

Restructuring & Insolvency

Postponing Limitation Periods for Fraud

Singapore High Court Clarifies Contours of Fraud Exceptions in Sections 29(1)(a) and (b) of the *Limitation Act 1959*

Introduction

Under Singapore law, claimants are required to bring certain types of actions within six years of the accrual of their cause of action, failing which they are time-barred from doing so. To mitigate the potential harshness of this rule, the *Limitation Act 1959* ("LA") allows time to be postponed in some exceptional circumstances.

Of particular note are the fraud exceptions in section 29(1)(a) and (b) of the LA. Where (a) an action is "based upon the fraud of the defendant"; or (b) the right of action is "concealed by the fraud" of the defendant, the limitation period only starts running when the claimant discovers the fraud, or could with reasonable diligence have discovered it. The first exception recognises that victims may not always know when they have been defrauded. The second exception ensures that a defendant cannot benefit from his wrongdoing, if he has fraudulently concealed his activity.

However, the precise contours of the fraud exceptions have been the subject of recent debate. This is especially so in England, where decisions have diverged based on differences of phrasing in the *UK Limitation Act 1939* and the *UK Limitation Act 1980*.

In *SW Trustees Pte Ltd v Teodros Ashenafi Tesemma and others* [2023] SGHC 273, the Singapore High Court clarifies two thorny questions on how the fraud exceptions apply in Singapore where conspiracy is alleged. In particular:

- For section 29(1)(a) of the LA, the High Court has clarified for the first time that limitation periods can be postponed only if fraud is an essential element of the cause of action; and
- For section 29(1)(b) of the LA, any fraudulent concealment must have been committed by the specific defendant against whom time is sought to be postponed. Where there are alleged joint tortfeasors in a conspiracy action, fraudulent concealment by one co-defendant does not permit time to be postponed against any other co-defendant.

Wilson Zhu, Lye Yu Min and Naomi Lim of Rajah & Tann Singapore LLP's Restructuring & Insolvency Practice acted for the successful Appellant in this case.



Client Update: Singapore

2023 OCTOBER

Restructuring & Insolvency

Brief Facts

The Claimants, an insolvent company and its Liquidator, sued several defendants on the basis that assets were sold at an undervalue to the Appellant. Midway through, the Claimants sought to amend their case to introduce new causes of action in conspiracy. These new claims were, on their face, made outside of the six-year limitation period for tort claims.

High Court's Decision

The High Court agreed that the new causes of actions were time-barred, and that the Claimants could not postpone time against the Appellant to bring their claim. In doing so, the High Court provided the following important guidance on the correct scope of application of section 29(1) of the LA.

On section 29(1)(a) of the LA (actions "*based upon*" fraud), the High Court observed that modern English authorities diverged on the question of whether:

- (a) "*fraud*" had to be an essential element of the cause of action (e.g. fraudulent misrepresentation, tort of deceit, fraudulent conveyance etc); or
- (b) mere allegations of wrongs or dishonesty present in the cause of action would suffice.

The High Court affirmed the former interpretation, based on the express wording of section 29(1)(a) of the LA and English decisions on the older *UK Limitation Act 1939*. Accordingly, the seminal English case of *Beaman v ARTS Ltd* [1949] 1 All ER 465, where time to bring a fraudulent conversion action could not be postponed as conversion was not an action based on fraud, is now confirmed to be good law in Singapore. The scope of section 29(1)(a) of the LA is therefore a narrow one.

As for section 29(1)(b) of the LA (where the right of action was "*concealed by*" the defendant's fraud), parties disagreed on whether, in a multi-defendant scenario of an unlawful means conspiracy claim:

- (a) the concealment had to be done by the specific defendant against whom time was sought to be postponed against, or
- (b) whether time could be postponed against all co-defendants as long as there was concealment by one co-defendant.

The High Court held that, on the weight of existing authority, the provision did not apply where concealment was done by one defendant, but the limitation was sought to be postponed against another defendant. This was so even if conspiracy is a joint tort involving joint tortfeasors.

