RAJAH & TANN ASIA

NewsBytes: Singapore

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RAJAH & TANN ASIA
LAWYERS WHO KNOW ASIA

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News

Rajah & Tann and Deloitte, with Support of Singapore Economic Development Board, Unveil Insightful Publication on the Family Office Landscape in Singapore

The proliferation of family offices in Singapore over the past few years does not come as a surprise. As Singapore successfully courts successful global business families looking to take advantage of its well-established wealth management environment, we see a synchronous increase in the number of family offices being established here.

On 30 November 2021, an exclusive launch event for the publication titled "Family Offices in Singapore" was held online and on Deloitte's premises in Shanghai for invited guests – many of whom are leading professionals in the private wealth industry. The publication, released in both English and Chinese, is one of the most comprehensive publications on Singapore family offices to date.

The event featured presentations by Mr Dino Tan, Vice President & Head (Family Businesses & Family Offices) from the Singapore Economic Development Board ("**EDB**"), as well as renowned private client practitioners Mr Vikna Rajah, head of Rajah & Tann Singapore's Tax and Trust & Private Client Practices, and Ms Shantini Ramachandra, Southeast Asia Deloitte Private Tax & Legal Leader, who provided their insights into the significance of family offices and what Singapore's family office landscape has to offer.

This was followed by a panel and Q&A session moderated by Ms Chia Lee Fong, Chief Representative at Rajah & Tann's Shanghai Representative Office, in which prominent figures in the private wealth industry discussed how Singapore's existing efforts, supported by new frameworks in the pipeline, have enabled the city-state to gain an edge over Asian counterparts and become one of the most trusted jurisdictions for high net worth individuals to preserve their legacy and grow their wealth. Ms Jasmine Chew from the Funds & Investment Management Practice was one of the panellists.

Find out more about our Private Client Practice here.

Click here to read our Press Release.

Rajah & Tann Retains Position as Highest Ranked Asian Law Firm for Global Restructuring & Insolvency

Rajah & Tann retains its position as the only Asian law firm to be recognised among the world's top 20 list of cross-border restructuring and insolvency firms in the 2021 edition of the widely-followed Global Restructuring Review's *GRR 30*. This is also the fourth time that the firm has been featured in the prestigious top 30 list of standout firms in the world working on restructuring and insolvency matters.

Patrick Ang, Managing Partner at Rajah & Tann Singapore, said: "We are honoured to be acknowledged by GRR once again and to be recognised among leading global law firms for restructuring and insolvency work. This

ranking is testament to our commitment in providing the highest standards of legal excellence for our clients."

GRR is a leading UK-based information service website providing cross-border restructuring and insolvency news. The GRR 30 table is a ranking of the standout firms in the GRR 100 where Rajah & Tann was selected based on the size of its restructuring and insolvency team, number of countries served, hours billed, types of clients, the value and volume of cases worked on, and the level of complexity and innovation that was required in individual cases.

Rajah & Tann has been involved in nearly all the major insolvencies and restructurings in Singapore in recent years.

Find out more about our Restructuring & Insolvency Practice here.

Click here to read our Press Release.

Rajah & Tann Singapore Emerges Top Among 101 Law Firms in Singapore, the Only Firm Earning a Spot in 16 Categories of Straits Times Survey

Rajah & Tann Singapore has been voted as the overall best law firm in Singapore, the only firm that has been recognised in all 16 local categories of The Straits Times Best Law Firms 2022 survey. The survey is jointly conducted by The Straits Times and international market researcher Statista to identify Singapore's best law firms.

Rajah & Tann Singapore topped the charts as the best Singapore law firm in eight out of the 16 local categories:

- Arbitration, mediation & dispute resolution
- Banking & finance law
- Company & commercial
- Inheritance & Succession, Private Wealth Management
- Insolvency & Restructuring
- Maritime Law
- Mergers & Acquisitions
- Real Estate law

The firm was also highly ranked in the following categories:

- Charities, Not-for-Profit Associations & Pros Bono
- Conveyancing
- Criminal Law
- Employment Law
- Family Law
- Intellectual Property Law
- Negligence (Professional/Accidents/Personal Injuries)
- Technology, Media, Telecommunication (TMT)

Patrick Ang, Managing Partner at Rajah & Tann Singapore, expressed that the firm is pleased to be acknowledged once again among the finest law firms in Singapore, even during challenging times. "We are deeply humbled to be listed among the top firms here. This serves as a pat on the back for our lawyers and staff. This year is significant for us as we mark our 45th year

and to be the best of the best is like the icing on the cake," comments Mr Ang.

Rajah & Tann Singapore has also been identified by The Straits Times as one of the top five models for charity, pro bono work in legal sector. Ranked second on the list, the firm is listed among top law firms that engage in pro bono and charitable activities.

Over the years, the firm has built a strong partnership of *pro bono* work with various organisations. Rajah & Tann is the first law firm to set up a charity foundation in Singapore, the Rajah & Tann Foundation, which channels donations to charities in a focused and organised manner.

"We are deeply humbled to be listed among top law firms," said Rebecca Chew, Deputy Managing Partner of the firm. "This recognition is an acknowledgement and encouragement to our lawyers and staff, who regularly provide hands-on contribution to needy communities such as underprivileged children, the elderly, and disadvantaged groups and individuals."

Click here to read our Press Release.

Rajah & Tann Partners NUS on Tech Courses for Lawyers

Rajah & Tann and the National University of Singapore's School of Computing ("**NUS Computing**") have collaborated on a seven-course programme to equip lawyers with the skills to harness disruptive technologies shaping the future of law. The courses included design thinking, financial technology, application programming interface, robotic process automation, business analytics and blockchain.

"We are preparing the next generation of lawyers," said Rajesh Sreenivasan, head of Rajah & Tann's Technology, Media and Telecommunications Practice. "This intensive and substantive training is a major step above courses where lawyers learn basic coding.

"We want our lawyers to rethink legal workflows and to use technology to enable change. This will allow our lawyers to re-engineer legal work, and ultimately transform and digitalise practice workflows and client deliverables."

This is the first time NUS has curated courses for a law firm. Ng Sey Ming, Deputy Head of the firm's Banking & Finance Practice and a member of the firm's Exco Technology Sub-Committee, said Rajah & Tann provided input for NUS, and the result is a suite of courses with practical applications.

"After the training, our legal engineering and innovation team will work with our lawyers to actualise the design and process changes," said Mr Ng.

A total of 22 Rajah & Tann participants from the firm's Technology Interest Group completed the training and attended a virtual graduation ceremony on 5 November 2021 presided over by Patrick Ang, Managing Partner of Rajah & Tann Singapore, Prof Keith Carter, Associate Professor at NUS Computing and Programme Director, NUS FinTech Lab at NUS, and Dr Chan Mun Kitt, Senior Director of Advanced Computing for Executives at NUS.

Mr Ng said the same course could also be used as part of the onboarding process of new lawyers joining the firm. The latest move by Rajah & Tann to ensure that its lawyers are proficient in the use of technology is in line with a call from Chief Justice Sundaresh Menon who, in a 2019 speech, urged law firms to make such training "a priority" and not see it as an "optional extra."

Click here to read our Press Release.

LegisBytes

Competition Law

Block Exemption Order for Certain Liner Shipping Agreements Extended Three Years to 31 December 2024

Anti-competitive agreements are prohibited under section 34 of the Competition Act ("**section 34 prohibition**"). However, under recommendation by the Competition and Consumer Commission of Singapore ("**CCCS**"), the Minister for Trade and Industry may order an exemption of certain types of agreements from the section 34 prohibition on the basis that a category of agreements fulfils the net economic benefit ("**NEB**") criteria, i.e. a block exemption.

Essentially, an agreement/collaboration fulfils the NEB criteria if: (i) the collaboration improves production or distribution of goods and services; (ii) restrictions in the agreement are indispensable to achieving such improvements; and (iii) the collaboration does not eliminate competition in respect of a substantial part of the good/service.

Currently, the only block exemption in Singapore is the Competition (Block Exemption for Liner Shipping Agreements) Order ("**BEO**") which exempts certain types of liner shipping agreements from the section 34 prohibition. First introduced in 2006, the BEO has been extended several times with various amendments lodged under it over time and was due to expire on 31 December 2021.

