Council to provide managing agent services and project management services during the period 15 July 2011 to 14 July 2015 and EMSU services during the period 1 October 2011 to 30 June 2015.²⁵

3.7.2 A summary timeline of the contracts between FMSS and the Town Council during the Review Period is provided below:



3.7.3 Further detail of the contracts is tabulated overleaf:

²⁴ Dated 12 May 2011.

²⁵ FMSS provided EMSU services to the precincts under the former Aljunied Town Council from 1 October 2011 to 30 June 2012 and to AHTC from 1 July 2012 to 30 June 2015. The precincts covered by the former Hougang Town Council continued to use FMSI as EMSU service provider until 30 June 2012, at which point FMSS provided EMSU services for these precincts.

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| Contract type | Party | Contract reference | Period |
|--|-------|--------------------|--|
| Managing agent and project management contract | FMSS | FMSS/11/DL/001 | 15 July 2011 ²⁶ to 14 July 2012 |
| | FMSS | OT/0264/12 | 15 July 2012 to 14 July 2015 |
| EMSU contract | FMSS | N/A ²⁷ | 1 October 2011 to 30 June 2012 |
| | FMSS | OT/0263/12 | 1 July 2012 to 30 June 2015 |

3.7.4 A summary table of the amounts billed by FMSS and FMSI over the Review Period is provided at **Appendix C**.

3.7.5 The following individuals (i.e. the Conflicted Persons) were, during part or all of the Review Period, shareholders of FMSS:

| Period | Shareholders | Interest in FMSS ²⁸ (%) |
|----------------------------------|--|------------------------------------|
| 15 May 2011 to 16 June 2011 | Danny Loh ²⁹ | 100 |
| 17 June 2011 to 22 July 2012 | Danny Loh How Weng Fan Yeo Soon Fei Vincent Koh Chng Jong Ling | 50 20 10 10 10 |
| 23 July 2012 to 20 February 2013 | Danny Loh How Weng Fan Yeo Soon Fei Chng Jong Ling | 60 20 10 10 |
| 21 February 2013 to 7 May 2013 | Danny Loh How Weng Fan Yeo Soon Fei | 60 20 20 |
| 8 May 2013 ³⁰ | Danny Loh How Weng Fan Yeo Soon Fei Lieow Chong Sern | 50 20 20 10 |

²⁶ Although the First Managing Agent Contract was retrospectively awarded to FMSS on 15 July 2011, FMSS had already taken over the staff of the former Hougang Town Council on 15 June 2011.

²⁷ There is no formalized contract.

²⁸ The number of issued shares in FMSS is 500,000, which has not changed since FMSS was incorporated.

²⁹ Danny Loh passed away on 27 June 2015.

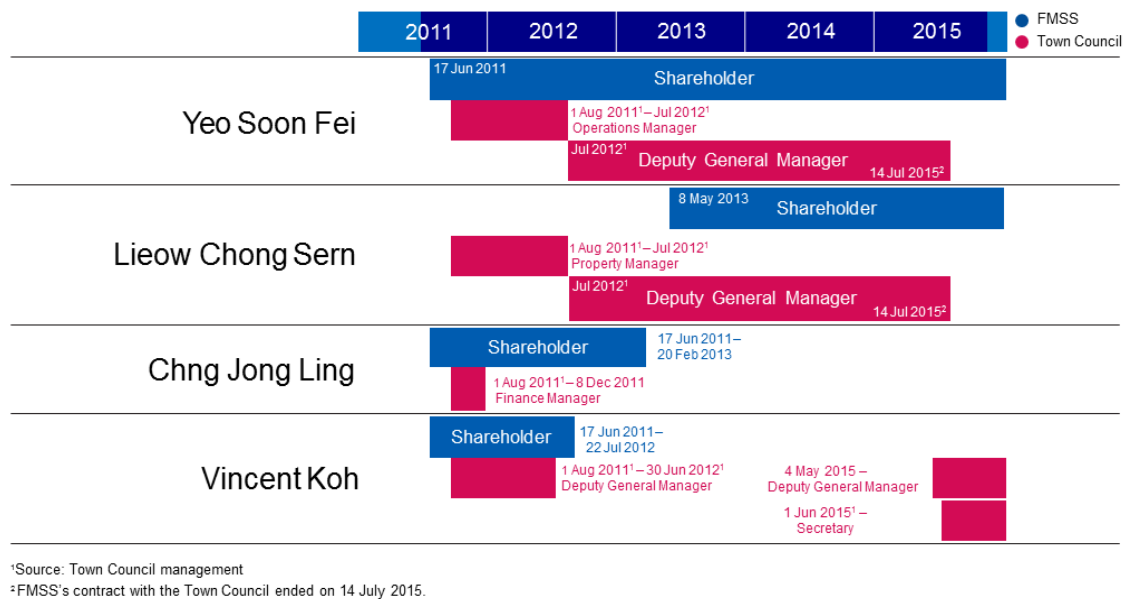
³⁰ Last registered change of shareholdings.

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3.7.6 A timeline showing the tenure of Danny Loh and How Weng Fan at the Town Council during the Review Period is below:



3.7.7 A timeline showing the tenure of the other Conflicted Persons at the Town Council during the Review Period is below:



3.8 CPG

3.8.1 CPG was the managing agent of the former Aljunied Town Council at the date of AHTC's formation. CPG had a contract dated 8 June 2010 to provide managing agent services to the former Aljunied Town Council for three years, from 1 August 2010 to 31 July 2013. It was replaced by FMSS as shown below:





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3.8.2 CPG also provided EMSU services for precincts taken over from the former Aljunied Town Council under a contract dated 30 May 2005 for the period from 1 July 2005 to 30 June 2009, with two further extensions made to extend the end of the contract till 30 September 2011.

3.9 EMS

3.9.1 EMS provided EMSU services to the Town Council (for Kaki Bukit, taken over from Marine Parade Town Council) under a contract covering the period from 1 July 2005 to 30 September 2011.

4 Legal and statutory framework

4.1 Preliminaries

- 4.1.1 In this section, we provide the legal framework we used in considering whether the payments made by the Town Council was improper and ought to be recovered.
- 4.1.2 We are not able to conclude whether all of the improper payments identified in this Report ought to be recovered. We have, however, indicated where, based on the evidence available to us, there may be grounds for recovery.
- 4.1.3 The nature of this Report is inquisitorial; it is not for us to make a final adjudication. We do not conclusively address whether our factual observations, by themselves or in combination with other observations, give rise to a cause of action in law. We are mindful of the principle *audi alteram partem*, to “let the other side be heard.”
- 4.1.4 We have nevertheless *Maxwellised* this Report in respect of our preliminary factual observations.
- 4.1.5 We have been advised that several English Court decisions indicate that town councillors stand in a position of fiduciaries. There has been no decision of the Courts of the Republic of Singapore that town councillors stand in a position of fiduciaries. In general, the decisions of the English Courts have persuasive authority in Singapore Courts but do not, unless in common with established Singapore law, represent the laws of Singapore.
- 4.1.6 Our assessment as to whether improper payments, as identified in sections 5 and 6 of this Report below, ought to be recovered is summarized in paragraphs 5.3.2 and 6.1.4 below.

4.2 Improper payments

Definition of improper payments

- 4.2.1 We have considered payments to be improper where they are in breach of the Town Council’s policies or procedures, the TCA, the TCFR or any other applicable duties imposed on the Town Council and Town Councillors by law. Our approach has also been to consider payments to be improper when the payment exceeds the sum that the Town Council is required to pay under a given contract (i.e. an overpayment), or when payment is made for work or services that have not been performed satisfactorily or not sufficiently delivered.

4.3 The statutory framework

- 4.3.1 The TCA provides for the incorporation of town councils to control, manage, maintain and improve the common property of HDB housing estates, their constitution and functions. The TCFR govern operational matters such as the authority to incur expenditure and sign cheques on behalf of a town council.

- 4.3.2 Town councils were set up nationwide in Singapore in 1989 to serve two objectives:³¹
- First, town councils enable elected MPs to be given the authority and responsibility to take charge of their constituents' estate and allow each town to develop its own distinctive character.
 - Second, town councils make MPs accountable to their direct voters for the running of their estate.
- 4.3.3 To achieve these objectives, MPs are given full autonomy to run town councils, including:
- running of the town council and choosing (for GRCs) an MP to be the town council chairman;
 - appointing town councillors to help them;
 - employing the agents and staff as they see fit and necessary. The members, officers and employees of a town council and all employees of its managing agent are not public officers,³² although they are given the same powers as public officers to enable them to perform their duties under the TCA; and
 - managing assets, including disposal and write-offs, subject to the TCFR.
- 4.3.4 The TCA and the TCFR reflect an intent to give elected MPs as much latitude as possible to run town councils within broad and general rules laid down to ensure proper governance and safeguard public interest. The MND Town Council Review Report of April 2013 notes that the TCA “does not prohibit transactions with persons or entities associated with political parties.”³³

4.4 Personal liability of town councillors

- 4.4.1 Section 56 of the TCFR provides:

56. (1) Any officer allowing or directing any disbursement without proper authority shall be responsible for the amount.

(2) In the event of any wrongful payment being made in consequence of an incorrect certification on a voucher, the certifying officer shall be responsible for the wrongful payment.

(3) The Head of Department or his authorised representative shall certify as to the accuracy of every detail on the voucher.

(4) It is the responsibility of the Head of Department to satisfy himself that —

(a) the services specified have been duly performed;

(b) the goods purchased have been properly held or applied for the purpose intended;

³¹ The background information presented at paragraphs 4.3.2 to 4.3.4 is summarized from the MND Town Council Review Report, April 2013.

³² However, in respect of the Penal Code, see section 4.5.6.

³³ Page 12, paragraph 6 of the MND Town Council Review Report, April 2013.

- (c) the prices charged are either according to contracts or approved scales, or fair and reasonable according to current local rates;
- (d) authority has been obtained as quoted, and the computations and castings have been verified and are arithmetically correct; and
- (e) the persons named in the vouchers are those entitled to receive payment.

(5) In approving a refund or payment under rule 31(2)(a) or (b), the Head of Department or his authorised representative shall satisfy himself that the amount had been received by the Town Council and is still due and payable to the payee.

4.4.2 The personal liability of a town councillor is subject to limitations set out in section 52 of the TCA, which states:

No suit or other legal proceedings shall lie personally against any member, officer or employee of a Town Council or other person acting under the direction of a Town Council for anything which is in good faith done or intended to be done in the execution or purported execution of this Act or any other Act.

4.5 Town councillors stand in the position of fiduciaries

4.5.1 Broadly, a fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The following relationships have been held to be fiduciary: director and their company, senior management employee and their company, solicitor and client, agent and principal, and partner and co-partner.

4.5.2 Public officers are also fiduciaries to two separate bodies: the government generally³⁴; and the public at large.³⁵

4.5.3 In the English case of *Magill v. Porter*,³⁶ it was observed that:

Where public powers are conferred on a council, it is the body of elected councillors who must exercise those powers save to the extent that such exercise is lawfully delegated to groups of councillors or to officers. *All will act in the name or on behalf of the council. It follows from the proposition public powers are conferred as if upon trust that those who exercise powers in a manner inconsistent with the public purpose for which the powers were conferred betray that trust and so misconduct themselves.*

[Emphasis added]

4.5.4 It was also recognized in *Magill* that, as a common law rule, public officers were liable to make good losses suffered by the local authority as a consequence of the public officers' wilful misconduct due their position as trustees of the local authority.³⁷

³⁴ *Magill v. Porter* [2001] 2 AC 357 and *Attorney General for Hong Kong v. Reid* [1993] 3 WLR 1143.

³⁵ *R v. Whitaker* [1914] 3 KB 1283 at page 1296, cited in Sadler, Robert J, "Liability for Misfeasance in a Public Office" 14 Sydney L. Rev 137 (1992).

³⁶ *Magill v. Porter* [2001] 2 AC 357 at [19].

- 4.5.5 Section 15 of the TCA requires the members of Town Councils, in common with directors of a company, to declare their interests in transactions in which they are directly or indirectly interested. This duty, to avoid a conflict of interest, goes to the heart of a fiduciary's duty to his principal.
- 4.5.6 The MND Town Council Review Report dated April 2013 stated, "The members, officers and employees of a [town council] and all employees of its managing agent are not public officers, although they are given the same powers as public officers to enable them to perform their duties under the [TCA]."³⁸ This must however be read in the context of section 56 of the TCA which provides that:

All members, officers and employees of a Town Council and all employees of its managing agent shall be deemed to be public servants for the purposes of the Penal Code.

4.6 The Penal Code

- 4.6.1 There are several sections of the Penal Code which may be relevant to improper payments made by a town council. These are:
- sections 405 and 406 of the Penal Code: Criminal Breach of Trust and Criminal Breach of Trust by public servant, or by banker, merchant or agent; and
 - section 166 of the Penal Code: Public servant disobeying a direction of the law, with intent to cause injury to any person.
- 4.6.2 It is outside our mandate to conclude whether any offence has or has not been committed. We do, however, where appropriate, note whether we have observed facts and circumstances that potentially give rise to an offence.

Criminal Breach of Trust

- 4.6.3 Section 405 of the Penal Code provides:

Criminal Breach of Trust

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or *dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode* in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person to do so, commits "criminal breach of trust".

[Emphasis added]

³⁷ [2001] 2 AC 357 at [19(4)].

