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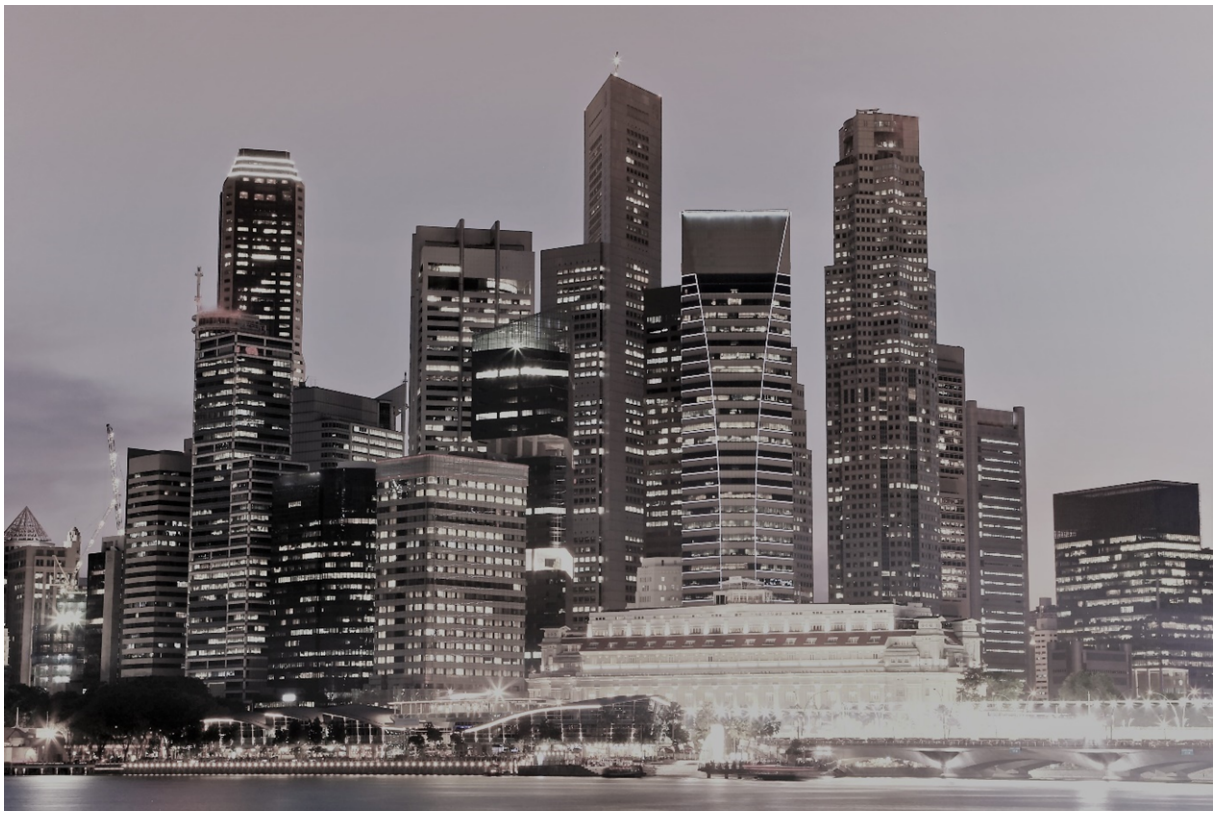

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Capital Markets

Further Extension of Electronic Dissemination of Rights Issue and Take-over Documents Beyond 30 June 2021

Issuers listed on the SGX-ST Mainboard and Catalist and parties involved in rights issues and take-over or merger transactions will continue to have the option to disseminate an electronic version of the relevant offer documents through publication on SGXNET and their corporate websites, beyond 30 June 2021, until revoked or amended by the Monetary Authority of Singapore ("**MAS**"), the Securities Industry Council ("**SIC**") and the Singapore Exchange Regulation ("**SGX RegCo**") (with at least six months' prior notice of any such cessation).

By way of context, the Singapore Securities and Futures Act requires an offer of securities, securities-based derivatives contracts, or units in collective investment schemes listed on the SGX-ST (whether by means of a rights issue or otherwise) ("**Offer**") to be made in or accompanied by an offer information statement. The SGX-ST Mainboard Listing Rules and Catalist Listing Rules (collectively, "**Listing Rules**") require hard copies of the notices and documents relating to rights issues of listed issuers to be despatched. In addition, the Singapore Code on Take-overs and Mergers ("**Code**") requires hardcopy take-over or merger documents to be posted.

The temporary measures and/or exemption allowing electronic dissemination of relevant offer documents were introduced to overcome the challenges to the mass production of hard copy rights issue and take-over or merger documents amid the control measures put in place to deal with the COVID-19 pandemic. They were first introduced on 6 May 2020, and were last extended to 30 June 2021.

Rights Issues - Electronic Offer Information Statement

The temporary measures and/or exemption allowing electronic dissemination of the Offer is effected through the Securities and Futures (Offers of Investments) (Temporary Exemption from Sections 277(1)(c) and 305B(1)(b)) Regulations 2020 ("**Exemption Regulations**"), subject to conditions therein. MAS issued the Guidelines on the Securities and Futures (Offers of Investments) (Temporary Exemption from Sections 277(1)(c) and 305B(1)(b)) Regulations 2020 providing guidance on these conditions and the inclusion of cautionary statements in relation to an Offer.

The temporary measures under the Exemption Regulations, which were originally effective from 6 May 2020 to 30 September 2020, were first extended to 30 June 2021, and now further extended beyond 30 June 2021. The relevant rules in the Listing Rules that require physical copies of the documents relating to rights issues to be sent to a listed issuer's shareholders will also not be applicable during the period the temporary measures/exemption are in effect.

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Take-Over Offers - Electronic Despatch of Offer Documents

SIC issued an updated statement on 29 June 2021 allowing documents related to the take-over or merger transaction under the Code to be despatched electronically to shareholders beyond 30 June 2021. The relevant rules in the Listing Rules that require physical copies of the notices and documents relating to a take-over offer to be sent to the shareholders of listed issuers will also not be applicable during the period the temporary measures/exemption are in effect.

For a further discussion on the temporary measures and the conditions relating thereto, refer to our previous Client Update titled "Temporary Exemption to Allow Electronic Dissemination of Offer Documents for Rights Issues and Take-over or Merger Transactions" (May 2020).

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

SGX Enhances SGX RegCo's Enforcement Powers and Disclosures on Whistleblowing Practices

With effect from 1 August 2021, the Singapore Exchange Regulation ("**SGX RegCo**") will have a wider range of enforcement and administrative powers, including the power to require a director or executive officer to resign from an existing position with an issuer listed on the Singapore Exchange Securities Trading Limited ("**SGX-ST**"). With effect from 1 January 2022, issuers listed on the SGX-ST Mainboard and Catalist ("**listed issuers**") will be required to state in their annual reports that they have put in place a whistleblowing policy, starting with their annual reports relating to financial years commencing from 1 January 2021.

These changes follow a public consultation conducted by the Singapore Exchange Limited ("**SGX**") in August 2020 on the proposals. For more information, please refer to our Client Update titled "SGX Consults on Changes to Listing Rules to Enhance Enforcement and Whistleblowing Frameworks", available here. The proposals received broad support from market participants. SGX's response to the feedback received from the consultation ("**Response**") is available here.

Enforcement Powers for Swifter Enforcement Outcome

Presently, SGX RegCo's direct enforcement powers to enforce compliance with the SGX Listing Rules (Mainboard) ("**Mainboard Rules**") and the SGX Listing Rules (Catalist) ("**Catalist Rules**") (collectively, the "**Listing Rules**") are mainly confined to private actions (i.e. not disclosed to public). Public enforcement actions, such as public reprimands, are only exercisable by the independent Listings Disciplinary Committee.

Starting from 1 August 2021, SGX RegCo will have the power to enforce non-appealable sanctions, such as:

(a) issue public reprimands; and
(b) require a listed issuer to comply with specified conditions. This is intended for investor protection and not a punitive sanction.

SGX RegCo will also have the power to:

(a) prohibit an issuer from accessing the facilities of the market for a

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specified period or until fulfilment of specified conditions. The denial of market facilities is not intended to be a delisting of the issuer, but includes withholding approval of matters that require approval from SGX RegCo, such as the issuance of shares. Circumstances warranting the imposition of this sanction will include situations where the issuer has repeatedly committed multiple breaches of the Listing Rules. SGX RegCo may also extend the duration of this sanction to last until the listed issuer has fulfilled specified conditions so that active action is taken to remedy the breaches;

(b) prohibit any issuer from appointing or reappointing a director or an executive officer for up to three years; and

(c) require a director or an executive officer to resign.

