RAJAH & TANN ASIA

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News

Rajah & Tann Singapore Expands Corporate Practice, Hires Leading Lawyer Raymond Tong

Rajah & Tann Singapore has expanded its corporate practice with the appointment of Raymond Tong, widely regarded as one of Singapore's leading lawyers, as a Partner in the firm's Capital Markets/Mergers & Acquisitions Practice, effective 15 February 2021.

Raymond, who is also ranked by global legal guide Chambers as a Band 1 leading lawyer in the Asia-Pacific region, was until recently a partner in the capital markets group of a leading international law firm. He has extensive experience advising clients on fund raising, having acted in some of the most high-profile equity capital markets deals across Southeast Asia. These included the US$1.68 billion IPO of NetLink, US$813 million IPO of Prime US REIT, US$394.6 million IPO of United Hampshire US REIT, RM1.03 billion IPO of Leong Hup International, S$2.1 billion rights issue by Sembcorp Marine, Petronas' sell down in MISC and KLCCP, and Aabar Investments PJS' sell down in RHB Bank Berhad.

Another new hire, Sriram Chakravarthi, joined the firm in January as Counsel of Funds and Investment Management to enhance the firm's South Asia Desk, focusing on India, Bangladesh and Sri Lanka.

Patrick Ang, Managing Partner of Rajah & Tann, said: "We are pleased to welcome high-calibre lawyers like Raymond and Sriram to Rajah & Tann. Their joining will further expand and grow our regional capabilities with Raymond's experience in transactions throughout the region and with Sriram's focus and experience in South Asia.

"We look forward to them adding to the bench strength at a time when the corporate capabilities of the Rajah & Tann Asia network have given us an edge in cross-border transactions."

Click here to read our Press Release.

LegisBytes

Alternative Dispute Resolution

SIMC Establishes Presence in Suzhou Industrial Park

On 19 February 2021, the Singapore International Mediation Centre ("**SIMC**") announced the establishment of the SIMC Suzhou (Mediation) Working Group ("**Working Group**") in the Suzhou Industrial Park ("**SIP**") to promote access to mediation as an avenue to resolve cross-border commercial disputes. The Working Group was unveiled during the Signing Ceremony for Major Projects of Suzhou Industrial Park 2021 at the Suzhou Industrial Park.

The collaboration with the Suzhou Industrial Park Administrative Committee ("**SIPAC**") will enable SIMC to support the dispute resolution needs of companies, businesses, and investors in Suzhou and the Greater China

Contact

Leong Kah Wah
Head, Dispute Resolution
T +65 6232 0504
kah.wah.leong@rajahtann.com

Adrian Wong
Deputy Head, Dispute Resolution
T +65 6232 0427
adrian.wong@rajahtann.com

region. The Working Group allows SIMC to share knowledge and information on cross-border commercial mediation, which is an effective, time- and cost-efficient method to manage business disputes while preserving commercial relationships – a mainstay in Asian deal-making.

The Working Group will also facilitate the development of further areas of collaboration in SIP. These may cover areas such as the provision of mediation services, joint events, training, and the exchange of thought leadership in the fast-developing space of international commercial mediation.

Click on the following link for more information:

- SIMC News Release titled "SIMC establishes presence in Suzhou Industrial Park" (available on the SIMC website at www.simc.com.sg)

Corporate Commercial

Companies and LLPs to Lodge Register of Registrable Controllers Information by 30 June 2021

The Accounting and Corporate Regulatory Authority ("**ACRA**") has announced that companies, foreign companies registered in Singapore and limited liability partnerships ("**Relevant Entities**"), unless exempted, must lodge their Register of Registrable Controllers ("**RORC**") information with ACRA via its online filing portal, BizFile+, by 30 June 2021. The announcement was made following the resumption on 1 February 2021 of the RORC e-Service in BizFile+, which was suspended in September 2020.

By way of background, since 31 March 2017, Relevant Entities are required to maintain a RORC in their registered office address or at the office of their Registered Filing Agents ("**RFAs**"). RORC information includes details of individuals and legal entities that have significant interest or control over the Relevant Entity. With effect from 30 July 2020, these Relevant Entities are also required to lodge RORC information with ACRA via BizFile+. This additional requirement is part of ACRA's ongoing efforts to sustain Singapore's reputation as a trusted financial hub, and further improve the transparency of corporate ownership and control in Singapore. RORC information lodged with ACRA will only be made available to law enforcement agencies to aid them in the administration or enforcement of laws under their purview, such as when investigating money laundering offences. RORC information will not be made available to the public.

RORC information can be lodged by authorised position holders of the Relevant Entities (e.g. directors, secretaries, partners) or their RFAs. Failure to lodge RORC information by 30 June 2021 may subject the errant Relevant Entity and every of its officers who is in default to a fine of up to S$5,000 each.

Should there be any subsequent changes to the RORC information, the Relevant Entity or its RFA must update ACRA of such changes via BizFile+ within two business days after updating the RORC on its end.

