RAJAH & TANN ASIA

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Rajah & Tann Singapore Lawyers Win Lexology Client Choice Awards 2021

Rajah & Tann Singapore is pleased to announce that Avinash Pradhan, Benjamin Teo and Philip Yeo have been named winners of this year's Lexology Client Choice Award, in the Construction, Insurance & Reinsurance, and Private Funds categories, respectively.

Our partners are among winners from across 73 jurisdictions worldwide, who have been globally recognised for their outstanding client care, service quality and the ability to add real value to clients' businesses, above and beyond the other players in the market. This recognition once again affirms our promise of delivering the highest standards of service to our clients through unrivalled skills, expertise, and responsiveness.

Published annually, Lexology's research is based on the assessment of more than 2,000 individual clients who rate partners on the following client service criteria: quality of advice, commercial awareness, industry knowledge, strategic thinking, billing transparency, tailored fee structures, value for money, responsiveness, effective communication, clarity of documentation, sharing of expertise, appropriate staffing, project management, use of technology, loyalty, and ethics.

Click here to read our Press Release.

LegisBytes

Capital Market

ASEAN Capital Markets Forum Initiatives on Sustainability and Connectivity

Sustainability and connectivity were forefront on the agenda of the 35th ASEAN Capital Markets Forum ("**ACMF**") meeting held on 18 October 2021. The ACMF is a high-level grouping of capital market regulators from all 10 Association of Southeast Asian Nations ("**ASEAN**") jurisdictions. Outlined below are some of the key initiatives discussed:

(a) **ASEAN Taxonomy**. Close cooperation in developing a sustainable finance taxonomy for ASEAN. On this front, ACMF, ASEAN Insurance Regulators' Meeting (AIRM), the Senior Level Committee on Financial Integration (SLC), and the ASEAN Working Committee on Capital Market Development ("**WC-CMD**") have worked closely to develop the taxonomy. The ASEAN Taxonomy Board (ATB) has, on 10 November 2021, announced its first milestone in the development of a multi-tiered regional taxonomy for ASEAN in conjunction with COP26 by the release of the ASEAN Taxonomy for Sustainable Finance (ASEAN Taxonomy) – Version 1.

(b) **Roadmap**. Various cross-cutting initiatives such as encouraging corporate sustainability disclosures, exploring transition standards,

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and creating sustainable and responsible fund standards for ASEAN, among other things, between ACMF's Roadmap for ASEAN Sustainable Capital Markets ("**ACMF Roadmap**") and the WC-CMD's Report on Promoting Sustainable Finance in ASEAN.

(c) **Connectivity**. Enhancing connectivity is also one of the key priorities in the ACMF Roadmap. In this regard, ACMF is working on, among other initiatives, creating a public database of sustainable products, projects, and investors, building on "multilateral and philanthropic efforts" to advance sustainable finance and encourage both regulators and players of capital markets to work together to ensure that efforts between public and financial sectors are aligned.

(d) **Capacity building**. Capacity building, another one of the priorities in the ACMF Roadmap, to materialise the attainment of sustainability goals. ACMF is focussed on augmenting technical competence, facilitating knowledge transfer, and promoting public awareness with the goal of creating a one-stop knowledge hub on sustainable finance and boosting the expertise of regulators in this area.

(e) **Standardised corporate sustainability disclosures**. For standardised and meaningful corporate sustainable disclosures across ASEAN, ACMF discussed climate reporting for listed companies by reference to international standards, such as the Task Force on Climate-Related Financial Disclosures (TCFD), as well as setting global baseline sustainability reporting standards.

(f) **ASEAN Asset Class**. Promotion of ASEAN asset classes with the latest admission of the Securities and Exchange Commission Philippines into the Framework for Cross-Border Offerings of ASEAN Collective Investment Schemes ("**ASEAN CIS**") earlier in May 2021. To provide guidance to operators of ASEAN CIS looking to offer CIS under the ASEAN CIS, the revised Handbook for ASEAN CIS and their Operators was launched on 11 October 2021.

(g) **ASEAN Corporate Governance Scorecard (ACGS) Country Report Manuscript**. The ACGS assesses the corporate governance performance of and ranks public-listed companies in participating countries. This publication will raise the public awareness of these top-performing companies.

Click on the following links for more information (available on the ACMF website at www.theacmf.org):

- ACMF News Release titled "ASEAN Capital Markets Forum forges ahead in pursuit of Sustainability and Connectivity"
- ACMF News Release titled "ASEAN Sectoral Bodies release ASEAN Taxonomy for Sustainable Finance - Version 1"
- ACMF's Roadmap for ASEAN Sustainable Capital Markets

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Consumer Protection

Steering Away from Unfair Trade Practices

Consumer protection is taken seriously in Singapore. The Consumer Protection (Fair Trading) Act ("**CPFTA**"), administered by the Competition and Consumer Commission of Singapore ("**CCCS**"), protects consumers against unfair practices, while the Consumers Association of Singapore ("**CASE**") generally first reviews complaints from local consumers.

Recent Case Highlight: State Courts Order Fire Extinguisher Supplier to Cease Unfair Trading Practices

In a recent case, the State Courts – on application by CCCS – ordered Fire Safety & Prevention (SG) ("**FSPSG**") to cease unfair trading practices involving the supply of fire extinguishers. CCCS' investigations showed that the sole proprietor, Kelvin Tan, and his employees (and ex-employees) "had persistently engaged in unfair practices under the CPFTA by making false and misleading claims while carrying out unsolicited door-to-door sales".

Considering the facts as a whole, the Court ordered that, among other things, with effect from 7 September 2021: (i) Kelvin Tan trading as FSPSG was declared to have engaged in the unfair practices and was to stop engaging in any of these unfair practices and any unfair practices under the CPFTA; and (ii) various employees (or ex-employees) to stop abetting or aiding FSPSG to engage in any of the unfair practices and any unfair practices under the CPFTA.

The aim of the sanctions/constraints goes to the root of doing business as the commercial impact can be prohibitive, impacting not only the company in violation, but also employees of the company.

CASE Initiatives to Combat Unfair Trade Practices

Traders should also pay attention to the recent initiatives launched by CASE to target errant suppliers engaged in specific industries or practices. These initiatives have been launched given the rise in e-commerce and the increasing number of unfair practices surfacing, and also to ensure consumers are protected where there are large prepayments to be made or where they are seemingly putting themselves into heavy debt. These include:

(a) Strengthening Consumer Protection in E-commerce;

(b) Strengthening Protection Against Large Prepayments;

(c) Combating the Rise of Personal Debt;

(d) Price Transparency Initiatives such as the CCCS Guidelines and comparative online platforms; and

(e) Faster Action in Dealing with Errant Suppliers.

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

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Corporate Commercial

Impending Legislative Changes to Enhance Transparency and Beneficial Ownership of Companies, Foreign Companies, and LLPs

In July 2021, the Ministry of Finance ("**MOF**") and the Accounting and Corporate Regulatory Authority ("**ACRA**") conducted a public consultation on proposed revisions to the Companies Act ("**CA**") and the Limited Liability Partnerships Act to improve the transparency and beneficial ownership of companies and limited liability partnerships ("**LLPs**").

The consultation ended on 30 July 2021, and ACRA recently published responses to feedback received on the consultation.

The proposed revisions aim to mitigate misuse of corporate entities for illicit purposes, in line with the Financial Action Task Force's standards to combat money laundering, terrorism financing, and other threats to the financial system.

The key proposed amendments relate to:

(a) The imposition of statutory timelines for updating changes to the register of members of a foreign company.

(b) A new requirement on Singapore companies, foreign companies, or LLPs to register individuals with executive control in their register of controllers under prescribed circumstances.

E.g. where the Singapore company, foreign company or LLP knows or has reasonable grounds to believe that the entity has no registrable controllers, or has a registrable controller but has not been able to identify the registrable controller.

(c) The imposition of statutory timelines for updating the register of nominee directors of a Singapore company.

(d) A new requirement on Singapore companies and foreign companies to keep a non-public register of nominee shareholders.