Appeals of these sanctions to the Listings Appeals Committee are allowed, subject to the fulfilment of specified grounds of appeal to be set out in a new Rule 1419(6) of the Mainboard Rules and Rule 319(6) of the Catalist Rules (which will come into effect on 1 August 2021).

More severe and pecuniary sanctions, such as fines, continue to be reserved for the Listing Disciplinary Committee.

Broader Circumstances Requiring SGX's Approval for Appointment (and Re-appointment) of Director, Chief Executive Officer ("**CEO**") and Chief Financial Officer ("**CFO**")

Currently, Rule 720(3) of the Mainboard Rules and Rule 720(2) of the Catalist Rules allow SGX RegCo to require an issuer to obtain the approval of SGX for any appointment of directors, CEOs, and CFOs (or an equivalent rank) under certain specified circumstances, for instance, where the listed issuer is the subject of an investigation into the affairs of the listed issuer by a special auditor, or by a regulatory or enforcement agency.

The amended Listing Rules will broaden the circumstances where SGX's approval is required for the appointment (and re-appointment) of a director, CEO, and CFO (or an equivalent rank) to include circumstances where the listed issuer is the subject of an investigation into the affairs of the issuer by an independent reviewer appointed by the issuer and/or the SGX, or by a regulatory or enforcement agency.

Enhanced Administrative Powers Relating to Objections to Appointment (and Re-appointment) of Directors or Executive Officers

The existing Listing Rules confer several powers on SGX RegCo to ensure that the market is fair, orderly, and transparent. The circumstances under which SGX RegCo may exercise these powers are prescribed under the relevant Listing Rules, for instance where the director or executive officer has (i) refused to extend cooperation to SGX or other regulatory agencies on regulatory matters, or (ii) wilfully contravened any relevant laws, rules, and regulations.

After considering the feedback from the Consultation Paper, it was decided that:

(a) SGX RegCo may prevent the appointment (or re-appointment) of directors or executive officers for up to three years, under specified circumstances. This can include, for instance, where the director or executive officer is being investigated or is the subject of proceedings for breach of any relevant laws, regulations and rules relating to fraud,

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dishonesty, the securities or futures industry, corruption, or breaches of fiduciary duties, in Singapore or elsewhere.

(b) SGX will not proceed with the proposed suspension powers as the power to object to appointment (or re-appointment) of directors or executive officers suffices to prevent individuals with questionable character and integrity from serving on the boards or management teams of the listed issuer.

(c) SGX will remove the requirement of wilfulness under Rule 1405(2)(b) of the Mainboard Rules and Rule 305(2)(b) of the Catalist Rules, as the proposed amendments narrow the scope of the relevant Listing Rules to apply only in circumstances involving the most material contraventions relating to fraud, dishonesty, the securities or futures industry, corruption, or breaches of fiduciary duties.

Listed Issuers to Establish and Maintain Whistleblowing Policy

All listed issuers must establish and maintain a whistleblowing policy which sets out the procedures for a whistleblower to make a report on the listed issuer on misconduct or wrongdoing related to the listed issuer or its officers. Under the new Rule 1207(18B)(d) of the Mainboard Rules and Rule 1204(18B)(d) of the Catalist Rules, the Audit Committee, to whom the independent function reports, will be responsible for oversight and monitoring of whistleblowing. The amended Listing Rules set out what information on the whistleblowing policy must minimally be included in the annual reports.

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

SGX RegCo Expectations of Issuers' Internal Audit Function

On 14 June 2021, the Singapore Exchange Regulation ("**SGX RegCo**") set out in the Regulator's Column its expectations and guidance on the Internal Audit ("**IA**") function of issuers listed on the Singapore Exchange Securities Trading Limited ("**SGX-ST**"). IA refers to "*an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes*" (Institute of Internal Auditors ("**IIA**")).

Under the SGX Mainboard Listing Rule 719(3) (and the corresponding Catalist Listing Rule), issuers are required to establish and maintain on an ongoing basis, an effective IA function that is adequately resourced and independent of the activities it audits. As provided in Practice Guidance 10 of the Code of Corporate Governance ("**CG Code**"), issuers would have the discretion to determine if its IA function can be supported by adequate internal resources or provided by an external service provider or a combination of both. In this regard, issuers will find it instructive to refer to the Three Lines Model by the IIA that helps organisations identify structures and processes that best assist the achievement of objectives and facilitate strong governance and risk management. IA professionals should also refer to the authoritative guidance which has been provided by the IIA under the International Professional Practices Framework ("**IPPF**").

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In addition, the Audit Committee ("**AC**") should ensure that the IA function is adequately resourced and staffed with persons with the relevant qualifications and experience. This is provided under Practice Guidance 10 of the CG Code. The AC should also ensure that their internal auditors comply with the standards set by nationally or internationally recognised professional bodies. Issuers should strive to disclose more information about their IA function in their annual reports, particularly the standards adopted. SGX Mainboard Listing Rule 719(3) (and the corresponding Catalist Listing Rule) and Practice Guidance 10 of the CG Code echo:

- Core Principle 2 of the IPPF (demonstrating competence and due professional care);
- Core Principle 3 of the IPPF (being objective and free from undue influence); and
- Core Principle 5 of the IPPF (being appropriately positioned and adequately resourced).

For an elaboration of the Core Principles of IPPF in the context of the SGX Listing Rules and CG Code, please refer to the Regulator's Column: What SGX RegCo Expects of Issuers' Internal Audit Function.

To enhance the state of IA for listed companies in Singapore, SGX RegCo will continue to provide guidance and work closely with IIA Singapore, an affiliate of the global IIA. Issuers should refer to the resources which IIA Singapore has provided in matters relating to IA activities.

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Commercial Litigation

Response to Public Feedback on the Civil Justice Reforms

The Ministry of Law ("**MinLaw**") and the New Rules of Court Implementation Team have issued a response on 11 June 2021 (available here) to the feedback received from the public consultation on the Civil Justice Reform proposals. Where applicable, the feedback will be incorporated into the new Rules of Court, which will be operationalised by end 2021. The new Rules of Court will position Singapore's civil justice system to meet future demands and challenges and improve access to justice while maintaining efficiency.

Key snapshots of proposals that will be retained or changed pursuant to feedback from the practitioners include the following:

(a) **Non-compliance with the Rules**. The Draft Rules provide that the court can, amongst other powers, refuse to hear any matter or dismiss it without a hearing if there is non-compliance with the Draft Rules. The feedback raised a major concern with the proposal that the consequences of non-compliance with the Rules could potentially be disproportionate to the severity of the breach. MinLaw's response was to clarify that in considering whether any breach of the Rules ought to result in a dismissal of the case, the court would have regard to the ideals which act to temper any unjust results, such as "fair access to justice" and "fair and practical results suited to the needs of the parties". The proposal will therefore be retained.

(b) **Calculation of time**. The Draft Rules provide that a non-court day (i.e. Saturday, Sunday or public holiday) would be included in the

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calculation of time for a period that is seven days or more. Currently, any period of eight days or more would include non-working days in its reckoning. Having considered the strong feedback received and after balancing the competing considerations of expediting court timelines and the interests of the parties to litigation, MinLaw agreed that adjustments would be made to the Draft Rules. All 7-day time periods stipulated in the Draft Rules will be increased to 14 days. This simplifies the Rules of Court, and also ensures fairness to all litigants.

(c) **Court has the power to order parties to attempt to resolve the dispute by amicable resolution**. While the Draft Rules will allow the courts to order parties to attempt to resolve the dispute by amicable resolution, they will also be amended to clarify that the courts, in deciding whether to exercise this power, will take into account all relevant circumstances, including whether any of the parties have refused to attempt to resolve the dispute by amicable resolution, as well as the Ideals (namely guiding principles to be introduced as part of the Draft Rules to guide the conduct of civil proceedings)..

The Draft Rules will also be amended to allow the court to order a party who does not wish to attempt to resolve the dispute by amicable resolution to submit a sealed document setting out his reasons for such refusal, for example, if such reasons are privileged. The sealed document will only be opened by the court after the determination of the action or appeal and its contents may be referred to on any issue of costs. This power ensures that the reasons for not attempting amicable resolution are not thought up *ex post facto* at the costs submissions stage, and will impress on the parties the possible cost implications that may arise if these reasons are inadequate.

(d) **Form of Originating Claim**. Despite some objections from respondents, the proposed requirements that parties will affix their signatures to pleadings filed in an Originating Claim action to certify that the contents of the pleadings are true to the best of their knowledge and belief, while solicitors will affix their signatures to certify that they have advised their clients of this obligation, will be retained.