Rebecca Chew
Deputy Managing Partner
T +65 6232 0416
rebecca.chew@rajahtann.com

Gregory Vijayendran, SC
Partner, Commercial Litigation
T +65 6232 0438
gregory.vijayendran@rajahtann.com

Mark Cheng
Deputy Head, Restructuring & Insolvency
T +65 6232 0446
mark.cheng@rajahtann.com

Contact

Abdul Jabbar
Head, Corporate and Transactional Group
T +65 6232 0465
abdul.jabbar@rajahtann.com

Celeste Lee
Partner, Corporate Commercial
T +65 6232 0217
celeste.lee@rajahtann.com

Khairil Suhairee
Partner, Corporate Commercial
T +65 6232 0571
khairil.suhairee@rajahtann.com

Click on the following link for more information:

- ACRA News Release titled "Resumption of Register of Registrable Controllers (RORC) e-Service from 1 February 2021" (available on the ACRA website at www.acra.gov.sg)

Employment & Benefits

Reduction of S Pass Sub Dependency Ratio Ceiling for the Manufacturing Sector

In line with the government's recently announced aim for Singapore to become a global business, innovation, and talent hub for advanced manufacturing, the Ministry of Manpower ("**MOM**") will be reducing the Manufacturing S Pass sub Dependency Ratio Ceiling ("**DRC**") to develop the local talent pipeline and improve manpower resilience in the manufacturing sector.

This reduction seeks to reduce businesses' reliance on foreign manpower at the S Pass level, and will take place in two stages:

(a) **From 20% to 18% for 1 January 2022 to 31 December 2022 (both dates inclusive)**. Employers will not be able to hire or renew their S Passes until they come within the new sub-DRC of 18%.

(b) **From 18% to 15% from 1 January 2023**. Employers will not be able to hire or renew their S Passes until they come within the new sub-DRC of 15%.

To support firms, both in general and in relation to the transition:

(a) Employers will be permitted to retain excess S Pass holders until the expiry of their work passes.

(b) Firms that require more help with the transition may apply for transitional manpower support under the Lean Enterprise Development Scheme.

(c) Companies may apply for government grants to support business transformation, from the Enterprise Development Grant to job redesign programmes such as the Industry 4.0 Human Capital Initiative (iHCI) and Job Redesign under the Productivity Solutions Grant (PSG-JR).

(d) Programmes are available to help employers access the local talent pool, including SkillsFuture initiatives, Workforce Singapore's (WSG) career conversion programmes, and the Jobs Growth Incentive for firms that expand local hiring. More broadly, the government is also working to build a steady pipeline of local professionals in conjunction with Institutes of Higher Learning.

This reduction is in step with the reductions in S Pass sub-DRC that are already being implemented for the Services, Construction, Marine Shipyard, and Process sectors. On a broader level, these reductions are part of a wider series of adjustments to ensure a complementary foreign workforce policy at the S Pass level, which have included two raises of the S Pass qualifying salary in the past year and an extension of the Fair Consideration Framework advertising requirement to cover S Passes.

Contact

Desmond Wee
Head, Employment & Benefits (Non-Contentious)
T +65 6232 0474
desmond.wee@rajahtann.com

Jonathan Yuen
Head, Employment & Benefits (Disputes)
T +65 6232 0161
jonathan.yuen@rajahtann.com

Kala Anandarajah
Partner, Employment & Benefits
T +65 6232 0111
kala.anandarajah@rajahtann.com

Click on the following link for more information:

- Reduction of S Pass Sub Dependency Ratio Ceiling For the Manufacturing Sector (available on the MOM website at www.mom.gov.sg)

Funds & Investment Management

ACRA Launches Online Variable Capital Company (VCC) Registration and Filing Portal

On 1 February 2021, the Accounting and Corporate Regulatory Authority ("**ACRA**") launched the new online Variable Capital Company ("**VCC**") registration and filing portal ("**VCC portal**"). The online transactions that are available on the VCC portal include: (i) application for a VCC name; (ii) application for incorporation of a VCC; (iii) registration of VCC sub-funds and charges; (iv) change in VCC information such changes in VCC/sub-fund name, VCC type and registered office address; and (v) general lodgement.

The VCC portal also includes a directory search function to assist users to search for registered VCCs or their sub-funds. More transactions in the VCC portal will be made available progressively in the months to come.

The VCC is a new corporate structure for investment funds vehicles constituted under the Variable Capital Companies Act ("**VCC Act**"), which came into operation on 14 January 2020. It complements the existing suite of investment fund structures that are available in Singapore.

Please refer to our Legal Update titled "Sea-change in Singapore's Funds Industry – the Birth of Variable Capital Companies" which discusses, among others, the key features of a VCC.

ACRA administers the VCC Act and its subsidiary legislation.

Click on the following link for more information:

- ACRA News Release titled "Online Variable Capital Company (VCC) Registration and Filing Portal now available" (available on the ACRA website at www.acra.gov.sg)

Contact

Arnold Tan
Co-head, Funds and Investment Management
T +65 6232 0701
arnold.tan@rajahtann.com

Anne Yeo
Co-head, Funds and Investment Management
T +65 6232 0628
anne.yeo@rajahtann.com

Insurance & Reinsurance

MAS Seeks Feedback on Proposed Revisions to Enterprise Risk Management, Investment and Public Disclosure Requirements for Insurers

The Monetary Authority of Singapore ("**MAS**") proposes revisions to enhance requirements for insurers in the following MAS Notices:

(a) MAS Notice 126 Enterprise Risk Management ("**ERM**");
(b) MAS Notice 125 Investments of Insurers; and
(c) MAS Notice 124 Public Disclosure Requirements.