The proposed definition of nominee shareholder is one who:

(i) is *accustomed* or under an obligation (whether formal or informal) to vote, in respect of shares in the company or foreign company of which the shareholder is the registered holder, in accordance with the directions, instructions or wishes of any other person; and
(ii) receives dividends, in respect of shares in the company or foreign company of which the shareholder is the registered holder, on behalf of any other person.

ACRA will publish further guidance on the definition, including the concept of "accustomed".

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These proposed changes are set out in the draft Corporate Registers (Miscellaneous Amendments) Bill, which was presented in Parliament on 1 November 2021 and is slated for second reading in January 2022.

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

Public Consultation on Proposed Amendments to Limited Partnerships Act

A limited partnership ("**LP**") is a vehicle for doing business in Singapore, comprising at least one general partner who takes on unlimited liability for the partnership's obligations (usually the fund manager), and one or more limited partners (investors) who are not personally liable for the partnership's obligations beyond their agreed commitments, provided they do not take part in the management of the LP.

LPs are popular among investment funds due to the relative ease of day-to-day administration and management and flexibility in the capital structure.

Their features include:

(a) Limitation of liability for investors;
(b) Greater privacy than companies;
(c) Greater flexibility than companies; and
(d) Tax transparency, as the partnership is not treated as a distinct tax entity from the partners.

In Singapore, LPs are governed by the Limited Partnerships Act ("**LP Act**"). On 4 October 2021, the Accounting and Corporate Regulatory Authority ("**ACRA**") announced a public consultation running from 4 October 2021 to 1 November 2021 on 14 proposed changes to the LP Act, as set out in Annex A of the consultation documents, to:

(a) make the limited partnership vehicle more attractive to fund LPs by:

- adding a specific definition of "fund LP";
- expanding safe harbour activities that limited partners may engage in without losing their limited liability status;
- disapplying fiduciary duties to limited partners;
- regulating the transfer of interests; and
- introducing a re-domiciliation regime.

(b) update existing provisions in the LP Act for all types of LPs by:

- expanding the types of entities who may be a general or limited partner;
- clarifying that a general or limited partner can be acting in the capacity of a trustee or representative capacity;
- regulating assignment and transfer of interests;
- not requiring limited partners to obtain a court order for winding up the LP; and
- allowing a grace period for a replacement general partner to be appointed.

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

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Employment & Benefits

New Measures to Support Retention of Work Permit Holders in Construction, Marine Shipyard and Process Sectors

On 30 October 2021, the Ministry of Manpower ("**MOM**") announced that it would be introducing measures to better support employers and facilitate the retention of Work Permit Holders ("**WPHs**") in the Construction, Marine Shipyard and Process ("**CMP**") sectors.

Extension of Retention Scheme to Marine Shipyard and Process Sectors

A retention scheme was introduced on 1 September 2021 for the construction sector for WPHs whose employment had been terminated but wished to continue working in Singapore. This included facilitating job-matching between WPHs and employers, and mediating to ensure a transparent and beneficial transfer process. The scheme will be in place until 28 February 2022, subject to further review.

The retention scheme will be extended to employers in the marine shipyard and process sectors, with MOM partnering the Association of Singapore Marine Industries (ASMI) and Association of Process Industry (ASPRI) respectively. Further details will be shared in due course.

Adjustment of Change of Employer ("**COE**") Without Consent Period for WPHs in CMP Sectors

Currently, prospective employers can hire a WPH without the original employer's consent in the 21 to 40 days period before expiry of the work permit. Going forward, WPHs will remain in employment with the original employer until their work permit expires. The work permit may then be extended for a 30-day period, subject to mutual agreement between the WPH and his employer.

(a) **Agreement to extend the work permit**. During this 30-day period, the WPH may search for a new employer without the original employer's consent, while continuing to work for the original employer.

(b) **No agreement to extend the work permit**. The WPH will be enrolled in the relevant retention scheme.

This adjustment will be implemented progressively from 8 November 2021, first in the construction sector and subsequently in the marine shipyard and process sectors.

Click on the following link for more information:

- MOM Press Release titled "New Measures To Support Retention Of Work Permit Holders In The Construction, Marine Shipyard and Process Sectors" (available on the MOM website at www.mom.gov.sg)

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Upcoming Changes to Retirement and Re-employment Ages

In a move to support older workers who wish to continue working, the Retirement and Re-employment (Amendment) Bill 2021 ("**Bill**") was passed in Parliament on 2 November 2021 to provide for changes to the retirement and re-employment ages.

By way of background, the Retirement and Re-employment Act establishes minimum ages for retirement and re-employment. With the passing of the Bill, these ages will be revised to support older workers to continue working for longer (if desired) and improve their retirement adequacy.

	Retirement	**Re-employment**
Current prescribed ages	62 years of age	67 years of age
Employer obligations	May not terminate an employee on grounds of age before the retirement age	Must offer re-employment to eligible workers who are between 62 to 67 years of age
New maximum ages that can be prescribed	65 years of age	70 years of age
To be prescribed effective from 1 July 2022	63 years of age	68 years of age

The timing of subsequent raises will be subject to the tripartite partners' agreement, but the ultimate aim is for retirement and re-employment ages to be raised by 2030 to the new statutory maximum of 65 and 70 years of age, respectively.

This move is taken in conjunction with planned increases in the Central Provident Fund ("**CPF**") contribution rates for senior workers. The first increase by up to 2% will take effect from 1 January 2022, having been postponed by a year from the original date of 1 January 2021 due to the COVID-19 pandemic.

Employers should note that grants are available through these transitions to assist them to better support older workers who are willing and able to continue working. These include:

(a) **CPF Transition Offset** – transitionary wage offsets equivalent to 50% of the increase in employer CPF contribution rates
(b) **Senior Employment Credit** – wage offsets of up to 8% for workers earning below S$4,000 and are aged 55 and above
(c) **Senior Worker Early Adopter Grant** – up to S$125,000 per employer for raising internal retirement and re-employment ages above minimum requirements
(d) **Part-time Re-employment Grant** – up to S$125,000 per employer for committing to providing part-time re-employment opportunities

Click on the following links for more information:

- Retirement and Re-employment (Amendment) Bill (available on the Singapore Statutes Online website at www.sso.sgc.gov.sg)

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- MOM Press Release titled "Retirement and Re-Employment (Amendment) Bill 2021 and CPF (Amendment) Bill 2021" (available on the MOM website at www.mom.gov.sg)
- Second Reading Speech by Minister for Manpower on Retirement and Re-Employment and CPF Amendment Bill (available on the MOM website at www.mom.gov.sg)

Financial Institutions

Singapore Banks and Subsidiaries to Implement Contractual Recognition Requirement to Recognise MAS' Power to Temporarily Suspend Contractual Termination Rights against FIs in Resolution

In October 2018, the Monetary Authority of Singapore Act ("**MAS Act**") was amended to empower the Monetary Authority of Singapore ("**MAS**") with enhanced powers to resolve distressed financial institutions ("**FIs**") in an orderly manner. Such powers include, among other things, allowing MAS to temporarily suspend counterparties' exercise of any termination right in a contract with a pertinent FI in resolution. Pertinent FIs include banks, finance companies, merchant banks, financial holding companies, operators of designated payment systems, and approved exchanges.

In relation to temporary stays on termination rights, MAS had proposed to impose a contractual recognition requirement for qualifying pertinent FIs ("**QPFIs**") and their related entities to include enforceable provisions in their financial contracts which contain early termination rights where such contracts are governed by foreign law. The effect of the provisions is to have all parties to the contract agree that their exercise of termination rights will be subject to MAS' temporary stay powers in the event of a resolution. In view of industry feedback, MAS has delayed implementing this proposal so that MAS can get further feedback from the industry.

On 1 November 2021, the Monetary Authority of Singapore (Resolution of Financial Institutions) Regulations 2018 ("**MAS Resolution Regulations**"), which were enacted in 2018 to set out the details of the MAS enhanced powers to resolve distressed FIs, were revised to implement this proposal. The amendment imposes the contractual recognition requirement on certain banks incorporated in Singapore ("**Singapore Banks**") and their subsidiaries.

