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New Penal Code Offence to Deal with Technologically Enabled and Complex Fraudulent Schemes for Contracts for Goods and Services

Introduction

Recent years have seen the emergence of novel and complex fraudulent schemes that may not be captured by the existing cheating offences in the Penal Code, such as where a wrongful gain or loss was intended but a victim is not easily identified. A significant example is the manipulation of the London Interbank Offered Rate ("**LIBOR**") in the UK via fraudulent representations made by banks. As LIBOR is often used as a benchmark for financial products, it had far-reaching consequences on financial markets and products. However, it was difficult to identify any specific person who suffered loss or show that the victims relied upon the fraudulent representations.

To address this loophole, the Criminal Law Reform Act ("**CLRA**") introduced sections 424A and 424B of the Penal Code. The new sections focus on the culpability of the offender instead of the effect on the victim – unlike existing cheating offences, they do not require the prosecution to establish that a victim has been deceived. Section 424A deals with fraud that is not directly connected with a written or oral contract for the supply of goods or services, while section 424B deals with fraud in connection with contracts for goods and services.

Section 424A had earlier come into effect on 1 January 2020. However, the commencement of section 424B was delayed to allow for the development of a mechanism to enable private individuals to obtain recourse for common and smaller losses, such as transactions on e-commerce platforms.

On 27 July 2023, the Ministry of Home Affairs ("**MHA**") [announced](#) that section 424B would come into effect on 28 July 2023.

Text of Section 424B

Section 424B of the Penal Code reads as follows:

- "(1) A person shall be guilty of an offence if he, fraudulently or dishonestly —*
- (a) makes a false representation;*
 - (b) fails to disclose to another person information which he is under a legal duty to disclose; or*

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(c) *abuses, whether by act or omission, a position which he occupies in which he is expected to safeguard, or not to act against, the financial interests of another person.*

(2) *A person may be guilty of an offence under subsection (1) whether or not the acts in subsection (1)(a), (b) or (c) were material.*

(3) *A person who is guilty of an offence under subsection (1) shall on conviction be punished with imprisonment for a term which may extend to 20 years, or with a fine, or with both.*

(4) *This section does not apply to any act mentioned in subsection (1) which would constitute an offence under section 424A."*

With regard to subsection (2), the lack of a materiality requirement ensures that the focus does not shift back to the victim and how material they found the falsehood, which would be inconsistent with the purpose of the new offence.

Mechanisms for Recourse for Smaller Losses

There have been several recent developments laying the groundwork for section 424B to come into force, namely:

- **Launch of the E-Commerce Marketplace Transaction Safety Ratings ("TSR")** in May 2022. The TSR assigns an overall safety rating to major e-commerce marketplaces (such as Amazon, Lazada, and Carousell) based on four areas of assessment: (i) user authenticity; (ii) transaction safety; (iii) availability of loss remediation channels for consumers; and (iv) the effectiveness of their anti-scam measures. This is to encourage consumers to transact only on e-commerce platforms that have put in place sufficient measures to protect consumers from scams. TSR ratings are reviewed annually.
- **Revision of Technical Reference 76**, the national standard for e-commerce transactions, to include additional anti-scam guidelines. The guidelines set out best practices for e-retailers and e-commerce marketplaces to offer better protection for consumers.
- **Implementation of remediation measures by most major e-commerce platforms** to allow individuals to obtain recourse for smaller losses. On 4 May 2023, MHA announced the updated TSR for 2023, additionally noting that e-commerce marketplaces had stepped up their anti-scam safety features.

If you have any queries on the above development, please feel free to contact our team members below who will be happy to assist.

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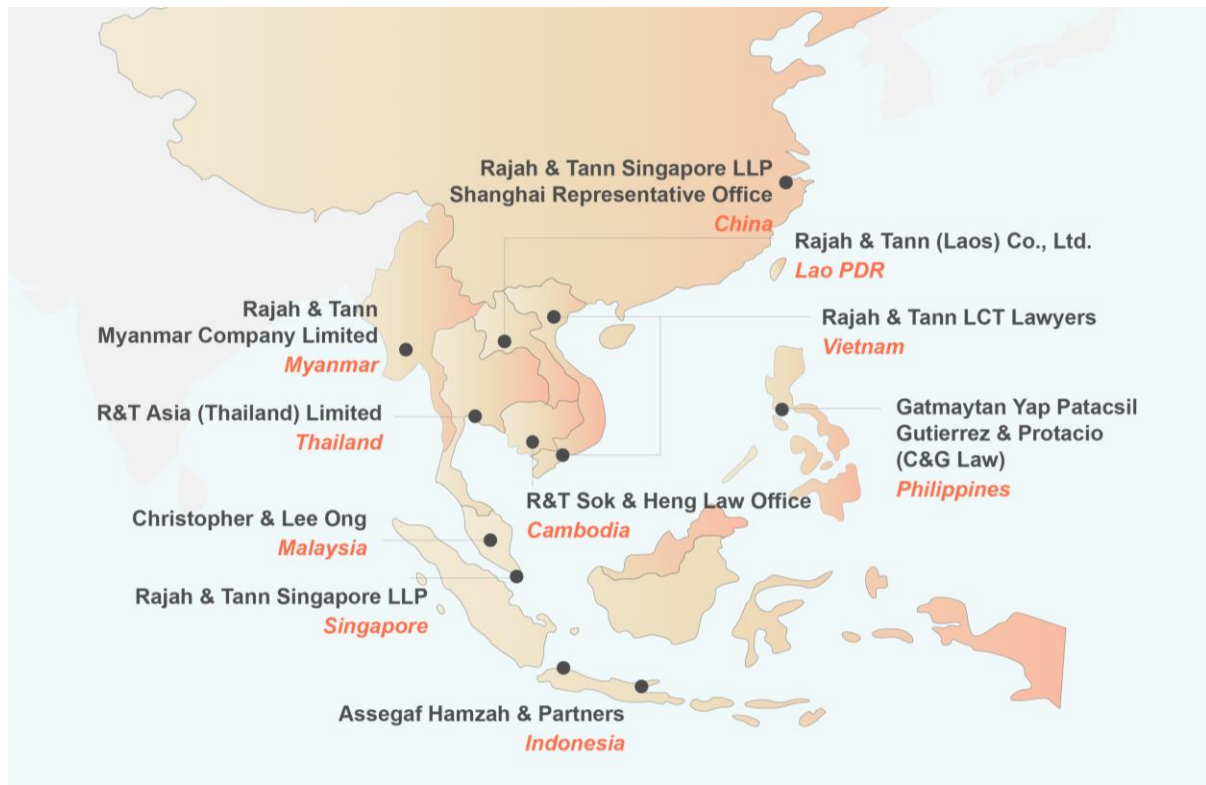
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