The proposed requirements are set out in the MAS Consultation Paper on Proposed Revisions to Enterprise Risk Management, Investment and Public Disclosure Requirements for Insurers issued on 19 February 2021. The consultation closes at 12 am, 19 March 2021.

Contact

Simon Goh
Head, Insurance & Reinsurance
T +65 6232 0645
simon.goh@rajahtann.com

Elaine Tay
Partner, Insurance & Reinsurance
T +65 6232 0673
elaine.tay@rajahtann.com

By way of background, the International Association of Insurance Supervisors ("**IAIS**") developed the Holistic Framework for Systemic Risk in the Insurance Sector ("**Holistic Framework**"), recognising that systemic risk may arise from both the collective activities and exposures of insurers at a sector-wide level as well as from the distress or disorderly failure of individual insurers. A key feature of the Holistic Framework is an enhanced set of supervisory policy measures to facilitate macroprudential surveillance by insurance regulators. To this end, IAIS adopted the relevant updated Insurance Core Principles ("**ICPs**") in November 2019.

MAS intends to align the rules and regulations with the updated ICPs with a focus on enhancing requirements concerning ERM, investment risk management, and public disclosure practice for insurers. We set out below a high-level overview of the key aspects of MAS' proposed revisions to each of the MAS Notices.

Proposed Revisions to MAS Notice 126

MAS Notice 126 sets out the ERM requirements and guidelines for insurers to identify and manage interdependencies between key risks, and how these are translated into management actions related to strategic and capital planning matters. MAS is proposing changes in the following main areas, including:

(a) **Concentration risk and counterparty stress testing**. For instance, MAS proposes to include concentration risk as one of the mandatory risks that licensed insurers need to consider and address in the ERM framework. Further, MAS proposes requiring licensed insurers to perform counterparty stress testing on material counterparties as part of the Own Risk and Solvency Assessment ("**ORSA**").

(b) **Macroeconomic stress testing**. Presently, all licensed insurers are required to perform stress testing as part of the ORSA and come up with scenarios that will encompass all reasonably foreseeable and relevant material risks. MAS proposes to require all insurers to perform macroeconomic stress testing as part of their ORSA stress testing process.

(c) **Liquidity risk management**. Liquidity risk refers to the risk of a financial institution being unable to meet its financial obligations as they fall due without incurring unacceptable costs or losses through fund raising and asset liquidation. Insurers should not underestimate their liquidity risk exposures which can be exacerbated in times of stress. As such, MAS proposes to require insurers to establish liquidity management processes as part of its ORSA. MAS also proposes several other requirements relating to maintenance of unencumbered portfolios of liquid assets, liquidity stress testing, and liquidity contingency funding plan, among other things.

Proposed Revisions to and Applicability of MAS Notice 125

MAS Notice 125 sets out the principles that govern the oversight of investment activities of a licensed insurer and the investments of its insurance funds, and, in the case of an insurer that is incorporated or established in Singapore, the investments of both its insurance funds and its shareholders' funds. MAS is proposing changes in the following main aspects:

Wang Ying Shuang
Partner, Insurance & Reinsurance
T +65 6232 0365
ying.shuang.wang@rajahtann.com

(a) **Items to be included in a Board-approved investment policy**. Appendix A of MAS Notice 125 requires the board-approved written investment policy of an insurer to include limits for the allocation of assets by geographical area, markets, sectors, counterparties and currency. Among other things, MAS proposes to require that limits for the allocation of assets by type of asset and credit rating to be additionally established in the board-approved written investment policy.

(b) **Scope of application of MAS Notice 125**. Paragraphs 8 to 20 of MAS Notice 125 concerning the Board of directors ("**Board**") and senior management oversight, reports to the Board, duties of the investment committee, and asset-liability management do not apply to captive insurers and marine mutual insurers. MAS proposes to also exclude special purpose reinsurance vehicles ("**SPRVs**") from these requirements, given the static nature of an SPRV's business model and that it typically invests in liquid financial instruments. MAS also proposes that paragraphs 13 to 14 of MAS Notice 125 concerning reports to the Board shall also not apply to an insurer in respect of the part of any insurance fund established and maintained for its investment-linked policies.

Revisions to and Applicability of MAS Notice 124

MAS Notice 124 sets out requirements for licensed insurers to disclose relevant, comprehensive and adequate information on a timely basis. The thrust of MAS' proposals pertain to enhancing public disclosure requirements and scope of applicability.

(a) **Expanded scope of items to be disclosed**. Currently, MAS Notice 124 requires licensed insurers to disclose information about their company profile, including the nature of their business, a general description of their key products, the external environment in which they operate, their objectives and their strategies in place to achieve these objectives. MAS proposes to expand the scope of items to be disclosed to include, among other things:

- quantitative and qualitative information on liquidity risk, known liquidity trends, and significant commitments, demands and reasonably foreseeable events that potentially result in material improvement or deterioration in liquidity;
- quantitative and qualitative information on investment risk, including management of investment risk exposures, use of derivatives for hedging investment risks and internal policies on the use of derivatives; and
- corporate structure, including any material changes that have taken place during the year, and key business segments.

(b) **Clarification of technical provisions disclosure**. MAS also proposes revisions to clarify technical provisions disclosure, i.e. the policy intent that such disclosure shall be presented based on material insurance business segments for more meaningful comparability of disclosures across licensed insurers.