(e) **Attendance of counsel at the case conferences**. The proposal for case conferences to be attended by the lead counsel, or a counsel who is familiar with the case and has sufficient authority to make decisions will be retained. The introduction of case conferences is intended to get parties and their counsel to closely assess their respective cases as early as possible and for the case to be conducted in a focused and streamlined manner.

(f) **List of Issues ("LOI")**. The proposal introduces an LOI, which need not be agreed on by the parties at the outset. The aim is for the LOI to be continually reviewed and refined as the case progresses, and for the judge to work with parties in this process. This process helps lawyers ensure that issues are properly identified at an early stage. It minimises last minute amendments to pleadings or introduction of evidence and the vacation of trial dates and wasted costs which invariably result. However, the New Rules of Court Implementation Team recognises that it may not be cost effective to require the LOI to be submitted early in every case. Therefore, the proposal will be amended to require the parties to submit the LOI at the direction of the court instead.

(g) **Initial obligation to produce documents**. Parties' obligation to produce documents under Chapter 8 Rule 2 of the Draft Rules will be amended so that parties will also be required to produce all known adverse documents in the party's possession or control.

(h) **Private or internal correspondence**. The Draft Rules will be amended to provide that the court shall not order production of private or internal correspondence except in a special case or if such correspondence are known adverse documents. The introduction of a new exception for known adverse documents addresses the concerns raised that private or internal correspondence adverse to a party's case and relevant to the dispute should be disclosed.

(i) **Single joint expert**. The proposal was for the introduction of a general rule requiring parties to agree and appoint a single joint expert in matters where expert evidence is required to assist the court, except in a special case and with the court's approval. The majority of respondents were opposed to this recommendation of this proposal. As such, the proposal will be refined such that parties will be encouraged to agree on a single expert, as far as possible.

(j) **Page limits for appeal documents**. The recommendation on page limits will be substantively retained. However, the page limits imposed on documents filed in respect of appeals will generally be increased by five pages.

(k) **Costs**. Following strong feedback from the Bar (i.e. advocates and solicitors of the Supreme Court of Singapore) on the impact of fixing solicitor-and-client ("**S&C**") costs to party-and-party ("**P&P**") costs would have on the long-term viability of litigation practice, the recommendation to peg S&C costs to recoverable P&P costs was withdrawn and is to be re-visited at a more appropriate juncture. This will allow any scale costs to be introduced to take into account the state of P&P and S&C costs under the new process.

Click on the following link for more information:

- MinLaw News Release titled "Response to Public Feedback on the Civil Justice Reforms" (available on the MinLaw website at www.mlaw.gov.sg)

Establishment of New Court for Harassment Cases on 1 June 2021

On 31 May 2021, the Ministry of Law ("**MinLaw**") and the State Courts jointly announced that the Protection from Harassment Court ("**PHC**") would be established on 1 June 2021. Sited in the State Courts, the PHC is a specialist court dedicated to dealing with harassment matters, whether online or offline. The PHC will have oversight of all criminal and civil cases under the Protection from Harassment Act ("**POHA**").

By way of background, the Protection from Harassment (Amendment) Act 2019 was passed on Parliament on 7 May 2019 to provide for, among other things (i) the offence of doxxing; (ii) enhanced measures to address the spread of online falsehoods affecting private persons (both individuals and entities); and (iii) the introduction of the POHA Court. With effect from 1

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January 2020, amendments relating to doxxing came into effect, making it an offence to publish identity information of a victim individual with the intention to cause harassment, alarm or distress to the victim.

The establishment of the PHC will bring about several improvements as follows:

(a) Expedited Protection Orders ("**EPO**") applications are targeted to be heard within 48 to 72 hours of application, and within 24 hours where there is a risk of violence or actual violence. Protection Orders ("**PO**") applications are targeted to be heard within four weeks.

(b) A simplified process, at a lower cost, will apply to certain types of POHA applications, including applications for PO and orders relating to falsehoods. Under this simplified track, a litigant can file a claim online and at lower cost, instead of having to travel to filing bureaus to file an Originating Summons with a supporting affidavit in-person. This can be done through the State Courts' Community Justice and Tribunals System ("**CJTS**") (www.statecourts.gov.sg/CJTS/), an online filing and case management system which is accessible 24/7. The CJTS also offers a pre-filing assessment for claimants to consider the validity of their claims. On CJTS, a respondent can also initiate an eNegotiation process to try and reach an amicable settlement with a claimant.

(c) Claims that may be made under the simplified proceedings must:

- involve only one claimant and no more than five respondents;
- be brought within two years from the date that the cause of action is accrued; and
- not include a claim for damages exceeding S$20,000.

(d) Simplified proceedings in the PHC will be judge-led. Judges will be specially trained to deal with harassment matters and take a more proactive role in court proceedings.

- For example, the PHC will not be bound by the rules of evidence in the conduct of simplified proceedings and may take evidence directly from parties or inform itself of any matter in such manner as it thinks fit. The judge may also conduct proceedings in an informal manner and may also, where appropriate, direct parties to alternative means of dispute resolution such as counselling or mediation.

- Simplified proceedings will also be streamlined as certain court applications which are available in standard proceedings, such as applications for summary judgment, striking out, and interrogatories, will not apply. This is to ensure that simplified proceedings will be heard and disposed of expediently and not be unnecessarily protracted.

- Where the courts make an EPO against a respondent, the courts now have a duty to proactively consider the facts and circumstances in the grant of the EPO and assess whether criminal investigation is warranted. If so, the

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judge must refer the matter to the police. The intention is for serious cases of hurt or harassment which come to the court to be referred to the police, if not already done. This will ensure that the authorities can intervene at an early stage to reduce the risk of further hurt to the victim.

- Interim relief will also be more permanent. EPOs will remain in effect until the PO hearing is concluded, unless it is successfully challenged. This means that pending disposal of the PO application, the victim will no longer have to renew the EPO every 28 days in order to ensure continued protection.

(e) Currently, an applicant has to first obtain directions on service from the court before effecting service of the application on the respondent or other relevant parties. Under the revised procedure, the applicant will only be required to seek the court's direction on service where the proper address of the respondent or other relevant parties is not known, and the applicant wishes to effect service by a non-default method of service. Otherwise, the revised procedure provides that the victim has to effect service of the application on the respondent within 14 days after the application is filed and may do so through the default service methods, without seeking the court's direction on service. This revised procedure is intended to ensure that proceedings can move faster than they do under existing processes.

(f) The PHC may transfer cases commenced in the PHC to other Courts (i.e. the District Court, Magistrate's Court or Family Court), and vice versa. This transfer mechanism recognises how harassment may occur against the backdrop of other ongoing proceedings, such as divorce proceedings. From 1 June 2021, cases may be transferred between the PHC and the District Court or Magistrate's Court. However, transfer of POHA cases between the PHC and the Family Court will only be operationalised at a later date.

Click on the following links for more information:

- MinLaw and State Courts Joint Press Release titled "Quicker, More Effective Remedies Against Harassment with New Protection from Harassment Court from 1 June 2021" (available on the State Courts website at www.statecourts.gov.sg/CJTS/)
- MinLaw News Release titled "Commencement of Protection from Harassment Court on 1 June 2021" (available on the MinLaw website at www.mlaw.gov.sg)

Corporate Real Estate

Refinements to Criteria for Publicly Listed Housing Developers with Substantial Connection to Singapore to be Exempted from Qualifying Certificate Regime

On 29 June 2021, the Ministry of Law ("**MinLaw**") announced that it had made refinements to the criteria for exemption from the Qualifying Certificate ("**QC**") regime for publicly listed housing developers with a substantial connection to Singapore.

Under the Residential Property Act, any housing developer that is not considered a Singapore company must apply for a QC when it purchases residential land for development, other than from the Government. MinLaw had announced last year that with effect from 6 February 2020, publicly listed housing developers can apply for exemption from the QC regime on the basis that they have a substantial connection to Singapore (press release available here). One of the criteria by which applications will be assessed is whether there is a significantly Singaporean substantial shareholding interest in the company.

MinLaw has made two refinements to how the shareholding interest criterion is assessed, implemented with immediate effect from 29 June 2021.

(a) **Shares that are held through whitelisted nominee companies.** In instances where shareholders hold their shares through nominee companies, these shares will now be counted towards fulfilling the shareholding interest criterion if (i) the shares are held through a whitelisted nominee company; and (ii) the Singaporean substantial shareholder(s) retains control over the voting rights to the shares through the whitelisted nominee company. The whitelist of approved nominee companies is published on Singapore Land Authority's ("**SLA**") website at www.sla.gov.sg, and the list will be reviewed and updated from time to time.

