Dispute Resolution

Developments in Dispute Resolution – A Review of 2019

Introduction

In 2019, Singapore’s legal framework has undergone further development as part of continuing efforts to keep pace with the modernisation and internationalisation of commercial disputes. Similarly, the Singapore courts have issued important decisions that reflect the continuing advancement of the law.

In this Client Update, we review the decisions and developments over the course of 2019, focusing on notable trends including the growing significance of Alternative Dispute Resolution (“ADR”), the facilitation of cross-border dispute resolution and adaptation to digitalisation.

We also take a look at some of the decisions over the past year in the areas of Restructuring & Insolvency, Property Law, Contract Law, Shipping Law, Criminal Law and Construction Law.

As we navigate the complexities of the legal year ahead, we hope that this Client Update will provide some insight as to where the developments in dispute resolution may be headed.
Dispute Resolution

CONTENTS

Alternative Dispute Resolution ................................................................. 3
Mediation ............................................................................................... 3
Arbitration ............................................................................................... 3
  The importance of the seat of arbitration.............................................. 4
  Determining the proper law of an arbitration agreement ....................... 4
  Defending an application to reverse an arbitral decision ...................... 5
SICC issues first judgment on arbitration .................................................. 5
Restraining winding-up proceedings in favour of arbitration ....................... 6
Can an arbitral award be issued against minors? ........................................ 6

Restructuring & Insolvency ...................................................................... 7
Limits of assistance in foreign insolvency .................................................. 7
Recognition of foreign bankruptcy orders .................................................. 8
Principles behind applications for schemes of arrangement ....................... 8

Cross-Border Disputes ............................................................................. 9
Mareva injunctions in aid of foreign proceedings ....................................... 9
Addressing important jurisdictional issues in complex cross-border dispute ........ 10
Offers to settle in the context of global proceedings .................................. 11
Singapore court judgment recognised by Vietnam Court of Appeal .............. 12

Property Law .......................................................................................... 12
What makes a valid collective sale .......................................................... 13

Contract Law .......................................................................................... 13
SICC rules on landmark cryptocurrency-related dispute ............................... 14
Proving arrangements in the absence of a written contract ......................... 14

Shipping Law ......................................................................................... 15
Ship collision and apportionment of liability .............................................. 15
Retention of title clauses ........................................................................ 15

Criminal Law ........................................................................................... 16
Five Judges of Appeal overturn conviction in illegal import case ................. 16
Retention of property seized for investigations ......................................... 17

Construction Law .................................................................................... 17
When should an adjudication determination be enforced? ......................... 18
Can a claimant in liquidation enforce an adjudication determination? ........... 18
Can a payment claim be made after termination of employment? ................ 19

Court Structure ....................................................................................... 19
Alternative Dispute Resolution

While litigation has traditionally been the default mechanism for the resolution of commercial disputes, ADR has established itself as a legitimate and often even preferred avenue for parties to submit their claims. This includes ADR options such as arbitration and mediation.

With the growing popularity of ADR, Singapore has positioned itself as a regional hub for ADR. In 2019, Singapore has continued to build up its legislative framework to support cross-border ADR, as well as its body of case law on the interaction between ADR and the court system.

Mediation

Over the recent years, there has been much focus on the conduct and enforcement of international commercial arbitration and litigation. 2019 has seen similar measures being initiated for the advancement of commercial mediation in Singapore. Mediation is increasingly being utilised as a means to avoid substantive proceedings and to reach a mutually agreed settlement.


Since then, the Singapore Convention on Mediation Bill has been introduced in Parliament on 6 January 2020. This Bill, once passed, will implement the Singapore Convention. It will allow a party to an international settlement agreement to apply to the Singapore High Court to record the agreement as an order of court so as to enforce the agreement in Singapore, or to invoke the agreement in court proceedings in Singapore to show that the matter has been resolved.