³⁸ At page 11, paragraph 4(c).

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- 4.6.4 In *Cheam Tat Pang and another v. PP*,³⁹ Yong Pung How CJ held that, in order to satisfy the requirement of “*direction of law prescribing the mode*”:
- the “direction of law” had to be express, not implied;⁴⁰ and
 - the “mode” requires that the direction of law in question must be specific.⁴¹
- 4.6.5 We are advised that section 19 of the Town Councils Act (Powers of the Town Council) and the provisions of the TCFR satisfies this requirement.
- 4.6.6 Section 405 of the Penal Code is to be read with section 409 which reads:
- Criminal breach of trust by public servant, or by banker, merchant, or agent
409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant, or in the way of his business as a banker, a merchant, a factor, a broker, an attorney or an agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment for a term which may extend to 20 years, and shall also be liable to fine.

Public Servant disobeying a direction of law

- 4.6.7 Section 166 of the Penal Code provides:
- Public servant disobeying a direction of the law, with intent to cause injury to any person
166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to another person, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

4.7 Conclusion

- 4.7.1 The Town Councillors bear a personal and collective responsibility. As described at section 4 of this Report, town councillors stand in a position of fiduciaries to a) the government, as well as b) the public at large, given that they are entrusted with the control and management of public funds. The Town Councillors were under a duty not to improperly use or apply the public funds entrusted to them.
- 4.7.2 We are advised that improper payments or liabilities improperly incurred, which caused or are likely to have caused a negative financial impact on the Town Council; as well as acts which unjustifiably led, or are likely to have led, to the loss of costs savings (such as weaknesses in the Town Council’s tender processes), may constitute a breach of the fiduciary duties owed by the Town Councillors. Insofar as this is the case, the

³⁹ [1996] 1 SLR(R) 161.

⁴⁰ [1996] 1 SLR(R) 161 at [16] to [18].

⁴¹ [1996] 1 SLR(R) 161 at [19].



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Town Councillors potentially bear a personal and collective responsibility for such abovementioned losses.

- 4.7.3 To the extent that such matters involve overpayments or erroneous payments to vendors and contractors, the Town Council may, as one avenue of recovery, seek recovery of losses from the recipients of the improper payments. At the same time, the Town Council may potentially look to the Town Councillors as a further avenue of recovery, for recovery of losses or cost-savings arising from any breaches of fiduciary duties.
- 4.7.4 We are advised that the issues identified in section 5 may give rise to personal claims against the Town Councillors or disclose the commission of criminality. For the avoidance of doubt, this report does not seek to make a finding on whether these circumstances, individually or collectively, demonstrate a deliberate course of action taken by the Town Councillors to benefit FMSS and FMSI. Any such intentional conduct would potentially amount to an offence or abetment of any offence under the Penal Code, particularly with reference to section 405 of the Penal Code (Criminal Breach of Trust), section 409 of the Penal Code (Criminal Breach of Trust by Public Servant, or by Banker, Merchant, or Agent), and/or section 107 read with section 108 of the Penal Code (Abetment of the doing of a thing).

5 Improper payments to FMSS and FMSI

5.1 Overview

- 5.1.1 As described in our July 2016 Monthly Report, the Control Failures in the Town Council were pervasive. The Control Failures result from a failure in the overall control environment. One aspect of this is the failure to address serious conflicts of interest, which exposed public funds to the risk of improper use and application.
- 5.1.2 Improper payments were made to FMSS and FMSI in this control environment in which meaningful oversight by the Town Councillors was absent. The lack of discipline in financial operations and record-keeping results in incomplete information to support payments, which caused the Town Council's auditors to disclaim their opinions, and is such that we are unable to conclude whether the improper payments identified in this Report are exhaustive and on the complete quantum of improper payments that ought to be recovered.
- 5.1.3 The tender processes that were adopted by the Town Council in relation to the appointment FMSS and FMSI were also deficient in numerous respects, which may have resulted in the Town Council incurring significant additional costs.

5.2 Flawed governance

- 5.2.1 The Control Failures in the Town Council are pervasive, cutting across the key areas of governance, financial control, financial reporting, procurement and records management for the duration of the Review Period. One aspect of this is the failure to address serious conflicts of interest, which involved an unacceptably high degree of abdication of control to the Conflicted Persons. It additionally involved an absence of meaningful oversight by the Town Councillors over FMSS's running of the Town Council's management function. This exposed public funds to the risk of improper use and application.
- 5.2.2 In this regard, payments with an aggregate financial value of SGD23,299,483 involved approvals by the Conflicted Persons of payments in effect to themselves through payment vouchers, which are each important gateways in the Town Council's payment approval process. The approvals for these payments was severely undermined by the involvement of the Conflicted Persons; it is of concern whether these payments are for services that were satisfactorily delivered and therefore whether some or all of these payments were fully justified. The salient features of this flawed governance in relation to FMSS and FMSI are enumerated in this section of our Report.
- 5.2.3 First, between 2011 and 2015, the Town Council appointed and engaged: (a) FMSS as its managing agent; and (b) FMSI and FMSS as its EMSU service providers. This represented a serious conflict of interest as the Conflicted Persons held direct ownership interests in FMSS or FMSI, whilst concurrently holding key management and operational positions in the Town Council. Their motive to serve the Town Council and their profit motive from their personal financial interests were therefore in conflict. Their positions are summarized as follows:

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| Conflicted Person | Period of conflict | Position(s) held at the Town Council | Position of conflict with Town Council's interests |
|--------------------------------|-------------------------------------|--|--|
| Danny Loh | Until 31 May 2015 | Secretary | Shareholder of FMSS, sole proprietor of FMSI |
| How Weng Fan | Until 14 July 2015 | Deputy Secretary and General Manager | Shareholder of FMSS, wife of proprietor of FMSI |
| Yeo Soon Fei | From 1 August 2011 to 14 July 2015 | Operations Manager then Deputy General Manager | Shareholder of FMSS |
| Vincent Koh ⁴² | From 1 August 2011 to 30 June 2012 | Deputy General Manager | Shareholder of FMSS |
| Chng Jong Ling ⁴³ | From 1 August 2011 to December 2011 | Finance Manager | Shareholder of FMSS |
| Lieow Chong Sern ⁴⁴ | From 8 May 2013 to 14 July 2015 | Deputy General Manager | Shareholder of FMSS |

- 5.2.4 Secondly, the Conflicted Persons held key functions in respect of the Town Council's payment approval processes, which meant that the Conflicted Persons were in many respects given the power in effect to approve payments to themselves.
- 5.2.5 The Town Council's response to this issue was that, "Like many other Town Councils, the function of managing the town is contracted out to the [managing agent]. There are no direct employees of the Town Council. It is out of necessity that the Managerial Staff of the MA check and sign off on the interim stages before payment." The Town Council also furnished payment vouchers showing that an employee of CPG had approved payments to CPG. However, the situation of FMSS is not like that of other town council managing agents; for other managing agents, those signing off payments for the town councils are not, as shareholders, ultimate beneficiaries of a fixed proportion of every payment to the managing agent that they approve. The conflict is entirely different; the appointment of FMSS and FMSI introduced a personal profit motive for the Conflicted Persons, in effect, to approve payments to themselves.
- 5.2.6 For payments by the Town Council for services rendered, the payment approval process generally involved the following steps⁴⁵:

⁴² Vincent Koh left FMSS, resigning as a director, on 30 June 2012 and ceased to be a shareholder of FMSS on 22 July 2012. He had been the Deputy General Manager until 30 June 2012. He re-joined on 4 May 2015 as Deputy General Manager and became General Manager on 1 February 2016, both under the direct employment of the Town Council.

⁴³ Chng Jong Ling ceased to be a director and a shareholder of FMSS on 15 November 2011 and 20 February 2013 respectively. He became Finance Manager on 1 August 2011 and left the Town Council in December 2011, although the Town Council was unable to confirm his exact end date. Town Council meeting minutes dated 8 December 2011 record that Chng Jong Ling was no longer Finance Manager.

⁴⁴ Lieow Chong Sern became a director and shareholder of FMSS on 1 May 2013 and 8 May 2013 respectively and remained so for the remainder of the Review Period.

⁴⁵ This paragraph provides an overview, in practice the use of Work Orders and payment vouchers was not consistent throughout the Review Period. In particular, there were no written policies for the type of expenditure for which Work Orders were required and payment vouchers were not consistently used for the whole of the Review Period.

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- approval and issuance of “Work Orders” on behalf of the Town Council (which, based on the Town Council’s then-existing practices, served as a certification by the Town Council that work and services had been duly provided and received);
- receipt of invoice from vendor;
- approval and issuance of “payment vouchers” on behalf of the Town Council (which, based on the Town Council’s then-existing practices, served as an internal record and confirmation that payment should be made); and
- the final signature on the cheque or bank transfer instruction by designated signatories of the Town Council. For payments to FMSS, but not FMSI, an internal requirement was set⁴⁶ that the co-signatory would be the Chairman or Vice Chairman of the Town Council.⁴⁷

5.2.7 The payment approval process for payments to FMSS and FMSI, however, was severely undermined by the involvement of the Conflicted Persons at every stage. Specifically, between 15 July 2011 and 14 July 2015, the Conflicted Persons approved 132 payment vouchers and 74 Work Orders on behalf of the Town Council in respect of FMSS’s invoices.

5.2.8 In other words, Conflicted Persons in effect approved payments to themselves using Work Orders and payment vouchers. This raises a serious concern whether the work or services provided by FMSS had been properly and accurately certified on behalf of the Town Council in the first place, or whether the works and services were performed or performed satisfactorily and in accordance with the contract.

5.2.9 In its response to our preliminary observations, the Town Council referred us to a speech by Sylvia Lim to Parliament on 12 February 2015, in which she stated, “the Town Council in fact has in place various structures to oversee the work of the Managing Agent. [The table⁴⁸], show[s] the various committees and channels that aid monitoring of the MA’s services. As can be seen, there are multiple avenues by which the Town Council holds the Managing Agent accountable for its work and service levels.” However, this table primarily describes the ordinary responsibilities of various Town Council committees. From time to time, matters relating to services performed by FMSS appear in the minutes of Town Council Committees, but without formal appraisal of FMSS’s performance. They do not describe a process by which oversight and monitoring of the managing agent were undertaken.

5.2.10 A total of 132 payment vouchers, comprising 748 FMSS transactions, were used by the Conflicted Persons in effect to approve payments to themselves; of which the Work Orders for 74 transactions were also “self-certified” by the Conflicted Persons. The value of the payment vouchers and Work Orders are tabulated below (a full list is at **Appendix F**):

| Payment document approved by | Number of transactions | Value of invoices |
|------------------------------|------------------------|-------------------|
|------------------------------|------------------------|-------------------|

⁴⁶ From 8 September 2011.

⁴⁷ For further details on the payment approval processes of the Town Council during the Review Period, see **Appendix E**.

⁴⁸ The table referred to is copied at **Annex C** of this Report.



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| Conflicted Persons | | (SGD) |
|-----------------------|-----|--------------------------|
| Payment vouchers | 748 | 23,299,483 ⁴⁹ |
| Of these, Work Orders | 74 | 1,213,580 |

- 5.2.11 The position of FMSI is analogous to that of FMSS, given that the Town Council's Secretary was the sole proprietor of FMSI for the whole period of his tenure. There were 14 FMSI transactions, totalling SGD411,600. Four of the 14 had payment voucher approval, all of which were by How Weng Fan.⁵⁰ None of the 14 had Work Order approval.
- 5.2.12 The Town Council's response was that the payments were for a fixed contractual sum and therefore there was no practical impact if individual approvals for payments were not given. However, the approval of payments does not relate only to the calculation of the contract sum but also matters such as the satisfactory rendering of services in accordance with the contract as required by TCFR Rule 61(1) and the timing of the payments. This approval should therefore have been obtained.
- 5.2.13 In addition to the above, the Conflicted Persons were also permitted to act as co-signatories for the cheques or bank transfers in respect of FMSS's invoices. Co-signatories for cheques made out to FMSS included the Secretary and General Manager/Deputy Secretary of the Town Council, who were Conflicted Persons. This undermines the payment approval process for FMSS invoices. Although the other co-signatory was either the Chairman or Vice Chairman of the Town Council, it is unlikely that the Chairman or Vice Chairman of the Town Council would have been independently informed (other than by the Conflicted Persons) as to whether the earlier certifications in respect of FMSS invoices were appropriate or justified.
- 5.2.14 The Town Council's response to our preliminary observations was that, "The alternative is to get a lower ranking employee of the [managing agent] who is not a shareholder to sign off. As this employee would still report to the business owners, such an alternative arrangement would merely be compliance in form but not substance notwithstanding it apparently addresses the problem of shareholders "self-approving" payment." However, for cases where payments are to be made to parties in such an obvious and serious conflict of interest, one readily-available option would have been to require the approval to involve an independent member of the Town Council at each stage.
- 5.2.15 Moreover, the continued involvement of the Conflicted Persons in the process as a co-signatory gives rise to the potential for influence being exercised by such individuals over the decisions and judgements of the Chairman or Vice Chairman including, for instance, the ability of the Chairman or Vice Chairman of the Town Council to perform meaningful review of the documentation presented to them being compromised when such documentation was prepared and approved by the Conflicted Persons. Our review indicates that all of the payments to FMSS and FMSI, SGD33,717,535 in total, were co-signed by Conflicted Persons or FMSS employees.

