RAJAH & TANN ASIA

NewsBytes: Singapore

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RAJAH & TANN ASIA
LAWYERS WHO KNOW ASIA

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News

Rajah & Tann Asia Hosts Global Event on Southeast Asia Business and Politics Post-pandemic

On 26 July 2021, Rajah & Tann Asia organised a global thought-leadership event themed "Beyond Pandemic & Politics: Behold Southeast Asia & The World" to tackle the evolving investment landscape in Southeast Asia post-pandemic and the role Singapore plays as a safe springboard for companies looking to expand their businesses into the region.

Lee Eng Beng, SC, Chairman of Rajah & Tann Asia, welcomed the participants to this inaugural global hybrid event. Singapore's Education Minister Chan Chun Sing delivered the keynote speech. A fireside chat with Mr Chan was conducted thereafter, hosted by Parag Khanna, Founder & Managing Partner, FutureMap.

At the main session of the event, distinguished panellists including Chia Kim Huat, Regional Head of Rajah & Tann Asia's Corporate and Transactional Group, discussed how digitalisation and sustainability offer the two biggest opportunities for businesses in Southeast Asia in the post-pandemic era.

This was followed by three breakout panel sessions participated in by our partners from across Rajah & Tann Asia:

- "Regional Trade Security and Sustainability: Southeast Asia's Role in the New World Order" – moderated by Kala Anandarajah, Head of the Competition & Antitrust and Trade Practice, Rajah & Tann Singapore; panellists included Melisa Uremovic, Deputy Managing Partner of R&T Asia (Thailand) Limited;

- "Harnessing Opportunities in Southeast Asia's Digital Transformation" – moderated by Rajesh Sreenivasan, Head of the Technology, Media & Telecommunications Practice, Rajah & Tann Singapore, and also a Director of Rajah & Tann Technologies and Rajah & Tann Cybersecurity; panellists included Logan Leung, Partner from Rajah & Tann LCT Lawyers (Vietnam); and

- "Investment Strategies & Trends - Spotlight on Fundraising, Investments and M&A in Southeast Asia" – moderated by Sandy Foo, Partner from the Mergers & Acquisitions Practice, Rajah & Tann Singapore; panellists included Fikri Assegaf, Co-Founder of Assegaf Hamzah & Partners (Indonesia).

More than 1,000 decision makers and senior legal counsels joined the event.

Click here to read our earlier Press Release.

Rajah & Tann Singapore Recognised as a Top 100 International Arbitration Practice Worldwide by The Global Arbitration Review 100 (GAR 100) for 13 Consecutive Years

For the 13th consecutive year, Rajah & Tann Singapore's International Arbitration Practice has been recognised as one of the top 100 international arbitration practices worldwide in the prestigious GAR 100 survey. Among Asian law firms, Rajah & Tann Singapore has the most number of pending cases as counsel (100 cases) and highest value of pending counsel work (US$40.8 billion).

Highlights of our recent matters include successfully defending Vedanta Resources against attempts by India to compel cross-disclosure of documents between two investment treaty arbitrations, and enforcing a US$400 million ICSID award against Venezuela in the Singapore courts for the Dutch subsidiary of US bottle maker Owens-Illinois.

The survey points readers to dependable counsel, offering extensive qualitative analysis of arbitration practices around the world. Led by International Arbitration Head Andre Yeap, SC and Deputy Head Kelvin Poon, and anchored by leading arbitration practitioners Lee Eng Beng, SC, Toh Kian Sing, SC, Francis Xavier, SC, and Tan Chuan Thye, SC, our International Arbitration Practice team is well respected for delivering quality service and providing clients with practical, effective, and even out of the box solutions.

The GAR 100 is an annual guide to firms 'approved' for international arbitration around the world.

Click here to read our Press Release.

LegisBytes

Capital Markets

SGX RegCo Shares Expectations of Nomination Committee's Responsibilities When Directors Join or Resign

Under the 2018 Code of Corporate Governance (CG Code), directors have critical fiduciary duties. The Singapore Exchange Regulation ("**SGX RegCo**") stresses the process by which the board of directors ("**Board**") selects and appoints directors, as well as disclosures relating to the resignation of directors. In this regard, SGX RegCo issued a statement on the Regulator's Column on 1 July 2021 on its expectations of Nomination Committees ("**NCs**") when directors of issuers listed on the SGX-ST Mainboard and Catalist join or resign.

Briefly, a few key takeaways from the statement include:

(a) **Boards and NCs should exercise judgment in assessing independence of directors and be aware of "overboarding"**

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The Board and NC must assess whether any circumstance or relationship exists which might impact a director's independence or the perception of his/her independence. If the Board finds the directors independent despite such circumstances or relationships, the Board must disclose the relationships and its reasoning in its annual report and announcements where applicable.

Regarding "overboarding", if an individual has multiple directorships in listed entities, he/she may and can be, or be perceived to be, ineffective as he/she is unable to devote sufficient time to properly discharge his/her duties on the Board. Therefore, the Board and NC of each company should consider the number of directorships and principal commitments of each director. For guidance on Board nomination, please refer to the Corporate Governance Advisory Committee's revised Practice Guidance 4, available here.

(b) **Clear explanation and disclosure of resignations**

SGX RegCo requires directors (and executive officers) who are resigning to inform SGX in writing as soon as possible of such developments via an SGXNet filing. Items to be disclosed in the disclosure template for cessation announcements include detailed reasoning for cessation. Boilerplate statements such as "to pursue personal interest" or "for personal reasons" are not informative on their own and the company must elaborate on the reasons if they are material to investors.

The cessation announcement must also: (i) clearly explain concerns about the company (such as corporate governance matters, internal controls or otherwise); and (ii) address key areas of concern (such as whether there exist any unresolved differences in opinion on material matters between the person and the board of directors, including matters which would have a material impact on the group or its financial reporting).

(c) **NCs to perform strict due diligence and consider past performance of potential appointees**

Due diligence should extend to whether each directorship candidate has fully discharged his/her duties and obligations during his/her previous directorship of an SGX-listed company, as well as whether a candidate had previously served on the Board of companies with adverse track record or a history of irregularities.

Where potential candidates had "jumped ship" or left during inclement times at the previous company, NCs and Boards must be more vigilant. For Catalist issuers, the responsibility to conduct due diligence on the potential appointee lies with the continuing sponsor. SGX RegCo reserves the right to object to, and publicly query the appointment of, directors who have previously "jumped ship". The issuer's NC (and continuing sponsor, if applicable) will have to publicly reply to SGX RegCo's queries and defend and "vigorously justify" why such a director is suitable. If responses are not satisfactory, SGX RegCo may exercise its administrative powers under the relevant Listing Rules and issue a Notice of Compliance (NOC) objecting to the appointment. The issuer's Board (and continuing sponsor, if applicable) will then have to publicly state its considerations on whether or not to remove said director from his/her post.

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Click on the following link for more information:

- Regulator's Column: What SGX RegCo expects of Nomination Committees when directors join or resign (1 July 2021) (available on SGX website at www.sgx.com)

Commercial Litigation

The Reform of the Singapore Court System – Keeping Pace with Changing Business Needs

On 26 July 2021, the Courts (Civil and Criminal Justice) Reform Bill ("**Bill**") was tabled for its First Reading in Parliament. The Bill seeks to reform the Singapore court system to keep pace with the changing needs of litigants and businesses seeking to resolve commercial disputes, creating a more efficient and facilitative framework.

To implement the proposed reform, the Bill sets out a host of amendments to the various legislation relating to the court system. Amongst these amendments, the following changes are directed at improving how the court system functions in relation to the practical and experiential concerns of litigants:

(a) **Efficiency** – Various amendments are aimed at making the litigation process more streamlined and economical. These include (i) empowering the courts to order parties to attempt to resolve their disputes by amicable resolution, such as through negotiation or mediation; (ii) allowing parties in certain civil matters to agree to limit or remove their right to appeal; and (iii) allowing the court to order hearings based on written submissions.

(b) **Functionality** – The Bill updates the litigation framework to support modern technological practicalities and conveniences, allowing remote hearings in appropriate cases whereby the participants can appear through live video, television, or audio link rather than in person.

(c) **Internationality** – The amendments seek to improve the court system's adeptness at responding to the needs of litigants with cross-border disputes by empowering the General Division of the High Court to grant interim relief in aid of foreign court proceedings where it is just and convenient, even when there are no substantive proceedings in Singapore.

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

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Competition Law

CCCS Consults on New General Business Collaboration Guidance Note

Following the expiration of the Guidance Note on Collaborations between Competitors in response to the COVID-19 Pandemic that was issued in July 2020 on 31 July 2021, the Competition & Consumer Commission of Singapore ("**CCCS**") recently issued a public consultation on a proposed Business Collaboration Guidance Note ("**Guidance Note**") to help businesses and trade associations understand the competition issues that may arise from their collaboration and provide ways to avoid or alleviate these issues.

By way of background, section 34 of the Singapore Competition Act prohibits agreements between businesses which have as their object or effect the prevention, restriction, or distortion of competition within Singapore. However, agreements and collaborations which generate net economic benefits ("**NEB**") are excluded from the section 34 prohibition. The three criteria to satisfy the NEB exception are: (i) the collaboration improves production or distribution of goods and services; (ii) the agreement or restriction must be indispensable to achieving such improvements; and (iii) the collaboration does not eliminate competition in respect of a substantial part of the good/service.