(b) **Collective interest held by members of the same family.** A housing developer will be considered to have a significantly Singaporean substantial shareholding interest if Singaporean shareholders from the same family collectively form the largest substantial shareholder and hold at least 30% interest in the total voting rights and issued shares in the company. This is provided that at least one of the shareholders in the family is a substantial shareholder (and identified clearly as the primary shareholder), and the largest single foreign substantial shareholder must hold not more than 30% of the voting rights and issued shares in the company.

Applications may be submitted to the Controller of Residential Property and the application form can be obtained from SLA's website at www.sla.gov.sg.

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Click on the following link for more information:

- Refinements to Criteria for Publicly Listed Housing Developers with Substantial Connection to Singapore to be Exempted from Qualifying Certificate Regime (available on the MinLaw website at www.mlaw.gov.sg)

Extension to Temporary Relief Measures for Property Sector due to COVID-19 Pandemic

On 28 June 2021, the Singapore Government announced an extension to the temporary relief measures ("**June 2021 Extension of Temporary Relief Measures**") for the property sector. The June 2021 Extension of Temporary Relief Measures extends (i) the temporary relief measures announced on 6 May 2020, and (ii) the additional temporary relief measures announced on 8 October 2020 which were granted to offer immediate relief for eligible property developers in view of disruptions to construction timelines arising from the COVID-19 pandemic.

The June 2021 Extension of Temporary Relief Measures aims to alleviate the effects of the COVID-19 pandemic on the construction timelines and schedules for property developers as border measures were tightened from April and May 2021 due to a resurgence in COVID-19 infections. Broadly, the June 2021 Extension of Temporary Relief Measures comprises the following:

(a) Extension of the Project Completion Period ("**PCP**") by six months for residential, commercial and industrial development projects in respect of qualifying residential, commercial, and industrial projects on Government sale sites, or on land which was directly alienated or had their lease renewed by the Singapore Land Authority;

(b) Extension of time by six months for the commencement and completion timelines of the residential development projects in relation to the remission of the Additional Buyer's Stamp Duty for qualifying housing developers; and

(c) Extension of the PCP by six months for housing developers for residential development projects under the Qualifying Certificate ("**QC**") regime, granted pursuant to Section 31 of the Residential Property Act, by way of a waiver of extension charges chargeable under the terms of the QC for the completion of construction of housing units in residential developments.

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

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COVID-19 – Support Measures

Extension of COVID-19 Support Measures for Individuals and SMEs in Tier 1 and 2 Sectors

On 24 June 2021, the Monetary Authority of Singapore ("**MAS**"), together with the Association of Banks in Singapore (ABS) and the Finance Houses Association of Singapore (FHAS) announced the extension of the existing industry-wide support measures for individuals and Small and Medium-sized

Enterprises ("**SMEs**") in Tier 1 and 2 sectors that continue to face financial difficulties due the COVID-19 pandemic.

Tier 1 and 2 sectors include aviation and aerospace, tourism, hospitality, conventions and exhibitions, built environment, licensed food shops and food stalls (including hawker stall), qualifying retail outlets, arts and entertainment, land transport and marine and offshore. The tiering of sectors is in line with the Job Support Scheme (JSS) administered by the Inland Revenue Authority of Singapore (IRAS).

By way of background, banks and finance companies have been providing payment deferrals since last year to enable individuals and SMEs facing cashflow difficulties due to the pandemic transition gradually to full loan repayments. The application period for the support measures set out below was due to expire on 30 June 2021. This has since been extended to give the affected individuals and SMEs more time to repay their loans.

Extension of Support Measures for Individuals

The application window for the following support measures has been extended from 30 June 2021 to 30 September 2021:

(a) **Property Loans:** Reduction of instalment repayment plans, pegged at 60% of borrowers' monthly instalments until 31 December 2021. A loan tenure extension of up to three years can be granted on a case-by-case basis.

(b) **Unsecured Revolving Credit Facilities**: Converting outstanding balances to term loans at a reduced interest rate.

(c) **Debt Consolidation Plans**: Extending loan tenures by up to five years.

(d) **Renovation and Student Loans**: Extending loan tenures by up to three years.

This is on an opt-in basis for borrowers who can provide proof of income impact and with loan repayments that are not more than 90 days past due. The eligibility criteria for each relief measure vary.

Extension of Support Measures for SMEs

(a) **Extended Support Scheme – Standardised** ("**ESS-S**"): This scheme allows eligible SMEs in Tier 1 and 2 sectors to partially defer the payment (i.e. 80% of principal payments) of secured loans granted by banks or finance companies, as well as loans granted under Enterprise Singapore's Enhanced Working Capital Loan Scheme and Temporary Bridging Loan Programme (collectively, "**Loans**").

The application window for the ESS-S has been extended from 30 June 2021 to 30 September 2021.

- SMEs in Tier 1 and 2 sectors currently participating in the ESS-S may opt to defer 80% of principal payments on their Loans until 30 September 2021.

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- SMEs in Tier 1 and 2 sectors that have not participated in the ESS-S may also apply to their lenders to defer 80% of principal payments till 30 September 2021.

This is on an opt-in basis for borrowers who do not have loan repayments that are more than 30 days past due. For borrowers with loans already granted partial principal moratoriums, there should be no overdue payments on those loans.

(b) **Extended Support Scheme – Customised** ("**ESS-C**"): This scheme provides for customised restructuring programmes for SMEs with multiple lenders for whom the Ministry of Law's Simplified Insolvency Programme (SIP) and Credit Counselling Singapore's Sole Proprietors & Partnerships Scheme (SPP Scheme) may not be suitable.

The application window for this scheme has been extended from 30 June 2021 to 31 December 2021.

Final Extension of Support Measures

MAS has indicated that this extension is "expected to be the final extension of the industry wide-support measures". Borrowers who may not be able to resume full loan repayments by the end of the relief periods should engage their lenders to work out longer and feasible repayment solutions.

Click on the following links for more information: (available on the www.gov.sg Portal):

- MAS Media Release titled "MAS and Financial Industry Extend Support Measures for Individuals and SMES in Tier 1 and 2 Sectors"
- Infographics – Extended Credit Support Measures for Individuals and SMES

Dispute Resolution

Singapore Extends Scope of Permissible Third-Party Funding

The advancement of third-party funding as an option in commercial disputes has been a closely watched development in Singapore. While Singapore's legislation was previously amended in 2017 to allow third-party funding for international arbitration and related court and mediation proceedings, the Ministry of Law ("**MinLaw**") has extended its application to a wider scope of proceedings.

From 28 June 2021, the categories of proceedings in which third-party funding is allowed has been extended to include:

(a) Domestic arbitration proceedings;
(b) Court proceedings arising from or connected with domestic arbitration proceedings, such as enforcement proceedings or applications for stay of proceedings;
(c) Proceedings commenced in the Singapore International Commercial Court ("**SICC**");
(d) Appeal proceedings arising from SICC decisions; and
(e) Mediation proceedings relating to any of the proceedings above.

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The extension of the permitted categories opens the doors for third-party funding in a much wider range of proceedings. The focus is still on arbitration, with domestic arbitration being included as a permitted category. However, the inclusion of SICC proceedings indicates that international commercial disputes (which is the purview of SICC) are also deemed to be suitable for third-party funding.

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

Financial Institutions

Significant Changes to Banking Act Effective from 1 July 2021

The Banking Amendment Act 2020 ("**Amendment Act**") makes substantial changes to the Banking Act ("**BA**") so as to remove the divide between the Domestic Banking Unit ("**DBU**") and the Asian Currency Unit ("**ACU**"), and consolidate the licensing and regulation of merchant banks ("**MBs**") under the BA. Other key changes in the Amendment Act aim to strengthen the regulatory framework for banks, MBs, and non-bank credit card or charge card issuers.

The Amendment Act came into force in phases. Several legislatively and operationally straightforward revisions came into force on 1 October 2020, such as those relating to provision of certain bank documents on request and new requirements for credit card or charge card issuers to obtain the Monetary Authority of Singapore's ("**MAS**") approval before appointing certain key appointment holders. For details, please refer to our previous NewsBytes write-up titled "Banking (Amendment) Act 2020 Came into Force Partially on 1 October 2020" in the September 2020 issue, available here.

The remaining sections of the Amendment Act came into force on 1 July 2021. The significant changes broadly relate to:

(a) **Removal of the divide between DBU and ACU**. The DBU-ACU divide has been used to distinguish the domestic and offshore operations of banks and MBs. As the distinction is no longer relevant resulting from market developments and updated regulatory standards, the amendments to the BA removes the requirement for banks and MBs to segregate their accounting books into DBU and ACU.