This development directly addresses the issue of enforcement of mediated settlement agreements, and provides greater assurance that the results of mediation can in fact be enforced in the relevant jurisdiction.

Arbitration

The Singapore courts have traditionally taken a pro-arbitration stance, demonstrating a policy of non-interference while also supporting the conduct of arbitral proceedings.

In 2019, the Singapore courts issued a number of judgments involving arbitration, many of which dealt with the cross-border nature of international arbitration. In particular, the Singapore International...
Dispute Resolution

Commercial Court ("SICC") – as an institution designed to manage international disputes and the corresponding issues – made its first determination on arbitration. Here, we highlight some of the notable cases on arbitration.

The importance of the seat of arbitration

Resisting the recognition and enforcement of an arbitral award can be challenging, and there are limited grounds on which enforcement can be opposed. However, in *ST Group Co., Ltd. & 2 Ors v Sanum Investments Limited* [2019] SGCA 65, the Singapore Court of Appeal demonstrated when it would refuse enforcement of an award in the context of a wrongly-seated arbitration.

The arbitration agreement between the parties in this case had specified the seat of arbitration as Macau. However, the actual arbitration was seated in Singapore instead. The Singapore High Court nonetheless allowed the enforcement of the award against most of the respondents in the arbitration, finding the error in seat to be a mere procedural irregularity.

The Court of Appeal reversed this aspect of the High Court's decision, holding that an award arising from a wrongly-seated arbitration should not be recognised or enforced because it is not in accordance with the parties' arbitration agreement. The decision highlights the importance of the correct seat of arbitration.

Francis Xavier SC, Tee Su Mien and Edwin Tan from the Commercial Litigation Practice were instructed counsel before the Court of Appeal, successfully resisting the enforcement of the arbitration award.

To read more, please find our Client Update here.

Determining the proper law of an arbitration agreement

In *BNA v BNB & Anor* [2019] SGCA 84, the Singapore Court of Appeal provided guidance on how it would determine the proper law of an arbitration agreement.

The dispute arose in relation to an agreement ("Takeout Agreement") between the Appellants and the Respondents. The Takeout Agreement was governed by the laws of the People's Republic of China ("PRC"), and contained a dispute resolution clause providing that disputes would be submitted to the Singapore International Arbitration Centre for arbitration in Shanghai.

The Respondents initiated arbitration proceedings. The Appellants challenged the jurisdiction of the arbitral tribunal on the grounds that the proper law of the arbitration agreement was the law of PRC, which law rendered the arbitration agreement invalid, and entailed that the dispute had to be litigated in the PRC court instead.

On the question of the implied choice of law for the arbitration agreement, the parties accepted that the starting point was that the governing law of the Takeout Agreement would similarly be the governing law of the arbitration agreement. The Court held that since Shanghai was the seat of the arbitration, the
law of the seat and the parties’ implied choice of proper law of the arbitration agreement was one and the same: PRC law. It followed that PRC law was the proper law of the arbitration agreement.

Defending an application to reverse an arbitral decision

In *BXY and others v BXX and others* [2019] 4 SLR 413, the SICC was faced with an arbitration-related application. The Plaintiffs, who were the respondents in the arbitration, had unsuccessfully applied to the tribunal for an order that the First Defendant, a claimant in the arbitration, be struck out as a party on the ground that it had assigned all its rights in the agreement containing the arbitration clause to the Second Defendant and was thus not a proper party to the arbitration.

The Court here held that the Plaintiffs had brought the application outside of the 30-day deadline from the date of notice of the tribunal’s ruling, as provided under the International Arbitration Act and the UNCITRAL Model Law on International Commercial Arbitration (“Model Law on Arbitration”). The Court further held that it did not have the power to extend the time for the Plaintiffs’ application. In any event, the Court was willing to find that the First Defendant had not assigned its rights and was in fact a proper party to the arbitration.