The various forms of agreements/collaborations covered under the Guidance Note are not restricted to agreements between two or more businesses that are actual or potential competitors. Interestingly, CCCS indicates that the Guidance Note may apply to "lateral collaborations", i.e. between businesses manufacturing or selling complementary products. This is an important point as non-competing businesses often overlook the competition impact of their agreement(s) and the importance of assessing their compliance with the law.

The Guidance Note focusses on six common types of business collaborations, namely information sharing, joint production, joint commercialisation, joint purchasing, joint research and development, and standardisation. It sets out the factors that CCCS will consider when carrying out an assessment of the effects of the six common types of business collaborations, and the conditions under which CCCS considers that competition concerns are less likely to be raised. If the conditions are not met, a more detailed assessment may be required as to whether the proposed collaboration may be considered anticompetitive and, if so, whether it benefits from the NEB exclusion.

In addition, the Guidance Note briefly touches upon cross-border collaborations and how trade associations may support collaborations amongst their members without falling foul of the law.

Businesses are advised to closely review the proposed Guidance Note and provide feedback on it as this will impact their business dealings with competitors in the future.

The proposed Guidance Note may be accessed here. The consultation closes on 27 August 2021.

For more information, click here and here to read our Legal Updates.

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CCCS Consults on Amendments to Penalty Guidelines

On 16 July 2021, the Competition and Consumer Commission of Singapore ("**CCCS**") announced a public consultation on proposed changes to the CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases ("**Penalty Guidelines**").

The Penalty Guidelines provide general guidance on how financial penalties for infringements of the prohibitions in sections 34, 47, and 57 of the Competition Act are calculated by CCCS. CCCS operates through a six-step process, namely:

Step 1: Calculation of the base penalty;
Step 2: Adjustment for the duration of the infringement;
Step 3: Adjustment for aggravating or mitigating factors;
Step 4: Adjustment for other relevant factors;
Step 5: Adjustment if the statutory maximum penalty is exceeded; and
Step 6: Adjustment for immunity, leniency reductions and/or fast-track procedure discounts.

CCCS sought feedback on two clarificatory amendments to mitigating factors, which are weighed in step three of the above process and set out in the Penalty Guidelines. It is highly likely that these changes have been introduced following recent infringement decisions, including one which was appealed to the Competition Appeal Board.

The consultation ran from 16 July 2021 to 5 August 2021, with feedback to be summarised and published in due course.

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

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Corporate Commercial

MOF and ACRA Consult on Proposed Enhancements to Singapore's Regime on Transparency and Beneficial Ownership of Companies and Limited Liability Partnerships

On 2 July 2021, the Ministry of Finance ("**MOF**") and the Accounting and Corporate Regulatory Authority ("**ACRA**") launched a public consultation to seek feedback on proposed changes to the Companies Act ("**CA**") and the Limited Liability Partnerships Act ("**LLP Act**") relating to transparency and beneficial ownership of companies and limited liability partnerships ("**LLPs**"). The proposed changes are set out in the draft Corporate Registers (Miscellaneous Amendments) Bill ("**CRMA Bill**").

By way of background, the CA and the LLP Act were amended in 2017 to improve the transparency of ownership and control of companies and LLPs, boosting Singapore's ongoing efforts to maintain high corporate governance standards and a strong reputation as a trusted financial hub. Amongst other requirements, the legislative changes required:

(a) local companies, foreign companies and LLPs to keep registers of controllers;
(b) local companies to keep registers of nominee directors; and
(c) foreign companies to keep registers of members.

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Since then, MOF and ACRA have continued to review the framework, and are proposing further enhancements to Singapore's regime on transparency and beneficial ownership of legal persons. The changes serve to reduce opportunities for the misuse of corporate entities for illicit purposes and are in line with the international standards set by the Financial Action Task Force for combating money laundering, terrorism financing, and other threats to the integrity of the international financial system.

The main changes in the draft CRMA Bill are as follows:

(a) requiring local companies, foreign companies, and LLPs to enter the particulars of the individual(s) with executive control in their registers of controllers if no individual or legal entity having significant interest in or significant control over the company or LLP has been identified;
(b) requiring local and foreign companies to keep non-public registers of nominee shareholders;
(c) clarifying that local companies should update their register of nominee directors within seven calendar days after receiving information and particulars from the directors; and
(d) specifying a 14-day timeframe for foreign companies to update their register of members.

The public consultation ended on 30 July 2021.

Click on the following link for more information:

- MOF News Release titled "Public Consultation on Proposed Enhancements to Singapore's Regime on Transparency and Beneficial Ownership of Companies and Limited Liability Partnerships" (available on the MOF website at www.mof.gov.sg)

Corporate Real Estate

Estate Agents Act Amended to Raise Professionalism of the Real Estate Agency Industry

Pursuant to the Estate Agents (Amendments) Act 2020 (Commencement) Notification 2021, the Estate Agents (Amendment) Act 2020 ("**Amendment Act**") came into force on 30 July 2021.

The amendments to the Estate Agents Act aim to:

(a) More effectively deter errant property agents and agencies from committing disciplinary breaches, so as to further raise industry professionalism and consumer confidence in the services of property agents and agencies;
(b) Update the regulatory framework to keep abreast of technology advancements; and
(c) Align levers against money laundering and terrorism financing to meet international standards.

Disciplinary and Enforcement Regime

The Council for Estate Agencies ("**CEA**") has increased the maximum financial penalty imposed by its Disciplinary Committee for serious disciplinary breaches (up to S$200,000 per case for property agencies and

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to S$100,000 per case for property agents), and has introduced a new Letter of Censure disciplinary regime for minor disciplinary breaches. The amendments also grant CEA enhanced investigation and inspection powers.

Technological Advancements

The Amendment Act will enable CEA to require any person to furnish electronic devices that can be inspected, copied, or extracted for its investigations. CEA can conduct document inspections of property agencies electronically and at premises under CEA's control, and can also serve documents through electronic means.

Anti-money Laundering and Terrorism Financing

The duties of property agents and agencies on the prevention of money laundering and terrorism financing have been incorporated into the Amendment Act. The details are outlined in the new Estate Agents (Prevention of Money Laundering and Financing of Terrorism) Regulations 2021 that also came into force on 30 July 2021.

Click on the following link for more information:

- CEA Media Release titled "Raising Professionalism of the Real Estate Agency Industry Through Amendments to the Estate Agents Act" (available on the CEA website at www.cea.gov.sg)

Commencement of Part 8C of the COVID-19 (Temporary Measures) Act 2020

On 1 July 2021, Part 8C of the COVID-19 (Temporary Measures) Act 2020 ("**Act**") ("**Part 8C**") and the subsidiary legislation in the COVID-19 (Temporary Measures) (Part 8C Relief) Regulations 2021 ("**Part 8C Relief Regulations**") came into operation.

On 3 November 2020, the COVID-19 (Temporary Measures) (Amendment No. 3) Act 2020 was passed in Parliament as part of the Singapore Government's support for the construction sector which has been severely affected by the COVID-19 pandemic. On 5 April 2021, the COVID-19 (Temporary Measures) (Amendment No. 2) Act 2021 was passed to further amend the Act so as to facilitate the implementation and delivery of the reliefs under Part 8C.

Part 8C serves to provide support to developers who face delays in the construction of properties due to the pandemic and are unable to meet the date of delivery of vacant possession to purchasers under the Sale and Purchase Agreement ("**SPA**"). Part 8C also allows purchasers to seek from developers a reimbursement (capped at a certain sum) of qualifying expenses as a result of the delay in delivery of vacant possession under the SPA. An Assessor's determination may also be sought if there is any dispute over the qualifying costs claimed by purchasers.

The Part 8C Relief Regulations should be read with Part 8C of the Act as it provides for details such as the prescribed forms, manner, and timelines that developers and purchasers must take note of when seeking the reliefs under Part 8C.

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

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Employment & Benefits

MOM Issues Advisory on COVID-19 Vaccination in Employment Settings

On 2 July 2021, the Ministry of Manpower ("**MOM**") published an advisory issued by the tripartite partners to provide guidance to employers and employees on COVID-19 vaccination policies in the workplace.

In line with the push to encourage all medically eligible people to get vaccinated, employers should strongly encourage and facilitate the vaccination of medically eligible employees, such as by providing paid time-off for vaccination appointments. Employers are also entitled to ask employees for their vaccination status for business purposes.

However, vaccination remains non-mandatory pursuant to the national vaccination policy, and employers should likewise refrain from making vaccination mandatory or from penalising or terminating employees for declining vaccination, even in higher-risk employment settings.

Higher-risk employment settings

The advisory sets out three types of higher-risk employment settings:

(a) Where employees have a higher risk of COVID-19 exposure. Examples include healthcare workers, aircrew, and laboratory employees working on COVID-19;
(b) Where employees have a communal living environment where Safe Management Measures ("**SMMs**") may not be practical, such as dormitories; and
(c) Where SMMs are not effective or practical due to the work environment or nature of the work. Examples include workplaces with high density or where masks must be removed frequently.