The Competition (Block Exemption for Liner Shipping Agreements) (Amendment) Order 2021 ("**Amendment Order**") extends the BEO for another three years, from 1 January 2022 to 31 December 2024, and amends the scope of liner shipping agreements covered thereunder. The extended duration of the BEO took effect from 15 November 2021 and the other amendments will take effect from 1 January 2022.

This follows CCCS' earlier public consultation where CCCS proposed an extension of the BEO in respect of vessel sharing agreements for liner shipping services and price discussion agreements for feeder services. Respondents were generally supportive of these proposals and these are incorporated in the Amendment Order. CCCS has also issued its Response to feedback received on the public consultation.

Liner Shipping Agreements Covered under Amended BEO

Under the previous BEO, liner shipping agreements were exempted from the section 34 prohibition subject to five conditions, namely:

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(a) An aggregate market share of the parties to the agreement of no more than 50%;
(b) Each contracting party is permitted to have its own confidential service arrangements with its customers;
(c) Each contracting party is allowed to withdraw from the agreements by giving notice to the other parties without penalty (financial or otherwise);
(d) The agreements do not subject the contracting parties to a mandatory "tariff", i.e. a list of prices and remuneration that liner operators may offer to transport users; and
(e) Contracting parties are not required to disclose confidential information pertaining to service arrangements.

Upon the recommendation by CCCS, the amended BEO now defines the two distinct types of liner shipping agreements it applies to:

(a) **Vessel sharing agreements**, whereby the parties agree on operational arrangements relating to the provision of liner shipping services, including the coordination or joint operation of vessel services, and the exchange or charter of vessel space, **but do not discuss or agree on prices or remuneration terms offered to third parties**; and

(b) **Price discussion agreements**, whereby the parties to the agreement discuss commercial arrangements relating to the provision of liner shipping services, including prices and remuneration terms offered to third parties.

Whilst the BEO continues to exempt vessel sharing agreements subject to the five conditions stated above, only price discussion agreements **for feeder services** can now benefit from the block exemption.

Cancellation of Exemption

Under the previous BEO, the exemption would be cancelled if there had been a breach of certain specified conditions. The amended BEO adds an additional provision that the exemption will be cancelled if the agreement ceases to be the specified type of agreement, i.e. a vessel sharing agreement or a price discussion agreement for the provision of feeder services.

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

Construction & Projects

Specialised Case Management System for Complex Disputes: SICC Announces Establishment of Technology, Infrastructure and Construction List

On 8 November 2021, the Singapore International Commercial Court ("**SICC**") announced the establishment of a specialised Technology, Infrastructure and Construction List ("**TIC List**"), effective from 31 August 2021. The aim of the TIC List is principally to deal with technically complex disputes, such as building and construction disputes, engineering disputes and technology-related disputes.

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For disputes falling within the scope of the TIC List, there are two main benefits to the TIC List. First, the TIC List will have at its disposal a raft of additional case management features suited for the efficient resolution of complex disputes, many of which have been a staple of construction arbitration for a number of years and have been proven to be useful tools in the effective and efficient resolution of construction disputes. Second, the TIC List will comprise Judges who have specialised knowledge and experience in technology, infrastructure and construction disputes.

A party wishing to have its case heard under the TIC List will need to satisfy the following requirements:

(a) the case must involve a TIC Claim;
(b) each party to the case must agree in writing that the case is placed in the TIC List; and
(c) the Court orders that the case be placed in the TIC List.

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

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Corporate Commercial

MAS Consults on Amendments to Business Trust Act to Align with Regulatory Regimes for Companies and REITs

Introduced in 2004, the business trust ("**BT**") is a hybrid structure embodying the features of both a company and a trust. A key advantage of a BT is the ability to pay dividends to unitholders out of its cash profits, unlike companies which may only do so out of accounting profits.

Given a BT's similarities with a company, many provisions of the Business Trust Act ("**BTA**") are based on the Companies Act ("**CA**"). Through a public consultation, the Monetary Authority of Singapore ("**MAS**") seeks feedback on proposed amendments to the BTA, mainly to align it with 2014 and 2017 amendments to the CA (collectively, the Companies (Amendment) Acts, "**CAA**")), as well as the regulatory regime for real estate investment trusts ("**REITs**"). The amendments also seek to streamline and clarify regulatory requirements.

We briefly cover key amendments below.

Aligning with Corresponding Provisions of the CA

These largely relate to the following areas:

(a) Disclosure and trust administration

- Requiring chief executive officers (CEOs) to disclose interests in transactions
- Requiring unlisted registered BTs to maintain information on beneficial ownership
- Providing for implied or deemed consent for electronic transmission of documents and notices

(b) Unitholders' rights and general meetings

- Including arbitration under the scope of statutory derivative actions

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- Enabling a court to order a buy-out of the BT in addition to winding up the BT
- Lowering the requirements for demanding a poll
- Simplifying deadlines for filing annual returns and for annual general meetings

(c) Auditors and financial statements

- Requiring a directors' statement as part of the financial statements, instead of a separate directors' report
- Removing duplication of legislative requirements regarding independence of auditors
- Codifying the requirement to comply with Accounting Standards Council (ASC) accounting standards
- Requiring an auditor of a listed registered BT to seek MAS' consent for resignation

(d) Governance and right of compulsory acquisitions

- Prohibiting the improper use of position by officers or agents of a BT's trustee-manager ("**TM**")
- Clarifying that, in the event of a takeover, individuals may exercise their right to compulsorily acquire units held by dissenting unitholders
- New provisions on joint offers, among other matters

Aligning with Corresponding Provisions of REIT Regulatory Regime

BTs share various structural similarities with REITs. For instance, both are usually externally managed – BTs by TMs and REITs by REIT managers ("**RMs**").

Currently, removal of the TM of a BT requires approval by unitholders holding no less than three-fourths of the voting rights. To instil greater market discipline by enabling investors to hold TMs accountable, MAS proposes to lower this threshold to a simple majority (similar to the removal of a RM).

Simplify Regulatory Requirements

MAS proposes to:

(a) permit resolutions to be passed by written means. This aligns with corresponding provisions in the CA, including similar approval thresholds to pass written resolutions.
(b) allow for the deregistration of a BT upon notice of winding up, such that the TM need not separately apply for voluntary deregistration.

Other Amendments

Apart from the above, there are further clarificatory amendments, together with amendments to align with the Securities and Futures Act and the CAA.

The consultation period is open from 19 November 2021 to 27 December 2021.

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

- Consultation Paper on Proposed Amendments to the Business Trusts Act
- Annex B – Text of proposed amendments

Corporate Real Estate

MAS Consults on Proposed Changes to MAS Notices on Residential Property Loans Fact Sheet

On 18 November 2021, the Monetary Authority of Singapore ("**MAS**") issued a consultation paper titled "*Proposed Amendments to Notices on Residential Property Loans Fact Sheet*" seeking comments on proposed changes to the following Notices (collectively, "**MAS FS Notices**"):

(a) MAS Notice 632A to Banks – Residential Property Loans - Fact Sheet
(b) MAS Notice 1106A to Merchant Banks – Residential Property Loans - Fact Sheet
(c) MAS Notice 825A to Finance Companies – Residential Property Loans - Fact Sheet
(d) MAS Notice 115A to Direct Insurers – Residential Property Loans - Fact Sheet

Background Information

A Residential Property Loans Fact Sheet ("**Fact Sheet**") sets out relevant information for borrowers when they take up property loans. Information included in a Fact Sheet include the interest rate of said loan, circumstances when banks, merchant banks, finance companies and insurers (collectively, "**FIs**") may revise the interest rate, and possible changes to loan repayment under different interest rate scenarios.

When marketing property loans, banks, FIs are required under the MAS FS Notices to:

(a) Provide and explain the Fact Sheet to borrowers; and
(b) Obtain the borrower's acknowledgement that the borrower has read and understood the Fact Sheet, or that the Fact Sheet has been explained to the borrower.

Key Proposed Revisions to the MAS FS Notices

Key proposed revisions to the MAS FS Notices are set out below:

(a) **Make acknowledgement process by borrowers easier**. For instance, MAS proposes revisions to clarify that in lieu of signing on the physical copy, borrowers can digitally acknowledge the Fact Sheet. FIs may also furnish the Fact Sheet and Letter of Offer to borrowers simultaneously. In addition, a joint-borrower may authorise another joint-borrower to acknowledge the Fact Sheet on his or her behalf.

