AROUND RAJAH & TANN
First Quarter 2005 Round-Up

Another year has gone by and while we look back on and give thanks for the successes of 2004, the Firm is also positioning itself for the new year ahead. The first quarter of 2005 has already built on the achievements of the past year. However, no law firm can rest on its laurels and we constantly strive to reach new heights in quality and service delivery for our clients. In this respect, the last quarter has seen the Firm reaching across and building in cutting-edge areas of the law.

Admiralty & Shipping

When the Singapore Supreme Court released its 2004 Annual Report, it listed 10 cases of significance which it decided in 2004. Out of these cases, three emanated from the Admiralty & Shipping PG, namely: Man B&W Diesel S E Asia Pte Ltd & Anor v PT Bumi International Tankers (2004), The Sunrise Crane (2004), and The Melati (2004). This was more than any other law firm in Singapore. This achievement not only highlights that the Firm is at the cutting edge of the legal development of complex and novel issues of law in Singapore, but the confidence that clients have in the Firm to handle such matters.

The achievements of 2004 continue into 2005. The beginning of the year has seen the Admiralty & Shipping Practice Group involved in some of the most high profiles cases on the legal calendar. Most recently, Steven Chong SC filed a suit on behalf of the Singapore Government against P&O Nedlloyd, the owners of the Dutch container ship, the ‘ANL INDONESIA’, which collided with the navy ship, the ‘RSS COURAGEOUS’, two years ago. The client is asking for compensation for the loss and damage suffered as a result of the collision.

Steven Chong SC is also acting for Keppel Shipyards in defending a charge brought against the safety officer onboard the ‘ALMUDAINA’, as well as two other charges against the shipyard.
The charges were brought after a flash fire in the vessel in May 2004 led to the loss of seven lives. The safety officer and the shipyard have been charged for failing to comply with certain regulations under the Factories (Shipbuilding and Ship Repairing) Regulations. Steven has also been instructed to defend a claim which has been brought by the dependants of one of the seven deceased workers.

Other members of the Practice Group have also been having their day in court:

- In addition to being involved in the Singapore Court of Appeal hearing of The Sunrise Crane, Lim Tean – head of the Practice Group – successfully acted for the defendant, QBE Insurance (Malaysia) Bhd, in a claim by the vessel owner of a container vessel, the ‘SAIPAN LEADER’. The vessel owner made a claim under its hull and machinery insurance policy issued by the defendant. The claim was for damage to an engine crankshaft which it alleged was caused by the negligence of the crew. The Singapore High Court agreed with QBE that the vessel owner had not been able to show that the chief engineer’s negligent onboard repairs had been the cause of the damage, and accordingly dismissed the claim against the client.

- Winston Kwek, instructed by Zao Large, the Russian owners of a seismic vessel, the ‘MV MEZEN’, successfully set aside the arrest of the vessel on the basis that they were not the party liable on the claim. The Singapore High Court agreed with him that the plaintiffs had not shown that they had contracted with the owners, and that the plaintiffs had instead contracted with the vessel’s charterers, who bore an almost identical name with the owners. Significantly and happily for the client, several other claimants who had intervened in this action subsequently discontinued their actions against the client after this decision.

- Leong Kah Wah assisted a Scandinavian P&I Club, and charterers, Armada Bulk Carriers Ltd, to successfully obtain a ship inspection order by invoking the provisions of the International Arbitration Act to get the Singapore courts to provide assistance to preserve evidence in respect of foreign arbitration proceedings.
The Admiralty & Shipping Practice Group has also been having success in the area of arbitration. Lim Tean is also acting for a European shipowner in a US$50 million ICC arbitration against a major Japanese construction group arising out of delays in a port expansion project. Leong Kah Wah is acting in a SIAC arbitration for an international group which provides collateral management warehousing services. The case involves a consignment of rice shipped from India to an African port which was supposed to have been discharged to a third party, but which, however, remained in bonded warehouses more than a year after the discharge.