A higher-risk setting may be also usefully gauged by whether the employee is required to undergo regular testing or is in regular contact with known or potential COVID-19 cases.

In such settings, employers may:

(a) Require both new and existing employees to be vaccinated;
(b) Redeploy employees who decline vaccination to another role with a lower risk of COVID-19 infection, subject to mutual agreement with the employee and (where applicable) in consultation with unions; and
(c) Recover COVID-19 related costs that are over and above costs incurred for vaccinated employees. This may include the costs of testing and any Stay Home Notice ("**SHN**") accommodation, as well as allowing only no-pay leave instead of paid leave during the SHN period. However, this should not be applied to employees who have been identified by the Ministry of Health (MOH) as unsuitable for vaccination.

For employers who do implement a vaccination-required policy, they should provide additional paid sick leave for employees suffering from any immediate adverse medical complications from the vaccination. They are also expected to make reasonable efforts to find out why employees decline

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vaccination and address their concerns. This includes clarifying that employees will not be penalised or terminated for declining vaccination and informing them of assistance that will be offered to those suffering adverse complications.

Click on the following link for more information:

- MOM Advisories on COVID-19 titled "Advisory on COVID-19 vaccination in employment settings" (available on the MOM website at www.mom.gov.sg).

Financial Institutions

MAS Proposes Refining Tier Structure Requirements and New Remuneration Restrictions for Financial Advisers

The remuneration practice of the financial advisory ("**FA**") industry is regulated by the Monetary Authority of Singapore ("**MAS**"). To better align the interests of FA representatives and supervisors with those of their clients, MAS proposes to, among other things, clarify and refine tier structure requirements and impose restrictions on direct payment of remuneration to, and acceptance of remuneration by, representatives and/or supervisors of other FA firms.

Refinement to Tier Structure Requirements

Currently, direct life insurers and licensed financial advisers ("**LFAs**") that operate tier structures are required to ensure that the structure has a maximum of three tiers – Manager (Third Tier), Supervisor (Second Tier), and Representative (First Tier) ("**tier structure requirements**"). MAS' policy intent is for the Second Tier and Third Tier to effectively supervise the lower tiers in their financial advisory and sales activities and limit the payment of overriding benefits to only the Second Tier and Third Tier. LFAs are subject to similar requirements as part of their licensing conditions under the Financial Advisers Act ("**FAA**").

However, certain FA firms have tier structures and remuneration practices that are not aligned with the policy intent. To address these issues, MAS proposes certain key changes to clarify and refine the tier structure requirements, including clarification on policy intent and refinement to the tier structure requirements, including defining "overriding benefits" and when they may be paid.

For a list of non-exhaustive examples on unacceptable remuneration practices, please refer to Annex B of the Consultation Paper titled "Proposals to Refine the Tier Structure Requirements and to Introduce New Requirements Relating to Remuneration" ("**Consultation Paper**"), available here. To harmonise the tier structure requirements for direct life insurers and LFAs, MAS proposes to impose these requirements under the FAA.

To ensure consistency across the FA industry, it is also proposed that the tier structure requirements be extended to exempt FA firms such as banks, merchant banks, finance companies, insurance brokers, and certain capital market services licensees.

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Restrictions Against Direct Payment or Acceptance of Remuneration

*Volume-based incentives ("**VBI**")*

Apart from paying VBI to FA firms for the sale of their life business products, direct life insurers have been noted to offer VBI directly to the representatives and supervisors of these FA firms. To address these issues, MAS proposes to prohibit persons other than the principal FA firms from determining, communicating, and paying VBI (offered by the direct life insurers) directly to the representatives of these FA firms. Similarly, MAS intends to prohibit representatives of FA firms from receiving VBI for the sale of life business products directly from any person who is not their principal, such as direct life insurers and other product manufacturers.

Spreading and capping of commissions

The rules concerning commission are set out in the Financial Advisers (Remuneration) Regulations 2015 and the Insurance (Remuneration) Regulations 2015 (collectively, "**Remuneration Regulations**"). Under the relevant rules in the Remuneration Regulations, an FA firm may make commission payments to its own representatives and supervisors, and to representatives and supervisors of another FA firm, for the sale of regular premium life policies. To align with the proposals on VBI payments, MAS intends to amend the Remuneration Regulations to prohibit FA firms from making such payments to representatives and supervisors of other FA firms.

These proposals are set out in the Consultation Paper.

The consultation period ran from 12 July 2021 to 13 August 2021.

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

MAS Consults on AML/CFT Notice for Precious Stones and Precious Metals Activities & Updates on AML/CFT Notices for Financial Institutions and Variable Capital Companies

The Monetary Authority of Singapore ("**MAS**") conducted a public consultation to seek comments on changes to the requirements on anti-money laundering and countering the financing of terrorism ("**AML/CFT**") applicable to financial institutions regulated by MAS ("**FIs**") and variable capital companies ("**VCCs**") under the purview of MAS for AML/CFT obligations. The proposals are set out in the "Consultation Paper on the Proposed New AML/CFT Notice for Precious Stones and Precious Metals Activities and Updates to AML/CFT Notices" ("**Consultation Paper**"). The consultation ended on 10 August 2021.

The key proposals in the Consultation Paper concern:

(a) Setting out the AML/CFT requirements applicable to FIs dealing in precious stones, precious metals, and precious products ("**PSM**") in a new AML/CFT Notice.

FIs that deal in PSMs are exempted from certain AML/CFT requirements under the Precious Stones and Precious Metals (Prevention of Money Laundering and Terrorism Financing) Act 2019

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("**PSPM Act**") to streamline the regulation and oversight of PSM activities by FIs under the purview of MAS.

MAS proposes to issue a new MAS AML/CFT Notice to govern the FIs' PSM activities ("**new PSM AML/CFT Notice**"), instead of expanding the requirements in the existing MAS AML/CFT Notices applicable to FIs to cover the FIs' PSM activities. To reflect the policy alignment between the AML/CFT requirements applicable to non-FI PSM dealers regulated by the Ministry of Law under the PSPM Act and those requirements applicable to FIs regulated by MAS, the definitions used in the proposed new PSM AML/CFT Notice will be modelled after the PSPM Act.

(b) Updating the existing MAS AML/CFT Notices for FIs and VCCs to provide for:

- New requirements relating to digital token services for FIs. Among other things, banks, merchant banks, finance companies, and credit card or charge card licensees would be required to conduct customer due diligence ("**CDD**") from the first dollar for digital payment token ("**DPT**") transactions undertaken by these FIs for any customer who has not otherwise established an account relationship with the FIs. Such occasional transactions include where DPTs are sold through kiosks, such as Bitcoin automated teller machines. Banks, merchant banks, finance companies, and capital markets license holders are subject to the same requirement in relation to transactions involving digital tokens that are capital markets products;

- New requirements for FIs and VCCs to perform enhanced CDD measures on a shell company that presents higher money laundering and terrorism financing risks;

- New wire transfer and correspondent account requirements for credit card or charge card licensees;

- New requirement for licensed trust companies and approved trustees to disclose to VCCs and designated non-financial businesses and professionals that they are acting as trustees when they are establishing business contacts with these entities; and

- Other clarifications on the requirements relating to group policy, identification and verification of customers, and beneficial ownership exemptions.

MAS aims to implement the proposals in the Consultation Paper in Q4 2021.

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

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MAS Proposes Amendments to OTC Derivatives Reporting Regime to Align with International Guidance

The Monetary Authority of Singapore ("**MAS**") reporting regime for over-the-counter ("**OTC**") derivatives contracts started in 2013, and the enabling provisions are set out in the Securities & Futures (Reporting of Derivatives Contracts) Regulations 2013 ("**SF(RDC)R**").

To ease the aggregation of OTC derivatives data through standardisation and harmonisation of data elements, the International Organization of Securities Commissions ("**CPMI-IOSCO**") has issued three sets of Technical Guidance respectively on unique transaction identifier ("**UTI**"), unique product identifier ("**UPI**") and other critical data elements ("**CDE**").

MAS intends to adopt and implement these sets of Technical Guidance, and has several key proposals relating to the approach to generation and reportable data fields under the SF(RDC)R, including UTI, UPI, and CDE. MAS also proposes to adopt the ISO 20022 XML message format for OTC derivatives reporting to the trade repository. These proposed amendments are set out in the MAS Consultation Paper on "Proposed Amendments to the Securities & Futures (Reporting of Derivatives Contracts) Regulations" ("**Consultation Paper**").

The consultation period is from 5 July 2021 to 3 September 2021.

Proposed Approach for Implementation of UTI

Reporting a UTI for OTC derivatives contracts uniquely identifies each reported contract, facilitates data aggregation, and reduces the possibility of double counting. At present, the SF(RDC)R requires reporting entities to report a UTI as follows:

- for an uncleared OTC derivatives contract which is not electronically confirmed, a bilaterally agreed or internally generated UTI; and
- for any other OTC derivatives contract, a bilaterally agreed UTI.