The Defendants were successfully represented before the Court by Francis Xavier SC, Ang Tze Phern, Tee Su Mien and Edwin Tan from the Commercial Litigation Practice.

To read more, please find our NewsBytes here.

SICC issues first judgment on arbitration

*BXS v BXT* [2019] 4 SLR 390 marked the first SICC judgment dealing with arbitration proceedings. International arbitration often involves cross-boundary disputes, as well as the application of laws of different jurisdictions. The SICC is thus well placed to manage such commercial disputes.

Here, the Plaintiff applied to the Singapore court to have an arbitral award set aside. In response, the Defendant applied to strike out the Plaintiff’s setting aside application on the ground that the Plaintiff’s challenge had been brought after the expiry of the three-month time limit in the Model Law on Arbitration.

The SICC agreed with the Defendant’s submission that the court does not have the power to extend the time for applying to set aside an arbitral award. Since the three-month time limit had lapsed, the Plaintiff’s application to set aside the award was accordingly struck out. In any event, the SICC also rejected the grounds of setting aside submitted by the Plaintiff.

The Defendant was successfully represented by Paul Tan, Alessa Pang and David Isidore Tan from the International Arbitration Practice.

To read more, please find our Client Update here.
Restraining winding-up proceedings in favour of arbitration

The Singapore High Court in *BWF v BWG* [2019] SGHC 81 had to grapple with the interaction between arbitration and winding-up proceedings – specifically, the applicable legal standard for determining whether an injunction restraining a winding-up should be granted in circumstances where the underlying claim is *prima facie* arbitrable. Ought the standard to be that of a *bona fide prima facie* dispute, or that of a triable issue?

The Court held that, following service of a statutory demand, if no payment is received, a claimant can ordinarily commence winding-up proceedings against the respondent. However, if the debt is disputed and falls within the scope of an arbitration clause, the court ought rightly to grant an injunction to restrain winding-up proceedings.

The Court thus found in favour of the Plaintiff, holding that the applicable standard is that of a *bona fide prima facie* dispute. The Court further found that the Plaintiff had in fact raised a *bona fide prima facie* dispute over the claimed debt, thus crossing the threshold for the grant of an injunction.

The Plaintiff was successfully represented by Kendall Tan and Ting Yong Hong from the Shipping & International Trade Practice.

To read more, please find our Client Update here.

Can an arbitral award be issued against minors?

When a dispute is submitted to arbitration, the basis of the tribunal's jurisdiction is the agreement of the parties. However, certain issues arise when one of the parties to the arbitration is a minor. Can a binding award be issued against a minor, and can it be enforced in the domestic courts?

In *BAZ v BBA and others* [2018] SGHC 275, the Singapore High Court was faced with a S$720 million arbitral award which had been issued against – amongst others – a number of minors ("Minors"). The Court considered the public policy issues behind enforcing an award against minors, and ultimately decided to set aside the award as against the Minors.

Notably, the Court held that the arbitral award would violate the protection given to minors in contractual relationships under Singapore law, and that it would shock the conscience and violate the basic notion of justice.

The Minors were successfully represented by Lee Eng Beng SC from the Restructuring & Insolvency Practice and Kelvin Poon, Alyssa Leong and Matthew Koh from the International Arbitration Practice.

To read more, please find our Client Update here.
Restructuring & Insolvency

With entities and individuals holding assets across various jurisdictions, the process of restructuring and insolvency can often be a complex affair, especially because each jurisdiction has its own insolvency framework.

To manage the demands of cross-border insolvency, Singapore has positioned itself as an international hub for restructuring and insolvency. This position is based on legislative support as well as the efforts of the Singapore courts in building up case law on how foreign insolvency proceedings are to be approached.