⁴⁹ Excluding credit notes worth SGD64,429.

⁵⁰ Payment vouchers were not universally used for approving payments by the Town Council during 2011 and 2012.

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5.2.16 Surprisingly, unlike for FMSS, there was no internal requirement put in place by the Town Council for the Chairman or Vice Chairman to be a co-signatory for cheques issued or bank transfers in payment of FMSI invoices. Specifically, the Conflicted Persons were able to give the final sign-off for payments to be made to FMSI either on their own, or simply with the sign-off of another employee or officer of FMSS. The instances where the Conflicted Persons had approved both the payment and signed the cheques for FMSI invoices, without the involvement of the Chairman or Vice Chairman of the Town Council, are as follows:

| Date of cheque | Invoice number | Nature of payment | Approver of payment voucher | Cheque/bank transfer signatories | | Amount (SGD) |
|------------------|--------------------------|-------------------|-----------------------------|----------------------------------|----------------|----------------|
| | | | | | | |
| 14 October 2011 | FM/1302/11 | EMSU | How Weng Fan | Danny Loh | Chng Jong Ling | 29,400 |
| 12 December 2011 | FM/1304/11 ⁵¹ | EMSU | How Weng Fan | Danny Loh | Vincent Koh | 29,400 |
| 21 February 2012 | FM/1304/11 | EMSU | No payment voucher | Danny Loh | LW | 29,400 |
| 5 March 2012 | FM/1304/11 | EMSU | No payment voucher | Danny Loh | LW | 29,400 |
| 15 March 2012 | FM/1307/11 | EMSU | No payment voucher | Danny Loh | LW | 29,400 |
| 24 April 2012 | FM/1309/11 | EMSU | No payment voucher | Danny Loh | LW | 29,400 |
| Total | | | | | | 176,400 |

5.2.17 Thirdly, the Town Council did not have protocols or processes in place to independently and objectively assess the service levels of FMSS and FMSI. Neither were there processes established for Town Councillors or independent parties to monitor, in a regular or structured manner, the integrity and sufficiency of the work carried out by FMSS and FMSI as managing agent and EMSU service providers. The lack of protocols or processes to independently monitor and assess the adequacy of FMSS's service levels are of significant concern, particularly given that FMSS's appointment as the managing agent of the Town Council was such that the overwhelming majority of all day-to-day management and operations of the Town Council (including financial responsibilities) were delegated to FMSS.

5.2.18 The Town Council asserts that it had oversight over FMSS's performance, in the form of regular meetings of the Town Council and its constituent committees.⁵² It is not clear to us how these committees would have acted as a check on FMSS's operations, as the scope of their duties do not appear to address the abovementioned issues. There

⁵¹ Three of these invoices, despite being for separate periods and having slightly different descriptions, have identical invoice numbers. All three were paid.

⁵² See **Annex C** for more details.

is no record during the Review Period that specifically addresses the means of assessment of FMSS's performance. The Town Council did withhold certain payments to FMSS after the AGO commenced its review; however, there is no record of the process during which the Town Council determined that payments should not be made.

- 5.2.19 Fourth, the Town Council's finances operated in a highly deficient environment, involving pervasive Control Failures, in particular a lack of discipline in financial operations and record-keeping. The Control Failures identified in the AGO's Report, as well as analogous findings published in our Monthly Reports, which have been accepted by the Town Council, establish such deficiencies beyond doubt. Such findings indicate not only that the service levels provided by FMSS during that period were highly lacking, but also an absence of meaningful oversight by the Town Councillors over FMSS's running of the Town Council's management function.
- 5.2.20 Given the above, it is clear that the Town Council's governance of matters relating to FMSS was seriously flawed. An unacceptably high degree of financial responsibility was relinquished by the Town Councillors to the Conflicted Persons, in a control environment in which meaningful oversight by the Town Councillors was absent. This exposed public funds to risks of erroneous payments, overpayments, payments for which services had not been sufficiently verified and payments without proper authority, as well as the potential for actual misappropriation or civil or criminal breach of trust.
- 5.2.21 The failure of the control environment that stem from this flawed governance has the potential to conceal and hinder the detection and identification of all instances of improper payment; and to impair the ability to assess how much of such improper payments ought to be recovered. This is because it can only be the management team running the Town Council's operations that can truly determine the extent of a loss suffered by the Town Council, and pursue the recovery of that loss.
- For example, there are instances where the only evidence of the goods or services being received takes the form of the certification itself.⁵³ As such, even after we identify an instance of persons in a position of conflict approving a payment or a series of payments for which they are ultimately beneficiaries, we are unable to determine if the Town Council suffered a loss.
 - Alternatively, even where an improper payment has taken place and a loss was suffered, there would nonetheless be a prospect that a third party reviewer might not be able to ascertain the amount of such loss. For example, this would be the case where:
 - a payment had been issued to FMSS for project management services that should have been included in the fee paid for managing agent services, but there are insufficient records to confirm whether or not the services were indeed required or received, or whether the certified amount was fair and reasonable in the circumstances; or
 - transactions are recorded as payments for services or disbursements which were rendered or incurred by FMSS but we are unable to objectively verify whether FMSS had properly performed such services or verify whether the

⁵³ See, for example paragraph 5.3.3 and the examples at **Appendix D2.3**.



individual instances of performance of FMSS were defective or fell below such standards as to warrant non-payment or a discount of the contracted sum.

5.3 Detectable improper payments to FMSS and FMSI

Overview of findings

- 5.3.1 The failed control environment of the Town Council manifested itself in pervasive Control Failures, including a lack of discipline in the Town Council's financial operations and record-keeping. In this context, improper payments were made by the Town Council to FMSS and FMSI. Our observations are based on our review of all 1,475 transactions between the Town Council and FMSS and FMSI, involving a total of 1,068 payments.
- 5.3.2 Our findings in relation to improper payments made to FMSS and FMSI, together with our assessment as to the amounts that ought to be recovered, are summarized overleaf:

| Improper payments⁵⁴ | Amount (SGD) | Amount that ought to be recovered (SGD) |
|--|---------------------|--|
| Overpayment to FMSS in respect of overtime claims and CPF contributions | 8,990 | 8,990 |
| Overpayment to FMSS for electrical parts | 3,720 | 3,720 |
| Payment to FMSS for electrical parts | 6,130 | Not determinable |
| Payments to FMSS that are purportedly for project management fees, but which are actually covered by managing agent fees paid by the Town Council | 608,911 | 608,911 |
| Payments to FMSS that are purportedly for project management fees, but which are actually in respect of matters that involve a combination of managing agent services as well as project management services | 611,786 | Not determinable |
| Payments to FMSS or FMSI that are unsupported by certifications of services received or contracts | 194,759 | Not determinable |
| Payments to FMSS made in breach of financial authority (namely, without the requisite co-signature of the Chairman or Vice Chairman of the Town Council) | 80,990 | Not determinable |
| Unclaimed liquidated damages under EMSU contract | 3,000 | 3,000 |
| Total amount determinable | 1,518,286 | >= 624,621 |
| "Settlement" of breaches with FMSS ⁵⁵ | 250,000 | Not determinable |

Payments to FMSS for overtime claims and CPF contributions

5.3.3 Payments totalling SGD8,990 were made by the Town Council for overtime claims and CPF contributions in respect of FMSS's employees as follows:

- general overtime totalling SGD7,322; and
- inspections during Chinese New Year totalling SGD1,668.

5.3.4 However, the applicable terms of service between the Town Council and FMSS (i.e. Second Managing Agent Contract OT/0264/12) provide that, "the managing agent shall provide [...] overtime and all direct and indirect costs as required by the performance of the Services."⁵⁶

⁵⁴ Unclaimed liquidated damages and the settlement of breaches with FMSS are not payments made by the Town Council, *per se* but are included here.

⁵⁵ Insofar as this results in an improper payment, its value would be the loss occasioned by breaches of the Town Council's contracts by FMSS, less SGD250,000.

⁵⁶ Clause 1.1 of the Second Managing Agent Contract.

- 5.3.5 Hence, the overtime payments by the Town Council are improper since the Town Council should not have been separately charged for these items by FMSS. Instead, these items should be considered part of the services provided by FMSS in consideration of the standard management fees payable by the Town Council. Moreover, the Town Council is unable to provide evidence that the overtime was indeed incurred, or if incurred, whether it was properly incurred so as to justify the above payments. In these circumstances, the Town Council's payment for such items ought to be recovered.
- 5.3.6 We are informed by the Town Council that it "expect[s] to include relevant improper payments [...] into the defence and/or counterclaim" in the ongoing arbitral proceedings commenced by FMSS against the Town Council for allegedly unpaid sums.

Payment to FMSS for overbilled electrical parts

- 5.3.7 Under the EMSU contracts between the Town Council and FMSS, the Town Council is required to reimburse FMSS for electrical parts purchased by FMSS in accordance with the schedule of rates in the contract.
- 5.3.8 However, we noted the following discrepancies:
- electrical fittings not charged in accordance with the schedule of rates, resulting in over-billing and overpayment of SGD3,746; and
 - arithmetical discrepancies in the supporting documents attached to invoices, resulting in under-billing of SGD26.
- 5.3.9 As such, there was a net overpayment of SGD3,720 for electrical parts. This constitutes an improper payment that ought to be recovered.
- 5.3.10 We are informed by the Town Council that it "expect[s] to include relevant improper payments [...] into the defence and/or counterclaim" in the ongoing arbitral proceedings commenced by FMSS against the Town Council for allegedly unpaid sums.
- 5.3.11 In addition, the Town Council made payments amounting to SGD6,130 for electrical fittings that were not listed in the schedule of rates. Although the fittings appear to have been provided, FMSS did not obtain the requisite approval of the rates for them from the Town Council before using such fittings.

Payments to FMSS for "Project Management Services" that were covered by managing agent contract

- 5.3.12 Under the Second Managing Agent Contract OT/0264/12, FMSS's services are divided into two categories, namely, a) the provision of maintenance management services, and b) the provision of project management services. Each category of services is priced differently. The price for the provision of managing agent services, which includes maintenance management services, is fixed at the lump-sum price of SGD16,752,314. In contrast, the price for project management services is 3.5% of the total project value.

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- 5.3.13 There is an overlap between the scope of maintenance management services and project management services as defined in the Specifications to the Second Managing Agent Contract. In particular, it is contractually provided that:
- the managing agent is responsible for managing and supervising various term contracts, including those in respect of building and sanitary maintenance, lift maintenance, comprehensive maintenance of refuse handling equipment, and cyclical maintenance works such as repairs, redecorations and reroofing (Annex 5C of Specifications); and
 - at the same time, the Town Council is permitted to issue written notices to FMSS to provide project management services for various project works likewise including cyclical repairs and redecorations, other cyclical works such as reroofing, rewiring works, overhauling and upgrading of lifts (clause 2.3 of Specifications at Part 5).
- 5.3.14 However, we are advised that any potential overlap can be resolved on the basis that: (a) maintenance works falling within the scope of managing agent services (which includes maintenance management services) would be maintenance works that are expected to be arranged routinely or periodically; (b) whilst, on the other hand, matters falling within the scope of project management services would be maintenance works that are provided on an *ad hoc* basis. This interpretation is supported by a contextual and purposive reading of the Second Managing Agent Contract OT/0264/12.
- 5.3.15 The Town Council provided us with a number of invoices from CPG prior to the establishment of AHTC, for which CPG was paid for project management services. However, as described above, we are advised that it is not just the nature of the project to be managed but whether it is arranged routinely or periodically – and hence falls under managing agent services – or is provided on an *ad hoc* basis.
- 5.3.16 Further, based on the terms of the Second Managing Agent Contract – in particular, clause 2.3 of the Specifications, project management services should have only been provided from time to time upon request by issuance of a written notice to FMSS by the Town Council. For seven of the nine projects managed by FMSS no such written notices were provided. The descriptions in the written notices for the remaining two projects where the Town Council did request FMSS be project manager stated that they were for repair and redecoration works. The Town Council was the sole party responsible for deciding whether project management services were required and should have had oversight over all project management services provided by FMSS.
- 5.3.17 On this basis, there are 99 invoices where the 3.5% project management fee was wrongly charged by, and paid to, FMSS amounting to a total of SGD608,911. These were in respect of works comprising repairs and redecoration works such as those for external walls of estates. These services provided by FMSS would have been more appropriately classified as managing agent services (which includes maintenance management services). As such they would have been covered by the lump-sum fee under the Second Managing Agent Contract. Accordingly, the payments made by the Town Council on these 99 invoices are improper and ought to be recovered. A detailed schedule of these payments is at **Appendix H.1**.

Payments to FMSS for “Project Management Services” that were partly covered by managing agent contract

- 5.3.18 The Town Council was additionally invoiced on 83 occasions for project management fees, where the subject matter of these invoices was in reality a combination of project management services as well as managing agent services. In other words, these services charged by FMSS were partially misclassified as project management services, when they would have been more appropriately classified as managing agent services. The aggregate value of these invoices issued to, and paid by, the Town Council is SGD611,786.
- 5.3.19 Accordingly, insofar as the services provided comprised of managing agent services (which includes maintenance management services), the 3.5% project management fee should not have been charged by FMSS. There is therefore an element of overpayment by the Town Council, which is improper and ought to be recovered. A detailed schedule of these payments is set out at **Appendix H.2**.
- 5.3.20 The specific amounts that ought to be recovered, however, cannot be readily ascertained, as there is no price breakdown within the invoices or relevant documentation that would provide an indication as to the extent of which the services provided comprised of managing agent services as opposed to project management services.

