

Dispute Resolution

Directors and the Scope of Fiduciary Duties

Introduction

Directors of a company are subject to a wide scope of fiduciary duties. The issue of whether certain acts or omissions constitute a breach of these fiduciary duties often comes before the courts, and the issue is further complicated when family-run organisations are involved.

The case of *Winsta Holdings Pte Ltd and another v Sim Poh Ping and others* [2018] SGHC 239 involved a family-owned and run business, a substantial stake of which was subsequently bought over by an investor. The family members stayed on to manage the business as directors and senior management, but were later alleged by the investors to have breached their fiduciary duties by diverting business from the company and failing to declare conflicts of interest.

The Singapore High Court found that the Sim family, including the father (“**Sim**”) and two daughters (“**Lynn**” and “**Joyce**”), had in fact breached their fiduciary duties, and were liable to compensate the group of companies for the losses suffered as a result of the breaches.

The Plaintiffs were successfully represented by Lee Eng Beng S.C., Mark Cheng, Chew Xiang and Ho Zi Wei of Rajah & Tann Singapore LLP.

Brief Facts

The dispute involves a series of companies (“**Winsta Group**”) which had been founded and managed by the Sim family. The companies were in the business of leasing and management of hostels and serviced apartments, and were subsidiaries of the main holding company (“**Winsta Holding**”).

M Development subsequently acquired a majority controlling stake in Winsta Holding. The Sim family continued to manage Winsta Holding and its subsidiaries, remaining as directors.

Following an investigation, M Development, Winsta Holding and its subsidiaries uncovered wrongful activities on the part of the Sim family. This consisted mainly of interested party transactions which they had failed to declare, as well as business opportunities which they had diverted to companies beneficially owned by them.

The Plaintiffs brought a claim against each of the members of the Sim family for breach of fiduciary duties owed to the Winsta Group as directors, as well as other individual and corporate defendants for dishonestly assisting the Sim Family in their breaches.

Dispute Resolution

Holding of the High Court

The Singapore High Court found in favour of the Plaintiffs, holding that the Sim family had in fact breached their fiduciary duties, and were thus liable to compensate the Plaintiffs for their losses.

Directors' duties

As a fiduciary, a director is subject to strict obligations of loyalty.

- (i) A director must avoid putting himself in a position where his duty to the company conflicts with his own interest (the no-conflict rule); and
- (ii) A director cannot profit out of his fiduciary position (the no-profit rule).

As part of the no-profit rule, a director who receives a business opportunity because of his directorship cannot divert the opportunity to himself or an entity in which he has an interest. It is irrelevant whether the company itself is in a position to take advantage of the opportunity.

Lynn and Joyce

Lynn and Joyce managed the day-to-day operations of Winsta Holding and its subsidiaries. On the facts, they had breached the no-conflict rule and the no-profit rule through a series of acts and omissions.

- (i) They diverted multiple business opportunities for leasing and provision of accommodation to companies of which they were beneficial owners. The opportunities were received in their capacities as directors of Winsta Group, and they had failed to disclose their interests or obtain consent from the Board of Winsta Group.
- (ii) They procured tenancy and catering agreements between Winsta Group and companies of which they were beneficial owners, resulting in interested party transactions. They also failed to disclose their interests in these companies to the Plaintiffs.
- (iii) They used the resources of Winsta Group for their own interests.

Sim

The Sim family argued that Sim was not involved in any of the matters which were the subject of the Plaintiffs' claim as he was not involved in the business operations.

However, the Court did not accept Sim's denial of knowledge and involvement. On the facts, the Court held that he must have known of Lynn and Joyce's interests in the defendant companies, that he would

Client Update: Singapore

2018 NOVEMBER

LAWYERS
WHO
KNOW
ASIA

Dispute Resolution

be regarded to have a personal interest in the companies as well, and that he must have agreed to the actions taken by Lynn and Joyce.

Concluding Words

Directors must strictly observe their fiduciary duties to the company, including the no-conflict rule and the no-profit rule. In particular, diversion of business to companies in which they have an interest and related party transactions are likely to breach these rules. Directors should also ensure they disclose any interests they may have in competing companies or counterparties to any transaction.

Where family-run companies are involved, corporate governance practices may sometimes tend to be more informal. It is important to note that these companies are also subject to the same corporate governance regime, and that their directors must comply with the same fiduciary requirements.

For further queries, please feel free to contact our team below.

Contacts



Lee Eng Beng S.C.
Managing Partner

D +65 6232 0402
F +65 6225 9630

eng.beng.lee@rajahtann.com



Mark Cheng
Deputy Head, Restructuring &
Insolvency

D +65 6232 0446
F +65 6428 2009

mark.cheng@rajahtann.com



Chew Xiang
Partner

D +65 6232 0418
F +65 6428 3457

xiang.chew@rajahtann.com



Ho Zi Wei
Associate

D +65 6232 0141
F +65 6428 2023

zi.wei.ho@rajahtann.com

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
F +65 6225 9630
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海
SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*
Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Sole Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN NK LEGAL | *Myanmar*

Rajah & Tann NK Legal Myanmar Company Limited

T +95 9 7304 0763 / +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 894 0377 to 79 / +632 894 4931 to 32 / +632 552 1977
F +632 552 1978
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Member firms are constituted and regulated in accordance with local legal requirements and where regulations require, are independently owned and managed. Services are provided independently by each Member firm pursuant to the applicable terms of engagement between the Member firm and the client.

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 Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or e-mail Knowledge & Risk Management at eOASIS@rajahtann.com.