(b) **Consolidation of the licensing and regulation of MBs under the BA**. Previously, MBs were subject to regulation under the Monetary Authority of Singapore Act ("**MAS Act**") as an approved financial institution, and the BA by virtue of their ACU activities. Upon removal of the DBU-ACU divide, the Amendment Act streamlines the regulatory framework for MBs by consolidating them under the BA. A new Part VIIB of the BA:

- sets out a new licensing framework for MBs as a class of FIs distinct from banks;
- clarifies their permitted scope of activities (including restrictions on acceptance of Singapore Dollar ("**SGD**") deposits and borrowing in SGD);
- stipulates applicable prudential requirements, and

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- provides for MAS' regulatory and supervisory powers over MBs.

(c) **Wider grounds for revocation of bank licence**. These new grounds are:

- contravention of provisions of the MAS Act, which contains key requirements to prevent money laundering and terrorism financing;
- for a foreign-owned bank incorporated in Singapore, when the parent bank's licence is withdrawn; and
- when MAS assesses that it is in the public interest to do so.

(d) **Stronger MAS oversight over outsourcing arrangements of banks and MBs in Singapore**. A new section 47A of the BA allows MAS to impose requirements on a bank or MB in Singapore before such bank or MB obtains any relevant service (on or after the date the section comes into effect) from its branch or office located outside Singapore, or from a person. These requirements are "risk-proportionate and legally-binding". For instance, a bank or MB is required to include in its agreements with service providers: (i) the right of MAS to audit the service provider; (ii) obligations of the services providers to protect customer information against unauthorised use; and (iii) the bank's or MB's right to terminate the arrangement under specified circumstances.

To operationalise and support the changes to the BA, MAS consulted on proposed amendments to MAS Regulations, Notices and Guidelines in December 2020. MAS issued its response to feedback received from the consultation ("**Response**") (available here) and has incorporated feedback where appropriate in the revised relevant Regulations, Notices and Guidelines. For a list of amended, cancelled, and new instruments from 1 July 2021, refer to Annex A of the Response. The revised Regulations, Notices and Guidelines are also available on the MAS website (www.mas.gov.sg).

Credit Bureau Act Takes Effect from 31 May 2021

In light of the large amount of sensitive borrower credit data that credit bureaus possess, on 31 May 2021, the Credit Bureau Act 2016 ("**CBA**") came into force to bring credit bureaus under formal oversight by the Monetary Authority of Singapore ("**MAS**"). The CBA provides a legal framework for MAS to license and supervise credit bureaus ("**LCBs**"), and regulates the credit reporting business and approved members of LCBs. The Credit Bureau Bill was passed in Parliament in November 2016.

LCBs collect, use, and disclose information relating to the credit worthiness of borrowers from banks and other financial institutions. Approved members of LCBs may use the customer credit information to facilitate their credit assessment and loan approval decisions. The objectives of the CBA are to ensure that LCBs operate soundly, safeguard the confidentiality, security and integrity of customer credit information, and protect consumer interests. The CBA empowers MAS to approve a financial institution to be an approved member of an LCB before it is allowed to receive customer credit information from LCBs.

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The following regulations and notices issued under the CBA also took effect on 31 May 2021:

(a) **Credit Bureau Regulations 2021** that set out the details relating to the licensing of LCBs.

(b) **Credit Bureau (Composition of Offences) Regulations 2021** that set out the compoundable offences that apply to both LCBs and their approved members.

(c) **Notice to Licensed Credit Bureaus and Approved Members (MAS Notice No. CBN01)** that sets out the requirements for all LCBs and approved members under the CBA. Some of the governance requirements for LCBs will take effect on 30 November 2021.

(d) **Notice on Technology Risk Management for Licensed Credit Bureaus (MAS Notice No. CBN02)** that sets out requirements for a high level of reliability, availability and recoverability of critical information technology ("**IT**") systems, and for LCBs to implement IT controls to protect customer information from unauthorised access or disclosure.

(e) **Notice on Cyber Hygiene for Licensed Credit Bureaus (MAS Notice No. CBN03)** that sets out cyber security requirements on securing administrative accounts, applying security patching, establishing baseline security standards, deploying network security devices, implementing anti-malware measures, and strengthening user authentication.

In October / November 2020, MAS conducted a public consultation to seek comments on drafts of the above regulations and MAS Notices. On 28 May 2021, MAS published its response to feedback received pursuant to the consultation.

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

- MAS Response to Feedback Received on Proposed Regulations and Notices for Licensed Credit Bureaus and Approved Members
- MAS Notice to Licensed Credit Bureaus and Approved Members
- MAS Notice on Technology Risk Management for Licensed Credit Bureaus
- MAS Notice on Cyber Hygiene for Licensed Credit Bureaus

MAS Proposes Enhanced Transaction Safeguards for Retail Clients by Financial Advisers

To raise industry standards and promote greater consumer trust in the financial advisory ("**FA**") industry in Singapore, the Monetary Authority of Singapore ("**MAS**") seeks feedback on proposed enhanced regulatory safeguards by FA firms to protect the interests of retail clients, particularly selected clients ("**SCs**"), who meet any two of the following criteria:

(a) is 62 years of age or older;
(b) is not proficient in spoken or written English; or
(c) has below GCE "O" or "N" level certifications (or the equivalent).

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To safeguard the interests of clients, MAS introduced the Balanced Scorecard Framework ("**BSC Framework**") in 2016. The requirements and guidance on the BSC Framework are set out in various MAS Notices and Guidelines, such as the Notice on Requirements for the Remuneration Framework for Representatives and Supervisors and Independent Sales Audit Unit and the Guidelines on the Remuneration Framework for Representatives and Supervisors, Reference Checks and Pre-Transaction Checks ("**BSC Guidelines**"). To assess the standards of FA representatives' advisory and sales process, MAS conducted a mystery shopping exercise ("**MSE**") in 2018/2019 and recently released its findings. Despite an improvement in the proportion of suitable product recommendations from an earlier MSE in 2011, weaknesses were identified in the implementation of safeguards for SCs, including lapses in identifying SCs and making adequate product disclosures to SCs.

To address the areas of deficiencies from its review of the effectiveness of the BSC Framework and MSE findings, MAS sets out its proposals in a consultation paper titled "Consultation Paper on Enhancing Pre and Post-Transaction Safeguards for Retail Clients".

To enhance pre- and post-transaction safeguards for retail clients, MAS has the following key proposals, including:

(a) Strengthening the requirement to identify SCs;
(b) Requiring a Trusted Individual ("**TI**") to be present for all investment recommendations made to SCs, as well as the criteria to qualify as a TI;
(c) Reinforcing requirements relating to call-backs. This includes proposed minimum content of call-backs, documentation and quality control on call-backs, as well as a new requirement to audio record call-backs;
(d) Requiring an independent panel to be set up to review all investment recommendations made to SCs; and
(e) Requiring the Independent Sales Audit Unit of the FA firm to sample and review transactions involving higher risk clients.

The proposed revisions will be set out in the Notice on Recommendation of Investment Products that MAS will consult on after the proposals in this consultation paper have been finalised. MAS proposes a six-month transitional period from the time the revised Notice is published for the revisions to take effect.

The consultation ends on 3 August 2021.

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

MAS' Inaugural Sustainability Report & Strategy on Climate Resilience and Environmental Sustainability

Mr Ravi Menon, Managing Director of Monetary Authority of Singapore ("**MAS**") announced the launch of MAS' inaugural Sustainability Report 2020/2021 ("**Report**") on 9 June 2021. Among other things, the Report sets out MAS' strategy on climate resilience and environmental sustainability to (i) strengthen the resilience of the financial sector to environmental risks; and (ii) develop a vibrant green finance ecosystem.

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Strengthening Financial Sector Resilience Against Environmental Risk

MAS is focused on two broad areas:

(a) **Enhancing environmental risk management in financial institutions ("FIs")**. MAS has issued the Guidelines on Environmental Risk Management for banks, insurers and asset managers, and the Green Finance Industry Taskforce ("**GFIT**") has issued an implementation handbook providing guidance on best practices in environmental risk management. Later this year, MAS will review the progress of FIs in implementing the guidelines. To assess the impact of the physical and transition risks associated with climate change, MAS will conduct by end-2022 stress tests on the financial industry under a range of climate change scenarios.