(b) **Improve disclosures in the Fact Sheet**. These enhanced disclosure requirements include having FIs disclose components of the interest rate, possible interest rate changes, as well as possible alternative arrangements that an FI may offer when the FI changes components of interest rate of the loan pursuant to circumstances not disclosed in the Fact Sheet or in exercise of the FI's contractual right of review.

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(c) **Loans based on Singapore Overnight Rate Average ("SORA")**. As FIs have begun offering SORA loan packages, MAS also proposes administrative revisions to include loan packages based on these SORA loan packages in the Fact Sheet.

The consultation exercise will end on 14 January 2022.

Click on the following link for more information:

- Consultation Paper on Proposed Amendments to Notices on Residential Property Loans Fact Sheet (available on the MAS website at www.mas.gov.sg)

Dispute Resolution

Conditional Fee Agreements: A New Avenue for Legal Funding

Legal fees are often a major factor for parties considering pursuing legal proceedings. Even where their claim is meritorious, parties may find themselves unable to afford the costs required to vindicate their legal rights.

For some foreign jurisdictions, one method of addressing this gap and enhancing access to justice is conditional fee agreements ("**CFAs**"). CFAs are a type of lawyer-client arrangement whereby a lawyer receives payment of the whole or part of his or her legal fees only in specified circumstances, for example where the claim is successful. Prospective litigants with strong claims are therefore better able to pursue their claims in court without being hindered by a lack of funds.

Thus far, CFAs have been prohibited under Singapore law. However, following a favourably received public consultation on a proposed framework for CFAs held in August 2019, the Legal Profession (Amendment) Bill ("**Bill**") was tabled for First Reading in Parliament on 1 November 2021. If passed, the Bill will create a framework to allow a statutory exception for CFAs for specific contentious proceedings.

While the exact categories of proceedings will be set out in future regulations, they are expected to include:

(a) International and domestic arbitration proceedings;
(b) Certain proceedings in the Singapore International Commercial Court (SICC); and
(c) Court and mediation proceedings related to the above.

Among other matters, CFAs are permitted to include uplift fees (where higher fees are charged in the event of a certain outcome) but not contingency fees (where fees are calculated as a percentage of the damages awarded).

For more information on features of the proposed CFA framework and its advantages to both prospective litigants and the legal landscape in Singapore, click here to read our Legal Update.

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Establishment of New Process to Resolve Disputes Over Health Insurance Claims

On 9 November 2021, the Ministry of Health ("**MOH**") announced that a Clinical Claims Resolution Process ("**CCRP**") will be established to resolve claim disputes of a clinical nature between private Integrated Shield Plan ("**IP**") policyholders, IP insurers, medical practitioners and medical institutions. IP insurers are also expanding their panels to include a wider pool of specialist doctors by end 2021.

Scope of Clinical Claims Resolution Process

The CCRP will help to facilitate the resolution of clinically related IP claim disputes, including concerns on:

(a) Unfair rejection of claims for medically appropriate treatment or procedures;
(b) Over-charging by medical practitioners and medical institutions; and
(c) Over-servicing by medical practitioners.

The CCRP will be administered by a secretariat from the Academy of Medicine, Singapore ("**AMS**"), and will be the main resolution channel for IP disputes of a clinical nature, complementing the Financial Industry Disputes Resolution Centre.

How the Process Works

(a) The CCRP is a voluntary process, and parties must mutually agree to participate in the CCRP and enter into a contractual agreement to abide by the panel's decision. Parties should, however, first attempt to resolve the disputes among themselves before turning to the panel. The disputes filed with the CCRP should be within six months after the IP insurer's final reply to the medical practitioner, medical institution, or policyholder.

(b) Complainants can file their disputes online via the CCRP website at www.ccrp.com.sg. Complainants are required to pay an administrative fee per dispute, subject to Goods and Services Tax. The fee is S$50 for IP policyholders, S$200 for medical practitioners and S$500 for medical institutions or IP Insurers.

(c) To ensure that one-off cases are not brought into the CCRP, disputes originating from IP insurers, medical practitioners or medical institutions will have a "3 incidents trend threshold". These complainants must show two or more prior related IP claims disputes with the other party within the last five years. This does not apply to policyholders and patients who can lodge a complaint even if an incident has only happened once.

(d) For each dispute, the CCRP will convene a five-member panel comprising AMS specialists of the relevant specialty, as well as medical directors from selected IP insurers. The Consumers Association of Singapore will also support the panel as a consumer advocate.

(e) To ensure objectivity, cases will be brought before the panel anonymously, and panel members will also remain anonymous to disputing parties. Once the panel comes to a decision, both parties will

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proceed to settle the case with each other. For instance, if an insurer has brought a case against a doctor, and the doctor has been said to be overcharging, the doctor has to make good the overcharged amounts back to the insurer.

(f) Where there are subsequent cases involving "recalcitrant parties", the complainant may be advised by the panel to refer the case to regulators including the Monetary Authority of Singapore, MOH, or the Singapore Medical Council ("**SMC**"), depending on which parties are involved.

(g) In a bid to guide and educate medical practitioners on the fair provision of service, AMS has also established a counselling framework to support the CCRP process. Doctors would be offered an option for counselling if the CCRP panel's determination is in favour of the IP Insurer or the policyholder. Doctors who choose not to participate in the counselling process will have their reasons duly documented and taken into account by SMC in the event of a repeat offence.

Click on the following link for more information:

- MOH Press Release titled "New Clinical Claims Resolution Process Established to Resolve IP Claim Disputes" (available on the MOH website at www.moh.gov.sg)

Financial Institutions

MAS Revises Corporate Governance Guidelines for Singapore-Incorporated Banks & Insurers

On 9 November 2021, the Monetary Authority of Singapore ("**MAS**") published revised Guidelines on Corporate Governance ("**2021 CG Guidelines**") for financial holding companies, banks and insurers incorporated in Singapore (collectively, "**FIs**"). This follows an earlier MAS consultation in May 2021.

The CG Guidelines provide guidance on best good practices on corporate governance that FIs should observe. It comprises the Principles and Provisions of the Code of Corporate Governance 2018 ("**CG Code**") which apply to companies listed on the Singapore Exchange Securities Trading Limited ("**SGX-ST**") and additional guidelines prescribed by MAS having regard to the unique characteristics of the businesses of banks and insurers ("**FI-specific Guidelines**").

Singapore-incorporated banks and insurers which are listed on SGX-ST are already required to comply with the Principles of the CG Code. Among other changes set out in the 2021 CG Guidelines, Singapore-incorporated banks, Tier 1 insurers, and designated financial holding companies that own a Singapore-incorporated bank or Tier 1 insurer are now expected to observe most of the Principles of the CG Code even though they are not listed on SGX-ST. Tier 2 insurers and other designated financial holding companies are also expected to observe the Principles or explain any variance in their annual reports or on their company websites.

The 2021 CG Guidelines apply to all FIs from 1 April 2022, except:

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(a) The Guidelines relating to the disclosure of compliance of the 2021 CG Guidelines by FIs, which will apply to the FIs' annual reports covering financial years commencing from 1 January 2022; and

(b) Provision 2.2 requiring independent directors to make up a majority of the board of directors ("**Board**") of a local bank, qualifying full bank, full bank, Tier 1 insurer, and its designated financial holding company where its Chairman is not independent, which will take effect from 31 December 2022.

Compliance Approach

Non-Listed FIs

(a) **Locally-incorporated banks, Tier 1 insurers, and designated financial holding companies that own a locally-incorporated bank or Tier 1 insurer** ("**Relevant FIs**")

- Principles 1 to 10, and 13: Full compliance.
- Principles 11 and 12 concerning shareholder rights and engagement: Comply-or-explain*.
- Provisions & FI-specific Guidelines: Comply-or-explain*.