Client Update: Singapore

2023 OCTOBER

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Significance

The High Court's decision provides important guidance on the precise contours of the fraud exceptions under the LA.

The decision will also be of particular significance to insolvency practitioners. As in the present case, liquidators are typically strangers to a company. Time is understandably needed to investigate potential claims. Even if directors have acted openly and documented their actions thoroughly in the insolvent company's books and records, there can still be fraudulent concealment if they were the controllers of the company prior to liquidation. However, this does not mean that limitation periods to bring an action can then be postponed against all other co-defendants, where there is no evidence that such co-defendants participated in the directors' fraudulent concealment. Liquidators will therefore have to carefully weigh their options when asserting claims involving joint torts.

For further queries, please feel free to contact our team below who acted for the successful Appellant.

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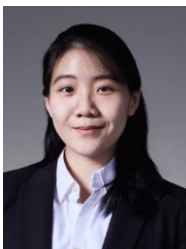
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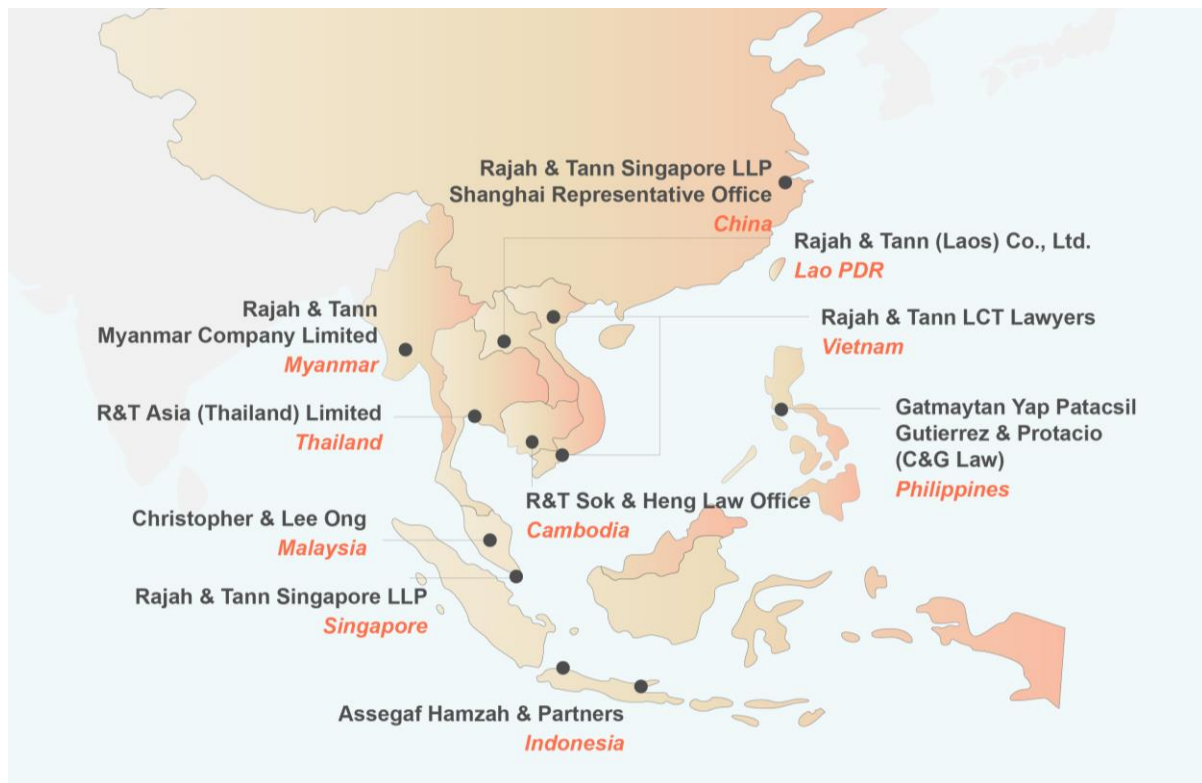
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