Payments to FMSS or FMSI that are unsupported by certifications of services received or contracts

- 5.3.21 Four invoices (summarized in the table below) were issued by FMSS for managing agent and EMSU services totalling SGD194,759 over the period May 2011 to July 2011. Payments on these invoices were made by the Town Council even though there was no certification that services had been satisfactorily delivered or that they were in conformity with the applicable contracts.

| Invoice number | Invoice date | Expenditure type | Payment signatories | Amount (SGD) |
|----------------|--------------|--|----------------------------------|----------------|
| FMSS/0601 | 30 June 2011 | Managing agent fees (Hougang Town Council) | How Weng Fan and Sylvia Lim | 106,559 |
| FM/1298/11 | 28 June 2011 | EMSU (Hougang Town Council) | How Weng Fan and Yaw Shin Leong | 29,400 |
| FM/1296/11 | 28 May 2011 | EMSU (Hougang Town Council) | How Weng Fan and Low Thia Khiang | 29,400 |
| FM/1299/11 | 28 July 2011 | EMSU (Hougang Town Council) | How Weng Fan and Sylvia Lim | 29,400 |
| Total | | | | 194,759 |

- 5.3.22 Invoice FMSS/0601 does not appear to be supported by a contract. It includes “Provision of Managing Agent Services for Hougang SMC for the month of June 2011”, accounting for SGD92,000 of the SGD106,559 (the remainder being other expenses related to the handover of AHTC). However, the First Managing Agent Contract

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commenced on 15 July 2011. A letter of intent from FMSS dated 15 June 2011 indicates that FMSS would take over “all the existing staff of the former Hougang Town Council at their existing salary and terms of appointment on 15 June 2011.” However, it does not appear to have been signed on behalf of the Town Council until July 2011. The entitlement or obligation of FMSS to run the former Hougang Town Council for the period billed is not therefore apparent.

- 5.3.23 The Town Council provided a log of complaints for FMSS as the EMSU service provider during May, June and July 2011 to support the proposition that EMSU services were delivered. This complaints log does not provide evidence that the work was satisfactorily delivered or that the terms of contract were adhered to. This is why stamping and signing the supporting document to certify that services have been satisfactorily delivered in conformity with the contract is a documentary requirement of the TCFR, which was not done.
- 5.3.24 These payments represent breaches of both the Town Council’s own payment processes and the TCFR. Rule 61(1) of the TCFR provides that, “When supplies are furnished or when work is done under an agreement, there shall be a certification on the voucher that the payments are in accordance with the terms of the agreement, and that, as regards supplies not for immediate use, the articles have been received and duly recorded in the proper inventory and, in the case of work, that it has been properly done.”
- 5.3.25 Accordingly, the payments for these four invoices were made improperly. It cannot be readily determined, however, the extent to which any amounts ought to be recovered, as there are insufficient records to verify that the services were satisfactorily delivered in conformity with the applicable contracts.
- 5.3.26 The Town Council has said that the failure to certify that the services had been satisfactorily delivered is merely a failure of “housekeeping”, which did not cause any loss to the Town Council. In the absence of the required documentation to record satisfactory delivery, it is not possible to ascertain if this is indeed correct. Given the serious conflicts of interest inherent in these transactions, we would not therefore agree that the failures are technical or “housekeeping” in nature.

Payments to FMSS made in breach of financial authority (namely, without the requisite co-signature of the Chairman or Vice Chairman of the Town Council)

- 5.3.27 Cheque and bank transfers were made to FMSS amounting to SGD80,990 for which the Town Council required the co-signature of the Chairman or Vice Chairman of the Town Council. Such co-signatures, however, were not obtained. These transactions are tabulated overleaf:

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| Date of cheque | Reference | Nature of payment | Cheque/bank transfer signatories | | Amount (SGD) |
|-----------------|------------|--|----------------------------------|----------------------------|---------------|
| 14 July 2015 | UOB042821 | Overtime and night inspections | Vincent Koh | WT, Deputy Finance Manager | 620 |
| 25 August 2015 | UOB043007 | Electrical parts and out-of-pocket expenses | Vincent Koh | WT, Deputy Finance Manager | 2,090 |
| 13 October 2015 | UOB000266 | Project management | Vincent Koh | WT, Deputy Finance Manager | 23,807 |
| 19 October 2015 | UOB000268 | Project management | Vincent Koh | WT, Deputy Finance Manager | 13,575 |
| 21 October 2015 | TT36221015 | Overtime, night inspections and project management | Vincent Koh | WT, Deputy Finance Manager | 40,898 |
| Total | | | | | 80,990 |

5.3.28 The Town Council's response to this issue was that the payments were made after FMSS ceased to be managing agent and were approved by the Vice Chairman. This notwithstanding, the requirement for the Chairman's or Vice Chairman's signature is a requirement decided upon by a meeting of the Town Council and validly in force. These payments to FMSS were thus in breach of the Town Council's controls over payments to FMSS and therefore were made improperly.

5.3.29 These transactions are recorded as payments for services or disbursements which were rendered or incurred by FMSS. It cannot be readily determined, however, the extent to which any amounts ought to be recovered, as there are insufficient records to verify that the services were satisfactorily delivered in conformity with the applicable contracts.

Unclaimed liquidated damages from FMSS under EMSU contract

5.3.30 FMSS is required under the EMSU contracts to meet certain service standards, failing which, the Town Council is entitled to claim liquidated damages. One such standard stipulated by the EMSU contract is that FMSS must complete lift rescues within 25 minutes. Service standards are reported on a monthly basis.

5.3.31 We have identified two reports from FMSS in January 2012 and February 2012 which described three cases where the rescue time exceeded 25 minutes. This entitled the Town Council to claim liquidated damages of SGD3,000. However, the Town Council failed to do so. The Town Council agrees that the liquidated damages should have been imposed.

- 5.3.32 We are informed by the Town Council that it “expect[s] to include relevant improper payments [...] into the defence and/or counterclaim” in the ongoing arbitral proceedings commenced by FMSS against the Town Council for allegedly unpaid sums.

“Settlement” of breaches by FMSS

- 5.3.33 The Town Council informed us that FMSS had extended compensation in the sum of SGD250,000 to the Town Council for the deficiencies in its service levels as identified in the AGO’s Report. The documentation⁵⁷ related to this “settlement” is as follows:
- a letter dated 17 March 2015 from Sylvia Lim to Danny Loh referring to discussions on 26 February 2015 and 17 March 2015 and an agreement that FMSS will pay the Town Council SGD250,000 in liquidated damages;⁵⁸
 - an email dated 10 June 2015 from Sylvia Lim to Danny Loh and Yeo Soon Fei stating that FMSS’s claim (apparently in the arbitration) “should be amended to reflect the reduction by \$250,000 for the liquidated damages”; and
 - an invoice from the Town Council to FMSS dated 16 July 2015 for SGD250,000.
- 5.3.34 There is no reply, or indeed a credit note, from FMSS in response to either of the communications from Sylvia Lim. The sum of SGD250,000 is listed in FMSS’s arbitration statement of claim as being payable by the Town Council to FMSS. How Weng Fan informed us that FMSS did not agree to any such settlement. Notwithstanding that FMSS denies that it agreed to the settlement, the Town Council maintains that the agreement nonetheless occurred.
- 5.3.35 The Town Council informed us that it accepted the SGD250,000 on the basis that it was a reasonable sum, taking into account that the losses caused by FMSS’s lapses were “difficult to quantify”. The Town Council’s position is also that the sum was proposed by FMSS on the basis that it was the maximum amount that Danny Loh was able to approve without the concurrence of the other directors of FMSS. This explanation raises questions about the compensation sum, not least because the figure appears to have been arrived at arbitrarily rather than as a genuine estimate of the losses occasioned.
- 5.3.36 The Town Council also takes the position that the SGD250,000 is only in settlement of the lapses identified in the AGO’s Report and the other claims against FMSS have not been waived. We are advised that, insofar as such a compensation amounted to a mutual settlement between the Town Council and FMSS, the Town Council may have waived its rights to make any further claim against FMSS for its deficient services, whether in respect of the deficiencies identified in the AGO’s Report or otherwise. If so, this may represent an improper waiver of the Town Council’s right to recover damages from FMSS.

⁵⁷ At **Annex D**.

⁵⁸ “I refer to our discussions on 26 February and 17 March 2015. As agreed, FM Solutions & Services Pte Ltd will pay the Town Council the sum of \$250,000 being liquidated damages imposed for MA services relating to the lapses noted in the Auditor-General’s Report dated 6 February 2015. Please let us have the credit note and adjustment to future billings at your earliest convenience.”

5.4 Unidentifiable improper payments to FMSS or FMSI

- 5.4.1 The same pervasive Control Failures that allowed improper payments would tend to conceal instances of improper payment and, concurrently, determination of how much ought to be recovered. It remains a real and reasonable prospect that there are further instances of improper payments to FMSS or FMSI in respect of which detection by an independent review is not readily achievable.
- 5.4.2 What are of significant concern are all the instances where Conflicted Persons effectively certified or approved payments to themselves. As detailed above, there were 748 FMSS transactions that were approved by the Conflicted Persons in effect for payment to themselves, using 132 payment vouchers; and a subset of 74 Work Orders certified by the Conflicted Persons.⁵⁹ The aggregate financial value of these transactions stands at the significant sum of SGD23,299,483.⁶⁰
- 5.4.3 In addition, of the 493 petty cash reimbursements to the staff of FMSS in the Review Period, 33 petty cash reimbursements, amounting to SGD1,883, were paid to the Conflicted Persons and approved by Conflicted Persons. In particular, two of these reimbursements were to How Weng Fan; one was approved by Danny Loh and the other by How Weng Fan.
- 5.4.4 As these transactions were predominantly or entirely approved or certified for payment by the Conflicted Persons, in effect to themselves, the Conflicted Persons would have had a financial incentive to be less stringent and objective in issuing payment approvals or certifications of work done to their own company. Additionally, there were no protocols or procedures implemented to independently monitor the approvals by the Conflicted Persons. In other words, the risk was that the payment approvals or certifications of work done would not be made objectively.
- 5.4.5 Instead, the records available in respect of services provided by FMSS or FMSI, are in some circumstances limited to Work Orders or payment vouchers, the reliability of which is open to question given that they were approved by the ultimate beneficiaries of the payments they support.
- 5.4.6 Transactions recorded as payments for services or disbursements which were rendered or incurred by FMSS are impossible to verify objectively with respect to whether FMSS had properly performed such services, or verify whether the individual instances of performance of FMSS were defective or fell below such standards as to warrant non-payment of, or a discount on, the contracted sum.
- 5.4.7 In other words, the failed control environment itself would tend to conceal any improperly issued payment approvals or work certifications. If individuals in a position of conflict had committed misappropriations or criminal breaches of trust, they would not be readily detectable because the Work Orders and payment vouchers supporting the payments were approved by the ultimate beneficiaries themselves.

⁵⁹ A listing of such transactions is at **Appendix F.2**.

⁶⁰ Excluding credit notes worth SGD64,429.

- 5.4.8 Should any such improper payment approvals or improper work certifications have occurred, as a matter of principle, any resultant payments would constitute improper payments and ought to be recovered.

5.5 Tender process for FMSS and FMSI

- 5.5.1 We reviewed the tender processes by which FMSS and FMSI were appointed. Our findings, in summary, are that the tendering out was, as a whole, inadequate and unsatisfactory, in particular in relation to the managing agent contracts:

- In respect of the First Managing Agent Contract, there are procedures in the TCFR to be followed except in “very special circumstances”, which “must be fully justified”; in our view, the circumstances as recorded in the contemporaneous documentation of the appointment of FMSS did not justify the waiver of tender. Insofar as this is the case, the contract was improperly entered into.
- For the Second Managing Agent Contract, the Town Council failed to obtain competitive rates or sufficiently address FMSS’s serious conflicts of interest. Section 35(c) of the TCA requires that a Town Council “do all things necessary to ensure that [...] adequate control is maintained over the assets of, or in custody of, the Town Council and over the expenditure incurred by the Town Council.” The outcome of the Second Managing Agent Contract did not achieve this.

- 5.5.2 Had the Town Council approached the appointment of a managing agent more rigorously, it could potentially have avoided incurring significant additional costs. In particular, we noted that FMSS was more expensive than the comparable contract with CPG for the First Managing Agent Contract, and that its rates significantly increased for the Second Managing Agent Contract. The increased cost over CPG for the first year amounted to approximately SGD515,773, while for the Second Managing Agent Contract their rates were, conservatively, SGD746,000 above that which might have been achievable by holding CPG to its contract.

The First Managing Agent Contract with FMSS for the period 15 July 2011 to 14 July 2012

- 5.5.3 The First Managing Agent Contract for the period 15 July 2011 to 14 July 2012 was awarded to FMSS without the Town Council calling for a tender.
- 5.5.4 The managing agent fee under the First Managing Agent Contract was SGD5,428,609 per year in total, excluding a separate project management fee of 3.5% of the value of projects managed. This fee was calculated based on a) the rates charged by CPG under its managing agent contract with the former Aljunied Town Council, and b) annual staff costs⁶¹ of the former Hougang Town Council, based on its audited financial statements for the year ended 31 March 2011. A summary of the terms of the First Managing Agent Contract is overleaf:

⁶¹ FMSS took over the existing staff of the former Hougang Town Council at their existing salary and terms of appointment on 15 June 2011.