(b) **Locally incorporated Tier 2 insurers, captive insurers, and designated financial holding companies which own Tier 2 insurers**

- Principles, Provisions & FI-specific Guidelines: Comply-or-explain*

** FIs are expected to observe the relevant Principles, Provisions or FI-specific Guidelines to the extent possible. If a FI is not able to comply with any Principles, Provisions or FI-specific Guidelines, it has to explicitly disclose and explain how its deviated practices are consistent with the aim and philosophy of the relevant Principles in its annual report or on its website.*

(c) **Captive insurers, special purpose insurance vehicles, marine mutual insurers, and run-off insurers which are not listed on SGX-ST** are not expected to disclose any deviations from the 2021 CG Guidelines although the Guidelines continue to apply to them. The extent and degree to which such insurers observe the Guidelines should be commensurate with the size, nature, and complexity of their business.

Listed FIs

(a) **FIs which are listed on SGX-ST** should continue to fully comply with the Principles of the Code and observe the Provisions and FI-specific Guidelines on a comply-or-explain basis.

Key New/Revised FI-Specific Guidelines and Provisions

Revisions/additions were also made to the FI-specific Guidelines and Provisions in several key areas such as risk management, roles and responsibilities of the Board, remuneration practices, Board composition, and related party transactions.

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Inclusion of Certain CG Guidelines in CG Regulations

Banks and insurers incorporated in Singapore are required to comply with the corporate governance requirements set out in the Banking (Corporate Governance) Regulations 2005 and Insurance (Corporate Governance) Regulations 2013 (collectively, "**CG Regulations**"). These statutory requirements primarily relate to independent directors, constitution of the Board, and the constitution and key responsibilities of the Board committees.

In its earlier consultation paper, MAS proposed moving certain expectations fundamental to good corporate governance presently contained in the CG Guidelines to the CG Regulations for mandatory compliance by banks and insurers. In its response to feedback received on the consultation paper, MAS addressed various key concerns raised by the respondents and indicated that it will conduct further consultation on the proposed changes to the CG Regulations before finalising them.

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

MAS Concludes Project Ubin with Development of Blockchain-based Multi-currency Payments Network Prototype

On 3 November 2021, the Monetary Authority of Singapore ("**MAS**") released a report titled "Project Ubin Phase 5: Enabling Broad Ecosystem Opportunities" marking the conclusion of Project Ubin ("**Final Report**"). Project Ubin was initiated by MAS in 2016 with an aim to collaborate with the industry to explore the use of blockchain and distributed ledger technology ("**DLT**") for clearing and settlement of payments and securities. Six reports were published during the project that was carried out in five phases.

The Final Report provided that the fifth and final experimental phase of Project Ubin resulted in the development of Ubin V, a domestic multi-currency payments network prototype. Ubin V addressed immediate business needs for cross currency exchange and foreign currency transactions, and demonstrated clear value for the use of blockchain technology. It is also envisaged that the model can be implemented as an international settlement model. A blockchain-based multi-currency payments network as such would result in cheaper, faster and safer cross-border payments.

Ubin V was developed to be production-ready. MAS indicated that this payments network prototype will continue to serve as a test network to facilitate collaboration with other central banks and the financial industry for developing next generation cross-border payments infrastructure. Participants from Project Ubin are encouraged to capitalise on the learnings and knowhow arising from the project to produce meaningful solutions for their business that will benefit them and their customers.

Please find below links to the six reports published pursuant to Project Ubin that are made available on the MAS website (www.mas.gov.sg).

- Phase 1: Tokenised SGD (Project Ubin: SGD on Distributed Ledger)

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- Phase 2: Reimagining RTGS (Project Ubin Phase 2: Re-imagining Interbank Real-Time Gross Settlement System Using Distributed Ledger Technologies)
- Phase 3: Delivery versus Payment (DvP) (Project Ubin: Delivery versus Payment on Distributed Ledger Technologies)
- Phase 4: Cross-border Payment versus Payment (PvP) (Cross-border Interbank Payments and Settlements: Emerging Opportunities for Digital Transformation and Jasper-Ubin Design Paper: Enabling Cross-border High Value Transfers Using Distributed Ledger Technologies)
- Phase 5: Enabling Broad Ecosystem Collaboration (Project Ubin Phase 5: Enabling Broad Ecosystem Opportunities)

MAS' Initiatives to Harness Technology and Data to Address Issues in Financial Services Industry and Sustainable Financing

In conjunction with the Singapore FinTech Festival x Singapore Week of Innovation and Technology from 8 to 12 November 2021, the Monetary Authority of Singapore ("**MAS**") has shared and highlighted various new and ongoing initiatives that harness technology and data to help address issues faced by the financial services industry and sustainable financing ecosystem. Below, we summarise some key initiatives which aim to drive adoption of artificial intelligence ("**AI**"), support sustainable financing, boost technology innovation, and facilitate data access in the financial services sector. For more information, please click on the links to webpages relating to these initiatives on the MAS website (www.mas.gov.sg) that are provided below.

Driving AI adoption

(a) **Veritas Initiative.** The objective of the Veritas Initiative is to help financial institutions ("**FIs**") ensure that any AI and Data Analytics ("**AIDA**") solutions adopted by them incorporate the principles of fairness, ethics, accountability, and transparency (FEAT). The initiative includes developing the assessment methodology, toolkit, and ecosystem to help FIs achieve that. The fairness assessment methodology in credit risk scoring and customer marketing was developed in Phase One of the Veritas Initiative. In its second phase, the Veritas Initiative is looking into developing the Ethics, Accountability and Transparency assessment methodology for the two use cases in Phase One. In addition, it is also working on the fairness assessment methodology for predictive underwriting and the ethics and accountability assessment methodology for fraud detection for use cases for the insurance industry.

(b) **COSMIC.** The COSMIC (Collaborative Sharing of Money Laundering/Terrorism Financing Information & Cases) is a new digital platform being developed by MAS to allow FIs to share with one another relevant information on customers and transactions to prevent money laundering, terrorism financing and proliferation financing. Targeted to be launched in the first half of 2023, the COSMIC platform will be the first centralised platform where information is shared in a structured format that allows for seamless integration with data analytics tools. For more information, please click here for our Legal Update that

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summarises the MAS consultation paper on the proposed features and legislative framework for COSMIC.

(c) **AIDA Grant.** This is a grant support scheme that provides FIs funding support of up to S$1.5 million to adopt AIDA techniques for insights generation, decision making or strategy formulation.

Supporting Sustainable Financing

(a) **NovA!.** The initial phase of NovA! will help FIs harness AI to assess the environmental impact of a company and identify emerging environmental risks. Additional use cases will be included in subsequent phases.

(b) **Project Greenprint Platforms.** MAS is collaborating with industry players to work on the following four common digital utility platforms that will consolidate new and existing sustainability data across multiple sectoral platforms and industry players, and allow different stakeholders to access and retrieve the data. The pilots are expected to be completed in the second half of 2022.

- **Common Disclosure Portal** – To manage performance data relating to environment, social and governance ("**ESG**"). Companies and FIs may make ESG disclosures via the common platform that will enable conversion and comparability across different reporting frameworks as required under different jurisdictions and purposes. This will promote data consistency and clarity in disclosures. Companies may also use the portal as an internal ESG monitoring and management tool.
- **Data Orchestrator** – To aggregate sustainability data from major ESG data providers, utilities providers, the Common Disclosure Portal, and other sectoral platforms. Users to the platform will be able to generate data insights through data analytics to help them with investment and financing decisions.
- **ESG Registries** – To store and maintain the origin of ESG certifications and verified data by certification bodies in different sectors, such as rubber, aquaculture, palm oil, construction, transport and maritime. The blockchain-based network of registries will enable access to trusted ESG data.
- **Greenprint Marketplace** – To connect green technology providers with investors, FIs and companies.

Boosting Technology Innovation

(a) **Sandbox Plus.** With effect from 1 January 2022, the enhanced version of the MAS FinTech Regulatory Sandbox framework will provide more effective one-stop assistance for fintech players. The enhancements to the FinTech Regulatory Sandbox framework include expanding the eligibility criteria for Sandbox Plus to include early adopters of technology innovations, in addition to first movers. First movers of technology innovation will be able to apply for entry into the Regulatory Sandbox and financial grant in one streamlined application. There will also be a new platform for deal-making opportunities for eligible participants.