(c) **Proposed exclusion of SPRVs from public disclosure requirements**. The rationale is that policyholders of SPRVs are the sponsors of the insurance-linked securities transactions, and will have access to relevant information to understand the risks to which the SPRV is exposed and the manner in which the risks are managed.

Intellectual Property

Public Consultation on the Proposed Copyright Bill

The Ministry of Law and the Intellectual Property Office of Singapore ("**IPOS**") are conducting a public consultation ("**Consultation**") on the draft of a proposed Copyright Bill ("**Proposed Bill**"). This Consultation is part of an overall review of Singapore's copyright regime and follows from previous public consultation papers and reports.

The Proposed Bill is intended to repeal and replace the current Copyright Act (Cap. 60, Rev. Ed. 2006), and this is slated to take place in the third quarter of 2021. Part 1 of the Consultation was released on 5 February 2021 and seeks feedback on the Proposed Bill. Part 2 of the Consultation was released on 22 February 2021 and seeks feedback on the newly introduced provisions for the regulation of Collective Management Organisations and the related issue of Copyright Tribunals. Both parts of the Consultation will end on 1 April 2021.

Part 1 of the Consultation is available here, and Part 2 of the Consultation is available here. Members of the public and affected stakeholders can provide their feedback online through Form@SG or via email to MLAW_Consultation@mlaw.gov.sg.

For more information, click here to read our Legal Update.

Contact

Lau Kok Keng
Head, Intellectual Property, Sports & Gaming
T +65 6232 0765
kok.keng.lau@rajahtann.com

Nicholas Lauw
Partner, Intellectual Property
T +65 6232 0772
nicholas.lauw@rajahtann.com

Medical Law

Regulatory Framework for Cell, Tissue and Gene Therapy Products Takes Effect from 1 March 2021

The Health Products Act (Amendment of First Schedule) Order 2021 and the Health Products (Cell, Tissue and Gene Therapy Products) Regulations 2021 ("**CTGTP Regulations**") were published in the Government Gazette on 17 February 2021 and they took effect from 1 March 2021.

The two legislations aim to provide:

(a) a definition of CTGTP;
(b) a risk-based regulatory approach for CTGTP; and
(c) introduce requirements unique to CTGTP.

Part (a) was addressed in the Health Products Act (Amendment of First Schedule) Order 2021, i.e., the insertion of the following definition of CTGTP under the Health Products Act: "any substance that is intended for use in humans for a therapeutic, preventive, palliative or diagnostic purpose and consisting of viable or non-viable human cells or tissues, viable animal cells or tissues, or recombinant nucleic acids".

Contact

Rebecca Chew
Deputy Managing Partner
Partner, Medical Law
T +65 6232 0416
rebecca.chew@rajahtann.com

Lim Wee Hann
Partner, Life Sciences
T +65 6232 0606
wee.hann.lim@rajahtann.com

The CTGTP Regulations in turn address parts (b) and (c), which provide a regulatory framework generally split into the following areas:

Area	Scope of Regulation
Risk Classification	• CTGTP will be classified into two risk categories (Class 1 and Class 2) based on a three-pronged test. • A CTGTP will only be considered lower risk (Class 1) if it is (i) minimally manipulated; (ii) intended for homologous use; and (iii) not combined or used in conjunction with therapeutic products or medical services. CTGTP that do not meet these criteria are automatically classified under Class 2.
Registration Requirements	• Class 1 CTGTP need not be registered prior to supply; only prior written acceptance from the Health Sciences Authority ("**HSA**") is required. • Class 2 CTGTP will need to be registered with HSA prior to supply.
Clinical Trials	• Class 1 CTGTP clinical trials will be regulated under the Human Biomedical Research Act. Trials must be conducted under the supervision of a research institution that has notified the Ministry of Health of its operation. • Class 2 CTGTP clinical trials will be regulated under the HSA's existing Clinical Trial Authorisation (CTA) - Clinical Trial Notification (CTN) clinical trial framework.
Quality and Licensing Standards	• Licensing will be risk-based, depending on the degree to which the CTGTP is manipulated. A dealer's license is required for the manufacture, import or sale of CTGTP that are more than minimally manipulated. • All manufacturers, importers and wholesalers of CTGTP will nevertheless be required to comply with the applicable quality standards, record keeping, safety reporting, and product defect reporting requirements, and ensure the product's traceability.
Requirements Unique to CTGTP	• All CTGTP must have a traceability system to enable bi-directional tracking of CTGTP from the point of sourcing, through manufacturing, up to the administration of the product to the patient and vice versa. • Dealers and product registrants will be expected to maintain the records of

	traceability for 30 years after the expiry of the product.

Click on the following link for more information:

- Regulatory overview of cell, tissue or gene therapy products (available on the HSA website at www.hsa.gov.sg)

Restructuring & Insolvency

Guide to Conducting Applications for Moratoria Pursuant to Schemes of Arrangement

The Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**") allows a company proposing or intending to propose a scheme of arrangement to its creditors to apply to the Singapore High Court ("**Court**") for a moratorium restraining proceedings against the company. The Court may also extend the moratorium on application to cover a subsidiary or holding company. This is to allow the company some breathing room to conduct its restructuring efforts.

The Supreme Court of Singapore has issued a Guide for the Conduct of Applications for Moratoria under Sections 64 and 65 of the IRDA ("**Guide**"), setting out the case management features and specialist practices for such applications. The Guide came into effect on 15 February 2021.