(b) **Promoting high-quality sustainability-related disclosures**. This will ensure better pricing of climate-related risks, more effective risk management and market discipline, and allocation of capital towards financing green and transition activities. Key upcoming developments include:

- *Phased roadmaps by MAS and Singapore Exchange Limited ("**SGX**")* for mandatory climate-related financial disclosures by both FIs and entities listed on the Singapore Exchange Securities Trading Limited (SGX-ST). A more ambitious timeline can be considered for listed entities that are larger or more exposed to climate risks. Larger financial institutions can similarly be prioritised. MAS and SGX will consult with the industry on the details in the next few months.
- *SGX consultation on climate-related reporting in line with the recommendations of the Task Force on Climate-Related Financial Disclosures ("**TCFD**").* Currently, listed entities are subject to annual sustainability reporting on a "comply or explain" basis, without any specified particular framework to follow. The TCFD recommendations provide a good baseline disclosure framework as they are broadly accepted internationally and will be the basis for future International Sustainability Standards Board (ISSB) climate reporting standards.
- *MAS consultation on mandatory climate-related disclosures by FIs later this year.* MAS expects all banks, insurers, and asset managers to make climate-related disclosures from June 2022, in accordance with well-regarded international reporting frameworks, such as the TCFD recommendations. The upcoming consultation will focus on how to transition these expectations into legally binding requirements, against a single, internationally aligned standard.

Creating a Vibrant Green Finance Ecosystem

To achieve this, MAS has been working on four areas:

(a) **Developing green taxonomies** to promote consistent definitions of what constitutes green activities to facilitate cross-border capital

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flows towards sustainable outcomes. Earlier this year, GFIT consulted on a proposed "traffic light" system to classify sustainable activities as green, transition activities as yellow, and highly carbon intensive activities as red. At the regional level, MAS is working with fellow ASEAN regulators to develop an ASEAN taxonomy aligned with international benchmarks while taking account of the regional context.

(b) **Promoting green finance solutions and markets** through MAS grant schemes to defray the costs of issuing sustainable bonds and green and sustainability-linked loans that are aligned with international standards. MAS also supports industry efforts to build Climate Impact X, an international marketplace for high-quality carbon offsets generated from nature-based solutions in Southeast Asia.

(c) **Harnessing technology to enable trusted sustainable finance flows ("Green FinTech")**. MAS aims to encourage the development of Green FinTech in Singapore through several key initiatives. For example, MAS (together with the industry) has launched Project GreenPrint, a technology platform to identify use cases where technology can help to mobilise capital for green projects, monitor commitments to emissions reductions, and quantify the impact of abatement efforts. This aims to remove impediments to green finance, such as the lack of access to trusted high-quality data on a project's carbon emissions. MAS has also earmarked S$50 million from the Financial Sector Technology and Innovation (FSTI) scheme to support Green FinTech projects in Singapore. The funding can be used to support proofs-of-concept, innovation labs, industry-wide utilities, and technology platforms focused on Green FinTech.

(d) **Building knowledge and capabilities in sustainable finance in partnership with the industry**. For instance, GFIT has been formed as part of the main financial sector industry advisory body, the Financial Centre Advisory Panel (FCAP), and comprises representatives from financial institutions, corporates, non-governmental organisations, and financial industry associations. The Sustainable Finance Institute Asia will support the implementation of sustainable finance policy initiatives in Asia, beginning with ASEAN. MAS is also working to anchor providers of independent environmental, social and governance (ESG) reviews and ratings.

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

- MAS Sustainability Report 2020/2021 (9 June 2021)
- "Being the Change We Want to See: A Sustainable Future" - Speech by Mr Ravi Menon, Managing Director, Monetary Authority of Singapore, at Launch of Inaugural MAS Sustainability Report via Video Conference on 9 June 2021

Tax

Implications of the G-7 Global Minimum Corporate Tax for Singapore

On 5 June 2021, the G-7 sent ripples worldwide when it reached a deal to implement two sets of rules, namely (i) reallocating taxable profits of the largest multinational enterprises ("**MNEs**") to "market jurisdictions" where their customers are located, and (ii) a global minimum tax rate of 15% for large MNEs. The G-7 represents a huge proportion of global gross domestic product (GDP) and global net wealth, being comprised of the seven countries of Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States.

Key Aspects

There are two key aspects to the agreement, namely (i) the global minimum corporate tax rate, and (ii) the taxation of the digital economy.

Global minimum corporate tax rate

Increasingly, companies have booked income from intangible sources such as drug patents, software, and royalties in jurisdictions where they pay little or no tax. The global minimum tax rate targets MNEs that design their international group structures to achieve reductions in their overall tax rate. In essence, the global minimum tax rate aims to prevent businesses from achieving better tax outcomes through conducting their business activities in a particular jurisdiction.

While jurisdictions retain the right to levy whatever corporate tax rate they choose, an MNE with a customer base in a G-7 jurisdiction – despite lacking a physical presence there – will have to pay a "top-up" tax to such jurisdiction. In effect, the MNE will pay at least 15% tax, split between the jurisdiction from which they operate and paying the balance tax to the G-7 jurisdiction. This eliminates any tax advantage a low-tax jurisdiction can offer an MNE. The 15% rate will likely be assessed on a country-by-country basis, rather than a global or entity basis.

Taxation of the digital economy

Currently, technology giants are able to sell their services remotely, attributing much of their profits to intellectual property rights in jurisdictions with low corporate tax rates. This leads to an erosion of tax base for such companies' traditional home countries.

In recent years, several countries have moved ahead with unilateral measures to tax the digital economy. As these taxes mainly impact US companies, the US has responded with retaliatory threats. This has given rise to a confusing global tax landscape with increasingly prohibitive costs of achieving compliance. The agreement will see the G-7 countries giving up their right to introduce taxes on the digital economy but gaining greater taxing rights over the global profits of the largest MNEs. It is unclear what threshold will be set to determine which MNEs will be captured by this agreement, but market countries are likely to be awarded taxing rights on at least 20% of profit exceeding a 10% margin for such MNEs.

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Implications for Singapore

Although Singapore's corporate tax rate stands at 17%, the effective tax rates of many businesses in Singapore may fall below the 15% global minimum rate as a result of tax incentives and the non-taxation of capital gains and foreign sourced income. Accordingly, this would place Singapore in the category of low-tax jurisdictions which risk losing their tax advantages over high-tax jurisdictions. In a worst-case scenario, some US MNEs may move certain functions currently performed in Singapore back home or to another jurisdiction.

However, not all is gloomy. While the agreement principally benefits high-tax jurisdictions, Singapore too stands to reap some benefits. In the short term, Singapore is likely to do away with some tax incentives, resulting in increased corporate income tax revenue. Second, jurisdictions with tax rates lower than Singapore's will also lose their tax advantages over Singapore, allowing Singapore to potentially benefit from the exodus of companies from tax havens such as the British Virgin Islands, the Cayman Islands, and Bermuda. Third, small and medium-sized enterprises ("**SMEs**") will not be affected by the new rules, noting that SMEs represent the majority of economic activity in many jurisdictions.

In the long term however, Singapore will need to shift away from its traditional reliance on low tax rates to continue to attract MNEs to its shores. Singapore may maintain its competitive edge by exploring other strategies such as assisting MNEs in the form of capital grants and other incentives which are not taxable. Further, Singapore will need to capitalise on its non-tax strengths.

Despite the G-7 agreement presenting an undeniable challenge to Singapore's ability to attract businesses, Singapore continues to shine in many areas that make it an attractive option to MNEs.

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

Public Consultation on Proposed Income Tax (Amendment) Bill 2021

On 11 June 2021, the Ministry of Finance ("**MOF**") launched a public consultation on 36 proposed amendments to the Income Tax Act ("**ITA**") to:

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

Tax Measures in the 2021 Budget Statement

There are 12 proposed amendments to cater for measures announced in the 2021 Budget Statement. These include:

(a) **Extending three measures for another year** to continue providing support for businesses affected by the COVID-19 pandemic.

- The enhancement to the carry-back relief scheme to allow qualifying deductions to be carried back up to three (instead

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of one) immediate preceding Years of Assessment ("**YA**") will be extended to YA 2021;

- The option to accelerate the write-off of the cost of acquiring plant and machinery ("**P&M**") over two years will be extended to capital expenditure incurred on the acquisition of P&M in the basis period for YA 2022 (i.e. Financial Year ("**FY**") 2021); and
- The option to claim renovation and refurbishment ("**R&R**") deduction in one YA (i.e. accelerated R&R deduction) will be extended to qualifying expenditure incurred on R&R in the basis period for YA 2022 (i.e. FY 2021).

(b) **Enhancing the Double Tax Deduction for Internationalisation ("DTDi") scheme** to continue supporting the internationalisation efforts of businesses amidst the changing business landscape. The proposed amendments will extend the scope of the DTDi scheme to cover more expenses, such as qualifying expenses incurred to participate in approved virtual trade fairs.