Facilitating Data Access

(a) **Second Phase of Singapore Financial Data Exchange ("SGFinDex").** Launched in 2020, SGFinDex allows an individual to view his/her consolidated personal financial information held across participating banks and the relevant government agencies. Such financial information includes information relating to his/her deposits, credit cards, loans, and investments. With the launch of the second phase of SGFinDex, individuals may also view their investment holdings at The Central Depository (CDP), providing a more comprehensive view of their financial portfolio. The next phase of the SGFinDex upgrade will include information relating an individual's insurance policies.

MAS Consults on Changes to Complex Products Regime and Related Distribution Safeguards Requirement

On 3 November 2021, the Monetary Authority of Singapore ("**MAS**") issued a consultation paper seeking feedback on changes to the list of investment products covered under the complex products regime and the distribution safeguards relating to these products. The consultation ends on 15 December 2021.

Background Information

Implemented in 2012, the complex products regime helps retail investors better comprehend the features and risks of a complex product to make their investment decisions. MAS classifies products as:

(a) Excluded Investment Products ("**EIPs**") – These products are well-established in the market and have terms and conditions generally understandable by the market.
(b) Specified Investment Products ("**SIPs**") – These are not EIPs and may only be sold to retail investors with enhanced distribution safeguards. For example, intermediaries must assess a customer's investment knowledge and experience before a customer invests in an SIP.

Key Proposals

Pursuant to industry developments and market feedback, MAS' key proposals are set out below.

(a) **Changes to list of products covered under the complex products regime**

- **Collective investment schemes ("CIS")**. To categorise as EIPs all CIS authorised or recognised by MAS, ***except*** for a small number of more complex funds that involve alternative investment strategies or embed unique features not usually found in traditional funds. These excepted complex funds are presently subject to additional disclosure requirements and enhanced distribution safeguards.
- **Debentures**. At present, MAS classifies all debentures as EIPs, except asset-backed securities (ABS) and structured notes. MAS proposes classifying all debentures with varying interest payments or convertible features as SIPs, given the complexity of these products.

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- **Perpetual securities**. Presently classified as EIPs, perpetual securities refer to "*debentures which the issuer may redeem, or not at all, at its discretion, and do not have a specific redemption or maturity date where the principal amount will be repaid*". MAS would like feedback on whether to classify perpetual securities as SIPs or EIPs, as well as safeguards concerning the sale of perpetual securities.
- **Preference shares**. Due to similarities between perpetual securities and preference shares, MAS would like feedback on whether to align the EIP/SIP classification and applicable distribution safeguards for these two groups of products.

(b) **Removal of Customer Account Review ("CAR") and Customer Knowledge Assessment ("CKA") in advised transactions**

Sale of complex products by financial advisers ("**FAs**") are subject to distribution safeguards set out in the Notice on Recommendations on Investment Products (Notice No. FAA-N16). Prior to a customer's transacting in an SIP, FAs must assess the customer's investment knowledge and experience. This is conducted through the CAR for listed SIPs, and the CKA for unlisted SIPs. MAS' prescribed criteria for this determination includes a person's educational and professional qualifications, or investment and work experience.

If the assessment shows that the customer:

- Has either the knowledge or experience, FAs must *still* offer the customer the *choice* of whether or not to receive advice on the SIP; and
- Does not have the requisite knowledge or experience, FAs must provide advice to the customer before the customer may proceed with any transaction. The customer may make an investment against the FA's advice.

MAS proposes not requiring FAs to conduct a CKA or CAR as a separate assessment when FAs advise on SIP transactions; however, FAs must *still* consider a customer's knowledge or experience in SIPs in the suitability assessment. If the customer chooses to transact in an SIP against the FA's recommendation, the approval of the FA's senior management will still be required.

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

- MAS Consultation Paper titled "Proposed Changes to the Complex Products Regime"
- MAS Media Release titled "MAS Proposes Changes to Classification of Investment Products for Retail Investors"

Gaming

Gambling Duties Bill First Reading in Parliament

The Gambling Duties Bill ("**Bill**") was read for the first time in Parliament on 1 November 2021. The Bill seeks to: (i) consolidate the law on collection and levy of duties on lawful betting and lotteries and to make related amendments to the Casino Control Act regarding casino taxes and casino

licences; (ii) repeal the Betting and Sweepstakes Duties Act; and (iii) make consequential amendments to certain other Acts.

(a) Part 1 introduces the definitions and fundamental concepts of gambling-related terms used in the Bill.
(b) Part 2 provides for the tax called gambling duties.
(c) Part 3 deals with the recovery of and penalties for failure to pay gambling duties.
(d) Part 4 is concerned with making of returns, keeping of records, and providing of information in connection with administration of the taxing provisions in the Bill.
(e) Part 5 is about the administration of the Bill.
(f) Part 6 contains miscellaneous provisions including regulation-making powers.
(g) Part 7 makes consequential and related amendments to other Acts and contains saving and transitional provisions.

The Ministry of Home Affairs ("**MHA**") had earlier conducted a public consultation on the proposed review of gambling laws from 12 July 2021 to 10 August 2021.

For more information, click here to read our earlier Legal Update titled "*Public Consultation on Proposed Amendments to Laws Governing Gambling Activities*", as well as the following link:

- Public Consultation on the Review of Gambling Laws (available on the MHA website at www.mha.gov.sg)

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Insurance

MAS Proposes Changes to MAS Notice 122 on Asset & Liability Exposures for Insurers to Enhance Data Requirements

From 5 November 2021 to 6 December 2021, the Monetary Authority of Singapore ("**MAS**") conducted a consultation on proposed changes to MAS Notice 122 that sets out the requirements for insurers to submit information on their asset and liability exposures to MAS.

MAS analyses the information collected to, among other things, identify and monitor emerging risks and vulnerabilities, underlying trends, and potential risks, as well as assess systemic impact on the insurance sector. New risks have emerged, and there is an increased supervisory and analysis need. Since the enhanced risk-based valuation and capital framework (RBC 2) was recently introduced, some proposed changes to MAS Notice 122 are also intended to align the information collected therein with RBC 2-related data.

In view of the foregoing, MAS proposed enhancing data requirements under MAS Notice 122. The revised MAS Notice 122 will be collected using the new enhanced data collection platform, Data Collection Gateway (DCG).

MAS also sought feedback on its proposed implementation approach for data collection. Details of the revised MAS Notice 122 tables are set out at Annex A of the consultation paper, available here, and the glossary for completion of the revised MAS Notice 122 is set out at Annex B of the consultation paper, available here.

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On the implementation timeline, MAS is cognisant that insurers will require time to build systems to compile data to implement the revised MAS Notice 122, especially given the new DCG and its associated file submission formats. MAS targets issuing the revised MAS Notice 122 by Q1 2022, with a phased implementation period spanning 15 months from the issuance of the initial version of the XML form for submission of the revised MAS Notice 122 information.

Click on the following link for more information:

- Consultation Paper on Proposed Changes to Notice 122 on Assets and Liabilities Exposures for Insurers and its Implementation (available on the MAS website at www.mas.gov.sg)

Intellectual Property

Commencement of the Copyright Act

The new Copyright Act ("**Act**"), which was passed in Parliament in September 2021, has come into force on 21 November 2021. The Act enhances Singapore's copyright regime by updating its provisions to take into account technological developments that impact how content is created, distributed, accessed and used.

The following regulations have also been published in the Government Gazette:

(a) Copyright Regulations 2021
(b) Copyright (Royalties for Music Records) Regulations 2021
(c) Copyright (Border Enforcement Measures Fees) Regulations 2021
(d) Copyright Tribunals (Procedure) Regulations 2021

For more information, click here to read our earlier Legal Update titled "*Impending Changes to the Copyright Regime – Copyright Bill Introduced in Parliament*", as well as the following link:

- Commencement of the Copyright Act (available on the Ministry of Law website at www.mlaw.gov.sg)

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IPOS Now Accepts International PCT Applications in Chinese

On 5 November 2021, the Intellectual Property Office of Singapore ("**IPOS**"), in its capacity as the receiving Office ("**RO**") for applications under the Patent Cooperation Treaty ("**PCT**"), announced via Circular No. 5/2021 that it has accepted Chinese as a language from 1 January 2017 for:

(a) International Applications filed on and after 5 November 2021; and
(b) Request Forms (PCT/RO/101).

In view of this, rule 116 of the Patents Rules was amended to introduce Chinese as a language for international applications filed at IPOS as the RO. This was brought into force on 1 January 2017. The PCT, administered by the International Bureau of World Intellectual Property Office, is an international treaty that seeks to facilitate patent protection for an invention in several countries simultaneously through one application with a single office.