The Guide provides a helpful roadmap to the various steps in making an application for a moratorium pursuant to a scheme of arrangement. This includes:

(a) The filing of an application;
(b) Pre-trial conferences;
(c) Hearing of the application;
(d) Making an appeal; and
(e) Applying for an extension of the moratorium.

For more information, click here to read our Legal Update.

Contact

Sheila Ng
Partner, Restructuring & Insolvency
T +65 6232 0590
sheila.ng@rajahtann.com

Raelene Pereira
Partner, Restructuring & Insolvency
T +65 6232 0401
raelene.pereira@rajahtann.com

Tax

Budget Speech 2021 – Emerging Stronger Together

After an unprecedented year in which Singapore experienced its worst recession since independence and with the global battle against COVID-19 far from over, Budget Speech 2021 was delivered by Singapore's Deputy Prime Minister ("**DPM**") and Minister for Finance Mr Heng Swee Keat on 16 February 2021. With the theme "Emerging Stronger Together", DPM Heng laid out the following plans to tackle Singapore's immediate challenges:

(a) The COVID-19 Resilience Package to reopen Singapore safely and sustain the momentum of its recovery;
(b) The Household Support Package for families, with greater support for families in need;
(c) Singapore's investments in economic and workforce transformation to emerge stronger; and
(d) The Singapore Green Plan 2030 to enhance sustainability and deal with climate change.

Contact

Vikna Rajah
Head, Tax and Trust & Private Client Practices
T +65 6232 0597
vikna.rajah@rajahtann.com

Foo Hui Min
Partner, Tax
T +65 6232 0498
hui.min.foo@rajahtann.com

There were also tax measures and changes announced which were categorised in the following manner:

(a) Extending Budget 2020 Temporary Tax Measures to Support Businesses;
(b) Updating Singapore's Tax Regime as the Digital Economy Grows;
(c) Maintaining the Competitiveness and Resilience of Singapore's Tax System;
(d) Emerging Stronger as a Community: Encouraging Philanthropy and Volunteerism;
(e) Encouraging Early Adoption of Electric Vehicles; and
(f) Environmental Sustainability.

For more information, click here to read our Legal Update.

CaseBytes

Wrongful Dismissal Arising from Terminating Employees with Cause – Cautionary Note for Employers

Two recent Singapore High Court decisions are stark reminders that the summary dismissal of an employee can cause serious legal issues for a company if not handled well, and can result in wrongful dismissal claims. This is particularly so if it is unclear whether the employee had conducted himself in such manner as to have repudiated the employment contract or engaged in misconduct, amongst other things. The High Court decisions of *Wong Sung Boon v Fuji Xerox Singapore Pte Ltd and another* [2021] SGHC 24 ("***Fuji Xerox case***") and *Singapore Recreation Club v Abdul Rashid Mohamed Ali and another* [2020] SGHC 156 ("***Singapore Recreation Club case***") are examples of summary dismissals gone wrong.

(a) In the *Fuji Xerox case*, the Court held in favour of Fuji Xerox's former managing director ("**MD**") who was awarded over S$1.4 million in damages. The Court held that the company had wrongfully dismissed the MD by summarily dismissing him from his position in 2017 without any basis as the company did not have any evidence to support allegations that the MD had breached his fiduciary obligations as well as certain provisions in his employment contract.

(b) In the S*ingapore Recreation Club case*, Singapore Recreation Club's former general manager and secretary ("**GM**") succeeded in his counterclaim for wrongful termination. While the club argued that the summary dismissal was justified as the GM failed to provide any explanation at an inquiry, the Court rejected this argument, finding that the inquiry had been conducted in an oppressive and aggressive manner.

While the employees in these two cases were respectively terminated in 2014 and 2017 (i.e. before the Employment Act ("**EA**") was expanded in 2019 to apply to all private sector employees), the cases raise important learning points and serve as a helpful reminder on how employers must

Contact

Jonathan Yuen
Head, Employment & Benefits (Disputes)
T +65 6232 0161
jonathan.yuen@rajahtann.com

Desmond Wee
Head, Employment & Benefits (Non-Contentious)
T +65 6232 0474
desmond.wee@rajahtann.com

Kala Anandarajah
Partner, Employment & Benefits
T +65 6232 0111
kala.anandarajah@rajahtann.com

operate post-2019, in particular in relation to the Section 14 EA due inquiry requirement before an employee may be summarily dismissed for misconduct.

For more information, click here to read our Legal Update.

Can a Company be Voluntarily Wound Up Without a Special Resolution?

In *Superpark Oy v Super Park Asia Group Pte Ltd* [2021] SGCA 8, the Court of Appeal had to consider whether a company can be voluntarily wound up by its creditors if no special resolution has been passed. The Court answered this question in the negative, even in the situation where a provisional liquidator has been appointed.

At the heart of this dispute was the question of the interaction between sections 290(1)(b) and 291(6)(a) of the Companies Act (version in force before 30 July 2020). The appellant relied on section 290(1)(b) to argue that, absent a special resolution by the company's members, the company could not be voluntarily wound up. The provisional liquidators argued that section 291(6)(a) created an alternative way for a voluntary winding up to commence (outside of section 290(1)) which did not require a members' special resolution, and that voluntary winding up had accordingly commenced following the lodgement of the statutory declaration providing for their appointment as provisional liquidators.