MAS proposes to align MAS' UTI reporting requirement with the UTI Technical Guidance as far as possible by (i) amending the current UTI reporting requirement in the SF(RDC)R, and (ii) issuing guidelines to provide clarity on MAS' expectations on the UTI generation and reporting requirements.

Proposed Changes to Reportable Data Fields

The First Schedule to the SF(RDC)R sets out the data fields required to be reported for each OTC derivatives contract. MAS proposes including additional data fields to facilitate MAS' review of these data and align the definitions of common data fields to the CDE Technical Guidance. For international standards for structure and format of a data field value that are developed, MAS proposes to adopt these, and to defer reporting of fields that are not fully developed and update the field values requirements when such standards become available. For data fields not covered by the CDE Technical Guidance but are also required to be reported by other authorities, MAS intends to align the definitions with those used by other authorities as closely as practicable for global reporting.

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Implementation Timeline and Approach

MAS intends to finalise the reportable data fields in the First Schedule to the SF(RDC)R and the UTI Guidelines by Q2 2022, and implement the revised requirements in Q2 2023. This provides reporting entities time to prepare for implementation in various jurisdictions.

MAS proposes requiring re-reporting of existing contracts with maturity of at least one year as at the effective date of the revised First Schedule of the SF(RDC)R, and providing a six-month transition period for these Reportable Existing Contracts to be re-reported.

Adoption of ISO 20022 Standard

CDE data elements will be included in the ISO 20022 data dictionary, and an ISO 20022 message format will be developed for OTC derivatives reporting in the CPMI-IOSCO Governance Arrangements for critical OTC derivatives data elements (other than UTI and UPI). MAS seeks views on its intentions to adopt the ISO 20022 XML message format for OTC derivatives reporting to the trade repository.

For details of the proposed amendments, please refer to the Consultation Paper and the various Annexes, available here.

MAS Consults on Proposed Enhancements to its Investigative and other Powers

On 2 July 2021, the Monetary Authority of Singapore ("**MAS**") launched a public consultation exercise seeking feedback on the proposals to:

(a) Enhance its investigative powers;
(b) Clarify the applicability of its reprimand powers even if a person has left a financial institution ("**FI**") or the financial industry; and
(c) Empower MAS to issue directions to regulated FIs conducting unregulated activities.

The proposed amendments will be made under a Financial Institutions (Miscellaneous Amendments) Bill ("**Bill**"). The Bill seeks to rationalise MAS' investigative and supervision powers through amendments to various Acts under MAS' purview, namely, the Banking Act, Credit Bureau Act, Financial Advisers Act ("**FAA**"), Insurance Act, Payment Services Act, Securities Futures Act ("**SFA**"), Trust Companies Act ("**TCA**"), and the new omnibus Act for the financial sector.

The consultation ended on 1 August 2021.

Enhancements to MAS' Investigative Powers

In line with MAS' mandate to effectively enforce laws and regulations under its purview, it is proposing enhancements to its investigative powers to strengthen its ability to gather evidence when conducting investigations.

The proposed enhancements to MAS' investigative powers include giving MAS the power to:

(a) Require any person to provide information, including information in electronic form, for purposes of investigation;

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(b) Require any person to appear for examination and record statements from persons at examination;
(c) Obtain a court warrant to secure the attendance of a person who fails to appear for examination;
(d) Enter premises without a warrant where it has reasonable grounds to suspect that the premises are, or have been, used by a person being investigated by MAS;
(e) Obtain a court warrant to seize evidence, including electronic evidence, from premises (i) when a person has failed to comply with an order to produce such evidence; or (ii) if there is a risk that evidence will be destroyed or tampered with if an order for the production of such evidence is made; and
(f) Transfer evidence to the Police or the Public Prosecutor and vice versa to facilitate greater inter-agency coordination in criminal investigations and regulatory actions.

Clarification of Applicability of MAS' Reprimand Powers

Currently, under section 97 of the FAA, section 334 of the SFA and section 72 of the TCA (collectively, the "**Reprimand Provisions**"), MAS may reprimand a "**relevant person**" if it is satisfied that such person is guilty of misconduct, and it is of the view that issuing a reprimand is necessary in the interest of the public, the investors, or other parties. A "**relevant person**" includes any FI that is licensed, registered, authorised, approved, recognised or exempted (as applicable) under the FAA, SFA or TCA, as well as its employee, officer, partner or representative (as applicable).

MAS proposes to amend the Reprimand Provisions to clarify that it may reprimand any person who was a relevant person at the time of the misconduct. The amendments serve to highlight that all persons who had been relevant persons at the time of the misconduct are subject to the Reprimand Provisions even if: (i) they have left the FIs (for individuals); or (ii) are no longer licensed, registered, authorised, approved, recognised or exempted (in the case of FIs), at the time of the discovery of the misconduct or when the reprimand is issued.

Expansion of MAS' Powers to Issue Directions to Regulated FIs Conducting Unregulated Businesses

MAS proposes to expand its powers to issue written directions to regulated FIs that are conducting unregulated businesses such as offering products that are not regulated by MAS. Examples of products that are not regulated by MAS are bitcoin futures and other payment token derivatives traded on overseas exchanges. MAS will issue such directions to regulated FIs in instances where it considers it necessary in the interest of the public and the investors.

Click on the following links for more information (available on the MAS website at www.mas.gov):

- MAS Media Release titled "MAS Proposes to Enhance its Investigative and other Powers"
- Consultation Paper on Proposed Amendments to MAS Investigative and Other Powers under the Various Acts

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Project Nexus: Proposed Blueprint for Instant Cross-border Payments

Approximately 60 countries currently have instant payment systems ("**IPSs**") whereby payments between bank accounts can be made in mere seconds. If these IPSs were to be connected through a cross-border network, retail customers would be able to make cross-border transfers securely and instantly via their mobile devices.

With this vision in mind, and building on the recent successful connection of Singapore and Thailand's national payment networks, a proposed blueprint titled **Project Nexus** – aimed at integrating national retail payment systems onto a single cross-border network – was published on 28 July 2021.

Under Project Nexus, all participating countries would be required to adopt specified technical and governance requirements, thereby standardising a way for the IPSs to "speak" to each other. In return, participants would gain access to the cross-border network, eliminating the need to negotiate payment linkages with each jurisdiction separately.

There are two key elements to Project Nexus, namely:

(a) **Nexus Gateways**, which will coordinate compliance, foreign exchange conversion, message translation, and the sequencing of payments among all participants. The proposal includes a common set of technical standards, functionalities, and operational guidelines upon which the gateways will be predicated.

(b) **Nexus Scheme**, which sets out the governance framework and rulebook for the coordination and effecting of cross-border payments via the network.

Project Nexus was published jointly by the Bank for International Settlements ("**BIS**") Innovation Hub Singapore Centre and the Monetary Authority of Singapore ("**MAS**"). Feedback may be directed to the Nexus team at Singapore.centre@bisih.org.

Click on the following links for more information:

- MAS Media Release titled "BIS Innovation Hub and Monetary Authority of Singapore publish proposal for enhancing global real-time retail payments network connectivity" (available on the MAS website at www.mas.gov)
- Summary report titled "Nexus: A blueprint for instant cross-border payments" (available on the BIS website at www.bis.org)

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Successful Singapore-France Experiment on Wholesale Cross-border Payment and Settlement Using Central Bank Digital Currency

At present, cross-border payments rely on correspondent bank arrangements that are subject to limited transparency on foreign exchange rates, restricted operating hours of payment infrastructures, and currency settlement delays due to time zone differences. In a bid to address these issues, the Monetary Authority of Singapore ("**MAS**") and the Banque de France (BdF) conducted a wholesale cross-border payment and settlement

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experiment using central bank digital currency ("**CBDC**"), announcing its successful completion on 8 July 2021.

The experiment aimed to facilitate cross-border payments on a 24/7 real-time basis, circumventing the current limitations of correspondent bank arrangements. Accordingly, it ran a simulation of cross-border transactions involving multiple CBDCs ("**m-CBDC**") on a common network between Singapore and France, noting that it was the first m-CBDC experiment that applied automated market making and liquidity management capabilities to reap cross-border payment and settlement efficiencies.

Through the experiment, four crucial outcomes were successfully achieved:

(a) Demonstrating interoperability across different types of cloud infrastructure;

(b) Designing a common m-CBDC network that allowed both central banks to have visibility on cross-border payments while retaining independent control over the issuance and distribution of their own CBDC;

(c) Setting up a m-CBDC network that incorporates automated liquidity pool and market-making service for EUR/SGD currency pairs. Smart contracts were used to automatically manage the EUR/SGD currency exchange rate in line with real-time market transactions and demands; and

(d) Demonstrating the feasibility of reducing the number of correspondent banking parties involved in the payment chain for cross-border transactions. This in turn enables a reduction in the number of contractual arrangements and the KYC (Know Your Customer) burden, together with the associated costs.

The m-CBDC network was designed to be scaled up to support the participation of multiple central banks and commercial banks located in different jurisdictions. Should this be implemented, banks would be able to replace the multiple connections needed in the present correspondent banking model with a single connection to a common platform, offering tremendous potential in simplifying integration and improving cost efficiencies.