Key Aspects of the Contractual Recognition Requirement

(a) **Scope of QPFIs**. Only Singapore Banks to which a direction for recovery plan has been issued under section 43(1) of the MAS Act, and subsidiaries of these Singapore Banks, will be subject to the contractual recognition requirement.

The contractual recognition requirement will not apply to Singapore branches of foreign-incorporated banks. It is recognised by MAS that it is too onerous for these branches to identify contracts that relate to the branches' activities, from among the financial contracts entered into by their head offices, and that these branches are subject to their home jurisdiction's resolution regime which would have imposed their own contractual recognition regimes.

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(b) **Scope of Contracts**. To complement any resolution measures taken in relation to the FI, MAS has the statutory powers to temporarily suspend the termination rights of a counterparty to a financial contract with an FI in resolution. As such, the scope of contracts covered under the contractual recognition requirement is correspondingly broad and apply to:

(i) a financial contract which is governed by foreign law and which contains a termination right; and
(ii) any contract which falls within (i) above entered into, or any transaction executed under a contract which falls within (i), above, on or after such date which is three years after the commencement of the contractual recognition requirement (relevant date).

(c) **Enforceability of Provisions Recognising MAS' Temporary Stay Powers**. Though FIs are not required to obtain legal opinions on the enforceability of the provisions, QPFIs (and their subsidiaries) are expected to satisfy themselves that the provisions are enforceable and where necessary, demonstrate the same.

Transitional Period

QPFIs have three years from 1 November 2021 to implement the contractual recognition requirement.

Click on the following links for more information:

- MAS Response to Feedback Received on Proposed Regulations to Enhance the Resolution Regime for Financial Institutions in Singapore (29 October 2021) (available on the MAS website at www.mas.gov.sg)
- MAS Consultation Paper on Proposed Regulations to Enhance the Resolution Regime for Financial Institutions in Singapore (16 July 2018) (available on the MAS website at www.mas.gov.sg)
- Monetary Authority of Singapore (Resolution of Financial Institutions) (Amendment No. 2) Regulations 2021 (available on the Singapore Statutes Online website at www.sso.sgc.gov.sg)

Exemption Frameworks for Cross-Border Business Arrangements for Foreign Offices & Foreign Related Corporations of Singapore FIs Take Effect

On 9 October 2021, the Monetary Authority of Singapore ("**MAS**") put in place an exemption framework to exempt the foreign head offices or branches (collectively, "**Foreign Offices**" or "**FOs**") of relevant financial institutions in Singapore ("**Singapore FIs**") conducting capital markets services and/or financial advisory services from applicable business conduct and representative notification requirements when the FOs conduct business in Singapore, subject to boundary and notification conditions ("**Branch Framework**"). The Branch Framework aims to level the playing field between FOs and foreign-related corporations of the Singapore FIs ("**FRCs**") which provide cross-border financial services in Singapore under a MAS approved arrangement with the Singapore FI ("**FRC Framework**").

At the same time, the FRC Framework has been streamlined, moving away from the case-by-case approval approach to an ex-post notification

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approach. Before 9 October 2021, FRCs have to be approved by MAS to operate under the FRC Framework so that they are exempted from the licensing and applicable business conduct requirements under the Securities and Futures Act (SFA) and Financial Advisers Act (FAA).

The new Branch Framework and revised FRC framework apply to the following Singapore FIs:

(a) Capital markets services licence holders (other than venture capital fund managers);

(b) Licensed financial advisors;

(c) Banks, merchant banks, finance companies, insurers conducting relevant capital markets services and financial advisory businesses as exempt capital market intermediaries or exempt financial advisors; and

(d) Exempt futures brokers and exempt over-the-counter derivatives brokers, which have entered into cross-border arrangements with their FOs or FRCs to conduct regulated activities under the SFA and/or financial advisory service (other than advising other by issuing or promulgating research analyses or research reports) under the FAA ("**Arrangements**").

With effect from 9 October 2021, FOs or FRCs of Singapore FIs must ensure that their new Arrangements comply with the boundary conditions under the Branch Framework or FRC Framework and submit notifications of such arrangements to MAS within 14 calendar days from the commencement date of the arrangements. FOs or FRCs which are currently operating under existing approved cross-border business arrangements or relevant exemptions before 9 October 2021 will have 12 months (on or before 8 October 2022) to comply with the boundary conditions under the new Branch Framework or revised FRC Framework and submit notifications on such arrangements to MAS. There will be no "grandfathering" of existing arrangements from the notification requirement.

For more information, click here to read our Legal Update which elaborates on the:

(a) scope and boundary conditions under the Branch Framework and FRC Framework;

(b) notification requirement for cross-border arrangements under the Branch Framework and the FRC Framework; and

(c) ongoing requirements in relation to a Singapore FI's cross-border arrangements with its FOs and FRCs (including anti-money laundering and countering of the financing of terrorism (AML/CFT) requirements).

This development follows from the public consultation exercises conducted by MAS in December 2018, and March and May this year to gather feedback on the operation details on the two Frameworks.

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MAS Second Consultation on Proposed Revisions to Business Continuity Management Guidelines to Strengthen FIs' Operational Resilience

In 2019, the Monetary Authority of Singapore ("**MAS**") conducted a consultation on Proposed Revisions to Guidelines on Business Continuity Management ("**BCM**") ("**Guidelines**") for financial institutions ("**FIs**") to adopt an end-to-end view to ensure the continuous delivery of critical business services, and proposed principles and practices to strengthen FIs' operational resilience.

Following feedback received on the consultation in 2019, MAS issued a second consultation paper on 15 October 2021 that included further revisions that took into consideration these feedback and key lessons from the COVID-19 pandemic ("**Second Consultation**"). This Second Consultation ended on 15 November 2021.

Key proposed revisions to the Guidelines are outlined below:

(a) **Identify critical business services and functions.** FIs should identify their critical business services and functions based on the impact their unavailability has on the FIs' safety and soundness, customers, FIs' counterparties, and other participants in the financial ecosystem. For recovery strategies, FIs should adopt an end-to-end view of critical business services' dependencies and consider the recovery of the complete set of processes supporting the delivery of the service.

(b) **Service Recovery Time Objectives ("SRTOs") for each critical business service.** SRTOs serve to help decision-making and monitor recovery progress following a disruption. FIs should establish SRTOs for each critical business service so that FIs and their third parties are clear on the recovery expectations. In setting SRTOs, some factors to consider include obligations to customers, the financial ecosystem, and its participants. FIs are also expected to set up and implement recovery strategies to meet the SRTOs. In addition, FIs should set out clear and defined thresholds to activate business continuity plans in the event performance of a critical business service is reduced or intermittent, but not to the extent where it is completely unavailable.

(c) **Map interdependencies**. For each critical business service, FIs must identify and map interdependencies on people, processes, and technology, including those involving third parties. This aids FIs to identify resources critical to the service delivery. FIs should use the information to verify that recovery of business functions and dependencies will meet the established SRTOs.

In addition, FIs must perform due diligence to check that third parties can meet the SRTOs of critical business services. The second consultation paper details various measures, for instance by regularly reviewing operational level agreements with third parties and conducting regular audits. For interdependency risks that are beyond FIs' direct control to mitigate completely, FIs must implement risk-mitigating measures such as redundancy and back-up arrangements.

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(d) **BCM Audits**. FIs must ensure that their audit programmes adequately cover an assessment of the FI's preparedness in regard to BCM. The scope and frequency of such assessments are proportionate to the criticality of the business services and functions. BCM audits should be conducted by a qualified independent party. FIs must have in place processes to monitor the implementation of remedial actions following audit findings, and for the escalation of significant lapses to the Board and senior management. These BCM audit reports must be submitted to MAS upon request.

FIs should continue to refer to the previous BCM Guidelines published in June 2003 and MAS Circular SRD BCM 01/2006. FIs will be expected to adopt the revised Guidelines within a year following the publication of the Revised Guidelines. The revised Guidelines will supersede the previous BCM Guidelines published in June 2003 and MAS Circular SRD BCM 01/2006.

For details on MAS' proposals as well as MAS' response to feedback received on the first consultation, please refer here. The text of the revised Guidelines is set out at Annex B to the second consultation paper.