The Court held that, under the plain and unambiguous wording of section 290, a company cannot be voluntarily wound up if no special resolution has been passed. To hold otherwise would be at odds with the very notion of voluntariness which underpins the entire distinction between a voluntary and a court-ordered/compulsory winding up

Section 291(6)(a), which allows the appointment of a provisional liquidator before the resolution for voluntary winding up is passed, provides that a voluntary winding up commences at the time the directors of the company lodge the necessary declaration with the Registrar. However, the Court clarified that section 291(6)(a) only operates if the resolution for voluntary winding up has been passed. In that sense, it may be best understood as a provision that retrospectively dates the commencement of the winding up as the time of the lodgement of the declaration, and does not provide an alternative way for a voluntary winding up to commence without a members' special resolution.

Contact

Sim Kwan Kiat
Head, Restructuring & Insolvency
T +65 6232 0436
kwan.kiat.sim@rajahtann.com

Mark Cheng
Deputy Head, Restructuring & Insolvency
T +65 6232 0446
mark.cheng@rajahtann.com

Chua Beng Chye
Deputy Head, Restructuring & Insolvency
T +65 6232 0419
beng.chye.chua@rajahtann.com

Three-Month Time Limit for Setting Aside an Arbitral Award Applies to Fraud Cases

In *Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2021] SCGA 9, the Court of Appeal considered fraud as a ground for setting aside an arbitral award, highlighting that there must be a causative link between any concealment aimed at deceiving the arbitral tribunal and the decision in favour of the concealing party. Further, the Court confirmed that the three-month time limit for setting aside an arbitral award cannot be extended even in cases of fraud.

The appellants in this case applied to set aside an arbitral award or, alternatively, to resist enforcement of the award on the basis that the making

Contact

Ng Kim Beng
Partner, International Arbitration
T +65 6232 0182
kim.beng.ng@rajahtann.com

Avinash Pradhan
Partner, International Arbitration
T +65 6232 0234
avinash.pradhan@rajahtann.com

of the award was induced or affected by fraud and was thus contrary to the public policy of Singapore.

However, Article 34(3) of the UNCITRAL Model Law on International Commercial Arbitration ("**Model Law**") prevents a court from entertaining an application to set aside an arbitral award under Article 34 after the expiry of a three-month period from the receipt of the award. While the appellant argued that this time limit should be extended in cases of fraud, the Court held that Article 34(3) is clear on its face and does not suggest that any carve-out is available for fraud or corruption, or indeed any ground at all.

The Court further found that the three-month time limit imposed by Article 34(3) of the Model Law also applies to setting aside applications under section 24 of the International Arbitration Act as well. Section 24 does not form a separate regime, but instead provides additional grounds on which an award might be set aside.

Keeping Time in Maritime Claims: Limitation Periods and the Single Liability Principle

In a maritime collision case, liability is generally apportioned according to the degree to which each vessel was at fault. Under the single liability principle, the quantum of the smaller recoverable claim is usually deducted from the quantum of the larger recoverable claim, leaving only one net balance to be paid by the net payor to the net payee.

In *The CARAKA JAYA NIAGA III-11* [2021] SGHC 43, the Singapore High Court considered how the single liability principle interacts with limitation periods under shipping law. Specifically, in a case where the claim of the net payor against the net payee is time-barred, the Court found that the net payor cannot avail itself of the single liability principle to reduce its liability to the net payee.

This decision highlights the importance of observing limitation periods and to initiate proceedings to avoid being time-barred in similar cases. It also marks the first time the issue has squarely arisen for determination before the Singapore Courts. While the issue has previously been considered in the English Courts, the Singapore High Court here chose not to follow the English position.

For more information, click here to read our Legal Update, which summarises the key points of the Court's decision and consider its impact on the management of maritime claims, including whether it will affect the application of limitation periods in the defence of set-off and in invoking limitation under the Convention on Limitation of Liability for Maritime Claims 1976.

Contact

Leong Kah Wah
Head, Dispute Resolution
Partner, Shipping & International Trade
T +65 6232 0504
kah.wah.leong@rajahtann.com

V Bala
Partner, Shipping & International Trade
T +65 6232 0383
bala@rajahtann.com

Dedi Affandi
Partner, Shipping & International Trade
T +65 6232 0706
dedi.affandi.ahmad@rajahtann.com

Determining the Viability of Contractual and Non-Contractual Claims Involving Illegal Contracts

In *Ang Jian Sheng Jonathan & Anor v Lyu Yan @ Lu Yan* [2021] SGCA 12, the Court of Appeal considered the application of the rule in *Foster v Driscoll* [1929] 1 KB 470 ("***Foster v Driscoll***"), which provides that a contract to break the laws of a foreign jurisdiction will be unenforceable for illegality even if the contract is otherwise lawful under local law.

Contact

Vikram Nair
Partner, Commercial Litigation
T +65 6232 0973
vikram.nair@rajahtann.com

The plaintiff instructed the defendants to remit money from her China bank accounts to her Singapore bank accounts. The money disappeared after being transferred to the second and third defendants. The plaintiff brought claims against the defendants. The defendants' legal defence was that the *Foster v Driscoll* rule barred the plaintiff's claims as the amount remitted from the plaintiff's China bank accounts exceeded the allowed amount under Chinese law.