(c) **Extending the 250% tax deduction for qualifying donations** to encourage Singaporeans to continue giving back to the community. The 250% tax deduction for qualifying donations made to Institutions of a Public Character and other qualifying recipients will be extended for another two years. This covers qualifying donations made during the period 1 January 2022 to 31 December 2023 (both dates inclusive).

(d) **Extending the withholding tax exemption on payments of interest and other payments covered under Section 12(6)** made by the financial sector to permanent establishments in Singapore of non-resident persons for the entire duration of a contract, where the contract takes effect during the period from 17 February 2012 to 31 December 2026.

(e) **Extending the withholding tax exemption on payments made to a non-individual, non-resident person** (excluding any permanent establishment in Singapore) from structured products offered by a financial institution in Singapore for another five years up till 31 December 2026.

Changes Arising from Periodic Review of the Tax System

There are 24 other proposed amendments arising from the periodic review of Singapore's income tax system. These include:

(a) Amending Section 6 to allow persons authorised by the Inland Revenue Authority of Singapore ("**IRAS**") to have access to necessary IRAS records and/or documents for the audit of the administration of public schemes specified in the Ninth Schedule of the ITA;

(b) Providing the tax treatment for cases where trading stock is appropriated for non-trade or capital purposes, and where non-trade or capital asset becomes trading stock;

(c) Adding a protection of informer provision;

(d) Aligning the maximum penalty amounts for non-filing and other related offences under the ITA with those for similar offences under the Goods and Services Tax Act and the Property Tax Act;

(e) Extending the time limit for claiming a foreign tax credit from two years to four years from the end of the YA in which the income was assessed to tax in Singapore; and

(f) Allowing tax deductions for upfront lease expenses incurred by landlords and tenants to secure leases in properties where lease terms do not exceed three years.

The public consultation exercise ended on 2 July 2021.

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

- Public Consultation on Proposed Income Tax (Amendment) Bill 2021
- Brief description of the 36 proposed amendments of the ITA (Summary Table)

Technology, Media & Telecommunications

PDPC Handbook on How to Guard Against Common Types of Data Breaches

In this digital age, organisations often find themselves grappling with issues of personal data, including how to protect personal data in the organisations' possession and how to defend their systems against data breaches.

As Singapore's main authority in matters relating to personal data protection, the Personal Data Protection Commission ("**PDPC**") has published a new handbook that highlights the five most common gaps in Information and Communication Technology ("**ICT**") system management and processes ("**Handbook**"). The Handbook also identifies the corresponding ICT good practices that organisations should put in place to prevent data breaches.

The Handbook is distilled from past data breach cases handled by the PDPC, and provides a helpful guide for organisations to assess the adequacy of their data protection systems and processes and to implement any of the relevant recommendations. In this regard, our Technology, Media and Telecommunications team as well as our team from Rajah & Tann Cybersecurity, are well placed to assist in assessment and remedial efforts.

The Handbook includes guidance and recommendations on the following identified common issues:

(a) **Coding**: Mistakes made during the programming phase of software development can lead to application errors that result in disclosure of personal data.

(b) **Configuration**: An ICT system often consists of various components that have configurable settings and parameters. Unsecured settings, including leaving settings in their default, can result in unintended disclosure of personal data.

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(c) **Malware and Phishing**: With employees having unrestricted access to the Internet, phishing email attacks are often used to trick them into revealing their login credentials or other sensitive information, or downloading attachments containing malware.

(d) **Security and Responsibility**: The security of an ICT system needs to be taken into consideration during the design and development phases, and thereafter as part of system maintenance as well. The responsibility of taking care of the ICT system's security needs has to be properly assigned.

(e) **Accounts and Passwords**: When accounts and passwords fall into the wrong hands, they can enable unauthorised access to ICT systems without requiring sophisticated attacks at the server end. Hence, accounts and passwords need to be managed securely.

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

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CaseBytes

Appeals Against a Winding-Up Order: Who Should Control the Appeal and Who Should Pay?

In *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] SGCA 60, the Singapore Court of Appeal had the opportunity to consider some vital questions relating to insolvency proceedings. In the context of an appeal against a winding-up order, the Court considered whether the company's directors should be entitled to control the appeal, and who should be responsible for the costs of the appeal.

The Court also examined the test for determining whether a company is deemed unable to pay its debts under sections 254(2)(c) and 254(2)(a) of the Companies Act, establishing the cash flow test as the sole applicable test to determine insolvency for purposes of winding up under section 254(2)(c). While these provisions have been repealed, they are effectively reproduced in the Insolvency, Restructuring and Dissolution Act 2018, save for certain amendments in monetary thresholds.

Notably, the Court of Appeal held that the company's director was allowed to control the conduct of the appeal against the winding-up order. However, the Court of Appeal highlighted that directors or shareholders controlling the conduct of the appeal should expect to pay any costs incurred in prosecuting the appeal out of their own pockets, and should expect to be personally responsible for the payment of any party and party costs if the appeal fails.

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

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Court of Appeal Determines Between Conflicting Set-Off Agreement and Standard Terms and Conditions

In light of recent market pressures, the area of trade finance has seen a number of disputes arising from the enforcement of debentures, pledges, and assignments pursuant to trade finance facilities. These cases have demonstrated the potential complications involved in trade finance disputes, where multiple parties and contracts are involved in a trade arrangement.

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One such case is *Italmatic Tyre & Retreading Equipment (Asia) Pte Ltd v CIMB Bank Berhad* [2021] SGCA 56, where the Singapore Court of Appeal had to tackle these very issues. The lender in this case sought to enforce book debts assigned from the borrower. The Court considered whether the debtor was entitled to raise the defence of set-off in light of conflicting contractual clauses – the borrower and debtor had entered into a set-off agreement, but the borrower's standard terms and conditions required the debtor to make payment without set-off.

The Court held that the standard terms and conditions did not preclude the debtor from exercising its right of set-off under the set-off agreement, but the debtor had failed to exercise this right by notice and confirmation. The Court also affirmed the finding of the trial judge that the letters which were alleged to serve as notice and confirmation were in fact fabrications.

In reaching its decision, the Court followed the recent Singapore Court of Appeal decision of *CIMB Bank Bhd v World Fuel Services (Singapore) Pte Ltd* [2021] SGCA 19, which involved the same lender and borrower, as well as similar issues including claims under assignment, the resolution of competing contracts, and the right of set-off.

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

Bankruptcy and Family Proceedings: The Court's Ratification of Division of Assets Amidst Bankruptcy

Under Singapore bankruptcy law, when a person is adjudged bankrupt, any disposition of property made by him from the date of the bankruptcy application is void unless the court consents to or ratifies the disposition. However, will the court ratify the disposition of assets made pursuant to an order for division of assets in divorce proceedings, and in what circumstances will it do so? These were the issues considered in the Singapore High Court case of *Ong Dan Tze Magdalene v Chee Yoh Chuang & Anor* [2021] SGHC 129.

The Court here declined to ratify the disposition of certain properties made pursuant to consent orders obtained in divorce proceedings between the bankrupt and his wife, who was the applicant in the ratification proceedings. The Court acknowledged that it had the power to ratify the disposition of property pursuant to a court order, including a consent order. However, the onus was on the applicant to persuade the Court that the dispositions should be ratified.

The Court declined to ratify the disposition in the circumstances as the alleged disposition did not fall within the scope of the ratification provisions. The Court further found that ratification would not promote the interests of the general pool of creditors, and that the applicant had not acted in good faith, having withheld certain information from the Judge when obtaining the consent orders.

The Court's decision highlights the interaction between the bankruptcy regime and the family law regime and how the bankruptcy regime may accommodate certain orders in family proceedings.

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

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Personal Wrong vs Corporate Wrong in Minority Oppression

Section 216 of the Companies Act provides for the protection of minority shareholders against the oppression of the majority. However, it is necessary for the minority shareholder to demonstrate that the wrong occasioned to him is a wrong occasioned to him in his personal capacity as a minority shareholder, as opposed to a wrong occasioned to the company. In *Ong Heng Chuan v Ong Teck Chuan & 3 Ors* [2021] SGCA 46, the Singapore Court of Appeal considered the distinction between a personal wrong and a corporate wrong in a minority oppression claim founded on breaches of a director's fiduciary duties.

The Court followed its earlier decision in *Ho Yew Kong v Sakae Holdings Ltd* [2018] 2 SLR 333, which held that it was inappropriate to bring a claim under section 216 of the Companies Act to redress corporate wrongs. Such wrongs ought to be appropriately dealt with either through a direct action brought by the company or, in more exceptional circumstances, through the statutory derivative action mechanism provided under section 216A of the Companies Act.