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| Key contract terms | Contractual amount (SGD) | Precincts |
|--|--------------------------|--------------|
| (A) Same terms and contractual amount as CPG for the previous year, subject to adjustment for the change in the number of property units and parking lots due to boundary changes and/or new blocks being built. | 4,225,176/year | Aljunied GRC |
| (B) Additional costs of new staff on a full reimbursement basis. | 89,150 | |
| (A) FMSS shall take over all the existing staff of the former Hougang Town Council at their existing salary and terms of appointment. The total staff cost per the audited accounts of the former Hougang Town Council for the year ended 31 March 2011 (SGD1,114,283 per year) shall form the basis to compute the monthly managing agent fees, with no profit element. | 1,114,283/year | Hougang SMC |

5.5.5 In summary, the contract fees were as follows:

| Period (June to July) | First Managing Agent Contract fees ⁶² | | | | | |
|-----------------------|--|------------------------|----------------------------|---------------------------|---|---|
| | Residential units (SGD) | Commercial units (SGD) | Vehicle parking lots (SGD) | Total contract fees (SGD) | Project management fee (% of project value) | Cumulative amount billed during Review Period (SGD) |
| 2011 to 2012 | 6.37 | 12.80 | 0.50 | 5,428,609 | 3.5 | 5,447,604 |

5.5.6 Prior to the appointment of FMSS, while Hougang Town Council was self-managed, the managing agent of Aljunied Town Council was CPG. As it transpired:

- After the 2011 General Elections, on or about 30 May 2011, CPG requested the Town Council to release CPG from its obligations under the CPG Contract. Control and management of the Town Council was handed over to the elected Worker's Party MPs on 1 August 2011, at which time the CPG Contract would still have had two years to run, with an option at the sole discretion of the Town Council to continue for a further period of three years.⁶³
- By a letter of intent dated 15 June 2011, FMSS indicated that it would take over “all the existing staff of the former Hougang Town Council at their existing salary and terms of appointment on 15 June 2011.” This was stated to be in anticipation of FMSS’s appointment as managing agent for AHTC from 15 July 2011. This suggests that FMSS had secured *de facto* appointment as AHTC managing agent as at that earlier date. Indeed, FMSS issued an invoice dated 30 June 2011 that included SGD92,000 for its “Provision of Managing Agent Services for Hougang SMC for the month of June 2011.”⁶⁴

⁶² Derived from the price breakdown in the First Managing Agent Contract.

⁶³ On terms and conditions to be agreed.

⁶⁴ See paragraph 5.3.22 of this Report for more information on this payment.

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- On 1 August 2011, a deed of mutual release was signed by CPG and the Town Council terminating the CPG Contract with effect from that date.⁶⁵
- The Town Council discussed and decided on the appointment of FMSS as a managing agent for the Town Council at the second Town Council Meeting on 4 August 2011 where FMSS's Danny Loh presented its managing agent proposal. The Town Council waived the tender process and appointed FMSS with effect from 15 July 2011 (i.e. approximately three weeks in retrospect).

5.5.7 Under Rule 74 of the TCFR, the Town Council is required to call for tenders for contracts valued above SGD70,000. The purported justification for waiving the calling of a tender, and to appoint FMSS as managing agent for a period of one year commencing 15 July 2011, is recorded in minutes of the Town Council meeting held on 4 August 2011. In particular:

- CPG had “indicated their desire to be released from the agreement as soon as practicable”
- The Town Council required a managing agent to replace computer and accounting systems for the former Aljunied Town Council as the service provider of the existing systems – Action Information Management Pte Ltd – had given notice to withdraw such systems by the end of July 2011.
- The deadline for the handover of Town Council management was 1 August 2011. If a new managing agent was not appointed as soon as possible, there would be serious disruption to residents' services on 1 August 2011.
- Given the tight timeframe and urgency, it was in the public interest that the tender be waived.
- FMSS comprised of key staff familiar with estate and township management with proven track records. The terms offered by FMSS did not put the Town Council in a worse position than it would have been under the previous managing agent contract.

Flaws in the appointment of FMSS in respect of the First Managing Agent Contract

5.5.8 First, using the CPG Contract rates was an arbitrary method of pricing FMSS's services as no adjustments were made to take into account the differences between the two managing agents, for example, in terms of manpower or experience. Additionally, FMSS charged a flat fee for Hougang Division of SGD1,114,283 (based on the actual staff expense for the preceding year of the former Hougang Town Council) for the duration of the contract and was reimbursed SGD89,150 for new staff it hired.

5.5.9 There were 114 commercial units and 8,767 residential units in the Hougang Division during the First Managing Agent Contract. Had CPG been used for the Hougang Division as well, which would have been possible under its contract, their additional

⁶⁵ At the Town Council's request, the finance team from CPG assisted in counter collection for three branches, at Hougang Central (Block 810), Serangoon North (Block 147) and Bedok Reservoir (Block 609) until the end of August 2011.

managing agent fees for Hougang Division would have amounted to SGD687,660 per year. As a result FMSS was already 10% more expensive than CPG even using the “same” rates⁶⁶ as can be seen below:

| Element of price | Cost of FMSS (SGD) | Potential cost of CPG (SGD) | Additional cost of FMSS (SGD) | Additional cost of FMSS (%) |
|-------------------------------|--------------------|-----------------------------|-------------------------------|-----------------------------|
| AHTC on a per-unit basis | 4,225,176 | 4,225,176 | 0 | 0 |
| Additional costs of new staff | 89,150 | N/A | 89,150 | N/A |
| Hougang Division | 1,114,283 | 687,660 | 426,623 | 38 |
| Total | 5,428,609 | 4,912,836 | 515,773 | 10 |

5.5.10 Second, notwithstanding that there may be certain applicable exceptions to Rule 74 of the TCFR, the Town Council’s decision to waive the tender was not the most prudent or reasonable in the circumstances:

- The managing agent fees proposed under the First Managing Agent Contract amounted to SGD4,225,176 per year for Aljunied (not including the project management fee of 3.5% of project value), which is a sum significantly greater than the SGD70,000 threshold that mandates town councils to call for tenders under Rule 74 of the TCFR. A more prudent approach would have been to call for a tender whilst keeping CPG on in the interim, which the Town Council would have been entitled to do.⁶⁷ There is no record of any discussions on the feasibility of requiring CPG to fulfil its obligations under the managing agent contract at least until a tender has been called and a new managing agent appointed.
- There is also no record of exploration of the feasibility of conducting a tender on an expedited basis with a shortened tender period. At best, the Town Council might have been able to secure a lower price or more favourable terms; at worst, it would have provided itself with a more defensible process for changing managing agents.

5.5.11 Further, the Town Council appears to have failed adequately to address the serious conflicts of interest in the appointment of FMSS:

- The proposed appointment of FMSS would involve certain Conflicted Persons, in particular Danny Loh and How Weng Fan, taking key management positions in the Town Council. At the time of the formation of AHTC, How Weng Fan was the Secretary of the former Hougang Town Council and Danny Loh was the sole proprietor of FMSI, then providing EMSU services to the former Hougang Town Council. In addition, they were controlling shareholders of FMSS, and were married to each other.

⁶⁶ FMSS’s effective rates were SGD13.29 per commercial units and SGD6.97 per residential unit. See **Appendix G** for a comparison of managing agent rates for town councils in Singapore.

⁶⁷ Under clause 1.1 of the Part 5 Specifications of the CPG contract, the managing agent services were to extend to the “whole Town under the Town Council”, which includes “other properties in any part of Singapore taken over from other town councils” and “any other properties managed by the Town Council”.

- There is no record of any meaningful discussion among the Town Councillors of the serious conflicts of interest or the necessary safeguards in respect of the same, save that several members highlighted the importance of issuing a media release to avoid speculation.
 - It was noted at the 4 August 2011 Town Council meeting that FMSS “comprised of key staff familiar with estate and township management with proven track records.” This is a weak basis for claiming FMSS’s competency and suitability for running the significantly larger Aljunied GRC in addition to Hougang SMC. Although he had previously been employed by DTZ, Danny Loh’s experience in town council management was providing EMSU services to former Hougang Town Council.
 - The Town Council did not go through a process to independently or objectively assess the ability of FMSS to provide the necessary service levels.
- 5.5.12 Not only should the Town Council have protected itself against such conflicts of interest, it should also have protected those who work for it against the implication that, in exercising their delegated authority, they may have been doing so improperly. By not providing a rigorous process to oversee payments in which the Conflicted Persons had an interest, the Town Council also exposed those individuals to such implications.
- 5.5.13 While the Town Council implemented the requirement that all cheques to FMSS, regardless of amount, be co-signed by the Chairman or Vice Chairman of the Town Council, this was insufficient in the circumstances. The payment approval process was such that it is unlikely that the Chairman or Vice Chairman of the Town Council would have been sufficiently informed as to whether the earlier self-certifications in respect of FMSS’s invoices were appropriate or justified.
- 5.5.14 Fifth, as per its letter of intent of 15 June 2011 FMSS took over “all the existing staff of the former Hougang Town Council at their existing salary and terms of appointment on 15 June 2011.” As FMSS had secured *de facto* appointment as AHTC managing agent at that earlier date, the Town Council’s waiver process appears to have been a foregone conclusion.
- 5.5.15 There may be some merit in a newly-formed town council choosing to work with people familiar to it. However, there are procedures in the TCFR to be followed except in “very special circumstances”, which “must be fully justified”⁶⁸; in our view, the circumstances as recorded in the contemporaneous documentation of the appointment of FMSS did not justify the waiver of tender. It is on the back of this that the appointment of FMSS is in itself tainted.
- 5.5.16 This taint casts a pall over the self-approving issues identified in section 5 of this Report. It accentuates the shortcomings in the governance and control environment because the entire process – from appointment to self-dealing to unverifiable payments – lacks transparency. The process of engaging FMSS is exemplified by failures to properly conduct the processes rightly demanded when dealing with public funds.
- 5.5.17 The Town Council’s position is that there was effectively no alternative provider to FMSS. But the reality is, there was a choice – to retain CPG. That would have been a

⁶⁸ TCFR Rule 74(18).

choice which did not require any waiver of tender. The Town Council informs us that they elected not to work with CPG since CPG had clearly expressed a desire to be released from its contractual obligations. But the Town Council had no obligation to release CPG from its contract; to do so left it in a position of having to waive a tender and usher in an unproven managing agent with serious conflicts of interest.

5.5.18 There appear to be two scenarios:

- The Workers' Party did not plan for who should manage the Town Council if it were to win Aljunied GRC in the 2011 General Elections.
- The Workers' Party did anticipate, from the outset, that it would, or might have to, "import" expertise from Hougang SMC should it win Aljunied GRC.

5.5.19 Neither scenario would place the Town Councillors in a position as unanticipated as suggested by the Town Council in justifying the waiver of tender in favour of FMSS. That FMSS was appointed from 15 June 2011 and that the tender was waived after it had taken over Hougang Division's staff leads to the conclusion that:

- The Workers' Party intended to import expertise from Hougang SMC – whether in the form or incarnation of FMSS or otherwise.
- The Town Council had no real alternative to FMSS, not necessarily because there were no other managing agents prepared to work with it, but because the Workers' Party had from the outset decided to keep the work "in house" in relying on resources already familiar and available.

5.5.20 Hence, the process by which FMSS was appointed as managing agent was unsatisfactory overall. Had a more prudent approach been taken (including, for instance, the calling of a formal tender, and requiring CPG to remain as the managing agent in the interim), AHTC would potentially have been able to secure better pricing for managing agent services, or been able to secure a managing agent with stronger experience and competencies. Instead, AHTC committed to paying to FMSS higher rates than were paid to CPG.

Second Managing Agent contract with FMSS for the period 15 July 2012 to 14 July 2015

5.5.21 The First Managing Agent Contract was scheduled to end on 14 July 2012. On 13 April 2012, the Town Council tendered out a three-year managing agent services contract from 15 July 2012 to 14 July 2015. Although three sets of tender documents were collected, including by EMS, only FMSS eventually submitted a tender.

5.5.22 FMSS was awarded the Second Managing Agent Contract for the period 15 July 2012 to 14 July 2015. The Second Managing Agent Contract was for three years at the sum of SGD16,752,314, excluding a separate project management service fee of 3.5% of the value of projects managed. The applicable fees are summarized overleaf:

| Period (July to July) | Second Managing Agent Contract fees ⁶⁹ | | | | | |
|--------------------------|---|------------------------|----------------------------|---------------------------|---|---|
| | Residential units (SGD) | Commercial units (SGD) | Vehicle parking lots (SGD) | Total contract fees (SGD) | Project management fee (% of project value) | Cumulative amount billed during Review Period (SGD) |
| 2012 to 2013 | 7.01 | 14.08 | 0.55 | 16,752,314 | 3.5 | 23,215,793 |
| 2014 to 2015 | 7.43 | 14.92 | 0.58 | | 3.5 | |
| 2015 to 2016 | 7.88 | 15.82 | 0.62 | | 3.5 | |

FMSS interviews by the Tenders & Contracts Committee

5.5.23 FMSS was interviewed twice by the Tenders & Contracts Committee during the tender evaluation process. The first tender evaluation meeting was held on 21 June 2012 between the Tenders & Contracts Committee and FMSS to address, amongst other things, the marked price increase of 17.3% (when averaged out over the respective three-year contract period), as compared to the price tendered by CPG in 2010. The minutes of meeting record that the Tenders & Contracts Committee also expressed concerns at the additional staff numbers proposed, the annual increase in managing agent fees and whether the Town Council was able to afford the managing agent fees due to the increase.

