

IN CONVERSATION WITH OUR CORPORATE MEMBER

FIRST FEATURED IN SCMA'S KNOWLEDGE SHARING (OCTOBER 2022)

RAJAH & TANN ASIA

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About Rajah & Tann Singapore ("RJT")

Website: <https://www.rajahtannasia.com/>

LinkedIn: <https://www.linkedin.com/company/rajah-&-tann/>

Rajah & Tann Singapore LLP anchors the Rajah & Tann Asia network of law firms, which spans 10 countries in ASEAN and beyond (Singapore, Indonesia, Vietnam, Malaysia, Philippines, Thailand, Cambodia, Lao PDR, Myanmar and China), creating a unified and coherent provider of legal services in the Asian region with over 900 fee earners.

Rajah & Tann Singapore's Shipping and International Trade practice is the largest such specialist practice in Singapore and the region, and it has been consistently placed in the "top tier" and ranked as a "Band 1" shipping firm by independent legal directories for well over two decades. The team manages a complex portfolio of top-end shipping work throughout the region, in both "wet" and "dry" contentious matters, as well as in ship finance and other non-contentious work.

Rajah & Tann Singapore's partners are recognised by Chambers Global and The Legal 500 Asia Pacific as the market-leading practitioners and experts in the maritime arena. The key members of the team are accredited specialists in Shipping & Maritime Law by the Singapore Academy of Law's Specialist Accreditation Scheme.

The Shipping & International Trade teams across the network firms of Rajah & Tann Asia have also come together to form the integrated Regional Shipping Sector Group. Combining the expertise of commercially and technically savvy specialist lawyers in these fields based in our network offices, the firm is able to provide both local expertise and cross-border advice covering the whole of Southeast Asia, and beyond, and serve an international clientele comprising major shipowners, shipping lines, operators, underwriters, P&I Clubs, shipyards and builders, energy and power generation companies, oil majors, traders, port terminals, and banks.



Mr. Kendall Tan,

Head, Shipping & International Trade

Head, Brunei Desk

Partner

Rajah & Tann Singapore LLP

1. Could you share with us case highlights that Rajah & Tann has handled in the past couple of years?

Lately, the dispute resolution landscape in the maritime and trade industry has largely been shaped by major corporate insolvencies, particularly in the oil trading sector. This shades into shipping, seeing that financiers would ordinarily have security over receivables with oil or commodity traders; the onset of corporate failure triggers recovery actions by financiers, which in turn precipitates disputes embroiling shipowners and strings of financiers and other traders.

On our part, the team at Rajah & Tann has represented multiple prominent parties in some notable corporate insolvencies and related disputes in the oil and commodity trading context. Rajah & Tann has also been actively involved in the conduct of the satellite disputes that spring from such corporate insolvencies, representing parties both before the courts and in arbitration proceedings. These disputes cover a wide range of legal issues engaging the expertise of our various specialist practice groups, including corporate fraud, investigation, and contests straddling winding-up and arbitration proceedings (which yielded the landmark decisions in *BWG v BWF* [2020] 1 SLR 1296 and *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2020] 1 SLR 1158), the legitimacy of financing arrangements, and trade finance.

Beyond corporate insolvency, our Shipping & International Trade practice has also been kept busy by a varied scope of disputes specific to the maritime industry. For example, the team has acted in a number of major maritime casualties such as the “Xpress Pearl” incident off Sri Lanka and the “Zim Charleston” explosion. The team has also been involved in one of the largest cases of bunker contamination in recent memory in a matter which has attracted widespread media coverage. Rajah & Tann's recent caseload has also covered areas such as four significant subsea power and optic cable damage incidents in one single year, and disruptions to high-value new shipbuilding agreements brought about by Ukrainian war sanctions. We are gratified also to have assisted in clarifying the rights of P&I insurers in the Maritime Labour Convention contexts in key decisions in Singapore [decision of the Honourable Justice Chua Lee Meng in “The Brightoil Lion” HC/ADM 156/2018] and in India [The Swedish Club (Appellant) v V8 Pool Inc. and other (Respondents) in Commercial Appeal No. 108 of 2021] in the same period.

2. In an increasingly volatile and uncertain environment, what have been some of the key challenges encountered by Rajah & Tann, and how did the firm overcome these challenges?

The COVID-19 pandemic has sent pronounced ripples across both the maritime industry as well as the corporate world at large. The volatile and uncertain environment has led to the onset of financial distress and hastened corporate insolvencies across the world, even for established companies. The challenges for these companies have only been accentuated by the disruptions in operations and supply chains. It is also a time of opportunity that compels innovation amongst leading legal firms.

One of the challenges in this regard, particularly for matters involving larger companies and groups, has been the sheer scale of disputes arising from major corporate failures. The number of parties involved in the chain of financing and trading contracts often leads to untidy disputes. This is further complicated by the transnational nature of commerce, which necessarily means that such disputes tend to involve parties across multiple time zones and engage the laws of different jurisdictions.