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The new service aligned with IPOS' extension of search and examination services to include international applications filed in the Chinese language as a competent International Searching Authority and International Preliminary Examining Authority under the PCT.

The new service is also expected to provide greater convenience and benefits to applicants who have filed or intend to file their patent applications in Chinese, by including an option to defer patent translation costs from Chinese into English until the national phase deadline. Applicants may thus gain time by making a conscious decision to translate the application at a later stage, without accruing upfront cost for translation that may be substantial depending on the technology.

Intellectual Property (Amendment) Bill First Reading in Parliament

The Intellectual Property (Amendment) Bill ("**Bill**") was read for the first time in Parliament on 1 November 2021. The Bill seeks to amend the Geographical Indications Act 2014, the Patents Act, the Plant Varieties Protection Act, the Registered Designs Act and the Trade Marks Act for the following purposes:

(a) To facilitate certain changes to processes for the registration of various intellectual property rights under the respective Acts; and
(b) To standardise certain provisions that are common across these Acts.

The Bill also amends the Intellectual Property Office of Singapore Act to require fines and composition funds paid under the Act administered by the Intellectual Property Office of Singapore ("**IPOS**") to be paid into the consolidated fund.

IPOS had earlier, from 15 July 2021 to 5 August 2021, conducted a public consultation to seek feedback on the Bill and corresponding amendments to the respective intellectual property subsidiary legislation.

Click on the following links for more information:

- Intellectual Property (Amendment) Bill (available on the Parliament of Singapore website at www.parliament.gov.sg)
- Public Consultation on Intellectual Property (Amendment) Bill 2021 (available on the IPOS website at www.ipos.gov.sg)

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Sustainability

Singapore Commits to Phasing Out Unabated Coal Power by 2050

On 4 November 2021, Singapore became a member of the Power Past Coal Alliance ("**PPCA**") and inked the Global Coal to Clean Power Transition Statement ("**Statement**").

Power Past Coal Alliance

The PPCA is committed to deliver the promises under the Paris Agreement. The main goals of the PPCA are to:

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(a) Get governments and private sectors to commit to phase out existing unabated coal power;
(b) Prompt a global moratorium on constructing new unabated coal-fired power plants;
(c) Move investments from coal to clean energy, such as by restricting finance for coal-fired projects; and
(d) Support the phasing out of coal in an inclusive manner (from sustainable and economic perspectives).

Unabated coal power generation refers to "*the use of coal power that is not mitigated with technologies to reduce carbon dioxide emissions, such as Carbon Capture Utilisation and Storage ("**CCUS**")*".

Joining PPCA, Singapore endorses the PPCA Declaration which includes a commitment to phase out unabated coal power by 2050. Singapore also pledges to restrict financing of unabated coal power internationally. To attain these decarbonisation goals, Singapore will transform our energy supply by switching to natural gas, solar, regional power grids, and emerging low-carbon alternatives.

Click here to read more about the PPCA.

Global Coal to Clean Power Transition Statement

The Statement was initiated by the UK 26th Conference of Parties (COP-26) Presidency to speed up global efforts in the energy transition movement, being a goal under the Paris Agreement.

By signing the Statement, Singapore is also committed to, among other things, move away from unabated coal power generation in the 2040s (or as soon as possible thereafter).

Singapore will also stop issuing new permits for new unabated coal-fired power generation, as well as cease direct Government support for new unabated coal-fired power generation projects worldwide.

The foregoing commitments by Singapore on the global front is aligned with Singapore's commitment to advance sustainable development, as evidenced by its Long-Term Low-Emissions Development Strategy ("**LEDS**") and Singapore Green Plan 2030.

Long-Term Low-Emissions Development Strategy

Through the LEDS, Singapore aims to cut its emissions from the peak to 33MtCO2e by 2050, and net zero emissions "*as soon as viable in the second half of the century*". The Singapore Government plans to achieve the LEDS in three main ways:

(a) Transforming industry, economy, and society through the greater use of renewable energy, improving energy efficiency and reducing energy consumption;
(b) Utilising advanced low-carbon technologies. These include CCUS and the use of low-carbon hydrogen; and
(c) Fostering effective collaboration internationally such as international climate action regional power grids and market-based mechanisms.

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To this end, the Parliament passed the Energy (Resilience Measures and Miscellaneous Amendments) Bill on 2 November 2021 to empower the Energy Market Authority (EMA) to implement measures requiring the reduction of greenhouse gas emissions and incorporate into regulations the relevant standards including those set out in international agreements or guidelines.

For more information, click here to read our earlier Legal Update titled "*Legislative Changes to Facilitate Transition to Low-Carbon Generation Sources Passed in Parliament*".

Singapore Green Plan 2030

As a national sustainability movement, the Singapore Green Plan 2030 aims to promote collective action to fight climate change through various key programmes. These include having the Government take the lead in the fight to peak public sector carbon emissions around 2025 (ahead of the national target) and promote sustainability practices among private sectors and individuals, such as through green procurement. Singapore also engages in "Energy Reset", which includes promoting the use of vehicles that utilises cleaner energy, and building greener infrastructure and buildings as well as sustainable towns and districts. Various schemes, such as the New Enterprise Sustainability Programme, are also introduced to assist local businesses to implement sustainability practices.

For more information on the Singapore Green Plan 2030, please refer here.

Click on the following link for more information:

- Ministry of Trade and Industry Singapore ("**MTI**") Press Release titled "Singapore to phase out unabated coal power by 2050" (available on the MTI website at www.mti.gov.sg)

Tax

Tax Treatment of Rental Relief Measures (2021)

To support businesses with rental costs during the Phase 2 (Heightened Alert) and the Stabilisation Phase, the Government has implemented two measures:

(a) **Government rental waiver framework** – where rental relief is provided to qualifying tenants of government-owned commercial properties. Tenants are required to pass down the rental relief received to any qualifying sub-tenants.

(b) **Rental waiver framework** – where landlords/intermediary landlords are required to provide a rental waiver of two weeks of gross rent to eligible tenants and sub-tenants of qualifying commercial properties.

- The Government has also encouraged landlords to provide additional rental support ("**additional support**") to their tenants/sub-tenants beyond their minimum obligations under the relevant framework/s.

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The Inland Revenue Authority of Singapore ("**IRAS**") has released a Tax Guidance on the tax treatment of reliefs provided under all three categories, as briefly summarised below.

	Provision of relief/additional support by landlords or intermediary landlords	**Receipt of relief/additional support by tenants or sub-tenants**
In the form of rental waiver	Only the reduced amount of rental income derived will be taxed.	The reduced amount of rental expenses incurred by the tenants/sub-tenants will be allowed for tax deduction, if such rental expenses are incurred in the production of income and not prohibited for deduction under Section 15(1) of the Income Tax Act ("**ITA**").
In the form of monetary payments	Tax deduction will be permitted on such monetary payments during the 2021 calendar year, subject to a cap. The cap will be the lower of (i) the contractual rental amount, or (ii) the actual amount of rental receivable from tenant/sub-tenant.	The amount of allowable rental expenses will be restricted to the amount of rental expenses net of the monetary payments received. Correspondingly, such monetary payments will not be brought to tax under Section 13ZA(5A) of the ITA.

Click on the following links for more information:

- Tax Guidance titled "Tax Treatment of Rental Relief Measures 2021" (available on the IRAS website at www.iras.gov.sg)
- Rajah & Tann Singapore Legal Update titled "Rental Waiver Framework for SMEs and Specified Non-Profit Organisations Affected During Phase 2 (Heightened Alert)"

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CaseBytes

Arbitration and Anti-Suit Injunctions: Singapore Court Issues Landmark Decision on the Proper Law for Determining Subject Matter Arbitrability

When a claim is filed in Court in breach of an arbitration agreement, the defendant's key recourse is to seek an anti-suit injunction at the national courts of the seat of the arbitration to restrain the counterparty. Such applications are usually heavily contested as the counterparty would invariably raise various defences as to why the court action should proceed. If the claimant's position is that the dispute is not arbitrable, how should the Court consider such an argument? Should the Court consider the issue of arbitrability under the law governing the *arbitration agreement* or the law of the *seat of arbitration*?