Ang Tze Phern
Partner, Commercial Litigation
T +65 6232 0922
tze.phern.ang@rajahtann.com

Application of the *Foster v Driscoll* Rule

The Court held that the *Foster v Driscoll* rule only applies if it can be shown that the parties intended, or at the very least knew, that the contract in question is illegal under the relevant law. However, the evidence did not establish that the plaintiff knew that the transaction violated Chinese law. Therefore, the Court agreed that the *Foster v Driscoll* rule is not engaged.

Interface between *Foster v Driscoll* rule and *Ochroid Trading* Framework

The defendants raised an argument concerning the *Foster v Driscoll* rule and the framework dealing with contractual illegality laid down in *Ochroid Trading Ltd and another Chua Siok Lui (trading as VIE Import & Export) and another* [2018] 1 SLR 363 ("***Ochroid Trading***"). The *Ochroid Trading* framework provides that, for contracts governed by Singapore law, there can be in general no contractual recovery for illegal contracts, but there may – in certain situations – be recovery of benefits via non-contractual, restitutionary means (provided the principle of stultification does not apply).

The defendants argued that the *Foster v Driscoll* rule that pertains to the conflict of laws is not to be read together with the *Ochroid Trading* framework, which deals with *domestic illegality*. The Court dealt with the argument with an example: A and B enter into a contract with the intention of violating the law of country X. A pays B, but B refuses to perform his part of the contract. A subsequently sues B in the Singapore court.

The Court addressed two possible situations based on the hypothetical:

(a) Where only the *Foster v Driscoll* rule applies (and the *Ochroid Trading* framework is not applicable), A will generally be allowed to make non-contractual claims against B, even though these non-contractual claims have the economic effect of enforcing the void and unenforceable contract.

(b) Where both the *Foster v Driscoll* rule and the *Ochroid Trading* framework apply (and are to be read together), A may (and not will) be allowed to make non-contractual claims against B.

However, the Court did not determine the complex question of whether the rule in *Foster v Driscoll* should be read together with the *Ochroid Trading* framework in the first place. The Court did lay down the following useful observations:

(a) The *Ochroid Trading* framework applies only to contracts governed by Singapore law, while the *Foster v Driscoll* rule applies to disputes heard before the Singapore courts arising out of contracts regardless of their governing laws, meaning they can only be read together where the impugned contract is governed by Singapore law.

(b) Possible difficulties arise only if the *Foster v Driscoll* rule is read together with the *Ochroid Trading* framework, such as a potential anomaly between contracts governed by Singapore law on the one hand and those not governed by Singapore law on the other.

(c) In the hypothetical raised above, if the contract between A and B is governed by a foreign law, the Singapore court applying the *Foster v Driscoll* rule would find that the contract is void and unenforceable but A will generally be permitted to recover from B in non-contractual causes of action. However, there will be a different result if the contract between A and B is governed by Singapore law. If the *Ochroid Trading* framework also applies, A may not be allowed to recover from B in respect of *non-contractual* causes of action where the principle of stultification is found to apply. This means that possible recovery for A via non-contractual means in the second situation is narrower than that in the first situation because of the additional application of the principle of stultification in the second situation.

Deals

Next Gen Foods Pte. Ltd.'s Pre-Series A Round

Terence Quek and Lee Xin Mei from the Mergers & Acquisitions Practice and Banking & Finance Practice acted for Next Gen Foods Pte. Ltd. in its seed financing round, which raised net proceeds of approximately US$10 million. This is the largest seed financing round globally in the plant-based meat space, according to PitchBook Data, Inc.

Quona Capital Co-leads US$20 Million Series A Funding in Ula

Brian Ng, Paul Ng and Lorena Pang from the Mergers & Acquisitions Practice and Regional Practice Desk acted for Quona Capital in leading Ula's US$20 million Series A financing round together with B Capital, with participation from existing investors Lightspeed India and Sequoia Capital India.

Oxley Holdings Limited's Issuance of Convertible Notes

Lee Xin Mei, Eugene Lee, Hoon Chi Tern and Cheryl Tay from the Banking & Finance Practice and Capital Markets / Mergers & Acquisitions Practice acted for Oxley Holdings Limited in the issuance of up to US$80 million in aggregate principal amount of secured convertible notes to funds managed by Dignari Capital Partners (HK) Limited.

Events

The Singapore Variable Capital Company (VCC) – Practical Considerations for India-focussed Funds and Fund Managers

On 26 February 2021, Rajah & Tann Asia and Dhruva Advisors (Singapore) Pte. Ltd. jointly organised a webinar titled "The Singapore Variable Capital

Company (VCC) - Practical Considerations for India-focussed Funds and Fund Managers".

The Singapore Variable Capital Company ("**VCC**") framework was launched on 15 January 2020 and has since been adopted enthusiastically by the Funds industry. Nearly 200 VCCs have been launched so far. At the webinar, an expert panel of speakers shared their experience using the VCC for India-focussed funds and the practical considerations that fund managers need to consider in structuring such funds.

Arnold Tan, Co-head of the Funds & Investment Management Practice, was one of the speakers.

The Cross-Border Restructuring Landscape Through the Lens of a Creditor One Year into COVID

On 2 February 2021, INSOL International (International Association of Restructuring, Insolvency & Bankruptcy Professionals) in association with Rajah & Tann Asia organised a webinar titled "The Cross-Border Restructuring Landscape Through the Lens of a Creditor One Year into COVID".