Click on the following link for more information:

- MAS Media Release titled "Monetary Authority of Singapore and Banque de France Break New Ground in CBDC Experimentation" (available on the MAS website at www.mas.gov.sg)

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Gaming

Public Consultation on Proposed Amendments to Laws Governing Gambling Activities

The Ministry of Home Affairs ("**MHA**") is conducting a public consultation ("**Consultation**") on proposed amendments to the laws regulating gambling in Singapore. The amendments primarily seek to address two recent trends in the gambling landscape: (i) advancements in technology, which have made gambling products more accessible, leading to the increase in online gambling; and (ii) blurring of boundaries between gambling and gaming, given that new business models have increasingly introduced gambling elements in products that are traditionally not related to gambling, e.g. chance-based loot boxes in video games.

The proposed changes target four main areas:

(a) Amending the definition of "gambling";
(b) Exempting physical social gambling among family and friends, subject to certain safeguards;
(c) Providing guidelines for certain games with gambling elements; and
(d) Streamlining penalties across the different gambling legislation.

It appears that MHA intends to enact a single consolidated Act in order to streamline current provisions set out in the various disparate legislation, while simultaneously proposing updates to the law. This Consultation ran from 12 July 2021 to 10 August 2021.

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

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Intellectual Property

Impending Changes to the Copyright Regime – Copyright Bill Introduced in Parliament

In February 2021, the Ministry of Law ("**MinLaw**") and the Intellectual Property Office of Singapore ("**IPOS**") introduced and conducted a two-month long public consultation on the draft copyright bill which is set to repeal and replace the current Copyright Act ("**Current Act**") as part of an overall review of Singapore's copyright regime – which review started way back in 2016. After incorporating the feedback received, the Copyright Bill ("**Bill**") was tabled for First Reading in Parliament on 6 July 2021.

The key features of the Bill include the following:

(a) **Rewarding the creation of copyright works and protected performances**. (i) The Bill grants creators and performers the right to be identified when their work or performance is used in a way that causes it to be seen in public. (ii) Authors of copyrighted works will, unless otherwise agreed in writing or created in the course of employment, be the default first owners of the copyright, even if they were commissioned to make those works. (iii) The Bill allows civil action against and criminal liability for distributors and retailers of products or services that stream audio-visual content from unauthorised sources (e.g. set-top boxes). (iv) The owner of a sound recording has a wider right to "communicate the recording to the

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public", alongside a new right to be paid equitable remuneration by a person causing the sounds embodied in the recording to be heard in public.

(b) **Ensuring the availability of copyright works and protected performances for the benefit of society**. (i) The Bill introduces refinements to the current permitted use exceptions for educational purposes to allow schools and students to use freely-available resources from the internet for educational purposes, without having to seek permission from each copyright owner as long as the source is acknowledged and the date of access is cited. (ii) Unpublished works will no longer enjoy perpetual copyright protection. (iii) The existing fair dealing exception in the Current Act will be reframed as the 'fair use' exception. (iv) While the present exceptions to infringement under the Current Act may already cover such use, the Bill introduces a new standalone exception to infringement for copying and/or communicating a copy of a work or recording of a protected performance for computational data analysis. (v) The list of permitted uses of copyright works will be expanded.

(c) **Strengthening the copyright ecosystem**. The Bill provides for Collective Management Organisations to be regulated by IPOS and to comply with a mandatory Code of Conduct which sets out minimum standards to be met. This will be carried out via a class licensing scheme to be administered by IPOS.

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

Restructuring & Insolvency

Application Period for Simplified Insolvency Programme Extended to 28 July 2022

The Ministry of Law ("**MinLaw**") has announced that the application period for the Simplified Insolvency Programme ("**SIP**") has been extended to 28 July 2022. The application period was originally set at six months (from 29 January 2021 to 28 July 2021). However, in light of the continued challenges in the business environment arising from the COVID-19 pandemic, MinLaw has extended the application period for another year.

In the initial onset of the COVID-19 pandemic, the SIP was developed to help eligible micro and small companies ("**MSCs**") facing financial difficulties restructure their debts or wind up via simpler, faster, and lower-cost restructuring processes. The SIP comprises two separate programmes which eligible MSCs may apply for: (i) the **Simplified Debt Restructuring Programme** for the restructuring of debts and potential rehabilitation of viable businesses; and (ii) the **Simplified Winding Up Programme** for the orderly winding up of non-viable businesses.

In recent months, changes in the safe management measures in Singapore have led to financial challenges for affected businesses. Further, as the temporary relief measures introduced by the Government begin to taper off, businesses will no longer be able to rely on such support. To address the continued difficulties facing MSCs, the application period for companies to submit their SIP applications to the Official Receiver has been extended to 28 July 2022.

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Shipping

Global Centre for Maritime Decarbonisation (GCMD) Established to Spearhead Maritime Industry's Energy Transition Journey

On 29 July 2021, the Maritime and Port Authority of Singapore ("**MPA**") announced the formation of the Global Centre for Maritime Decarbonisation ("**GCMD**") and its leadership team with effect from 1 August 2021. It was set up to lead the maritime industry's energy transition journey. GCMD aims to collaborate with the industry to:

(a) help the maritime sector reduce greenhouse gas (GHG) emissions;
(b) implement identified decarbonisation pathways; and
(c) create new business opportunities.

The establishment of a decarbonisation centre was first announced during the Singapore Maritime Week in April 2021 as one of the recommendations in the International Advisory Panel for Maritime Decarbonisation's report submitted to the Singapore Government

Collaborations with Industry Stakeholders

As part of GCMD's efforts to initiate joint industry projects to advance the deployment of low- and zero-carbon maritime solutions, 31 organisations have expressed interest in partnering with the centre. These include organisations from shipping companies, classification societies, research centres, traders, energy players, terminal and tank operators, engineering companies, financial institutions, and industry associations. GCMD will collaborate with these organisations to fulfil its objectives and add value to the industry globally.

Through this partnership with the industry, GCMD will facilitate decarbonisation technology development and test-bedding, including future marine fuel trials with the industry and research communities in Singapore.

Leadership Team

GCMD is spearheaded by international experts on clean energy transition and emerging solar technologies. Its leadership team is supported by a Governing Board comprising representatives from the industry and public sector who have deep industry networks to grow GCMD into a leading centre of excellence for maritime decarbonisation.

We congratulate the inaugural group of industry partners who will collaborate with GCMD, amongst whom are clients of Rajah & Tann.

Click on the following link for more information:

- MPA Press Release titled "Maritime Energy Transition Picks Up Pace with Establishment of Global Centre for Maritime Decarbonisation in Singapore" (available on the www.gov.sg Portal)

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Legislative Changes Take Effect on 24 July 2021 to Implement Salvage Convention

As a global maritime hub, Singapore is one of the key jurisdictions for admiralty and shipping dispute resolution. In 2019, the Merchant Shipping (Miscellaneous Amendments) Bill 2018 was passed in Parliament to implement, among other things, the International Convention on Salvage, 1989 ("**Salvage Convention**") and the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims, 1976 ("**1996 Protocol**"). For a discussion, please refer to our earlier May 2020 Client Update titled "Singapore Enhances Legal Framework for Maritime Casualty Claims", available here. The provisions relating to the 1996 Protocol that serve to increase the limits of liability for claims against shipowners came into force on 29 December 2019.

With effect from 24 July 2021, the relevant provisions in several pieces of legislation came into effect to implement the Salvage Convention mainly to:

(a) **Allow special compensation under the Salvage Convention**. Typically, the basis of calculation of reward is premised on the recovery of the vessel or its cargo. However, the Salvage Convention entered into force in 1996 introducing a special compensation to be paid to salvors who have minimised or prevented environmental damage, even if the ship or its cargo are not salved ("**special compensation**"). Singapore, as a major participant in the shipping and international trade industry, acceded to the Salvage Convention, which now has the force of law in Singapore with the relevant provisions in the Merchant Shipping (Miscellaneous Amendments) Act 2019 taking effect on 24 July 2021.

(b) **Enhance the Singapore High Court's jurisdiction over salvage claims**. The High Court's admiralty jurisdiction is now expanded to include: (i) any claim under the Salvage Convention; and (ii) any claim under any contract for or in relation to salvage services. Before the revision, the High Court's admiralty jurisdiction covered only traditional salvage claims. The revisions mean that salvage companies will be able to seek compensation under special compensation claims before the Singapore High Court or via arbitration. Importantly, salvage companies will also be able to enforce such salvage claims seated in foreign jurisdictions (such as London) in Singapore by ship arrest in aid of foreign arbitration under the Singapore International Arbitration Act.

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

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Sustainability

Partial Commencement of Environmental Public Health (Amendment) Act 2020

The Environmental Public Health (Amendment) Act 2020 ("**Amendment Act**") came into operation on 20 July 2021, except section 7 (Repeal and re-enactment of Part VII (Aquatic Facilities) and new Part VIIA (Aerosol-Generating Systems)). This is set out in the Environmental Public Health (Amendment) Act 2020 (Commencement) Notification 2021.

The Amendment Act amends the Environmental Public Health Act that consolidates the law relating to environmental public health in the following key areas:

(a) Introduce environmental sanitation programmes for premises designated by the National Environment Agency ("**NEA**") with the Minister's approval ("**specified premises**"). At the time of this update, the specified premises include senior care centres, active ageing hubs, welfare homes, and children and young persons' homes. For details on the environmental sanitation regime and specified premises, please refer to information on the NEA website, available here.