MAS Consults on Proposals to Make Appeal Process under MAS-Administered Acts More Efficient and Fair

The Monetary Authority of Singapore ("**MAS**") executes various supervisory and regulatory actions concerning breaches of laws and regulations it administers. The relevant MAS-administered Acts provide for appeal by persons subject to certain decisions of MAS to appeal to the Minister. Some of these cases involve an appeals advisory committee ("**AAC**") that makes recommendations to the Minister.

For a more efficient, fair, and practical appeal process, MAS proposes various revisions to provisions concerning appeals involving an AAC under the respective legislation administered by MAS, namely the Securities and Futures (Appeals) Regulations; the Financial Advisers (Appeals) Regulations; the Business Trusts (Appeals) Regulations; the Insurance (Appeals) Regulations; and the Trust Companies (Appeals) Regulations ("**Appeals Regulations**").

Detailed proposals are set out in the MAS consultation paper titled "*Consultation Paper on Proposed Amendments to Appeals Regulations*". The consultation ran from 14 October 2021 to 15 November 2021. Outlined below are key MAS proposed amendments to the appeal process:

Filing of cases by parties	***Filing Order***: MAS proposes reversing the order in which parties file their respective cases, such that MAS will file its case first before the appellant. ***Filing Timelines***: MAS proposes an extended filing timeline – both parties will have 28 days (up from the current 21 days for appellant and 14 days for MAS).
AAC's Powers regarding appeal	***Case management conference ("CMC")***: MAS proposes a flexible approach instead of fixed timelines for submission of documents. This will take the form of a CMC where the AAC gives directions concerning timelines for

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	submissions, form, and manner of conducting the CMC, taking into account parties' feedback. ***Extended timeline to conduct hearing***: Instead of the current 28 days, MAS proposes to extend the timeframe for the AAC to conduct the hearing within 42 days of the appellant filing his case. ***Different forms of hearing***: Instead of an oral hearing, it is proposed that AAC be empowered to conduct hearings by way of written submissions as well as video conferences.
Other matters pertaining to appeal	***Consolidation of appeal proceedings***: For efficient and consistent consideration by the AAC of closely connected MAS decisions, MAS proposes empowering the AAC to order appeal proceedings to be consolidated and heard together. ***Confidentiality of documents/information***: At present, if MAS deems that it is against public interest to furnish certain information to the appellant, MAS may at its sole discretion withhold the disclosure of information to an appellant. Disclosure may not be ordered by the AAC. For a fair process, MAS proposes instituting certain safeguards to ensure that there is a proper and fair basis for claiming protection from disclosure. ***Submission of summary of arguments***: To address the issue of lengthy closing submissions, MAS proposes having each party submit a summary of their respective arguments to the AAC at the close of an appeal hearing, and for the ACC to include these summaries in its report to the Minister.

Click on the following link for more information:

- Consultation Paper on Proposed Amendments to Appeals Regulations (available on the MAS website at www.mas.gov.sg)

MAS Consults on Features & Legislative Framework of Digital Platform for FIs to Share Information for AML/CFT Purposes

The Monetary Authority of Singapore ("**MAS**") held a public consultation on deploying a secured digital platform, COSMIC (Collaborative Sharing of ML/TF Information & Cases), that will allow financial institutions ("**FIs**") to share "risk information" to help them detect and disrupt illicit transactions in a timelier manner. "**Risk information**" relates to the particulars of a customer (including the beneficial owners and authorised signatories of the customer) and transactions, money laundering ("**ML**"), terrorism financing ("**TF**"), and proliferation financing ("**PF**") risk observations or analysis relating to the customer, or the high-risk behaviour exhibited.

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The consultation ended on 1 November 2021, with MAS intending to launch COSMIC in phases starting in the first half of 2023.

COSMIC is intended to plug the existing information gap caused by FIs not being permitted to warn each other about potentially suspicious activity involving their customers, by enabling FIs to query and alert each other on potential illicit behaviours in a timely fashion.

Key Features of COSMIC

(a) **Information Permitted to be Shared**. Sharing on COSMIC is proposed to be permitted only: (i) to address potential ML, TF or PF concerns in key risk areas; (ii) if the customer's behaviours and transaction activities exhibit multiple red flags that cross risk thresholds to suggest that potential financial crime could be taking place; and (iii) in the data format specified by MAS, such that only relevant risk information is shared, and in a proportionate manner.

(b) **Modes of information-sharing**. Depending on the level of ML/TF/ PF risks exhibited by a customer, an FI will be able to share risk information with another FI through COSMIC in three ways:

- *Request*: Customer's activities exhibited red flag behaviour, raising suspicion of involvement in illicit activity
- *Provide*: Customer's unusual activities indicated greater risk of involvement in illicit activity
- *Alert*: Customer's activities exhibited higher threshold of red flags, FI has filed suspicious transaction report and terminated relationship

Key Aspects of Proposed Legislative Framework

The proposed regulatory framework will be set out in the Financial Services and Markets Bill, which is targeted to be introduced in Parliament later this year. The proposed framework contains three main aspects relating to: (i) safeguarding confidentiality of information sharing; (ii) statutory protection against civil liabilities; and (iii) sharing of information on COSMIC with local and overseas affiliates of FIs, and third parties.

Essentially, information sharing by FIs is permitted only for anti-money laundering/countering the financing of terrorism (AML/CFT) purposes. All COSMIC participants are required to implement robust measures to safeguard against unauthorised use and disclosure of COSMIC information. MAS will supervise FIs for compliance with these requirements and will take action against errant FIs.

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

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Private Client

Launch of New Family Office Network for Business Families and Professionals

On 20 October 2021, the Wealth Management Institute ("**WMI**") announced the launch of the Global-Asia Family Office Circle ("**GFO Circle**"), a new network platform that seeks to be the leading voice and umbrella association for family offices in Singapore and Asia.

With the number of family offices in Singapore doubling to approximately 400 between 2019 to end-2020, the GFO Circle aims to tap on this momentum to strengthen links across the family office community. It seeks to become a trusted environment for networking and knowledge-sharing by bringing together family office principals, service partners, and professionals, and is supported by the Singapore Economic Development Board ("**EDB**") and the Monetary Authority of Singapore (MAS).

Beyond community building, the GFO Circle also intends to galvanise the community towards meaningful causes such as philanthropy, sustainable finance, and supporting Singaporean and regional entrepreneurship. It will further emphasise capability development to support a stronger industry talent pipeline with greater levels of expertise. Key initiatives include:

(a) Curated networking events;
(b) Provision of education programmes, research and thought leadership forums on areas such as trusts, governance, and family office leadership;
(c) Launch of new programmes on global investment strategies, market principles, sustainable investment, and impact investing;
(d) Cross-sector collaboration opportunities; and
(e) Certification programmes for family office advisors.

Click on the following link for more information:

- EDB Press Release titled "Singapore launches new family office network for business families and professionals" (including Annex: Selected List of Upcoming Programmes under the GFO Circle) (available on the gov.sg website at www.gov.sg)

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Restructuring & Insolvency

Singapore and Malaysia Announce Protocols for Court-to-Court Cooperation in Cross-Border Insolvency and Shipping

Commercial transactions and disputes are increasingly likely to contain a cross-border element. As such, the ability of Courts to cooperate on the management of proceedings that span their respective jurisdictions will facilitate the efficient resolution of cross-border issues. In this regard, the Singapore and Malaysia Courts have demonstrated a commitment to judicial cooperation between the two countries.

On 5 October 2021, the Supreme Court of Singapore and the Federal Court of Malaysia announced the implementation of Protocols on Court-to-Court communication and cooperation in Admiralty, Shipping and Cross-Border

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Insolvency matters ("**Protocols**"). The Protocols put in place a framework for cooperation and communication between the two Courts to facilitate the efficient and timely coordination and administration of prescribed types of cases.

The Protocol on cross-border corporate insolvency matters applies to the following types of proceedings commenced in Malaysia and Singapore (or other similar processes as are available in Malaysia and Singapore):

(a) Winding up;
(b) Judicial management;
(c) Schemes of arrangement for debt restructuring; or
(d) Receivership in the context of corporate insolvency.