The speakers at the webinar discussed issues which creditors face in cross-border restructuring cases, and whether and how these issues have changed in today's world one year into the COVID-19 pandemic. The panel of speakers also discussed how creditors approach restrictions on contractual rights such as *ipso facto* clauses, as well as the impact of statutory moratoria.

The speakers included Sim Kwan Kiat, Head of the Restructuring & Insolvency Practice, and Ibrahim Sjarief Assegaf from Assegaf Hamzah & Partners.

Corporates Doing Business Across Borders: FTAs, Export Control, Sanctions and more – Navigating Trade Issues with Ease

On 2 February 2021, the Competition & Antitrust Practice organised a webinar titled "Corporates Doing Business Across Borders: FTAs, Export Control, Sanctions and more – Navigating Trade Issues with Ease".

Despite border closures, trade issues remain pertinent as corporates continue to do business across borders. Whilst importing and exporting goods, and services and data may seem easy enough, there are regulatory issues that require compliance in the exporting country as well as in the importing country. The speakers at the webinar covered relevant trade issues such as understanding rules of origin (ROO), adherence to sanctions controls, and compliance with trade agreements and networks, and how they could comply with the same so as not violate the relevant laws when doing business across borders.

The speakers comprised Kala Anandarajah, Head of the Competition & Antitrust and Trade Practice, Tanya Tang, Chief Economic and Policy Advisor with the Practice and Alvin Tan from the same Practice.

Our Regional Contacts

RAJAH & TANN | *Singapore*
Rajah & Tann Singapore LLP
T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*
R&T Sok & Heng Law Office
T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海
SHANGHAI REPRESENTATIVE OFFICE | *China*
Rajah & Tann Singapore LLP
Shanghai Representative Office
T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*
Assegaf Hamzah & Partners

Jakarta Office
T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office
T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*
Rajah & Tann (Laos) Co., Ltd.
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*
Christopher & Lee Ong
T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*
Rajah & Tann Myanmar Company Limited
T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*
Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)
T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

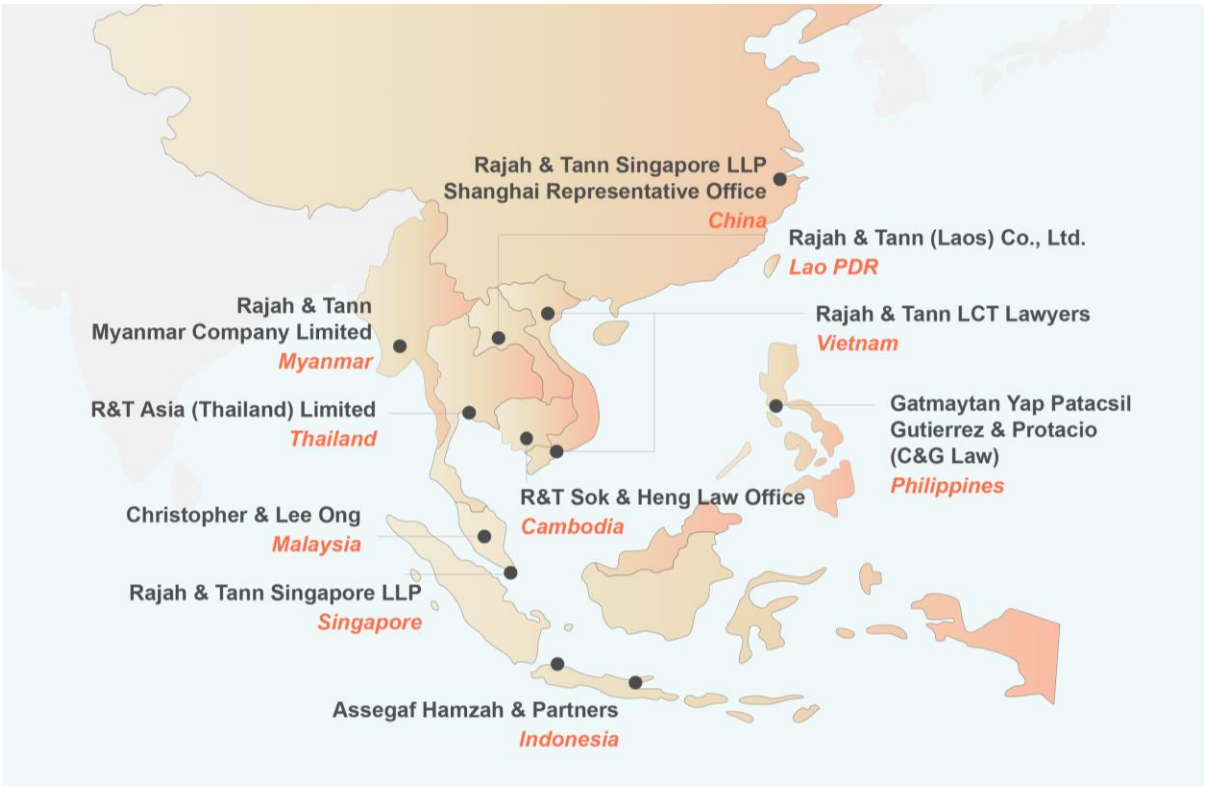
RAJAH & TANN | *Thailand*
R&T Asia (Thailand) Limited
T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*
Rajah & Tann LCT Lawyers

Ho Chi Minh City Office
T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full-service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

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