Dispute Resolution

The Admiralty & Shipping Practice Group have not been the only lawyers in the Firm involved in high-profile, cutting-edge cases. Quentin Loh SC, Anthony Wee and Teo Guan Kee have been advising a major insurer in defending a high profile dependency claim. The plaintiff had initially claimed for the sum of more than US$150 million. This figure was reduced over several hard fought court wins where, at the end, the Court dismissed the plaintiff’s novel claim against the clients’ insured for loss of inheritance. Thus, the substantial portion of the plaintiff’s claim for US$150 million failed. The decision, which saw the Singapore High Court engage in an extensive review of the history of the relevant provisions of the Civil Law Act, resulted in a favourable decision for the clients’ insured as the Court ultimately held that it should only pay US$585,000 as loss of dependency (being 45% of US$1.3 million) based on the traditional multiplier-multiplicand basis (multiplier of 10 years and multiplicand of US$130,000 a year).

In the area of securities disputes, Andrew Ong recently acted for Ong & Co against David Lua Soo Theng in a case that is the first reported decision in Singapore dealing with a dealer’s liability for the margin account trading losses of his clients. The claim was in the nature of an indemnity from a former dealer, David Lua, in respect of losses incurred on a margin trading account serviced by the dealer. A full claim was adjudged in favour of the client for over S$6.3 million with interest and costs. The alleged counterclaim by the defendant was dismissed
entirely. This case has extended the principle set out in a previous reported decision, also successfully argued by Andrew Ong on behalf of Ong & Co, on a claim against one of its dealers for the cash account trading losses of her clients. These two reported decisions constitute significant precedents and are the latest developments in the area of stockbroking law.

Chandra Mohan has been handling various significant international arbitration related matters recently (An article by Chandra on the problems posed by multi-party, multi-contract arbitrations is available at page 14). He successfully acted for CNPC International, a subsidiary of one of the largest companies in the PRC, China National Petroleum Corporation, in obtaining an injunction to restrain counterparties from commencing proceedings in Nigeria in favour of arbitration proceedings in Singapore. He is also acting for the Government of the Philippines in applying to set aside a partial arbitral award.

**Insolvency**

China Aviation Oil (Singapore) Corporation Ltd (‘CAO’), which has recently been much in the news when it incurred US$550 million in derivatives trading losses, has engaged Patrick Ang to act in its proposed scheme of arrangement for the restructuring of its debts. The proposal was duly filed in the Singapore High Court on 24 January 2005. Among other things, the scheme involved a cash injection of up to US$100 million in fresh equity from its parent company, China Aviation Oil Holding Company (‘CAOHC’), and a new investor. This money is going towards working capital and a cash distribution to creditors on terms to be agreed between the new investor, CAOHC and CAO. In addition, CAOHC had, as a goodwill gesture, agreed not to participate in the cash distribution and deferred debt, and to the conversion of its debt at a discount to shares in CAO; the proposed scheme assures creditors of a payment of up to 41.5% of their total debt. The Court also granted an order that the creditors’ meeting may be convened within six months (ie, by 10 June 2005).

Lionel Tay, together with Audrey Ng, are acting for the receivers and managers of Poh Kong Chye Goldsmith, one of Singapore’s oldest goldsmiths. It has closed with substantial debts owing to its
Around

Rajah & Tann

First Quarter 2005 Round-Up
Rajah & Tann’s South Asia Practice
The Lunchtime Seminar Series 2005

Feature Articles

The Problem Of Inconsistent Awards In Multi-Party, Multi-Contract Arbitration Proceedings
Limitation Of Liability In Maritime Claims
The Law Concerning Mistakes Made In Electronic Commerce
Implications Of The Building & Construction Industry Security Of Payment Act 2004

Case Bites

Legislation Bites

——

major creditors, United Overseas Bank Limited and NM Rothschild & Sons. Lionel is also acting for the receivers and managers of Angie the Choice, a familiar name in the cakeshop and bakery market. Wilma Cheng and Michelle Yeo are assisting in the corporate aspects of this file.

Corporate & Capital Markets

Wong Kok Hoe and Chia Kim Huat are acting for Pakara Investments Pte Ltd in making an unconditional cash offer for shares in its subsidiary Pakara Technology in order to take it private. Having achieved more than 90% acceptances, Pakara is exercising its rights under section 215 of the Companies Act to compulsorily acquire the remaining shares.