The Protocol on related admiralty and shipping matters applies to the following types of proceedings commenced in Malaysia and Singapore:

(a) Proceedings involving claims coming within the admiralty jurisdiction of either Court;
(b) *In rem* proceedings that involve the arrest of the same vessel, including the release or judicial sale in Malaysia or Singapore; or
(c) Proceedings that arise out of the same casualty and which involve parties to an existing limitation action in Malaysia or Singapore.

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

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Sustainability

New National Standards for Renewable Energy Certificates

To support renewable energy deployment in Singapore and the region, the Singapore Standards Council, Enterprise Singapore, National Environment Agency, and Energy Market Authority launched a first-in-Southeast Asia set of standardised guidelines for Renewable Energy Certificates ("**RECs**"), Singapore Standards (SS) 673 on the Code of Practice for RECs ("**SS 673**") on 26 October 2021.

What are RECs?

RECs are "*market-based instruments to substantiate that electricity has been generated from renewable energy sources*". Energy users typically buy RECs to show that they utilise renewable energy sources.

Key Features of Standardised Framework

SS 673 sets out a framework for issuing and managing RECs. It is a voluntary standard providing guidance on best practices that covers the lifecycle of RECs, namely:

(a) Production;
(b) Tracking;
(c) Management; and
(d) Usage.

It is targeted at REC registries which are in charge of tracking RECs sold to electricity consumers in Singapore. It is also relevant to various stakeholders

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in the REC environment, for instance renewable energy installation owners, REC intermediaries, traders, brokers, third-party verifiers, issuers, and end-users.

Key areas which SS 673 covers include:

(a) Types of renewable energy sources that are eligible to generate RECs;
(b) Roles of various stakeholders;
(c) Registration requirements of renewable energy installations that generate RECs in Singapore; and
(d) Management process of RECs. This includes how they are issued and transferred.

SS 673 also provides guidance on how to verify renewable energy installations and generation of RECs, as well as how RECs may be used.

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

- New Singapore Standard launch to support management and use of Renewable Energy Certificates
- Second Minister for Trade and Industry Tan See Leng's Speech at the Asia Clean Energy Summit on 26 October 2021

Legislative Changes to Facilitate Transition to Low-Carbon Generation Sources Passed in Parliament

On 2 November 2021, the Energy (Resilience Measures and Miscellaneous Amendments) Bill ("**Bill**"), introduced in Parliament on 4 October 2021, was passed.

One of the key effects of the Bill is to amend the Energy Market Authority of Singapore Act, the Electricity Act and the Gas Act so as to allow the Energy Market Authority ("**EMA**") to require electricity generation licensees to reduce the emission of greenhouse gases in the generation, transmission, import, export or supply of electricity. To facilitate this, the Bill:

(a) Introduces provisions in the Electricity Act allowing any code of practice issued by EMA to provide for the reduction of such emissions of greenhouse gases;
(b) Confers on EMA the function of implementing policies, strategies, and measures targeted at reducing such emissions of greenhouse gases; and
(c) Amends the Electricity Act and the Gas Act to allow EMA to adopt codes of practices, standards, or other documents, and incorporate them into the relevant regulations issued under the respective legislation.

The Bill also effects the following changes:

(a) Safeguards energy security by allowing EMA to acquire, develop, manage or operate critical infrastructure such as generating units and generating stations if the private market fails to do so. This is to ensure the reliability, availability, and continuity of electricity supply during the energy transition in light of investors' reduced inclination to the building of new generation capacity;

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(b) Enhances protection of critical electricity and gas infrastructure via the Electricity Act and the Gas Act by making it an offence to damage protective infrastructure housing cables/pipelines. Current regulatory powers only penalise offenders who damage the actual cables/pipelines; and

(c) Makes various technical amendments.

The legislative changes are in line with Singapore's commitment to reducing carbon emissions as part of its enhanced 2030 Nationally Determined Contribution and Long-term Low-emissions Development Strategy. The Bill stands as a part of Singapore's multi-decade programme to transition Singapore's electricity generation to low-carbon generation sources. It also facilitates the retirement of a number of existing natural gas fuelled power plants over the next one to two decades.

The passing of the Bill follows an earlier public consultation by the Ministry of Trade and Industry and EMA on the proposed Bill. Our earlier Legal Update on "*Public Consultation on Legislative Changes to Facilitate Transition to Low-Carbon Generation Sources*" is available here.

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

Support for Qualifying Local Green Enterprises under Enterprise Financing Scheme-Green

From 1 October 2021 to 31 March 2024, qualifying local green enterprises will be able to apply for financial support under the Enterprise Financing Scheme-Green ("**EFS-Green**") for developmental capital, fixed assets, trade, project, venture debt, and mergers & acquisition.

EFS-Green facilitates green financing through risk-sharing of 70% to support lending by partner financial institutions ("**FIs**"). These partner FIs include DBS, HSBC, OCBC and UOB.

To be eligible, the local enterprise must be:

(a) an Accounting and Corporate Regulatory Authority (ACRA)-registered business entity, with physical presence in Singapore;

(b) at least 30% owned directly or indirectly by Singaporeans and/or Singapore Permanent Residents (PRs);

(c) a Group Annual Sales Turnover not exceeding S$500 million; and

(d) a qualifying borrower type (i.e. project developer, system integrator, or technology and solution enabler) and in qualifying green sectors and activities (i.e. clean energy and decarbonisation, circular economy and resource optimisation, green infrastructure, and clean transportation).

For details on qualifying borrower types and qualifying green sectors and activities, please refer to Annex 1 of the Media release on Enhanced Financing Scheme to Support Singapore Companies to Capture Opportunities in Green Economy.

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Applications must be approved by a partner FI and reach Enterprise Singapore ("**ESG**") by 31 March 2024.

Click on the following links for more information:

- Media Release titled "Enhanced Financing Scheme to Support Singapore Companies to Capture Opportunities in Green Economy" (available on the gov.sg website at www.gov.sg)
- Enterprise Financing Scheme (available on the ESG website at www.enterprisesg.gov.sg)

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Tax

Goods and Services Tax (Amendment) Bill 2021 Tabled in Parliament

On 4 October 2021, the Goods and Services Tax (Amendment) Bill 2021 ("**Bill**") was tabled in Parliament. This follows a public consultation on the draft Bill, which was held in July 2021.

If passed, the Bill will implement the following changes:

(a) amendments to give legislative effect to the goods and services tax ("**GST**") measures which were announced in Budget 2021, namely:

- extending the ambit of GST on overseas supplies to Singapore; and
- amending the zero-rating treatment for the supply of media sales.

(b) changes arising from the periodic review of the GST regime, including extending the application of section 39 to changes in tax treatment as a result of supplies becoming or ceasing to be (i) Seventh Schedule supplies, or (ii) supplies that give rise to reverse charge supplies.

(c) technical amendments.

Key aspects of the first two categories are covered below.

Budget 2021 Measures

Ambit of GST on overseas supplies

GST will be extended to:

(a) Low-value goods that are imported via air or post. Low-value goods are goods that are valued up to the current GST import relief threshold of S$400.

(b) Business-to-consumer ("**B2C**") imported non-digital services, such as live interaction with overseas providers of educational learning and telemedicine.

The extension of GST to these imported goods and services would complement 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 by subjecting overseas

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suppliers of goods and services to the same GST treatment as local businesses.
This is proposed to take effect from 1 January 2023.

Zero-rating for media sales

Media sales generally refers to the sale of advertising space, whether in hard copy, broadcasting airtime, or online. Currently, the GST treatment of media sales depends on where the advertisement is circulated. The Bill proposes to have the GST treatment based on the place where the customer (i.e. the contractual customer) and direct beneficiary of the service belongs instead. If the customer belongs in Singapore, the media sales will be standard-rated. If the customer belongs outside Singapore and the direct beneficiary either belongs outside Singapore or is GST-registered in Singapore, the media sales will be zero-rated.

This is proposed to take effect from 1 January 2022.