(b) Provide for the registration of Environmental Control Coordinators ("**ECCs**") and Environmental Control Officers ("**ECOs**"), and their functions in relation to specified premises. The premises manager and the ECCs are key personnel who will develop and implement the environmental sanitation programme for specified premises. For details on the roles and responsibilities of ECCs and ECOs, please refer to the information on the NEA website, available here.

(c) Regulate aquatic facilities and aerosol generating systems.

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Tax

Capital Gains, Branch Profits, Royalties: Updates to the Singapore-Indonesia Double Taxation Agreement

On 23 July 2021, the Agreement between the Government of the Republic of Singapore and the Government of the Republic of Indonesia for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance ("**Updated DTA**") entered into force, following Indonesia's ratification of the Updated DTA on 11 May 2021.

In its official statement, Indonesia's Directorate General of Tax stated that the Updated DTA is meant to strengthen efforts to prevent tax evasion, protect and increase Indonesia's tax base, and at the same time encourage increased investment from Singapore. Similarly, Singapore's Ministry of Finance stated in its press release of 23 July 2021 that the Updated DTA would boost bilateral trade and investment flows between the two countries.

We examine some of the key changes arising from the Updated DTA below, including:

(a) The new Article 13 on capital gains;
(b) A reduction in branch profit tax;

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(c) A reduction in royalties tax;
(d) Removal of exemption for interest paid on government bonds or debentures;
(e) Abolishment of articles on income not expressly mentioned and limitation of relief;
(f) Expanded exchange of information provisions; and
(g) Application of the principal purpose test.

For more information, click here to read our Regional Tax Update.

MOF Launches Public Consultation on Proposed GST (Amendment) Bill 2021

On 6 July 2021, the Ministry of Finance ("**MOF**") launched a public consultation on four proposed amendments to the Goods and Services Tax ("**GST**") Act to:

(a) effect tax measures announced in the 2021 Budget Statement on 16 February; and
(b) effect changes arising from the periodic reviews of Singapore's GST system.

The consultation ended on 27 July 2021.

Tax Measures Announced in the 2021 Budget Statement

The proposed amendments relating to the measures announced in the 2021 Budget Statement are as follows:

(a) *Introduction of GST on (i) low-value goods imported via air or post, and (ii) business-to-consumer ("**B2C**") imported non-digital services from 1 January 2023*

"Low-value goods" are goods that are valued up to the current GST import relief threshold of S$400. Currently, imported low-value goods and B2C imported non-digital services are not subject to GST. Examples of non-digital services are live interaction with overseas providers of educational learning, fitness training, counselling, and telemedicine. The extension of GST to these imported goods and services complements the existing GST measures on business-to-business ("**B2B**") imported services and B2C imported digital services that took effect from 1 January 2020. This ensures a level playing field for local businesses to be competitive.

(b) *Updated GST treatment for supplies of media sales from 1 January 2022*

The growth of online advertising and developments in digital technologies have changed the way media sales are supplied, and made it more difficult for suppliers of digital media sales to determine the place of circulation.

Under this updated GST treatment, the GST treatment will be based on where the customer (i.e. the contractual customer) and where the direct beneficiary of the service belongs, rather than where the advertisement is circulated. If the customer of the service belongs outside Singapore and the direct beneficiary either belongs outside

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Singapore or is GST-registered in Singapore, the media sales will be zero-rated. Otherwise, GST will be chargeable at the standard-rate.

Changes Arising from Periodic Reviews of Singapore's GST System

The two other proposed amendments are based on the periodic reviews of the GST system and are aimed at improving the administration of GST in Singapore.

(a) *Update of the transitional rules for changes in GST Treatment*

Transitional rules determine whether an old or new GST treatment applies. These rules were last amended in 2011. If passed, the updated transitional rules will apply to upcoming changes, such as the updated GST treatment for the supply of media sales which will take effect from 1 January 2022.

(b) *Miscellaneous changes to existing Overseas Registration Vendor Registration regime and Reverse Charge regime*

Both the Overseas Registration Vendor Registration regime and Reverse Charge regime are used to impose GST on imported low-value goods and/or imported B2B or B2C services. The objective of the miscellaneous changes to both regimes is to mitigate revenue risks, provide tax certainty, and ease compliance burden, among other things.

Click on the following links for more information (available on the MOF website at www.mof.gov.sg):

- MOF Press Release titled "Public Consultation on Proposed GST (Amendment) Bill 2021"
- Public Consultation on Draft Goods and Services Tax (GST) Amendment Bill 2021
- Annex: Proposed Changes to the Goods and Services Tax (GST) Act

Technology, Media & Telecommunications

IMDA Launches Public Consultation on the Proposed Allocation and Use of 2.1 GHz Spectrum Band for 5G Networks

On 26 July 2021, the Infocomm Media Development Authority ("**IMDA**") issued a public consultation seeking views from the public and the industry on the proposed spectrum allocation and use of the 2.1 GHz spectrum band for 5G in Singapore. The band is currently used for 3G services and will expire at the end of 2021. IMDA proposes to use the 2.1 GHz spectrum band to support the nationwide deployment of 5G Standalone ("**SA**") networks to deliver the full capabilities and benefits of 5G, while allowing flexibility for 3G services to continue.

The consultation closes on 16 August 2021.

The consultation paper, titled "Next Wave of 5G Growth & Deployment In Singapore: Policy Issues & Proposed Regulatory Design For 2.1 GHz Band",

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sets out IMDA's policy proposals on the allocation and use of the 2.1 GHz spectrum band upon the expiry of the existing spectrum rights.

Considering the global technological and market developments in relation to the 2.1 GHz spectrum band, including the international trend towards the increasing use of the band for 5G deployment as well as the rapidly maturing device ecosystem for 5G in this band, IMDA has proposed that the best and most efficient use of the 2.1 GHz band would be for the provision of 5G services based on SA network architecture.

IMDA intends to allocate the new spectrum through an auction to be held towards the end of 2021. Given the limited amount of spectrum available in the 2.1 GHz band, IMDA will allow only existing Mobile Network Operators ("**MNOs**") (i.e., M1, Singtel, StarHub, and TPG) to participate in the auction. Through the market-based approach, bidders will get the flexibility to decide the amount of spectrum they wish to acquire and at what price. All 2.1 GHz spectrum right holders must meet baseline regulatory requirements, consistent with the requirements on holders of the first tranche of 5G spectrum allocated through IMDA's 5G Call for Proposal (CFP) held in 2020.

Mindful that the spectrum is still needed to support 3G user needs, given that there is still a sizeable number of 3G subscriptions and that inbound roamers may still rely on 3G networks, IMDA proposes to set aside a small amount of 2.1 GHz spectrum, on a First-Right-of-Refusal basis, as part of the auction design for MNOs who have existing 3G networks on the 2.1 GHz band.

Click on the following links for more information (available on the IMDA website at www.imda.gov.sg):

- IMDA Media Release titled "IMDA to Make Available New 5G Spectrum Bands to All Mobile Network Operators"
- Consultation Paper on "Next Wave of 5G Growth & Deployment In Singapore: Policy Issues & Proposed Regulatory Design For 2.1 GHz Band"

IMDA and PDPC to Develop Minimum Viable Product (MVP) Testing Framework for AI Governance

On 14 July 2021, the Infocomm Media Development Authority ("**IMDA**") and the Personal Data Protection Commission ("**PDPC**") announced that they are working with like-minded partners to develop a credible Minimum Viable Product ("**MVP**") that will allow the industry to achieve greater transparency around artificial intelligence ("**AI**") systems, and enable organisations to deploy AI systems in a trusted manner.

The baseline or MVP testing framework for AI governance, also known as the Testing Framework 1.0, is intended to aid AI system-owners and/or developers test and verify the performance of their AI solutions. This is achieved through a mix of technical/statistical tests and process checks. The Testing Framework translates AI ethical principles into tangible results and is the practical next step for organisations.

The Testing Framework identifies 12 ethical principles that describe four central aspects of a trustworthy AI system:

(a) Understanding how an AI model reaches a decision;

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(b) Ensuring safety and resilience of the AI system;
(c) Ensuring fairness and no unintended discrimination; and
(d) Ensuring management and oversight of the AI system.

The Testing Framework allows AI system owners to objectively assess their claim(s) regarding their AI systems and check whether they are in line with internationally accepted AI ethics and governance principles. The AI system owners are the primary target audience of the Testing Framework. AI system owners are those who implement AI systems to offer products/services to their end-users.

AI developers who provide solutions to AI system owners will also find this Testing Framework relevant. This is because AI system owners often seek technical support from their solution providers.

The structure of the Testing Framework comprises the following key components:

(a) Definitions of AI governance principles
(b) Testable criteria
(c) Testing process
(d) Metrics
(e) Thresholds

PDPC plans to work with companies and organisations to enhance the Testing Framework so that it will be of value and relevance to industry.