From the legislative aspect, one of the most anticipated developments is the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA"), which was passed in Parliament on 1 October 2018 and is expected to come into force in 2020. The IRDA is an omnibus piece of legislation which consolidates Singapore’s corporate and personal insolvency and restructuring laws, and establishes a new licensing and regulatory regime for insolvency practitioners. The IRDA also clarifies the role of the Singapore court in assisting with the liquidation of a foreign company, while also containing existing provisions on the enactment of the UNCITRAL Model Law on Cross-Border Insolvency ("Model Law on Insolvency").

To read more, please find our Client Update here.

From the case law aspect, 2019 has seen a number of decisions which clarify the court's treatment of foreign insolvency in terms of recognition and assistance. Here, we observe some of the decisions which reflect the court's approach in this area.

Limits of assistance in foreign insolvency

While the Singapore court has demonstrated its willingness to recognise and assist in foreign insolvency, the court's readiness to assist should not be regarded as being without limit or discretion. In Re Rooftop Group International Pte Ltd and another (Triumphant Gold Limited and another, non-parties) [2019] SGHC 280, the Singapore High Court had to assess how far it could (and should) assist in a foreign insolvency.

The case involved a company undergoing US Chapter 11 proceedings. The company and its foreign representative applied to the Singapore court to seek the recognition of the insolvency proceedings, as well as a moratorium against certain actions commenced in Singapore.

The Court provided guidance on the difference between foreign main and non-main proceedings, clarifying that the scope of assistance for foreign non-main proceedings would not necessarily be narrower than that for foreign main proceedings. The primary difference would be that in respect of foreign non-main proceedings, stays and other orders would be granted at the discretion of the court under Art 21 of the Model Law on Insolvency, while a moratorium would operate automatically upon recognition of a foreign main proceeding under Art 20 of the Model Law on Insolvency. Further, the
Dispute Resolution

interests and authority of a representative of a foreign non-main proceeding would typically be narrower than those of a representative of a foreign main proceeding.

The Court declined to grant an order prohibiting the disposition of property, finding that it was not in furtherance of the point of assistance under the Model Law on Insolvency, which was to ensure the orderly and equitable distribution of assets and to facilitate the process of restructuring. The Court also declined to designate an alternative person to serve as foreign representative, finding that this was a matter which fell to be determined by the foreign proceeding itself.

To read more, please find our Client Update here.

Recognition of foreign bankruptcy orders

While the recognition of foreign corporate insolvency is governed by the Model Law on Insolvency, the Model Law on Insolvency – as enacted in Singapore – does not extend to personal bankruptcy orders. In Re: Heince Tombak Simanjuntak & 2 Ors [2019] SGHC 216, the Singapore High Court thus had to consider the recognition of foreign bankruptcy orders on the basis of common law.

The Applicants, who were receivers and administrators appointed under Indonesian law, had obtained recognition of Indonesian Bankruptcy Orders made against the Respondents. The Respondents sought to set aside the recognition order.

The Court determined the recognition of the Indonesian Bankruptcy Orders on the basis of common law. The Court was of the view that recognition should be granted to a foreign bankruptcy order if the following requirements are met:

(a) The foreign bankruptcy order is made by a court of competent jurisdiction;
(b) That court must have jurisdiction on the basis of the debtor's domicile or residence, or submission by the debtor to the jurisdiction of the court;
(c) The foreign bankruptcy order must be final and conclusive; and 
(d) No defences to recognition apply.

In the circumstances, full recognition was granted to the Indonesian Bankruptcy Orders. The Applicants were thus empowered to administer the Respondents' property in Singapore.

To read more, please find our Client Update here.