Amendments from Periodic Reviews

The Bill will update the transitional rules for GST treatment, which determine whether an old or new GST treatment applies. If passed, these updated rules will apply to when the GST treatment for the supply of media sales changes from 1 January 2022.

The Overseas Vendor Registration ("**OVR**") regime and Reverse Charge ("**RC**") regime will be used to impose GST on imported low-value goods. GST on imported B2C services will be imposed via the OVR regime. Miscellaneous amendments will be made to these regimes to mitigate revenue risks, provide tax certainty, and ease compliance burden. Examples are:

(a) Clarification of who the customer is for imported services under the OVR and RC regimes, in cases where the person with whom the contract for the supply is entered into and the person who directly benefits from the supply are different persons.

(b) Allow the Comptroller to alter the time at which supplies of imported services by a Pay-Only OVR Vendor are treated as taking place, to times/dates being later than would otherwise apply under the normal time of supply rules.

(c) Amend the time of supply rules for RC businesses for employee reimbursement scenarios.

This is proposed to take effect from 1 January 2022.

Click on the following links for more information:

- Goods and Services Tax (Amendment) Bill (available on the Singapore Statutes Online website at www.sso.sgc.gov.sg)
- Ministry of Finance ("**MOF**") Press Release titled "Summary of responses to public consultation on the draft Goods and Services Tax (Amendment) Bill 2021" (available on the MOF website at www.mof.gov.sg)
- Public Consultation on Proposed GST (Amendment) Bill 2021 (available on the MOF website at www.mof.gov.sg)

Technology, Media & Telecommunications

Clarification of Amendments to Personal Data Protection Act – Follow-Up Changes to Regulations and Advisory Guidelines

The Personal Data Protection Act 2012 ("**PDPA**") has been undergoing a series of amendments pursuant to the Personal Data Protection (Amendment) Act 2020, aimed at enhancing the PDPA and strengthening organisation accountability and consumer protection. The changes have taken effect in phases, with the first phase coming into operation on 1 February 2021.

As a follow-up to the earlier changes, a number of subsequent amendments have been made to the Regulations under the PDPA – specifically, the Personal Data Protection Regulations 2021 and the Personal Data Protection (Notification of Data Breaches) Regulations 2021. These amendments ("**Follow-Up Amendments**") have taken effect from 1 October 2021, and serve to clarify the following:

(a) What constitutes "significant harm" resulting from a data breach, which would incur mandatory data breach reporting obligations;
(b) The application of the defence of prior consent to the offences of egregious mishandling of personal data; and
(c) What must be done to satisfy the obligation to provide the business contact information of Data Protection Officers.

To help organisations with compliance, the Personal Data Protection Commission (PDPC) has also updated the following resources to provide clarity on the Follow-Up Amendments:

- Advisory Guidelines on Key Concepts in the Personal Data Protection Act
- Advisory Guidelines on the Personal Data Protection Act for Selected Topics

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

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Industry Consultation on the Licensing Framework for Cybersecurity Service Providers

The Cybersecurity Agency of Singapore ("**CSA**") conducted an Industry Consultation on the Licensing Framework for Cybersecurity Service Providers ("**CSPs**") under Part 5 of the Cybersecurity Act from 20 September 2021 to 18 October 2021 ("**Industry Consultation**"). While the rest of the Cybersecurity Act came into effect on 31 August 2018, CSA intended for the licensing framework for CSPs to commence later after industry views on the implementation details had been gathered to enhance the practicality of the licensing framework. The Industry Consultation was focused on the implementation details of the licensing framework.

CSA clarified that the licensing requirements will apply to all providers of the licensable service, regardless of whether they are companies or individuals (i.e., freelancers or sole proprietorships owned and controlled by individuals)

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who are directly engaged for such services, or third-party vendors that support these companies. Resellers, or overseas CSPs who provide licensable cybersecurity services to the Singapore market, would likewise need to be licensed.

The key proposed conditions of the licensing regime include the following:

(a) **Information required for application of licence**. Information on the applicant's name, unique identification number and contact information must be provided along with information relating to the qualification or experience of the applicant or key officers relating to the licensable cybersecurity service.

(b) **Keeping of records**. Licensed CSPs are required to keep records of the name and address of the person engaging the licensee for the service, along with the date and type of service provided. The licensee is also required to collect the name and individually identifiable information of the person providing the service on behalf of the licensee.

(c) **Notification on changes to information**. Licensees are to notify the licensing officer at least 30 days before the appointment of new key officers, and within 14 days after any change or inaccuracy of the information and particulars that the licensee had previously submitted.

(d) **Professional conduct of licensee**. Licensees would be required to comply with certain requirements on professional conduct.

(e) **Provision of information to the licensing officer**. Licensed CSPs are required to provide information concerning its cybersecurity service upon request and within stipulated timeframes to assist CSA's investigations.

(f) **Licence period and licence fees**. The licence is valid for two years and is renewable two months prior to expiry. The licence fees would be S$1,000 for business entities and S$500 for individuals. No application fees will be imposed on CSPs for the grant or renewal of licences.

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

CaseBytes

Court of Appeal Clarifies When Conditions May Be Imposed for Stay of Court Proceedings in Favour of Arbitration

Whilst the Singapore Court is empowered to impose terms and conditions as it may think fit when ordering a stay of court proceedings in favour of arbitration, when will it do so? This question was answered by the Court of Appeal in *The Navios Koyo* [2021] SGCA 99 where it also considered whether the quantum of a potentially time-barred claim may be taken into consideration in assessing whether a waiver of a time bar defence should be imposed as a condition for the stay.

The Appellant in this case had brought a claim against the Respondent pursuant to certain bills of lading. The bills of lading were found to contain

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an arbitration clause, as well as a one-year time bar for the bringing of any claim in arbitration. However, by the time the Appellant sought and obtained a copy of the bills of lading, more than a year had passed from the relevant date. The Appellant argued before the Court of Appeal that the stay of court proceedings in favour of arbitration should be conditional on the waiver of the time bar defence in the arbitration proceedings.

The Court of Appeal declined to impose any condition on the facts of the case. The Court cautioned that a "heightened level of scrutiny" will be given when conditions affecting the substantive rights of the parties are sought and stated that the Court would have regard to the following factors in assessing when it may be appropriate to impose conditions for a stay of court proceedings in favour of arbitration:

(a) The reasons for the conditions being sought, and whether those reasons could have been obviated by the party's own conduct;
(b) Whether the need for any of the conditions was contributed to or caused by the conduct of the counterparty; and
(c) The substantive effect on the parties of any condition that the court may impose (if the condition sought may deprive a party of a substantive and accrued defence, it is a very strong factor *against* the imposition of such a condition).

The Court of Appeal also clarified that the size of the claim is irrelevant in determining whether the condition sought ought to be imposed.

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

Breach of Contract – Liability of Directors and Relevance of Post-Breach Events in the Assessment of Damages

In *Iventure Card Limited & 2 Ors V Big Bus Singapore City Sightseeing Pte Ltd & 2 Ors* [2021] SGCA 97, the Singapore Court of Appeal held that a director will be protected from liability for his company's breaches of contract, notwithstanding that he procured such breaches, if in so doing he did not breach any of his personal legal duties to the company. This is consistent with the principle enunciated in *Said v Butt* [1920] 2 KB 497 adopted by the Court of Appeal in *PT Sandipala Arthaputra and others v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 1 SLR 818, which provides that when a director acts *bona fide* within the scope of his authority, he is immune from tortious liability for procuring his company's breach of contract.

The Court of Appeal also held that a trial court may take into account events post-dating the breaches in appropriate cases when assessing damages for anticipatory breaches of contract. The fact that this approach may undermine commercial certainty does not in itself justify a departure from the compensatory principle that damages are awarded for a breach of contract to put the innocent party in as good a position as if the contract had been performed, as doing so otherwise would end up awarding a claimant windfall damages representing benefits it would not have obtained if the contract had been performed. Similarly, an appellate court, in assessing the damages awarded by the trial court, may take into account supervening events known to it but not to the trial court in exceptional situations where the supervening events fall outside the field or area of uncertainty in which the trial judge's estimate had previously been made, where the said events falsify basic assumptions common to both sides, or where to refuse to take the events into account would affront common sense or a sense of justice.