Click on the following link for more information:

- Developing the MVP for AI Governance Testing Framework (available on the IMDA website at www.imda.gov.sg)

Singapore Announces Launch of Data Infrastructure (SGTraDex) to Support Supply Chain Digitalisation

On 13 July 2021, the Deputy Prime Minister and Coordinating Minister for Economic Policies, Mr Heng Swee Keat, announced that Singapore will be stepping up investments to unlock the full potential of the digital revolution through collective action. This includes the launch of a new common data infrastructure and framework, the Singapore Trade Data Exchange ("**SGTraDex**").

Designed as a neutral and open digital infrastructure and conceptualised by the Alliance for Action (AfA) on Supply Chain Digitalisation, SGTraDex is intended to enable trusted sharing of trade data that will support ecosystem-wide digital transformation. The aim is to allow stakeholders along the supply chain to easily "plug and play" to exchange data in a secure environment, where the data will be encrypted and transmitted without being stored. The exchange of previously unavailable or difficult to obtain data, such as real-time cargo location, will enable logistics players and shippers to enhance cargo handling and operations.

The three initial use cases of SGTraDex demonstrate its ability to (i) strengthen financing integrity of trade flows by enabling participants to reconcile trade data with actual physical flows; (ii) enhance end-to-end visibility of container logistics flows; and (iii) allow the industry to digitalise documentation and processes associated with the delivery of bunkers.

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These have the potential to unlock more than S$200 million (US$150 million) of value annually when fully developed. SGTraDex also has the ability to serve as the data infrastructure for many other sectors ranging from construction to aviation, hence enabling more benefits and value to be realised.

SGTraDex is part of a suite of digital infrastructure and utilities being developed, including the SGFinDex for the financial sector that was launched in end 2020, that provides a strong foundation for Singapore's Digital Economy.

Click on the following link for more information:

- IMDA News Release titled "Singapore to Unlock Full Potential of Digital, Announces SGTraDex to Digitalise the Supply Chain Ecosystem, at Asia Tech x Singapore" (available on the IMDA website at www.imda.gov.sg)

CaseBytes

High Court Sets out New Sentencing Framework for Tax Evasion Offences

For justice to be achieved, like cases should be treated alike. When a court is faced with two very similar cases, it should arrive at broadly similar outcomes. Consistency in sentencing – encompassing both the adoption of a consistent methodology as well as the achievement of consistent sentencing outcomes – is therefore crucial to ensuring a fair justice system.

In *Tan Song Cheng v Public Prosecutor and another appeal* [2021] SGHC 138, the High Court agreed with the prosecution that previous sentencing decisions under section 96(1) of the Income Tax Act lacked a consistent or coherent sentencing approach. As such, the High Court substantially endorsed the five-step framework proposed by the prosecution, transposed from the five-step framework in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609:

Step 1: Identify the level of harm and the level of culpability;
Step 2: Identify the applicable indicative sentencing range;
Step 3: Identify the appropriate starting point within the indicative sentencing range;
Step 4: Make adjustments to the starting point to take into account offender-specific factors; and
Step 5: Make further adjustments to take into account the totality principle.

For more information on the new framework and factors to be considered at each step, click here to read our Legal Update.

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Disagreement Over Relocation of Club Facilities: Members Awarded Nominal Damages for Failure to Prove Loss

In *Meow Moy Lan and Others v Exklusiv Resorts Pte Ltd and Another* [2021] SGHC 155, the Singapore High Court considered claims by a group of members of a social club against the club's owner and operator Exklusiv Resorts Pte Ltd ("**Exklusiv**") and Exklusiv's director and indirect shareholder, Mr Peter Kwee ("**Mr Kwee**") arising from the relocation of the club's facilities. The Court dismissed the majority of the 170 members' claims, which were brought via representative proceedings. Although the Court allowed the claim for breach of contract against Exklusiv, it awarded nominal damages of S$1,500 to each of the members, as against their original claim for more than S$110,000 each.

The clubhouse in this case had been relocated from its original location, and its members were instead provided access to club facilities at a separate clubhouse. A group of members, dissatisfied with the relocation, sought to claim against the club's owners. Having considered the parties' cases, the Court dismissed the members' claims for deceit, negligent misrepresentation, and negligence against both Exklusiv and Mr Kwee.

The Court allowed the members' claim for breach of contract against Exklusiv. However, the Court found that the members had failed to prove that they had suffered loss as a result of the breach, and thus awarded nominal damages.

Both Exklusiv and Mr Kwee were represented by Vikram Nair and Foo Xian Fong from the Commercial Litigation Practice.

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

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Court Rejects Consultant's Claim for Fees for Breach of the Legal Profession Act

In *Choo Cheng Tong Wilfred v Phua Swee Khiang* [2021] SGHC 154, the Singapore High Court rejected the Plaintiff's claim for alleged unpaid 'consultancy fees' of over S$2 million for work done over a 16-year period for breach of the Legal Profession Act. This is the first reported decision where the Singapore High Court has struck down a claim for fees for work done in breach of the Legal Profession Act.

The Plaintiff was admitted as an advocate and solicitor of the Singapore Court in 1989, but did not have a valid practising certificate when he was appointed by the Defendants in 2000/2001, and for a significant period during which the work was done. Under the Legal Profession Act, an unauthorised person (such as the Plaintiff) cannot claim payment for legal work done as an advocate and solicitor. The Plaintiff claimed that his services were law-related business consultancy services, which did not contravene the Legal Profession Act.

The Singapore High Court found that the work done by the Plaintiff was essentially in the nature of legal services, which he was not entitled to claim for as an unauthorised person under the Legal Profession Act. The Court also found that the payment arrangement, in which the Plaintiff would

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receive a percentage of the recovered moneys, was void for breaching the rules of champerty.

This decision clearly marks out the boundaries of what constitutes regulated work under the Legal Profession Act and the Court's focus on the substance (rather than the form) of the work done. The guidance in this decision is significant and timely as the legal industry enters into transition, with an increasing number of alternative legal service providers entering the market to provide legal services to the general public.

Jansen Chow and Ang Leong Hao from the Commercial Litigation Practice successfully represented the 2nd Defendant in this decision.

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

Rights of Contribution Between Co-Guarantors

In *Atlantic Navigation Holdings (Singapore) Ltd v Chang Yee Meng Malcolm* and *ASEAN Offshore Ltd* [2021] SGHC 159, the Singapore High Court had occasion to consider certain issues relating to seeking contribution for guarantees, such as whether a contractual relationship between the co-guarantors is required, and whether there is a need for the creditor to call on the guarantors to make payment first before a guarantor's entitlement to contribution arises.

The Plaintiff and the Second Defendant were shareholders, in the proportion of 51% and 49% respectively, in an entity that obtained a loan facility from a bank. The First Defendant was a director of the Second Defendant. The Plaintiff and both Defendants guaranteed, under separate and distinct guarantees, the repayment of all sums due under the loan to the bank. When the entity defaulted in loan repayments, the Plaintiff voluntarily paid, under its guarantee, the outstanding sums owed to the bank without the bank calling on its guarantee and in turn sued both Defendants for contribution of 49% of the sums paid by the Plaintiff. The Defendants sought to resist the claim for contribution, but were unsuccessful before the High Court.

The Defendants first argued that as there was no contractual relationship between the Plaintiff and the Defendants that governed contributions between the parties as co-guarantors, the Plaintiff had no basis for its claim for contribution. Although there was indeed no contractual relationship between the Plaintiff and the Defendants, the Court held that the right to contribution from a co-guarantor arises in equity, and is independent of contract, such that the Plaintiff was entitled to a contribution. The Defendants had also contended that in the guarantees executed by all three parties, there was a clause that prohibited each guarantor from seeking contribution from co-guarantors – this contention failed because the Plaintiff had obtained the bank's consent under that very clause to pursue a claim of contribution from its co-guarantors.

The Defendants next argued that it was a condition precedent that the bank had to formally call on the Plaintiff to pay under its guarantee – as the Plaintiff paid voluntarily without being called upon to do so, the Plaintiff's right to contribution against its co-guarantors, the Defendants, had not arisen. The Court rejected the Defendants' argument and held that where a guarantee requires a formal demand for payment to be made on the surety, it is not a condition precedent to his liability to pay as it merely marks the time the

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guarantee may be enforced against the surety. This provision for a formal demand may be waived by the surety if he wishes to pay voluntarily, and does not affect his separate right to contribution, which arises in equity, from his co-surety. In this case, by virtue of the Plaintiff having paid more than his proportion of the guaranteed sum, the right to seek contribution from the Defendants had arisen.

The Defendants' third argument was that the Plaintiff exercised control over and conducted the affairs of the borrowing entity and another associated company that managed the ship owned by the entity in a manner that led to mismanagement in the operation of the ship. This resulted in a failure to generate returns that would have produced profits to pay the bank, thereby avoiding default under the loan. Moreover, the Plaintiff failed to sell the ship when doing so would have generated sufficient funds to repay the loan in its entirety. The Plaintiff's conduct was oppressive on the Defendants and it was thus inequitable that the Defendants be made to contribute, since the Plaintiff did not 'come to court with clean hands'. After considering the evidence, the Court concluded that the Defendants' allegations were not made out on the facts and rejected the same, noting that the Defendants knew of the corporate structure between the Plaintiff, the borrowing entity and the ship management company, with the First Defendant being a director of the borrowing entity and attending board meetings where he had not raised the issues that he had later asserted as oppressive when proceedings were commenced by the Plaintiff.