Principles behind applications for schemes of arrangement

Schemes of arrangement are often the preferred option for companies seeking to restructure their debt, allowing for a compromise with the creditors while the debtor remains in control of the company. To initiate the process, the company must first apply to the court for leave to convene a meeting of creditors to consider a proposed scheme of arrangement ("leave stage").
Dispute Resolution

In *Pathfinder Strategic Credit LP and another v Empire Capital Resources Pte Ltd and another appeal* [2019] 2 SLR 77, the Singapore Court of Appeal considered issues of procedure behind schemes of arrangement, particularly regarding the leave stage. It held that:

(a) The company must present a restructuring proposal with sufficient particulars for the court to assess that it is feasible and merits due consideration.
(b) Issues that will be considered at the leave stage generally involve the court’s jurisdiction, but also include the classification of creditors, whether there is a realistic prospect of the scheme being approved, and any allegation of abuse of process.
(c) The company bears a duty of disclosure and must unreservedly disclose all material information to assist the court in determining how the creditors’ meeting is to be conducted.
(d) The leave application should be heard on an expedited basis, and the court generally should not consider the merits and reasonableness of the proposed scheme.

The Court further expounded on the disclosure obligation at the leave stage.

(a) It is only in clear and obvious cases that the court should intervene at the leave stage solely on the ground of inadequate disclosure.
(b) The sufficiency of disclosure depends on what is reasonable in the circumstances.
(c) Unless there are complications such as significant legal issues to be considered, the leave stage will remain a largely expedited process.

To read more, please find our Client Update [here](#).

**Cross-Border Disputes**

As globalisation continues its steady march across the world economy, the nature of commercial disputes is becoming increasingly transnational. Disputes often involve parties from different countries, proceedings in different jurisdictions and different national laws.

The interplay of these elements can be fairly complex. In Singapore, the SICC is a specialised branch of the Supreme Court that manages international commercial litigation.

Apart from the SICC, the Singapore courts have often found themselves facing cross-border disputes. Here, we take a look at some of the key instances where the Singapore courts have demonstrated how they handle such disputes and their associated issues.

**Mareva injunctions in aid of foreign proceedings**

Mareva injunctions are freezing orders granted by the court to restrain parties from dissipating their assets prior to the determination of a claim against them. Such injunctions give rise to much discussion over their scope and application, especially where foreign proceedings are involved.
Dispute Resolution

In *Bi Xiaoqiong (in her personal capacity and as trustee for the Xiao Qiong Bi Trust and the Alisa Wu Irrevocable Trust v China Medical Technologies, Inc (in liquidation) and another)* [2019] 2 SLR 595, the Singapore Court of Appeal considered an application for a Mareva injunction in the context of proceedings in Singapore and Hong Kong. Importantly, the Court considered the issue of whether it could grant a Mareva injunction in aid of foreign proceedings, where the plaintiff intends to pursue the foreign proceedings and not the Singapore proceedings.

The Court here found that it had the power to grant a Mareva injunction in the circumstances described above. The Court held that its power to grant Mareva injunctions under section 4(10) of the Civil Law Act extends to situations where the injunction is in aid of foreign court proceedings. Moreover, the Court held that there should not be a further requirement that the cause of action must terminate in a judgment by the Singapore court.

On an assessment of the facts, the Court chose to exercise its discretion in favour of the Respondent, upholding the Mareva injunction against the Appellant. The Respondent was successfully represented by Kelvin Poon, Nigel Pereira, Chew Xiang and Chow Jie Ying from the Restructuring & Insolvency Practice.

To read more, please find our Client Update [here](#).

**Addressing important jurisdictional issues in complex cross-border dispute**

In *MAN Diesel & Turbo SE and anor v IM Skaugen SE and anor* [2019] SGCA 80, the Singapore Court of Appeal reversed the decision of the High Court and ordered the service of writ on the Appellants outside jurisdiction to be set aside, effectively spelling the end of the Singapore chapter of this long-running litigation.

The case is of both practical and academic importance, as it contains authoritative guidance on the role of an appellate court in the review of decisions on jurisdictional issues, the relevance of subsequent events in an application to set aside service out of jurisdiction, how multiple interrelated claims are to be treated in the jurisdiction inquiry, how the availability of the SICC features in the *forum non conveniens* analysis, and the test to be applied when assessing where a tortious cause of action arises for purposes of the jurisdiction gateway analysis.