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In *Westbridge Ventures II Investment Holdings v Anupam Mittal* [2021] SGHC 244, the Singapore High Court was faced with the exact issue above. The defendant in the above decision had commenced action in the Indian courts for a claim of shareholder oppression and company mismanagement. The plaintiff sought an anti-suit injunction in Singapore on the grounds that the dispute ought to be arbitrated. The defendant sought to oppose the injunction on the ground that minority oppression is not arbitrable under the governing law of the arbitration agreement, which he submitted to be the laws of India.

The Singapore High Court held that subject matter arbitrability is determined by the law of the seat of arbitration at the pre-award stage. As the law of the seat in this case was Singapore law, under which the issue of minority oppression is arbitrable, the Court found that the dispute was arbitrable and thus granted an anti-suit injunction against the court proceedings.

The decision is novel as this is the first time that the Singapore Courts or the Courts of the Commonwealth jurisdictions have decided this issue.

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

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Singapore Court Sets Out When Contracts May Be Rectified for Unilateral Mistake

The provisions of a written contract may not always reflect the actual contractual intention of the parties. In certain situations, the Court may order the rectification of contractual terms to reflect such intention. In the case of *Doo Wan Tsong Charles v Oxley Jasper Pte Ltd* [2021] SGHC 249, the Singapore High Court considered when it would be appropriate to order the rectification of a contract in the event of unilateral mistake by a contracting party. In particular, the Court considered the kind of mistake for which rectification is available and the scope of rectification that is allowed.

The Plaintiffs had entered into an agreement for the *en bloc* sale of property to the First Defendant ("**Oxley**") and made payment of the initial deposit totalling S$4.75 million. Some months in, Oxley rescinded the agreement because a condition precedent regarding planning permission for a minimum number of units the development could be redeveloped into had not been met. The Plaintiffs, however, refused to return Oxley's initial deposit. By the time the matter came to Court, the Plaintiffs' position was that there was a mistake on their part, and as such the condition precedent in the agreement should be rectified such that, practically, they would be allowed to retain the deposit even as the sale was not seen through. Oxley counterclaimed for a return of the initial deposit

The High Court dismissed the Plaintiffs' claim on two fundamental levels: first, the Plaintiffs had failed to prove that they had made the alleged mistake as they had not supplied the requisite evidence, and had erroneously sought to attack the evidence of their own witness in closing submissions (without affording the witness an opportunity to respond); and second, rectification was in any event not available for the sort of mistake pleaded. The Court ordered the Plaintiffs to return the S$4.75 million deposit, along with interest.

Oxley was successfully represented by Kelvin Poon, Devathas Satianathan, and Cai Xiaohan from the International Arbitration Practice and Construction & Projects Practice, and Jodi Siah from the Appeals & Issues Practice.

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

Court of Appeal Sets Aside Arbitral Award Decided on Unpleaded Defence

Can an arbitral award take into account a defence that was first raised in written closing submissions? The Court of Appeal held otherwise in the case of *CAJ and another v CAI and another appeal* [2021] SGCA 102, finding that it had been decided in excess of the arbitral tribunal's jurisdiction and constituted a breach of natural justice.

As background, the appellants were the contractors for the construction of a plant for the respondent's subsidiary, who later assigned the claim to the respondent. In the arbitral proceedings, the respondent sought liquidated damages from the appellants, alleging a delay in mechanical completion.

In their written closing submissions, the appellants raised for the first time a defence claiming an extension of time, seeking to reduce the amount of liquidated damages payable ("**EOT Defence**"). The respondent objected to the raising of this defence.

Accepting the EOT Defence, the arbitral tribunal ("**Tribunal**") issued an award granting the appellants an extension of time of 25 days ("**EOT**") and therefore reducing the liquidated damages payable. The respondent then applied to the High Court to partially set aside the Award on the basis that:

(a) by ruling upon and allowing the EOT Defence, the Tribunal had exceeded the scope of the parties' submission to arbitration; and/or
(b) the Award had been made in breach of natural justice.

The High Court judge ("**Judge**") set aside the Tribunal's decision to grant the EOT. This was upheld by the Court of Appeal, who agreed that the Tribunal's decision on the EOT Defence had been made in excess of jurisdiction and in breach of natural justice.

Jurisdiction

As the appellants had failed to follow the correct procedure by applying to amend the defence to plead the EOT, the EOT Defence remained unpleaded.

Given that the EOT Defence had not been expressly raised in the pleadings, the Lists of Issues, or the Terms of Reference, there was simply no room to argue that the EOT Defence was nonetheless within the scope of the arbitration. It was also untenable for the appellants to suggest that the EOT Defence fell within the scope of the submission to arbitration simply because it would have a bearing on the respondent's claim for liquidated damages.

Natural justice

This was a classic case of breach of natural justice, as the respondent had not been given a fair and reasonable opportunity to respond to the EOT Defence.

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While there was no need to consider the question of remission, given the above errors in the Tribunal's decision, the Court of Appeal noted that this was not an appropriate case for remission back to the Tribunal. It would be manifestly unfair to the respondent to allow any amendment of the appellants' defence at this late stage.

Singapore High Court Sets Out Principles for Stay or Dismissal of Proceedings Under the Choice of Court Agreement Act

In *6DM (S) Pte. Ltd. v AE Brands Korea Ltd & 3 Ors* [2021] SGHC 257, the Singapore High Court set out and applied the relevant principles regarding an application to dismiss or stay proceedings pursuant to section 12 of the Choice of Court Agreements Act 2016 ("**CCAA**").

The plaintiff had commenced Suit 951 in Singapore against the defendants for a dispute relating to an Agreement. The Agreement contained a clause providing that the Agreement was governed by English law, and that the local courts had exclusive jurisdiction to settle any disputes arising under the Agreement. The first three defendants ("**Asahi Entities**") sought, among others, an order that Suit 951 be dismissed or stayed pursuant to section 12 of the CCAA.

Section 12(1) of the CCAA provides that, if an exclusive choice of court agreement does not designate any Singapore court as a chosen court, a Singapore court must stay or dismiss any case or proceeding to which the agreement applies, unless the Singapore court determines that certain prescribed exceptions apply.

The High Court held that, in an application for dismissal or stay of proceedings pursuant to section 12(1) of the CCAA, it is for the party seeking to rely on the purported exclusive jurisdiction clause ("**EJC**") to show a "good arguable case" that the EJC clause exists and governs the dispute in question. Once the applicant has done so, the Singapore court is required (except in the circumstances specified in section 12(1)) not to hear the case even if it has jurisdiction under national law. While a Singapore court may choose to stay or dismiss the case on other grounds, the grounds on which it may choose *not to stay or dismiss* the case or proceeding are closed, ie, limited to the five exceptions set out in section 12(1).

On the facts, the High Court accepted that the Asahi Entities had made out a good arguable case that the EJC in the Agreement was an EJC in favour of the courts of England, and that the EJC governed the disputes in question. This meant that section 12(1) of the CCAA was engaged, and that the Court must dismiss or stay the proceedings in Suit 951, unless it determined that one of the five stated exceptions in section 12(1) applied. However, the Court found that the exceptions did not apply in this case, and that the Suit 951 proceedings should be dismissed as against the Asahi Entities.

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Deals

Pace Enterprise's US$ 40 Million Series A Investment Round

Terence Quek, Benjamin Liew and Cheryl Tan from the Mergers & Acquisitions Practice, Financial Institutions Group and Banking & Finance Practice assisted Pace Enterprise Holdings Pte. Ltd., a Singapore-based Buy Now Pay Later solution, with its US$40 million Series A investment round, which raised capital from Japan's Marubeni Ventures, South Korea's Atinum Partners, Taiwan's AppWorks, Indonesia's Alpha JWC, and Singapore's UOB Venture Management, Vertex Ventures Southeast Asia & India, and Genesis Alternative Ventures.

HKBN JOS (Singapore) Pte. Ltd. and HKBN JOS (Malaysia) Sdn. Bhd.'s Sale of 60% Stake

Favian Tan from the Mergers & Acquisitions Practice, and Por Chuei Ying from Christopher & Lee Ong are acting for HKBN Group Limited in its sale of a 60% stake in each of HKBN JOS (Singapore) Pte. Ltd. and HKBN JOS (Malaysia) Sdn. Bhd. to StarHub Ltd., and its joint venture with StarHub Ltd.