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In this case, the Court of Appeal found that the assessment of the lost profits from the three agreements made by the appellants' expert witness was with hindsight overly optimistic since it did not take into account the COVID-19 pandemic, which had an unprecedented and severe impact on tourist activity in Singapore and around the world in 2020, and such effects certainly persisted during the period up to 26 September 2020 when the agreements would have expired. The Court of Appeal thus set aside the judge's award of damages due from the defendants to the appellants for breaches of contract. Unless the parties could come to an agreed reduction in the aforesaid damages to be awarded as a result of the COVID-19 pandemic, the matter of assessing the damages would have to be remitted back to the Judge to receive evidence in order to decide on the appropriate reduction to be made to the damages in the period from 25 March 2020 to 26 September 2020. It is to be assumed that there would be no tourists in Singapore from 25 March 2020 up to 26 September 2020 when the agreements would have expired.

Determining the Extent of an Arbitral Tribunal's Remedial Powers

An arbitral tribunal's remedial powers are broad and akin to a court's powers under section 12(5)(*a*) of the International Arbitration Act ("**IAA**"). However, its power to grant a remedy or relief does not include the High Court's coercive powers. The enforcement of arbitral awards, orders and directions are matters squarely within the domain of the courts.

In *Bloomberry Resorts and Hotels Inc. & Anor v Global Gaming Philippines LLC & Anor* [2021] SGCA 94, the Court of Appeal examined whether a constructive remedy crafted by the tribunal constituted an attempt by the tribunal to enforce its own award and/or was punitive in nature.

The dispute arose out of a Management Services Agreement ("**MSA**") entered into between the appellants and the first respondent. Pursuant to the MSA, the first respondent exercised an option to purchase shares in the appellants' parent company. Sometime later, the appellants terminated the MSA, and the respondents commenced arbitration proceedings for wrongful termination.

Apart from issuing a Liability Award in favour of the respondents, the arbitral tribunal issued a Remedies Award where, among others:

(a) The appellants were to pay the respondents the full value of the Shares in exchange for the respondents' transfer of the Shares to the appellants ("**Share Transfer Order**"). This was due to the appellants' interference with the respondents' attempts to sell the Shares after the MSA was terminated.

(b) Should the appellants fail to do so, the respondents were entitled to sell the Shares on the market, and the appellants were to undertake steps to facilitate such sale of the Shares. This was referred to as the Constructive Remedy.

Before the High Court, the appellants unsuccessfully sought to set aside the Remedies Award or to resist its enforcement in the alternative. They then appealed to the Court of Appeal, who dismissed their arguments.

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The Court of Appeal considered the powers exercisable by an arbitral tribunal, grouped broadly under the categories of: (i) procedural powers; (ii) substantive powers; and (iii) remedial powers. It reaffirmed that the arbitral tribunal's remedial powers are akin to those of the court, pursuant to section 12(5)(a) of the IAA. However, it is also clear that section 12 of the IAA does not confer upon arbitral tribunals the power to grant all the reliefs that the High Court can. One such excluded power is the power of enforcement. Such coercive powers remain the exclusive domain of the courts.

Having set out the relevant law, the Court of Appeal turned to consider the Constructive Remedy. It noted that:

(a) In awarding the Constructive Remedy, the tribunal was not attempting to enforce the Share Transfer Order.

   i. The tribunal had merely sought to compensate the respondents for the loss occasioned to them after the appellants first interfered with the intended sale of the Shares.
   ii. The damages awarded by the Tribunal were for the interference with the Shares and not for failure to comply with an interim Order and the Liability Award.

(b) Nor was the Constructive Remedy punitive in nature.

   i. The tribunal had chosen a remedy designed to compensate the respondents for actual losses, and the appellants themselves had tacitly accepted that a valuation method that compensated the respondents for actual damages would not be a punitive remedy.
   ii. Although the tribunal had used the term "recalcitrance" in the Remedies Award, this was insufficient to prove that the Constructive Remedy was a punitive award.

Pertinently, the Court of Appeal noted that the Constructive Remedy was a pragmatic solution to the realities of the situation, aimed at facilitating the sale of the Shares. Much like a court does, the Tribunal fashioned a remedy in light of all the circumstances and could not be faulted for doing so.

The Effect of COVID-19 Circuit Breaker Measures on the Enforceability of Contracts

The COVID-19 pandemic has had a significant impact on the operation of businesses and contractual relationships. In Singapore, the case of *Dathena Science Pte. Ltd. v Justco (Singapore) Pte. Ltd.* [2021] SGHC 219 represents one of the first cases resulting from the Circuit Breaker Measures that were taken by the Singapore government to control the spread of the COVID-19 pandemic. The Court considered whether a lease agreement had been validly terminated following delays in performance, and whether it had been frustrated by the Circuit Breaker Measures.

The Plaintiff had agreed to lease the commercial Premises from the Defendant in a co-working arrangement from 1 May 2020 to 30 April 2022. However, the Plaintiff did not occupy the Premises due to unexpected and/or unforeseen events, including the Circuit Breaker Measures. Due to the Circuit Breaker Measures, the Defendant claimed it could not ready the Premises in time for moving in.

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On the facts, the Court held that the Plaintiff was justified in issuing a Notice of Termination for the lease agreement due to the Defendant's failure to deliver the Premises for its occupation on 1 May 2020. Notably, the Court viewed certain terms in the lease agreement as grossly unfair and disadvantageous to the Plaintiff and held those provisions to be unenforceable. They included provisions allowing the Defendant to terminate the agreement (but not the Plaintiff), one-sided indemnity provisions, and provisions allowing the Defendant to replace the Plaintiff's allocated office space with another allocated office space of comparable size.

The Court then considered whether the lease agreement was frustrated by the implementation of the Circuit Breaker Measures. The Court found that the Defendant's four-month delay in delivering the Premises to the Plaintiff and its inability to provide alternative comparable premises rendered the lease agreement frustrated, and that the Defendant's contractual obligation was rendered radically fundamentally different from what was agreed to.

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Deals

Establishment of S$1 Billion Medium Term Note Programme and Issuance of S$650 Million 2.185% Sustainability-linked Notes Due 2036

Lee Xin Mei, Eugene Lee and Lee Weilin from the Banking & Finance Practice, Capital Markets Practice and Sustainability Practice advised Nanyang Technological University (NTU) on the establishment of its S$1 billion multicurrency medium term note programme ("**Programme**"), and its subsequent issuance of S$650 million 2.185% sustainability-linked notes due 2036 ("**Notes**") under the Programme. The Notes are the world's first publicly offered sustainability-linked bonds by a university.

Partnership Between Asian Tour and Saudi Arabia's Public Investment Fund-backed LIV Golf Investments

Lau Kok Keng from the Intellectual Property, Sports and Gaming Practice is advising Asian Tour Limited on the establishment of its partnership with LIV Golf Investments to boost the Asian Tour. The partnership will introduce a new premier professional golf league sanctioned by the Asian Tour and has a projected commitment totalling US$200 million over the next 10 years beginning from 2022.

Toptip Holding Pte Ltd.'s Acquisition of Shares in NatSteel Holdings Pte. Ltd.

Danny Lim and Cynthia Wu from the Capital Markets / Mergers & Acquisitions Practice, and Yon See Ting from Christopher & Lee Ong acted for Toptip Holding Pte. Ltd. in its S$233.2 million acquisition of shares in NatSteel Holdings Pte. Ltd..

Esteel Enterprise Pte. Ltd.'s Acquisition of Antara Steel Mills Sdn Bhd

Danny Lim and Cynthia Wu from the Capital Markets / Mergers & Acquisitions Practice, and Yon See Ting from Christopher & Lee Ong are advising Esteel Enterprise Pte. Ltd. in its US$122 million acquisition of Antara Steel Mills Sdn Bhd from Lion Industries Corporation Berhad, which is listed on Bursa Malaysia.