Finally, the Defendants also argued that the bank ought to have enforced against its security by way of its naval mortgage over the ship, which would have produced sale proceeds sufficient to pay off the loan, instead of enforcing on the guarantees. This was summarily dismissed by the Court because it is trite law that a surety has no right to require the creditor to proceed against the principal or any other forms of security for the guaranteed debt before proceeding against the surety.

Deals

US$1.78 Billion Merger of PropertyGuru and SPAC Bridgetown 2 Holdings

Evelyn Wee and Hoon Chi Tern from the Capital Markets / Mergers & Acquisitions Practice – supported by Desmond Wee, Benjamin Cheong, Elsa Chai, Lina Chua and Vikna Rajah from the Corporate Commercial Practice, Technology, Media & Telecommunications Practice, Corporate Real Estate Practice and Tax Practice – are advising Bridgetown 2 Holdings Limited, a special purpose acquisition company (SPAC) formed by Pacific Century Group and Thiel Capital LLC, in respect of its proposed merger with PropertyGuru Pte. Ltd. into a combined company with an equity value of approximately US$1.78 billion and the proposed listing of the combined company on the New York Stock Exchange.

Joint Venture between NanoFilm Technologies International Limited and Venezio Investments Pte. Ltd.

Favian Tan and Benjamin Cheong from the Mergers & Acquisitions Practice and Technology, Media & Telecommunications Practice are acting for NanoFilm Technologies International Limited ("**NanoFilm**") in relation to its S$140 million joint venture between NanoFilm and Venezio Investments Pte. Ltd., a wholly-owned subsidiary of Temasek Holdings (Private) Limited,

to undertake the hydrogen energy and hydrogen fuel cell business of the NanoFilm Group through Sydrogen Energy Pte. Ltd.

US$65 Million Series D Fundraising of HappyFresh (iCart Group Pte. Ltd.)

Brian Ng and Lorena Pang from the Mergers & Acquisitions Practice acted for iCart Group Pte. Ltd. in relation to the US$65 million Series D fundraising of HappyFresh. The proceeds will be used for, amongst others, the working capital of the Group.

US$65 Million Private Placement by Keppel Pacific Oak US REIT

Raymond Tong and Penelope Loh from the Capital Markets / Mergers & Acquisitions Practice are acting for DBS Bank Ltd. and United Overseas Bank Limited, the joint bookrunners and underwriters, in respect of the private placement of new units in Keppel Pacific Oak US REIT to raise gross proceeds of approximately US$65 million.

Placement of Shares in Beng Kuang Marine Limited

Danny Lim and Penelope Loh from the Capital Markets / Mergers & Acquisitions Practice acted for Beng Kuang Marine Limited, which is listed on the Main Board of the Singapore Exchange Securities Trading Limited, in its placement of S$1.35 million new shares via SAC Capital Private Limited, as placement agent.

Acquisition of Controlling Stake in Cosmos-Maya

Sandy Foo and Lee Jin Rui from the Mergers & Acquisitions Practice advised NewQuest Capital Partners in its acquisition of a controlling stake in Cosmos-Maya from KKR-backed Emerald Media.

Authored Publications

Rajah & Tann Contributes to Lexology Getting The Deal Through: Mediation 2021 – Singapore Chapter

Rajah & Tann Singapore has authored the Singapore chapter of the *Mediation 2021* published by Lexology Getting The Deal Through.

Exclusively authored by our leading dispute resolution and mediation partners Jonathan Yuen and Ang Tze Phern, the Singapore chapter discusses the key features of mediation as a key method of dispute resolution in Singapore. It covers topics such as the accreditation and appointment of mediators, mediation procedures, enforceability of settlement agreements, and stays in favour of mediation. The authors also highlight key trends and legal developments in mediation in Singapore, noting that mediation has grown in importance as a cost-effective means to resolve commercial disputes especially during the ongoing pandemic.

The full Singapore chapter can be read here.

Find out more about our Commercial Litigation Practice here.

Rajah & Tann Contributes to Lexology Getting The Deal Through: Initial Public Offerings 2022 – Singapore Chapter

Rajah & Tann Singapore has authored the Singapore chapter of the Initial Public Offerings 2022 published by Lexology Getting The Deal Through.

Exclusively authored by our leading Capital Markets partners Evelyn Wee and Hoon Chi Tern, and Senior Associate Jasselyn Seet, the Singapore chapter sets out the market overview of IPO in Singapore. It also discusses, among others, the regulatory landscape relating to IPOs in Singapore, corporate governance requirements, as well as special requirements for foreign issuers seeking to list in Singapore. The authors also highlight some key trends and legal developments in the capital markets industry including the measures put in place to address the challenges brought about by the COVID-19 pandemic and the proposed regulatory framework for the listing of Special Purpose Acquisition Companies (SPACS) or blank-cheque companies.

The full Singapore chapter can be read here.

Find out more about our Capital Markets Practice here.

Events

Overview and Update of Dispute Resolution and Arbitration for the Japanese

On 8 July 2021, the Japan Desk of Rajah & Tann Singapore organised a webinar titled "Overview and Update of Dispute Resolution and Arbitration for the Japanese".

At the webinar for the Japan Desk clients, the speakers discussed the practical aspects of the arbitration process, its merits and demerits, as well as the alternative measures of resolving disputes such as filing a matter before the Singapore International Commercial Court (SICC) and resorting to mediation. They also discussed the impact that the COVID-19 pandemic has had in the dispute resolution and the arbitration scene.

The survey results obtained after the webinar were very positive, with many respondents indicating that the views from the leading practitioners-speakers were insightful.

The speakers comprised Shuhei Otsuka, Head of the Japan Desk, Rajah & Tann Singapore and Japan Business Unit, Rajah & Tann Asia, and Ng Kim Beng from the International Arbitration Practice.

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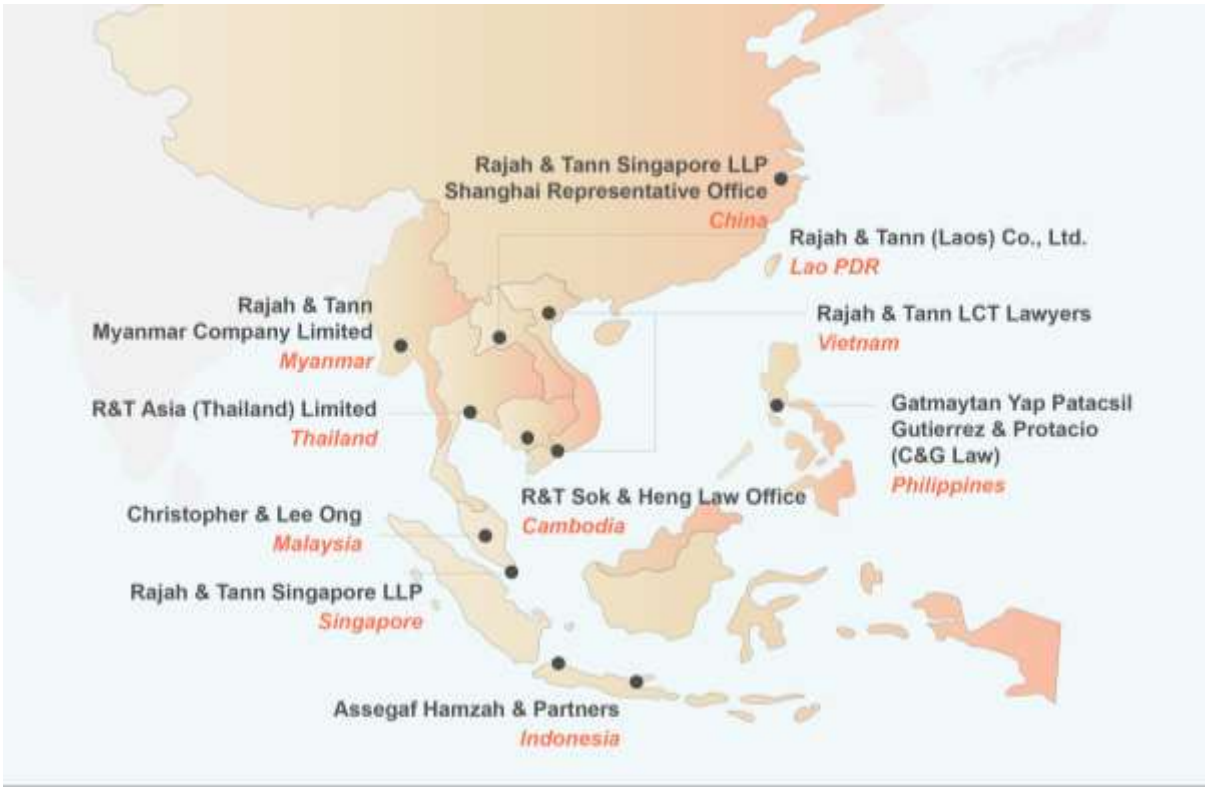
Our Regional Presence



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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