The Shipping & International Trade practice has been well-placed to meet the challenges involved in such disputes by leveraging on the expertise and local capabilities of our Rajah & Tann Asia regional colleagues, and also, of the Regional Shipping Sector Group. The close working synergy between the regional teams means that we are able to have our boots on the ground in the relevant jurisdictions, facilitating a hands-on approach to dealing with cross-boundary legal issues and regulatory engagement. The well-resourced Rajah & Tann Asia network also means that it is better able to support the scale of emerging disputes.

Another feature of the volatility of the current environment is the ongoing and escalating geopolitical tensions, which have led to direct conflict as well as sanctions and trade-hostile measures between countries. Navigating the intricacies of such trade measures requires experience and familiarity with regional legal systems. Rajah & Tann has been engaged heavily in the provision of advice on sanctions and their effect on contracts and commercial arrangements.

3. We have seen the global supply chains being disrupted by external factors such as the COVID-19 pandemic. Would you agree that for the global maritime industry, arbitration is an attractive, efficient, and useful mechanism for dispute resolution?

The increased disruptions to global supply chains have also led to a heightened number of disputes finding their way to litigation or arbitration. With courts and dispute resolution institutions facing an elevated caseload, efficiency is all the more important to litigants.

There is no gainsaying that arbitration is an attractive mechanism for dispute resolution as it lends itself to the efficient management of disputes. Arbitration provides the flexibility for parties to agree to simplified or tailored processes, meaning that disputes may find a more direct route from initiation to resolution.

On the topic of efficiency, arbitral institutions have also embraced the use of technology to facilitate remote proceedings in response to challenges in conducting face-to-face proceedings. Rajah & Tann is well-positioned in this regard, being an industry leader in the adoption of legal tech. Rajah & Tann launched Rajah & Tann Technologies (“RTT”) in 2018, offering technology-enabled legal solutions to external clients and our network firms so as to evolve our practice and help clients meet the demands and challenges of the new economy.

Digital information presents its own unique challenges in the resolution of disputes. The volume of information is constantly growing at ever-increasing rates, and the preservation of information is a special challenge in the Digital domain. RTT's dedicated evidence management service, LegalComet, has been established to guide clients in cost-effective strategies to harness and manage relevant digital information.

RTT's services include the preservation of digital information for use as evidence, mitigation of data security risks when extracting large data sets, advice and support on techniques to reduce data volumes in ways that will not compromise a client's position in a case, and data hosting and support for the review of prioritised digital evidence.

With these services, technology has enabled litigants to leverage our expertise and target matters that are specific to shipping and international trade by cutting through the noise to clarify and quantify open issues.

The Singapore Admiralty Court, in prescient fashion, has for a number of years co-opted a committee of practitioners and industry stakeholders for industry input. Our judiciary is very interested in innovating best practices also for the admiralty area, such as ship arrests now via electronic means. In 2021, Rajah & Tann Singapore was also involved in the first Singapore High Court trial to be conducted entirely virtually.

4. What are the key areas of collaboration that the SCMA and Rajah & Tann can build on?

Intrinsically, maritime disputes often give rise to industry-specific issues which require specialist knowledge and expertise. Such disputes will benefit from the focus of specialist facilitators such as the SCMA, which is focused on meeting the needs of our fast-paced industry, and in curating a panel of esteemed specialist arbitrators who are well-placed to determine difficult disputes.

We are heartened to see SCMA arbitration gaining traction amongst notable industry users in Singapore, as well as amongst international shipping law firms in the major maritime centres around the globe. A growing awareness of the SCMA brand is also discernible amongst the shipping and trade enterprises in the Southeast Asia and North Asia regions, in terms of election for its rules to govern dispute resolution in their commercial contracts or a willingness to agree to those rules for ad hoc arbitrations seated in Singapore.

Like the regional dynamism that the SCMA has exhibited, Rajah & Tann Asia has pooled together the legal expertise, industry insight, and commercial acumen in the fields of maritime and trade from the diverse talent pool of specialist maritime and trade lawyers at the Rajah & Tann Asia offices. My colleagues and I, of the Regional Shipping Sector Group, are keen to promote the adoption of the SCMA Rules which commend themselves to the sort of user-friendliness and expediency that naturally appeal to savvy maritime and trading companies in each of our "home" jurisdictions in Southeast Asia.

We expect that Singapore will continue to be stable in its growing global standing as an arbitration centre. It has traditionally benefited from corporates in South East Asia looking to Singapore as a reliable jurisdiction. That will remain intact for practical reasons, because Singapore is by far the most popular common law jurisdiction in South East Asia. The interesting thing is whether Singapore eventually eclipses Hong Kong as an arbitration centre, because it may be perceived as more neutral, given the current geopolitical dynamics.