Blumont Group Ltd.'s Acquisition of Natra Bintan

Danny Lim, Tan Mui Hui and Cheryl Tay from the Capital Markets / Mergers & Acquisitions Practice are acting for Blumont Group Ltd. in its S$78.36 million acquisition of shares in Mendol Investments Pte. Ltd., Hinako Investments Pte. Ltd., Prime Holdings Pte. Ltd., Enggano Investments Pte. Ltd. and Mesawak Investments Pte. Ltd..

Blumont Group Ltd.'s Renounceable Non-underwritten Rights cum Warrants Issue

Danny Lim, Tan Mui Hui and Cheryl Tay from the Capital Markets / Mergers & Acquisitions Practice are acting for Blumont Group Ltd. in its S$41.6 million renounceable non-underwritten rights cum warrants issue.

Private Placement by United Hampshire US Real Estate Investment Trust

Raymond Tong from the Capital Markets / Mergers & Acquisitions Practice is acting for United Overseas Bank Limited and UOB Kay Hian Private Limited, the joint bookrunners and underwriters, in respect of the private placement of new units in United Hampshire US Real Estate Investment Trust to raise gross proceeds of approximately US$35 million.

Placement of Shares and Warrants in Metech International Limited

Danny Lim and Penelope Loh from the Capital Markets / Mergers & Acquisitions Practice are advising Metech International Limited in its S$10.36 million placement of new shares and warrants via Phillip Securities Pte. Ltd. as placement agent.

Placement of Shares in Beng Kuang Marine Limited

Danny Lim and Penelope Loh from the Capital Markets / Mergers & Acquisitions Practice are acting for Beng Kuang Marine Limited in its placement of S$3.35 million new shares via SAC Capital Private Limited as placement agent.

Authored Publications

Rajah & Tann Contributes to *The Global Damages Review* (Fourth Edition) – Singapore Chapter

Our dispute practitioners from Rajah & Tann Singapore, Partner Vikram Nair, and Associates Mazie Tan and Ashwin Menon, contributed to the

Singapore chapter of the Fourth Edition of *The Global Damages Review* published by The Law Reviews.

The chapter provides an incisive survey of the codified rules and common law principles underpinning the analysis and presentation of damages in Singapore. With a focus on recent legal changes and noteworthy cases, it also provides an in-depth examination of the various rules that set boundaries on what is permissible damages evidence.

The full Singapore chapter can be read here.

Find out more about our Commercial Litigation practice here.

Rajah & Tann Contributes to *Chambers Global Practice Guide: Private Equity 2021* – Singapore Chapter

Rajah & Tann Singapore contributed to the Singapore chapter of *Chambers Global Practice Guide: Private Equity 2021* published by Chambers and Partners.

Given its position as a key hub for fund managers and a popular domicile to investment entities, as well as its extensive network of double taxation treaties, Singapore serves as a useful entry point for regional private equity and investment activity in Southeast Asia and India.

Exclusively authored by our leading Private Equity partners Evelyn Wee, Sandy Foo and Hoon Chi Tern, this chapter extends our previous contribution to the Corporate M&A 2021 guide as our authors provide expert legal commentary on private equity transactions in Singapore, including the latest trends and developments, due diligence requirements, funding structures, considerations in a public buyout, management incentives plans, and exits.

The e-Guide is available here, and the full Singapore chapter can be read here.

Rajah & Tann Contributes to *Lex Mundi Global Attorney-Client Privilege Guide* – Singapore Chapter

Rajah & Tann Singapore contributed to the Singapore chapter of the *Global Attorney-Client Privilege Guide* published by the Lex Mundi Litigation, Arbitration and Dispute Resolution Group.

Authored by our market leading dispute resolution partners Leong Kah Wah, Adrian Wong and Alina Chia, the chapter discusses attorney-client privilege in Singapore. Topics addressed in the report include legal advice privilege, litigation privilege, common interest doctrine, crime-fraud exception as well as privileges in other contexts such as in mediation and in settlement negotiations.

Beyond Singapore, this guide also includes summaries from over 65 jurisdictions around the world, making it the broadest of its kind.

The e-Guide is available here, and the full Singapore chapter can be read here.

Find out more about our Commercial Litigation practice here.

Events

The Public International Law Webinar Series

On various dates in October 2021, David Grief International Consultancy, Duxton Hill Chambers, Fietta LLP, Rajah & Tann Singapore, and The University of Sydney jointly organised the Public International Law Webinar Series. The webinar series brought together leading public international law practitioners, academics, and arbitrators to discuss topical issues of global importance.

The webinar series was launched on 6 October 2021 with keynote addresses by Professor Shotaro Hamamoto (Graduate School of Law, Kyoto University) and Professor Simon Chesterman (National University of Singapore on "Issues of Legitimacy in the International Legal Order". Matthew Koh from the International Arbitration Practice did the introduction.

On 13, 20 and 26 October 2021, the panellists discussed the following topics, respectively:

- "New Horizons for Investor-State Disputes", where Francis Xavier, SC, the Regional Head of Dispute Resolution Group, was one of the panellists
- "Climate Change and International Disputes", where David Isidore Tan from the International Arbitration Practice was one of the Moderators
- "How States Negotiate Their Treaties"

The last webinar in this series, held on 3 November 2021, was a year-in-review of themes that emerged in public international law this year.

ABLI Webinar: Playbook on China's Corporate Restructuring Tools and Their Cross-border Implications

On 21 October 2021, the Asian Business Law Institute ("**ABLI**") organised a webinar titled "Playbook on China's Corporate Restructuring Tools and Their Cross-border Implications". The speakers at the webinar covered the following:

- Corporate restructuring tools available under domestic Chinese law (and practice), namely reorganisation and mediation;
- Mutual recognition of insolvency proceedings in mainland China ("**Mainland**") and Hong Kong Special Administrative Region ("**HKSAR**");
- Cases of Chinese bankruptcy administrators being recognised in other jurisdictions, including in Singapore; and
- A survey of the regimes in Singapore and other jurisdictions in Southeast Asia on the recognition of foreign insolvency orders and proceedings, and whether a protocol similar to the Mainland-HKSAR arrangement is possible in the Southeast Asian region.

Sim Kwan Kiat, head of the Restructuring & Insolvency Practice, was one of the speakers.

Omnibus Law: Impact on Foreign Businesses and Investors

On 14 October 2021, Rajah & Tann Asia organised a webinar titled "Omnibus Law: Impact on Foreign Businesses and Investors".

Indonesia's new "Omnibus Law" is slated to stimulate growth by streamlining business processes and addressing the problem of over-regulation in Indonesia.

The law eases restrictions across a wide range of critical areas including labour law, business licensing, capital investment, corporate tax, and land acquisition. These essential reforms are designed to make Southeast Asia's largest economy a more attractive destination for foreign businesses and investors.

Dr. Riyatno, S.H., LL.M., Deputy Chairman for Investment Cooperation of the Indonesia's Investment Coordinating Board (BKPM), Eko Basyuni from Assegaf Hamzah & Partners, and Debbie Woo from the Capital Markets / Mergers & Acquisitions Practice looked into the key ways in which the Omnibus Law has eased foreign investment restrictions, and shared how foreign investors can position themselves to benefit from this new law. The speakers also discussed the anticipated impact of the Omnibus Law and shared real-life practitioners' perspectives, insights, and advice on this landmark new legislation.

SGX SPAC Listing – Highlights and Opportunities

On 12 October 2021, Rajah & Tann Singapore and our Shanghai Representative Office, together with Singapore Exchange ("**SGX**") (Beijing office) and King & Wood Mallesons (KWM) Guangzhou office jointly organised a webinar titled "SGX SPAC Listing – Highlights and Opportunities".

The webinar was conducted in Mandarin, to walk our PRC audience through the SGX Special Purpose Acquisition Company ("**SPAC**") framework, the advantages of SGX SPAC listing, the legal requirements and issues arising from the SPAC framework, as well as new opportunities the SGX SPAC framework presents to the PRC enterprises. Howard Cheam from the Capital Markets Practice was one of the speakers, who focussed on "Key points of SPAC Listing and Listing Routes in Singapore for PRC Enterprises".

Chia Lee Fong, the Chief Representative of Rajah & Tann Singapore's Shanghai Representative Office, was the moderator at the webinar.

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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 Singapore, 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.