5.5.24 FMSS justified the increase on the basis of the following:

- The increased costs were calculated on the basis of FMSS's projected costs plus a margin of 8.3%.
- FMSS would have to staff additional offices (from three to five offices) within the Town Council compared to those managed by CPG on behalf of the former Aljunied Town Council. These were namely the offices at Hougang Central, Serangoon North and Bedok Reservoir, plus the former Hougang Town Council office and the new Kaki Bukit office.
- FMSS hired eight additional staff.
- A lack of economies of scale compared to CPG, which also managed other town councils.
- Additional costs including lift testing fees and an increase in the number of lifts to be managed by FMSS with the completion of the Lift Upgrading Programme.

⁶⁹ Derived from the price breakdown in the Second Managing Agent Contract.

5.5.25 FMSS said that salaries alone accounted for about 82% of the monthly fee and presented a breakdown of the calculation of FMSS's proposal, which is summarized in the following table:

| Description | Amount per month (SGD) | Observations (paragraph number) |
|--|------------------------|--|
| Managing agent fees per contract | 438,506 | |
| Basic salary | (264,600) | See paragraph 5.5.34 |
| Two months of bonus – (one month of Annual Wage Supplement and one month of bonus) | (44,100) | |
| Provision for CPF contribution | (49,392) | See paragraph 5.5.36 |
| Overheads at 10% | (43,850) | See paragraph 5.5.38 |
| Net profit | 36,564 | Derived by KPMG, not in proposal. Tax assumed to apply at 17%. |
| Less tax | (6,216) | |
| Profit after tax | 30,348 | |
| Profit margin before tax | 8.3% | See paragraph 5.5.38. Derived by KPMG, not in proposal. |
| Profit margin after tax | 6.9% | See paragraph 5.5.38. Derived by KPMG, not in proposal. |

5.5.26 The second Tenders & Contracts Committee meeting was held on 21 July 2012 to discuss FMSS's pricing and staffing proposal in respect of project management.

5.5.27 The minutes of meeting record that the Tenders & Contracts Committee noted that another managing agent of other town councils had been charging 3.5% for projects up to SGD2 million and only 3% for projects above SGD2 million. FMSS was asked to elaborate on why they were not pricing in any reduction in rate for larger projects, since the staff costs would not necessarily rise in tandem with project value.

5.5.28 Danny Loh stated that the higher rate charged by FMSS was due to:

- other managing agents having greater economies of scale for project management as they also manage other town councils;
- the project management rate charged by HDB for the Lift Upgrading Programme of 4%;
- the Town Council's projects generally fell below SGD2 million in value per project; and
- FMSS hiring a project manager to support the Town Council's initiated projects, which at the project value at the time would be insufficient to support the payroll of the project manager.

5.5.29 It was recorded in the Tender Evaluation Report that, originally, FMSS's proposed project management rates had been 3.5% for the first two years and 4% for the third year. After negotiation, FMSS agreed to fix the rate at 3.5% for all three years.

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- 5.5.30 Thereafter, the Tenders & Contracts Committee presented the Tender Evaluation Report to the members of the Town Council during the thirteenth Town Council meeting held on 2 August 2012. The minutes record that the Tenders & Contracts Committee concluded that the tender price proposed by FMSS was “value for money, based on the prevailing market conditions and the Town Council’s requirements.” The award of the tender was approved by the Chairman on 2 August 2012.
- 5.5.31 Prior to awarding the tender, the Town Council had retained RSM Ethos to perform an “agreed upon procedures”⁷⁰ review of the tender process, with RSM Ethos rating it “A”.⁷¹ The Town Council also contacted Kelly Services, an HR recruitment firm, which replied by email stating that the salaries indicated in FMSS’s proposal were “generally acceptable and within range of market norms.”
- 5.5.32 Notwithstanding the above, there remained flaws in the process for appointment of FMSS in respect of the Second Managing Agent Contract.
- 5.5.33 First, the findings in RSM Ethos’s report were limited to the procedural propriety of the tender process, and did not extend to the substantive issue of whether the prices proposed by FMSS were appropriate and reasonable.
- 5.5.34 Second, Kelly Services’ email reply to the Town Council’s enquiry was limited to the reasonableness of the salaries of FMSS employees by reference only to their paper job descriptions as provided by FMSS. It did not seek to address the accuracy of those descriptions, the appropriateness of the overall staff complement, or the qualifications of the employees.
- 5.5.35 Third, it appears that the Tenders & Contracts Committee relied on How Weng Fan’s representation that the Town Council was able to afford the managing agency fees for 2012 but that it was not possible to provide a three-year cash flow projection due to the unpredictable external environment, changing manpower policies and rising costs. It is unusual for an organization to rely on a tenderer to provide assurance on its own ability to pay, in this case, because How Weng Fan was also a shareholder of the tenderer. In addition, the reasons provided for the difficulty in generating such a cash flow model are not convincing. In our experience, cash flow projections can be prepared to cater for any number of uncertainties, with the right scenario-setting and sensitivity analysis, by a competent team.
- 5.5.36 Fourth, in FMSS’s calculation of its fees, FMSS used a maximum rate of 16% to compute the CPF contributions for basic salary and bonuses. There are tiered rates for different age groups and an ordinary wage ceiling of SGD5,000, after which the employer’s CPF contribution would not increase. The 16% used is based upon an over-simplification; FMSS personnel would fall across a range of age groups, which would have resulted in FMSS paying less in CPF contributions.

⁷⁰ RSM Ethos’s report caveats that, “The sufficiency of the agreed-upon scope is solely the responsibility of those parties specified in this Report. Consequently, we make no representations regarding the sufficiency of the scope described in this Report for which this Report has been requested or for any other purpose.”

⁷¹ On a scale of A to E, indicating that, “On an overall basis, an appropriate control environment was in place that gave reasonable assurance that internal controls are adequate in addressing the inherent business risks. Some improvements to routine control activities were noted.”

- 5.5.37 Fifth, the Tenders & Contracts Committee highlighted the departure of several key FMSS staff from July 2011 to June 2012, including two Finance Managers and the Deputy General Manager. FMSS assured the Tenders & Contracts Committee that the vacancies would be filled by competent persons either promoted within FMSS or through external recruitment. It does not appear that the Tenders & Contracts Committee sought assurance on the timescale within which the vacancies would be filled or that any monitoring of the staff complement was to be undertaken.
- 5.5.38 Sixth, the Town Council did not review the rates applied to FMSS's management accounts in calculating FMSS's proposed fees in the following respects:
- The reasonableness of the 10% overhead rate applied by FMSS by a) comparing the overheads against the management accounts from FMSS, and b) to benchmark against the overheads incurred by other managing agents. By way of comparison, CPG had an overhead rate of 6% for both FYs 2010 and 2011.
 - More importantly, whether the proposed pre-tax profit margin of 8.3% was reasonable – the financial statements of CPG reflect a pre-tax profit margin of 5% for FY 2011. FMSS made a net (post-tax) profit margin of 7.6% for FY 2013 and 23.2% for FY 2014.⁷²
- 5.5.39 Seventh, FMSS's overall proposed fee, when compared to the Town Council's operating expenses, was at the high end of the range when a similar analysis is performed for other town councils using data publicly available in their financial statements.⁷³ If the Tenders & Contracts Committee had conducted such a cursory analysis, it would have been in a better position to examine the reasonableness of FMSS's proposed rates.
- 5.5.40 A summary of the scenarios we considered in calculating the potential additional costs of the Second Managing Agent Contract is provided overleaf (a fuller description of the scenario analysis is at **Appendix K**):

⁷² Released by MND on 29 August 2015, see the analysis at **Appendix I** of this Report.

⁷³ See a summary of this analysis at **Appendix G** and the chart below at paragraph 5.5.43.



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| No. | Summary of scenario | Additional cost of using FMSS (SGD) |
|-----|---|-------------------------------------|
| 1 | CPG's rates for managing agent, adjusted for changes in units and applying wage inflation for real estate services ⁷⁴ during the extension of option from 15 July 2013 until 14 July 2015. | 746,000 |
| 2 | CPG's rates for managing agent, adjusted for changes in units and applying a 6% annual increase in pricing from the Second Managing Agent Contract. | 851,000 |
| 3 | FMSS's rate from the Second Managing Agent Contract, applying an overhead margin of 6% (derived from CPG's FY 2012 financial statements). | 670,000 |
| 4 | CPG's rates for managing agent until 14 July 2013 and subsequently the average of the rates charged by CPG to other town councils from 15 July 2013 until 14 July 2015. | 5,293,000 |
| 5 | CPG's rates for managing agent until 14 July 2013 and subsequently the average rates charged by managing agents to other town councils for the period from 15 July 2013 until 14 July 2015. | 3,810,000 |

5.5.41 While scenarios 4 and 5 would depend upon the Town Council striking similar terms with managing agents to those obtained by other town councils, the conservative scenarios 1, 2 and 3 are based on the Town Council making use of and applying generally available information at the time. For example, had the Town Council continued to use CPG's rate for managing agent, adjusted for inflation, we estimate it could have saved SGD746,000 between 15 July 2012 and 14 July 2015.⁷⁵

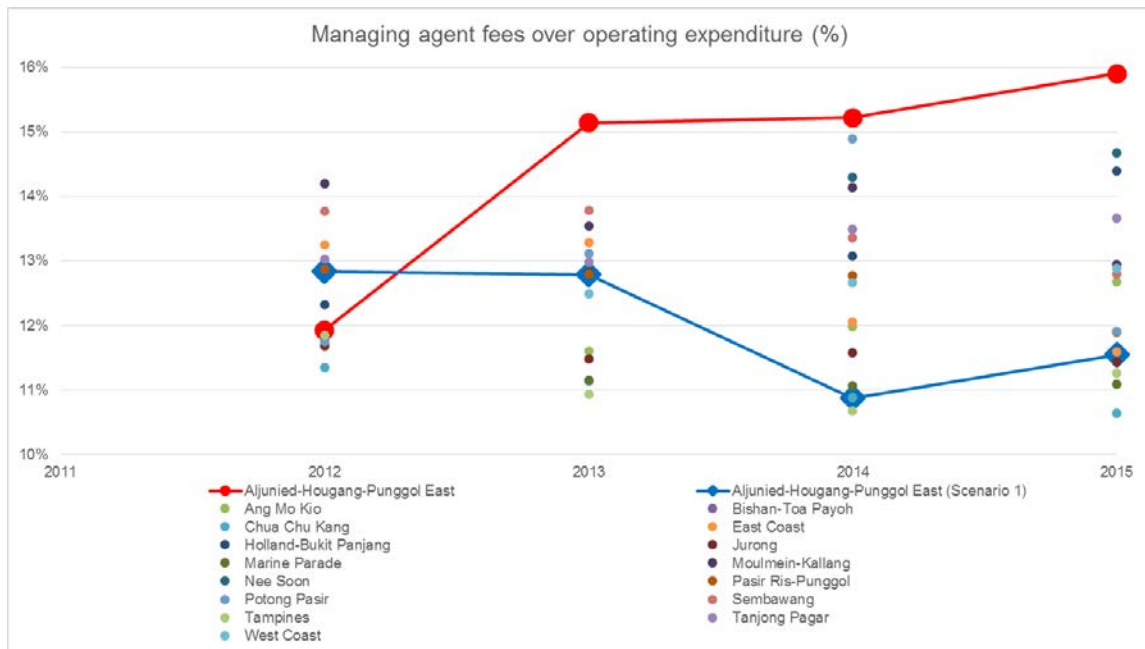
5.5.42 The chart overleaf shows town council managing agent fees over town council operating expenditure.⁷⁶ As can be seen, the Town Council's is the highest in Singapore from FYs 2013 to 2015. An alternate line, based upon scenario 1 above is illustrated in blue, which indicates the theoretical cost of continuing to use CPG as per the CPG Contract.

⁷⁴ <http://stats.mom.gov.sg/Pages/IncomeTimeSeries.aspx>.

⁷⁵ Being the duration of the Second Managing Agent Contract.

⁷⁶ See **Appendix J** for a table of town council managing agent fees over the operating expenditure as disclosed in the town councils' respective financial statements.

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5.5.43 The level of scrutiny of FMSS’s managing agent and project management fees exercised by the Tenders & Contracts Committee was not adequately robust, and the level of assessment conducted by the committee for such a significant contract to a single tenderer was superficial. This is especially so given that the sole tender bid was put forward by the Conflicted Persons, who had serious conflicts of interest between their service motive for the Town Council and profit motive as owners of FMSS.