DBS, J.P. Morgan and Temasek Jointly Develop Common and Open Industry Platform for Payments, Trade and Foreign Exchange Settlement through Use of Blockchain Solutions

Sandy Foo, Goh Jun Yi, Rajesh Sreenivasan, Benjamin Cheong, Kala Anandarajah, Tanya Tang and Regina Liew from the Mergers & Acquisitions Practice, Technology, Media & Telecommunications Practice, Competition & Antitrust and Trade Practice, and Financial Institutions Group acted for DBS Bank Ltd. in the joint development with J.P. Morgan and Temasek of Partior, a common and open industry platform for payments, trade and foreign exchange settlement through the use of blockchain solutions.

Authored Publications

Rajah & Tann Co-authors Report on the Family Office Landscape in Singapore Titled "Family Offices in Singapore"

Over the years, Singapore has become the jurisdiction of choice for family offices in Asia. This is partly due to its reputation as an international financial hub, strong regulatory framework, well-developed infrastructure, stable and pro-business government policies and tax incentive schemes.

Rajah & Tann Singapore recently co-authored a report on family offices titled "Family Offices in Singapore" ("**Report**"). Developed in collaboration with Deloitte Singapore with the support from Singapore Economic Development Board (EDB Singapore), the Report provides insights into the family office landscape in Singapore, and the incentives, challenges and solutions to creating and managing a family office today. It sets out the different pathways to establish a family office in Singapore and the factors to consider

when selecting a legal structure and team for a family office. The Report also features selected case studies of family offices in Singapore, and examines the tax and wealth structuring, family governance and planning strategies that these family offices adopt to manage their wealth and transfer the same through generations.

Vikna Rajah, head of the firm's Tax and Trust & Private Client Practices, and Chandra Mohan, co-head of the Private Client Practice, contributed to the Report.

The full Report can be read here. To read the full Report in Chinese, please click here.

The Report was officially launched on 30 November 2021. Please refer to the write-up titled "*Rajah & Tann and Deloitte, with the Support of Singapore Economic Development Board, Unveil Insightful Publication on the Family Office Landscape in Singapore*" on page 4 for more information.

Find out more about our Private Client Practice here.

Rajah & Tann Contributes to *The Law Gazette*: "Data Protection and Data Security Laws of China"

Benjamin Cheong and Yu Peiyi from the Technology, Media and Telecommunications Practice contributed an article titled "Data Protection and Data Security Laws of China" to the November 2021 issue of *The Law Gazette*, the official publication of the Law Society of Singapore.

2021 marks a significant year for China's data protection scene. On one hand, it was reported that China had close to 989 million internet users at the end of 2020, making it the country with the most internet users in the world. At the same time, 2021 saw the coming into operation of two important pieces of legislation concerning data protection and data security in China, namely, the Data Security Law ("**DSL**") and the Personal Information Protection Law ("**PIPL**"). It has therefore become increasingly important for businesses seeking to tap on the immense Chinese internet market to understand China's data protection regime.

In this article, the authors examine some of the key features of the DSL and the PIPL and the changes that they bring to China's data protection and data security landscape, and the way MNCs can conduct business in China taking into account these changes. Topics covered include the territorial scope of the laws, definition of "Personal Information", processing of Personal Information, cross border transfer of data, rights of data subjects, obligations of Personal Information processors (PIPs), and enforcement.

Click here to read the full article.

Find out more about our Technology, Media and Telecommunications Practice here.

Events

Primer on Resolution of Myanmar Disputes at the Singapore International Arbitration Centre

On 30 November 2021, Rajah & Tann Asia organised a webinar titled "Primer on Resolution of Myanmar Disputes at the Singapore International Arbitration Centre".

In the wake of the COVID-19 pandemic and the current political and economic situation in Myanmar, there has been an increased interest in the use of arbitration as an alternative means of formal dispute resolution for contract disputes. At the webinar, the speakers provided an introduction to the arbitration process at the Singapore International Arbitration Centre (SIAC) and the legal framework for the subsequent enforcement of arbitral awards in Myanmar.

The speakers comprised Dr Min Thein, Managing Partner of Rajah & Tann Myanmar, and Lester Chua, Associate Director of Rajah & Tann Myanmar and Partner at Rajah & Tann Singapore.

Back to the Office 3.0

On 23 November 2021, the Legal Services Interest Group of the Singapore International Chamber of Commerce (SICC), Rajah & Tann Singapore, Freshfields Bruckhaus Deringer LLP, Jardine Cycle & Carriage Limited (Jardine Matheson Group), Allen & Gledhill LLP and Drew & Napier LLC jointly organised a webinar titled "Back to the Office 3.0".

At the webinar, the speakers looked at the future of legal practice and shared their perspectives and concerns regarding hybrid working/working from home (WFH) arrangements. Being young lawyers and junior practitioners, they also touched on their concerns about their development or progress at work.

Rebecca Chew, Deputy Managing Partner of Rajah & Tann Singapore, was the moderator at the webinar.

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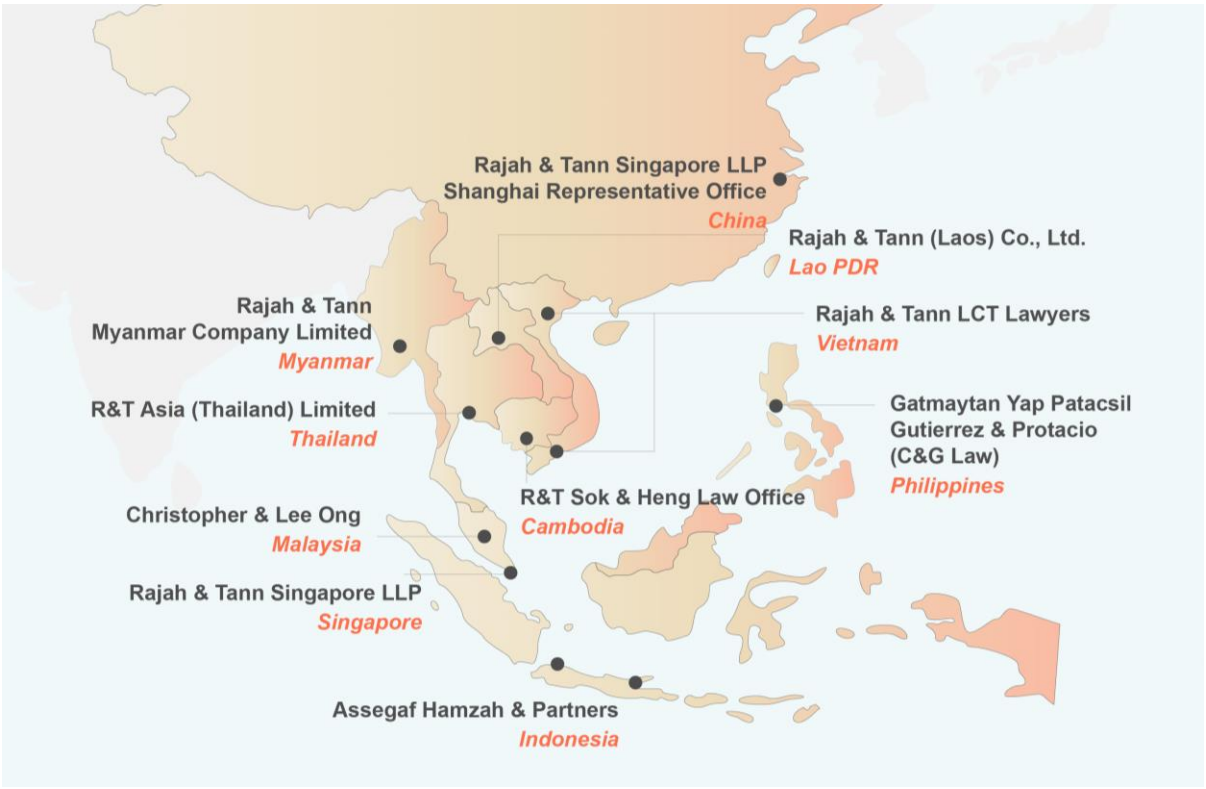
Our Regional Presence



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 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.