While the Court noted that a corporate wrong may, in some instances, also amount to a personal wrong capable of vindication under section 216 of the Companies Act, a breach of a director's fiduciary duties would *prima facie* amount to a corporate wrong. This is because such duties, properly characterised, are owed to the company. To bring a claim within the strictures of section 216 of the Companies Act, it is incumbent on the claimant to go a step further and show how such a breach is also a wrong suffered by him in his capacity as shareholder.

The Court also rejected the proposition that a minority shareholder should be able to establish a personal wrong against himself merely by characterising the majority's breaches of their directors' duties as breaches of his own "legitimate expectations" that directors should fulfil their legal duties to the company. If accepted, every allegation of a breach of director's duty would allow a plaintiff to commence a minority oppression action, which would obviate the distinction between personal and corporate wrongs.

The claimant here had sought to impugn certain transactions that were allegedly committed in breach of directors' duties and fiduciary duties. On the facts, the Court upheld the decision of the High Court that the impugned transactions did not constitute acts of oppression, and that any breach did not amount to a personal wrong against the claimant.

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SOPA and Insolvency: When Can an Adjudication Determination Judgment Debtor Resist Winding-Up Proceedings?

In *Diamond Glass Enterprise Pte. Ltd v Zhong Kai Construction Company Pte. Ltd* [2021] SGCA 61, the Court of Appeal considered the extent to which the temporary finality of an adjudication determination under the Building and Construction Industry Security of Payment Act must be given effect and enforced. In particular, the Court examined whether an adjudication determination judgment debtor (**"ADJ debtor"**) would be able to stave off a winding-up petition brought by an adjudication determination judgment

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creditor by raising a cross-claim against the latter or by disputing the adjudication debt.

The appellant subcontractor had secured an adjudication determination in its favour in respect of sums due under a payment claim. The appellant sought to enforce this by way of a judgment, and when the respondent contractor failed to make payment, the appellant applied to wind up the respondent. However, the Court of Appeal allowed the respondent's application for the winding up petition to be stayed unconditionally pending the determination of a High Court suit between the parties, on the basis that the respondent had raised a genuine cross-claim against the judgment debt.

The Court of Appeal held that an ADJ debtor cannot challenge a winding-up petition founded on the adjudication determination merely by disputing the adjudication debt. However, the ADJ debtor can stay or set aside the winding-up petition if it can show, on a *prima facie* standard, the existence of a justiciable cross-claim that is likely to equal or exceed the claim against the debtor. This is provided that the cross-claim is not being raised in an abuse of the court's process.

Even though a stay was granted for the winding-up petition, it was granted on condition that the respondent pays the amount stated in the statutory demand into court.

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Deals

Collective Sale by Private Treaty of Ho Seng Lee Flatted Warehouse

Norman Ho from the Corporate Real Estate Practice acted in the S$40 million collective sale by private treaty of Ho Seng Lee Flatted Warehouse at 10C Jalan Ampas, Singapore consisting of 16 strata lots with a land area of 2,043.2 square metres.

Events

Asia Infrastructure Forum 2021

On 23 June 2021, Rajah & Tann participated at Infrastructure Asia's Asia Infrastructure Forum ("**AIF**") 2021 – Enabling Sustainable Infrastructure for Asia's Recovery. The AIF is a platform which provides an avenue for infrastructure players and thought leaders to discuss key issues on infrastructure developments such as the future state of infrastructure, sustainable financing, technological innovation, and collaboration.

Speakers at the AIF 2021 offered insights into the latest developments and sustainable solutions in regional infrastructure. Chia Kim Huat, Regional Head of Rajah & Tann's Corporate and Transactional Group, was one of the speakers at the symposium on "Standardisation as a Pillar to Accelerate Infrastructure Development". Kevin Tan from the Commercial Litigation Practice and International Arbitration Practice was the moderator at the symposium on "Dispute Resolution for Infrastructure Projects: What Works and What Needs to be Improved".

(We previously issued a Client Update which shares insights distilled from our conversation with Infrastructure Asia on green and sustainable infrastructure and environmental, social and governance (ESG) factors for bankable projects in the region. To read this Client Update, please click here.)

Turbulence in the Airlines Industry – Issues in Debt Restructuring

On 9 June 2021, Rajah & Tann Asia organised a webinar titled "Turbulence in the Airlines Industry – Issues in Debt Restructuring".

The aviation industry is facing one of the biggest crises to date as global travel bottomed out due to the COVID-19 pandemic. Airlines are facing a gruelling uphill battle to survive amidst prolonged downturn in revenues, which in turn is likely to drive restructuring activity as debts continue to mount.

In this webinar, our Partners, together with our colleagues from the Rajah & Tann Asia network in Indonesia, Malaysia, and Thailand discussed the following issues:

- Cross-border elements to restructuring;
- Some practical issues to consider in a rehabilitation regime;
- Rights and issues of classification of creditors in an airline scheme;
- Potential effect of the Cape Town Convention; and
- Recognition of foreign insolvency orders under the UNCITRAL Model Law.

The speakers comprised Francis Xavier, SC, Regional Head of Rajah & Tann's Dispute Resolution Group, Sim Kwan Kiat and Wilson Zhu from the Restructuring & Insolvency Practice, Chua See Hua (Christopher & Lee Ong), Ibrahim Assegaf (Assegaf Hamzah & Partners), and Pakpoom Suntornvipat (R&T Asia (Thailand)).

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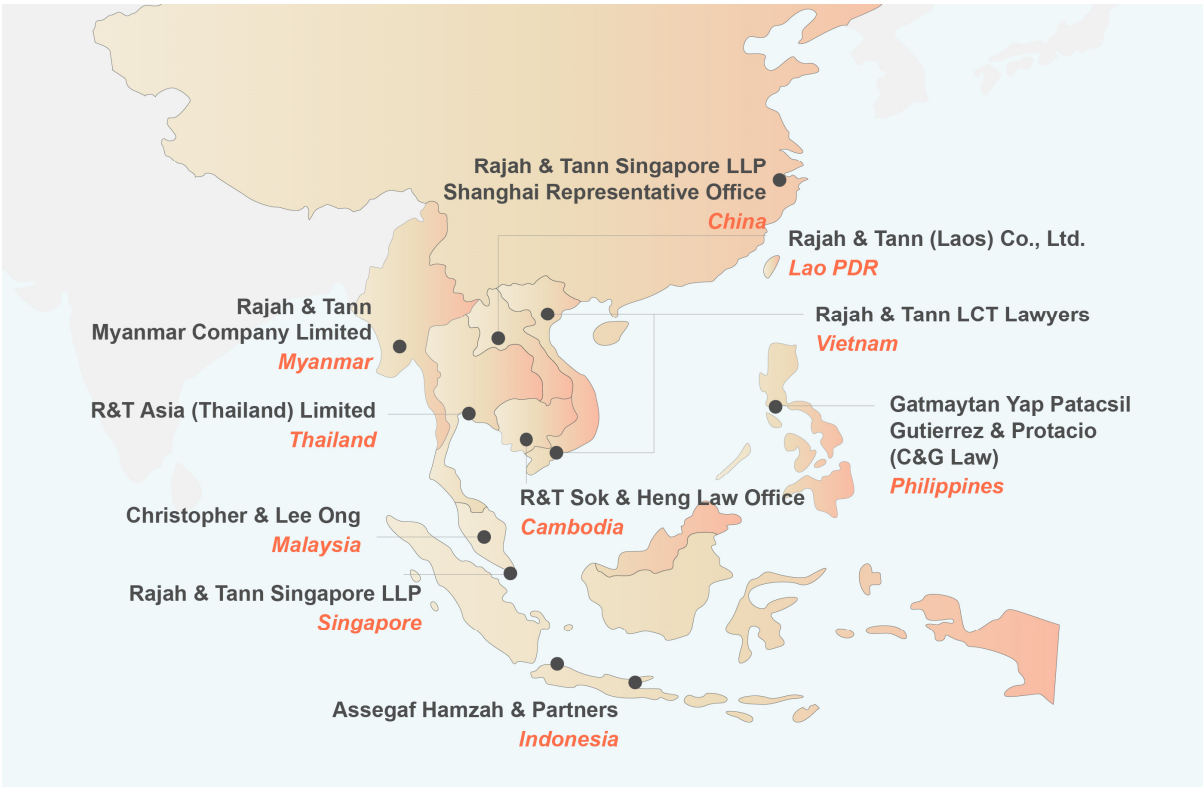
Our Regional Presence



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.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.