5.5.44 Further, in the course of this tender process, the Town Councillors failed to take the opportunity to address serious conflicts of interest in the event that FMSS was to be re-appointed as the managing agent. The Town Council also did not use the opportunity to stipulate service standards that FMSS would have to deliver, as well to formulate the methods by which such service standards would be measured. In particular:

- The necessary safeguards, given Conflicted Persons and employees of FMSS would be handling Town Council transactions with FMSS, were not considered or mentioned in meeting minutes or in the Tender Evaluation Report.
- The Town Council did not state the performance criteria to measure the performance of FMSS or the delivery standard expected in the tender documents, tender evaluation report or during the tender meetings.
- The Town Council stated that FMSS’s performance in the initial year of the Town Council had been “overall good, considering the challenges posed of having to take over from the former MA within the short time period in 2011”. However, this is a general and uninformative description that says little about FMSS’s level of competence, experience and suitability. The lack of measurable data provides no basis for this observation. Objective, measurable service standards should have been implemented.

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- 5.5.45 In responding to our preliminary observations, the Town Council stated that, “The tender documents for the [managing agent] contract were replicated from the documents used by the PAP administrations in 2010 drafted by a Quantity Surveying firm.” While the Town Council did use the CPG Contract terms more or less verbatim for the Second Managing Agent Contract, CPG did not have the same serious conflicts of interest as FMSS. In the circumstances of these serious conflicts, more stringent monitoring needed to be undertaken for FMSS than would have been needed for CPG.
- 5.5.46 The Town Council asserts that there was “market failure” in this tender exercise, with FMSS the only tendering bidder, implying that it had no choice but to accept FMSS’s proposal. It is our view that the Town Council held a reasonably strong negotiating position as the sole customer of FMSS, and it is our experience in similar situations that buyers their bargaining power to achieve the best negotiated position. In fact, the Town Council did negotiate a reduction in the project management fee, originally proposed at 4%, to the eventually contracted rate of 3.5% for the third year of the managing agent contract. Notwithstanding these negotiations, the contract was eventually awarded at a significantly higher rate, an increase of 17.3%, for the managing agent’s fee.
- 5.5.47 The Town Council does not dispute the facts underlying our observations. The Town Council’s responses to our observations on the appointment of FMSS above is set out in detail at **Annex E**.

First EMSU Contract with FMSS for the period 1 October 2011 to 30 June 2012

- 5.5.48 A summary timeline of the Town Council’s EMSU contracts during the Review Period is below:

| | 2005 to 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|------------------|--|---|------|------|------|------|
| CPG (Aljunied) | 1 Jul 2005 EMSU 30 Sep 2011 | 14 September 2011: e-mail from CPG declining Town Council’s request to continue EMSU contract | | | | |
| EMS (Kaki Bukit) | 1 Jul 2005 EMSU 30 Sep 2011 | 7 September 2011: letter from EMS declining Town Council’s request to continue EMSU contract | | | | |
| FMSI (Hougang) | 15 Oct 2007 EMSU 30 Jun 2012 ⁷⁷ | | | | | |
| FMSS | | 1 Oct 2011 EMSU 30 Jun 2015 | | | | |

⁷⁷The contract for EMSU services between the former Hougang Town Council and FMSI was for 15 October 2007 to 14 October 2012, but was terminated on 30 June 2012.

- 5.5.49 The First EMSU Contract⁷⁷ for the period 1 October 2011 to 30 June 2012 was awarded to FMSS without the Town Council calling for a tender, under similar circumstances to the First Managing Agent Contract. The First EMSU Contract was for the sum of SGD38,585 per month.
- 5.5.50 The Town Council was informed by both its EMSU providers, CPG (on 14 September 2011) and EMS (on 7 September 2011), that they were not willing to extend their

⁷⁷ For the precincts under the former Aljunied Town Council.

services beyond 30 September 2011⁷⁸. The Town Council provided us with documentation indicating that, in early September, they had requested CPG and EMS to extend their contracts. We were told that CPG had previously verbally agreed to extend its contract but later indicated it would not do so, while EMS had indicated that it would not.

- 5.5.51 The Town Council waived the tender process, under TCFR rule 74(17) on the basis of the “urgency of the requirement and the public interest necessity”. The intention was apparently for an interim contract to be awarded and an open tender to be called for the whole Town Council after the interim period.
- 5.5.52 As identified in the AGO’s Report (and accepted by the Town Council), the committee formed by the Town Council to assess FMSS’s proposal incorrectly calculated a number of elements of the contracts of the then current EMSU providers, CPG and EMS, resulting in a figure approximately 30% higher than the actual rate. This resulted in an inaccurate comparison of FMSS’s proposal, which was then accepted by the Town Council. The Town Council accepted this was an error and FMSS subsequently repaid SGD122,412 to the Town Council. If not for the fact that this was identified in the AGO’s Report, the overpayment would not have been identified or recovered.
- 5.5.53 The lack of documentation in respect of the First EMSU Contract is striking. No contract appears to have been signed with FMSS for the provision of EMSU services during this period. The Town Council again failed to address the serious conflicts of interest, in awarding the contract to a party owned by the Town Council’s own officers, and the necessary safeguards when so doing.

Second EMSU Contract with FMSS for the period 1 July 2012 to 30 June 2015

- 5.5.54 The Second EMSU Contract for the period 1 July 2012 to 30 June 2015 was awarded to FMSS following the Town Council’s tender on 13 April 2012. The tender notice was the same as that for the Second Managing Agent Contract. Likewise, FMSS was the only tenderer. The Second EMSU Contract was for the sum of SGD110,356 per month.
- 5.5.55 A tender evaluation meeting was held on 21 June 2012. It was noted in the Tender Evaluation Report that:
- There had been no major issues with performance in respect of FMSS’s role as the contractor for EMSU for Aljunied GRC and its “related sole-proprietorship” FMSI’s role as the Hougang Division EMSU contractor.
 - While the rate tendered was 8.5% higher than the existing rate, the Tenders & Contracts Committee deemed this reasonable in view of the inflationary environment and the fact that the rate tendered was fixed for three years.
- 5.5.56 There was no attempt to draw any comparisons in terms of price with the rates that other town councils were being charged in order to verify this change in rate.

⁷⁸ The respective EMSU services contracts were to end on 30 September 2011.



- 5.5.57 The Town Council again failed to consider the serious conflicts of interest in awarding the contract to a related party, and the necessary safeguards when doing so.

5.6 Conclusion

- 5.6.1 In respect of the appointment of FMSS and FMSI as managing agent and EMSU service providers, we observed that:

- The two individuals behind FMSS and FMSI, Danny Loh and How Weng Fan, were involved in the management of, or provided services to, the former Hougang Town Council and were therefore associated with the Town Councillors prior to FMSS's appointment as managing agent and EMSU service provider of the Town Council.
- The award of the First Managing Agent Contract and the First EMSU Contract to FMSS were by *ex post facto* waiver of tender by the Town Council, despite the starting requirement of the TCFR for tender exercises to be conducted.
- The Town Council did not apply robust assessments of FMSS's tenders overall.
- The terms of the Second Managing Agent Contract and the Second EMSU Contract were materially more favourable than the terms of the contracts previously entered into between the Town Council and CPG.
- The Conflicted Persons were given significant authority in respect of the Town Council's financial affairs, with minimal oversight by the Town Councillors.
- The Town Council made improper payments, including overpayments, to FMSS and FMSI.

- 5.6.2 In summary:

- One aspect of the flawed governance at the Town Council is the failure to address serious conflicts of interest, which, together with the pervasive Control Failures, including a lack of discipline in the Town Council's financial operations and record-keeping, exposed public funds to the risk of improper use and application.
- In the context of this flawed governance, there were improper payments of SGD1,518,286, with the amount that ought to be recoverable readily ascertainable in some instances, but not readily ascertainable in others.
- At the same time, the pervasive Control Failures that allowed such improper payments would tend to conceal instances of improper payment and accordingly it is likely that other improper payments occurred, which remain undetectable.
- The tender processes adopted by the Town Council in respect of the appointment of FMSS and FMSI were deficient. Had prudent measures been taken, we estimate conservatively that the Town Council paid SGD1,261,773 more than it would have done if it had held CPG to its contract.

6 Improper payments to other parties

6.1 Overview

- 6.1.1 In addition to improper payments to FMSS, we observed improper payments made by the Town Council to third-party vendors such as consultants, contractors and vendors. Such improper payments stem from weaknesses in the Town Council's control environment.
- 6.1.2 The Town Council failed to comply with the TCFR in several instances, which rendered payments pursuant to the awarded contracts improper. In several instances highlighted below, the Town Council breached Rule 74 of the TCFR in, without proper justification or documentation, awarding tenders to contractors at higher prices.
- 6.1.3 We have also identified instances where the Town Council's weaknesses in approving payments have led to improper payments:
- before the Town Council was even required to make payment; or
 - without the necessary and appropriate supporting documents.
- 6.1.4 This lack of discipline in the Town Council's financial operations and record-keeping is reflective of the failed control environment of the Town Council. They exposed the Town Council to losses from mistakes in payment. Our findings in relation to improper payments made to parties other than FMSS and FMSI, together with our assessment as to the amounts that ought to be recovered, are summarized below:

| Improper payments | Amount (SGD) | Amount that ought to be recovered (SGD) |
|---|------------------|---|
| Use of higher-priced panel consultant | 2,794,560 | Not determinable |
| Payments made without supporting evidence | 43,961 | Not determinable |
| Weaknesses in payment approval leading to improper payment | 105,554 | Not determinable |
| Expenditure incurred without authority in breach of TCFR and Town Council internal controls | 2,463,083 | Not determinable |
| Overpayment of allowances to a Town Councillor | 1,500 | 1,500 |
| Overpayment of lithography charges | 465 | 465 |
| Total amount determinable | 5,409,123 | >= 1,965 |

- 6.1.5 We also identified numerous miscellaneous breaches of the TCFR or the Town Council's own process and controls, which, while meeting the definition of improper payments provided at section 4 of this Report, do not appear to have an effect on the legitimacy of the underlying payments. These are summarized at **Appendix D**.

6.2 Use of higher-priced panel consultant

Engagement of consultants from panel in breach of Rules 73(5) and 74(4) of the TCFR

- 6.2.1 The Town Council was in breach of Rules 74(1) and Rules 74(15) to (18) of the TCFR for 10 projects which required the appointment of consultants for the provision of architecture, civil and structural engineering services, mechanical and electrical engineering services, and quantity surveying services for construction projects.
- 6.2.2 Through a tender process, the Town Council selected Consultant A and Consultant B to be placed on a panel for certain projects at fixed rates. These were the only consultants on the panel. The Town Council would from time to time engage Consultant A or B to provide services on certain projects.
- 6.2.3 The Town Council holds the view that, having selected consultants for a panel, there is no requirement to hold a separate tender process or select the lowest priced consultant for individual projects. This does not appear to conform to the TCFR. Notwithstanding the selection of Consultants A and B on a panel, the TCFR requires, as a starting point, the Town Council to choose between the consultants in accordance with Rule 74 of the TCFR which requires the calling for a tender and selection of the lowest priced tender unless the circumstances were “fully justified” and properly recorded:
- The appointment of Consultants A or B in the 10 projects would have amounted to a payment of more than SGD70,000 per project. Under the TCFR, such appointments would have required the Town Council to invite a tender.
 - We understand that in lieu of separately tendering out each of these appointments, the Town Council instead invited tender for consultants on a fixed fee basis, with the intention of choosing from a panel of pre-approved consultants to assist in managing certain projects from time to time.
 - It follows, therefore, that insofar as the tender for the panel was a substitute for inviting consultants to tender for individual projects, the Town Council was required to choose consultants from the panel in accordance with the TCFR.
- 6.2.4 Based on the rates provided by Consultant A and Consultant B, Consultant B would have cost less for certain projects.
- 6.2.5 We selected 10 projects for which Consultant A was engaged by the Town Council. Consultant A was higher-priced than Consultant B in seven of these 10 projects. In breach of Rule 74(16) of the TCFR, the reasons for appointing Consultant A and not Consultant B for these projects were not documented at the relevant time.
- 6.2.6 The Town Council informed us that, notwithstanding that it had the lowest contract price, Consultant B was “busy” on two Neighbourhood Renewal Programme projects and that the projects had been noted to be “slow-moving.” The Town Council meeting minutes dated 14 February 2013 indicates that a project at pre-tender stage was “slightly” behind schedule, in respect of which the Vice Chairman, Pritam Singh requested FMSS to give Consultant B an “ultimatum” to expedite plan submission and preparation of tender. There was no further discussion for poor performance by

Consultant B in any subsequent Town Council meetings. Save for this, the Town Council has not provided any documentation to support this view.

- 6.2.7 Furthermore, if Consultant B was disfavoured so as to leave Consultant A as the only choice on the panel, there was no meaningful panel from which to choose consultants for these projects. Accordingly, the tender process cannot be relied upon to be a rigorous control.
- 6.2.8 In the absence of documented justification for choosing the higher priced consultant, the decisions to award the tenders to Consultant A were in breach of Rule 74(16) of the TCFR. Resultant payments to Consultant A were therefore improper.
- 6.2.9 Our analysis suggests that the Town Council paid or is liable to pay up to SGD2,794,560 more that it would by appointing Consultant A for the seven projects above. A breakdown of this sum is as follows:

| Contract number | Additional cost of appointing Consultant A over Consultant B (SGD) |
|-----------------|--|
| 1 | 299,087 |
| 2 | 463,767 |
| 3 | 183,750 |
| 4 | 374,745 |
| 5 | 14,500 |
| 6 | |
| 7 | 1,458,711 |
| Total | 2,794,560 |

- 6.2.10 The Town Council's response to our observations on this issue is set out at **Annex E**.