Banking

Toh Kian Sing acted for Mizuho Corporate Bank Limited in successfully resisting an appeal by Woori Bank that they were not liable for a claim under four letters of credit. One of the principle grounds relied on by Woori Bank was that, under the terms of the letters of credit, the client could only negotiate on them on or after 51 days from the date of the bill of lading. The Singapore High Court accepted Kian Sing’s argument that the term ‘negotiate’ in letters of credit transactions must refer to the entire process of initial negotiation, ie giving value to the beneficiary, coupled with reimbursement. Accordingly, as the entire process here ended after the 51-day period, there was no breach of this term.

Property

The REITS markets have been gathering a great deal of attention as the property industry faced more optimistic prospects. The Ascendas Real Estate Investment Trust has been making the news lately with its acquisition of various properties around Singapore. Ong Hway Cheng of the Property Practice Group has been involved in advising the vendors in a number of these sales, which include, among others, CG Aerospace Building (which had a purchase price of S$31.1 million), C&P Logistics Hub (at a purchase price of S$225 million), and IDS Logistics Building (at a purchase price of S$50 million).
The growing popularity and commercial growth of REIT schemes has also seen Lai Pui Ming involved in sales of properties by owners of buildings to other REITs as well. Most recently, she acted for Builders Centre Pte Ltd in the sale and leaseback of their building, Builders Centre to ProLogis Singapore I Pte Ltd. She is also currently acting for the owners of two buildings in the sale and leaseback of their buildings to Mapletree REIT.

**iTec**

The iTec Practice Group has seen itself very busy as well.

Steven Chong SC and Lionel Tan recently represented SP Services Limited (formerly known as Power Supply Limited) in bringing an action against TUI Consulting Asia Pte Ltd and TUI Consulting Limited (together ‘TUI Consulting’). TUI Consulting, New Zealand based information technology consultants, had been engaged by SP Services to implement a new multi-million dollar computer billing system. The new computer system went ‘live’ in June 2000, but was beset with problems that resulted in long delays in utility bills being sent out to customers and also errors in these bills. As a result of the problems faced with the new computer system, SP Services brought an action against TUI Consulting in the Singapore High Court in November 2003.

Steven and Lionel were able to assist SP Services in reaching a satisfactory settlement to the dispute this year under which TUI Consulting agreed to provide restitution to the satisfaction of SP Services, and also agreed to withdraw all its claims and counter-claims against it.

In line with Singapore’s obligations under the United States-Singapore Free Trade Agreement, Parliament revamped the Copyright Act. The new Copyright (Amendment) Act came into force on 1 January 2005 and it introduced far-reaching amendments to the copyright regime. While the greatest media attention was given to the new provisions on infringing software, other provisions introduced will have an equally hard-hitting impact as well.

At the forefront of the crest of this new development, the iTec Practice Group has been assisting its clients negotiate their way through
the new copyright landscape. Among other things, Lau Kok Keng has advised the Media Corporation of Singapore Ltd, Sony Computer Entertainment and Yahoo! on digital broadcasting, internet simulcasting, anti-circumvention provisions, end-user criminal liability and ISP rights and obligations under the Copyright Act amendments.

He has also been interviewed and featured in various media articles commenting on the new copyright legislation. Preliminary information on the amendments introduced by the Copyright (Amendment) Act can be found in our Client Update on it, available on eOASIS at http://eOASIS.rajahtann.com.

Also making headlines has been the attention given to the proposal to introduce a casino in Singapore. The iTec Practice Group has, since 2002, been developing considerable expertise in the area of gaming, having advised lottery operators, sports bookmakers, off-shore internet casinos and online betting exchanges in their gaming operations. Most recently, Kok Keng was in Africa and the Middle East to work on a gaming project.

Other Achievements

As Singapore positions itself to become a medical and pharmaceutical centre for the region, the need for quality legal advice and familiarity with this area of professional practice has been growing. It is not only in the area of medical negligence that advice is needed, but the growing expansion of medicine into cutting-edge research areas has meant that lawyers must increasingly be familiar with the ins-and-outs of the ethical implications of their clients’ practices. Anthony Wee is currently a member of the Bioethics Committee, Alexandra Hospital which is a sub-committee of the Medical Board, Alexandra Hospital. By virtue of his office as a member of the Bioethics Committee, Anthony is also a member the Quality Assurance Committee of Alexandra Hospital.

Lunchtime Seminars

The Firm is starting its popular lunchtime seminar series again, now in its sixth year. Page 13 has more about the upcoming talks and how you can register to attend.