6.3 Payments made without supporting evidence

- 6.3.1 Under the terms of a contract with one of the Town Council's construction contractors, Contractor A, rates for items that are not listed in the schedule of rates (called "star rates") are invoiced at a mark-up over cost of 15%. We identified the following:
 - Our testing identified 190 units of an item that did not appear on the schedule of rates. The star rate applied for this item was SGD212.75. The Town Council did not have supporting documentation for these items, which Contractor A is required to provide by the contract. SGD40,423 worth of payments to Contractor A were therefore unsubstantiated.⁷⁹
 - Similarly, Contractor A issued another invoice (IV11394) for hacking and plastering a wall, which included five items on which the star rate was applied. The total cost

⁷⁹ FMSS was also paid project management fees of SGD1,415 in relation to these items (based on 3.5% of SGD40,423).



of these items was SGD789; however, the star rate applied was not stated on the invoice and the Town Council was unable to provide supporting documentation for these star rates, as required by the contract.

- Contractor A issued another invoice (IV11858) for supplying and installing aluminium flashing which included an item on which the star rate was applied. The total cost of this item was SGD1,512; however, the star rate applied was not stated on the invoice and the Town Council was unable to provide supporting documentation for this star rate, as required by the contract.

6.3.2 In addition, we also identified a payment of SGD198,043 (for invoices IV11886 and IV11887) to Contractor A on 30 January 2013 where the Town Council was only able to locate supporting document for an amount of SGD196,806.

6.3.3 Where the abovementioned payments were made without sufficient documentation, we are of the view that they were made improperly. It cannot be readily determined, however, the extent to which any amounts ought to be recovered, as there are insufficient records to verify that the goods were appropriately priced.

6.3.4 The facts underlying our observations in this section are not disputed by the Town Council. The Town Council's response to our observations on this issue is set out at **Annex E**.

6.4 Weaknesses in payment approval leading to improper payment

Payments without Certificate of Statutory Completion

6.4.1 We reviewed all payments (comprising 103 invoices) recorded in the accounts payable during the Review Period relating to consulting contracts⁸⁰ of Consultant A and Consultant B.

6.4.2 There were two instances where payments were made without the documents required to establish the delivery of the service in accordance with the contract. These are tabulated overleaf:

⁸⁰ Contract number OT/0286A/12 and OT/0286B/12.

Aljunied-Hougang Town Council
 Report on Improper Payments
 31 October 2016

| Payment voucher reference | Payment date | Invoice reference | Invoice description | Required document | Invoice amount (SGD) |
|---------------------------|------------------|-------------------------|--|---|----------------------|
| 21359 | 4 July 2012 | 001/12 | 100% payment for proposed additions and alternations to existing Aljunied Hougang Town Council Office (Serangoon Office) | <ul style="list-style-type: none"> - Approval from Fire Safety & Shelter Department - Fire Safety Certificate | 25,000 |
| 29101 | 20 December 2013 | LST/2012/AHPETC/HAI/006 | Reimbursement for Fire Safety Bureau submission | Receipt from Fire Safety Bureau | 150 |
| Total | | | | | 25,150 |

6.4.3 There were eight instances where requisite certifications had not been issued and final payment was made based on a different document. The relevant contracts required a Certificate of Statutory Completion or Maintenance Certificate⁸¹ to be issued before making final payment⁸² to the consultants. The eight instances are tabulated overleaf:

⁸¹ Or whichever is later if both are issued.

⁸² 5% of the total contract value.

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| No. | Payment voucher number | Payment date | Supporting document for payment | Amount paid without requisite supporting documentation ⁸³ (SGD) |
|--------------|------------------------|------------------|---------------------------------------|--|
| 1 | 37459 | 21 January 2016 | SCC ⁸⁴ dated 20 March 2015 | 10,715 |
| 2 | 37458 | 21 January 2016 | SCC dated 20 March 2015 | 9,142 |
| 3 | 37457 | 21 January 2016 | SCC dated 20 March 2015 | 5,597 |
| 4 | 37455 | 21 January 2016 | SCC dated 20 March 2015 | 12,866 |
| 5 | 37453 | 21 January 2016 | SCC dated 20 March 2015 | 7,761 |
| 6 | 37454 | 21 January 2016 | SCC dated 20 March 2015 | 13,061 |
| 7 | 37452 | 21 January 2016 | SCC dated 30 June 2015 | 3,375 |
| 8 | 137571 | 28 November 2015 | SCC dated 23 March 2015 | 2,437 |
| Total | | | | 64,954 |

6.4.4 These payments were made before the relevant certifications evidencing that the final release of funds for the services should be provided and, as such, were made improperly.

6.4.5 We note the following:

- The Final Completion Certificate was eventually issued on 28 June 2016 in relation to items 1 to 3, five months after the payment had been made.
- The Town Council and Consultant A have confirmed that the Final Completion Certificates have still not been issued in relation to items 4 to 8.

6.4.6 The Town Council's position is that it had been informed by the architects involved in the relevant projects that there was sufficient alternative documentation or other evidence to substantiate final payment for the abovementioned projects.

6.4.7 To the extent that the abovementioned payments were made without clearly documented evidence of services received, such payments were made improperly. It cannot be readily determined, however, the extent to which any amounts ought to be

⁸³ This relates to only the portion of the billing which was without the requisite supporting documents.

⁸⁴ A Substantial Completion Certificate. A Substantial Completion Certificate is a preliminary certification issued once works have been substantially completed but prior to the issuance of Maintenance Certificate or a Final Completion Certificate, which are issued only after the one-year defect liability period has expired. A Certificate of Statutory Completion is issued by the Building and Construction Authority and is dependent on certain statutory milestones having been met.

recovered, as the certifications and records for some of the transactions are not available to verify that the services were ultimately satisfactorily delivered in conformity with the applicable contracts.

Payments without approval of variation orders

- 6.4.8 We reviewed the two largest Neighbourhood Renewal Programme projects for the Town Council. The Town Council's lack of discipline in the Town Council's financial operations and record-keeping also allowed in payments to be made improperly to consultants and contractors for these two Neighbourhood Renewal Programme projects.
- 6.4.9 Payments were made to contractors for additional works⁸⁵ that were not approved by the Chairman. As of the end of the Review Period, of the variation orders billed⁸⁶, the following upward revisions had not been approved by the Chairman:
- for the Bedok Reservoir Road contract, total increases in the works billed of SGD548,363⁸⁷ from three variation orders; and
 - for the Serangoon North Avenue 1 and 2 Contract, total increases in the works billed of SGD153,902 from three variation orders.
- 6.4.10 Payments for these variation orders were made improperly without having been approved.
- 6.4.11 The Town Council's management explained that the anomalies in the variation orders would eventually balance out during the final settlement of accounts. It is pertinent to note that, on these projects, decreases in works exceed increases in works, which would frustrate such "balancing." In any case, the contractor would be entitled to be paid for work done even if it were the Town Council's internal controls that had gone astray. This control failure is illustrative of the lack of discipline in the Town Council's financial operations and record-keeping. Such Control Failures expose public funds to risks of erroneous payments, overpayments and payments for which delivery had not been sufficiently verified, as well as the potential for actual misappropriation or civil or criminal breach of trust.
- 6.4.12 As of September 2016, one upward revision of SGD15,450 for Serangoon North Avenue 1 and 2 remains that had been paid improperly without having been approved. Its recoverability will depend upon whether the works in question were agreed by the Town Council and were in fact carried out satisfactorily by the contractor.
- 6.4.13 This notwithstanding, the mistakes in payment approvals are breaches of the TCFR and demonstrate a clear lack of oversight from the Town Council, as well as by FMSS on project management, which received was paid 3.5% in project management fees on the underlying project.

⁸⁵ Changes (addition, omission, or alteration of specifications) to the works included in the original contract.

⁸⁶ Comprising various increases in works valued at SGD1,439,724 and various decreases in works valued at SGD3,554,218.

⁸⁷ This sum is the additional works billed and is not expressed net of the reductions in works billed. There is an additional SGD32,094 for which the date of approval is not recorded on the approval documentation.

6.5 Expenditure incurred without authority in breach of TCFR and Town Council internal controls

- 6.5.1 A Written Instruction is used when expenditure is incurred for non-routine estate work when the Town Council instructs the relevant contractor to undertake a piece of work at the agreed contractual rates. Although the authority to do so was not formally documented by the Town Council, in practice it allowed Estate Officers and Estate Managers to incur expenditure up to a value of SGD1,000. Typically, such authorization is documented in a Written Instruction or a Recommendation Letter⁸⁸.
- 6.5.2 As there was no documented delegation of authority to any of the Estate Officers and Estate Managers to authorize such expenditure during the Review Period all expenditure incurred by an Estate Officer or an Estate Manager during the Review Period amounts to a breach of the TCFR and the Town Council's documented policies.
- 6.5.3 We reviewed two sets of samples of payments for which the Town Council's Written Instruction and Recommendation Letter process was used: first, all 1,412 items of expenditure in the month of January 2014, totalling SGD1,736,029; secondly, a sample of Written Instructions for expenditure above SGD1,000 in the Review period as a whole.
- 6.5.4 Of the 1,412 items of expenditure in the month of January 2014:
- 1,260 of these transactions, totalling SGD217,858, were for amounts less than SGD1,000 and were incurred by the Estate Officer or Estate Manager. In 74 of these transactions, totalling SGD22,911, there were no Written Instructions or Recommendation Letters.
 - The remaining 152 transactions, totalling SGD1,518,171, were for amounts greater than or equal to SGD1,000 and therefore should not have been incurred by Estate Officers or Estate Managers even under the Written Instruction or Recommendation Letter process. Of these 152:
 - Sixty-nine payments, totalling SGD1,357,341, did not have documented approval in the Written Instruction.
 - Eighty-three payments, totalling SGD160,830, had signed Recommendation Letters or Written Instructions by Estate Managers, none of which would be valid even under the Town Council's undocumented process for incurring expenditure.
- 6.5.5 By breaching the Town Council's documented policies, these also breached the TCFR.
- 6.5.6 The above issues relate to a small sample of transactions within one month of the Review Period. Similar failures occurred during the other months, as can be seen in the sample tested across the Review Period overleaf:

⁸⁸ See **Appendix E.2** for an explanation of the Town Council's processes for incurring expenditure and making payments.



| Approval threshold (SGD) | 1,000 to 5,000 | Above 5,000 | Total |
|---|----------------|-------------|----------------|
| Number of transactions not approved in accordance with the Town Council's written policies or only approved after the Written Instructions had already been issued | 280 | 20 | 300 |
| Total value (SGD) | 537,294 | 189,760 | 727,054 |

6.5.7 But for the absence of formal delegation as required by the TCFR, payments compliant with the Town Council's undocumented process would not have been made improperly. Reflecting the lack of discipline in the Town Council's financial operations and record-keeping, such informal processes were not complied with either, which further illustrates a problem of undocumented or informal processes: that they are often poorly observed in practice. To the extent that the abovementioned payments were made without the requisite authority, they were made improperly.

6.6 Overpayment of allowances to a Town Councillor

6.6.1 Under section 16 of the TCA, a town councillor is entitled to a monthly allowance determined by the number of dwelling units in their town council.

6.6.2 Overall for the Town Council, allowances waived or not claimed by Town Councillors exceed any overpayments. However, based on an accurate count of housing units in the Town Council (sourced from HDB) there were instances where Town Councillors were paid incorrect allowances during the Review Period.

6.6.3 The Town Council told us that it placed reliance on a presentation from FMSS, which was inaccurate, to determine the number of dwelling units in the Town Council. This led to inaccurate computations of Town Councillor allowances, and the subsequent payment of inaccurate amounts.

6.6.4 The Town Council provided us with a schedule of waived Town Councillor allowances, which we have reviewed against payments made by the Town Council. Taking such waived allowances into account, there was one instance where a Town Councillor received SGD1,500 more than the net amount to which he was entitled.⁸⁹ While there is no indication of deliberate wrongdoing on the part of the Town Councillor, this payment, having been made in error, should be recovered from the individual concerned.

6.7 Overpayment of lithography charges

6.7.1 Overpayment was made for lithography charges where the rates in the supporting document did not correspond to the payment or invoice, resulting in an apparent overcharging of SGD465. The Town Council showed us a contract for a different project from the same consultant to support the higher rate. However, the contract

⁸⁹ Scheduled at **Appendix L**.



excerpt appended to the payment voucher showed a lower rate and appears to us to be the one applicable. If so, an overpayment was made on this invoice, which ought to be recovered.

6.8 Conclusion

6.8.1 Our review of the Town Council's payments disclosed instances where the Town Council had, in breach of the TCFR, made payments to third-party vendors such as consultants, contractors and vendors:

- The Town Council awarded tenders to contractors which did not quote the lowest price without a documented justification, or tendering out the project in question. These contract awards totalled SGD2,794,560.
- We have also identified instances where payments were made to third parties:
 - in the absence of adequate supporting documentation for the work and services provided (amounting to SGD43,961 in aggregate); or
 - as a result of weaknesses in the payment approval process (amounting to SGD105,554 in aggregate).

6.8.2 Such improper payments stem from a lack of discipline in the Town Council's financial operations and record-keeping, reflecting the failed control environment. Insofar as the erroneous approval of payments to vendors and contractors constitute recoverable payments, the Town Council may seek recovery of losses from the recipients of the improper payments.