In particular, the Court of Appeal set out the following findings:

(a) The High Court had erred in treating the four distinct claims brought by the Respondents as a single aggregate claim for the purposes of determining whether the requirements of O 11 r 1 of the Rules of Court (which deal with when service of process out of Singapore is permissible) were satisfied. In cases involving the assignment of claims, the jurisdictional requirements are to be assessed from the perspective of the original assignor as claimant, and not as the ultimate assignee.
Dispute Resolution

(b) The proper test to be applied when assessing whether the asserted causes of action arose in Singapore for purposes of O 11 r 1(p) of the Rules of Court would be the "substance test" that is used to determine the governing law for tortious actions.

(c) The court should not put too much weight on the possibility of the dispute being transferred to the SICC as a connecting factor favouring Singapore, as this should not ordinarily be sufficient to displace a foreign jurisdiction which is the more appropriate forum based on an application of conventional factors in *forum conveniens* analysis.

(d) In a setting aside application, the court is entitled to consider subsequent developments occurring after the lower court’s decision granting leave for service out of jurisdiction.

This decision comes on the back of two previous landmark judgments in this series of litigation: *Re IM Skaugen SE and other matters* [2019] 3 SLR 979, now considered the leading case on the enhanced scheme of arrangement framework introduced pursuant to the Companies (Amendment) Act 2017; and *Man Diesel Turbo SE v IM Skaugen Marine Services Pte Ltd* [2019] 4 SLR 537, which authoritatively laid down the test to be applied for applications to adjourn proceedings for the enforcement of a foreign arbitral award under section 31(5) of the International Arbitration Act.

Danny Ong and Yam Wern-Jhien from the Commercial Litigation Practice successfully represented the Appellants in these proceedings.

To read more, please find our Client Update [here](#).

**Offers to settle in the context of global proceedings**

In the course of commercial disputes, it is fairly common for parties to make offers to settle to avail themselves of costs protection. A party who rejects a reasonable offer may, upon obtaining a less favourable judgment, be penalised with adverse costs orders with the other party gaining the corresponding benefit of such orders. However, a rejection of an offer to settle a claim in full could entail more serious consequences. This was precisely what transpired in *TMT Asia Ltd v BHP Billiton Marketing AG (Singapore Branch) and another* [2019] 2 SLR 710.

The Appellant had commenced proceedings in Singapore against the Respondents. However, the UK court had granted a judgment in favour of one of the Respondents against the Appellant for a sum far in excess of the Appellant’s claim. In the course of proceedings, the Respondents issued an open offer to settle, under which the entire amount claimed by the Appellant would be paid by way of set-off against the UK judgment sum.

The Court of Appeal held that it was an abuse of process for the Appellant to seek to continue its claim instead of accepting the Respondents’ offer. The offer would have satisfied the remedies sought by the Appellant, and there was no practical benefit or public interest in continuing the claim. The Appellant’s claim was thus struck out.
Dispute Resolution

The Respondents were successfully represented by Kelvin Poon from the International Arbitration Practice, and Derek On and Ang Tze Phern from the Commercial Litigation Practice.

To read more, please find our Client Update [here](#).

**Singapore court judgment recognised by Vietnam Court of Appeal**

One of the key issues in cross-border litigations is that of enforcement. After an award is obtained, can it be enforced in the relevant foreign jurisdiction?

In a significant development, the Vietnam Court of Appeal in Case No. 222/2016/TLST-DS has recognised a decision of the Singapore High Court. The decision marks another step in the progression of the cooperative relationship between the courts of Singapore and Vietnam.

The case involved a mortgage granted by a Singapore bank to foreign purchasers. Upon the purchasers’ defaulting on their mortgage, the bank obtained a Court Order against the purchasers in the Singapore courts. The bank subsequently sought to enforce the Singapore Court Order in the purchasers’ home country of Vietnam.

In considering whether to provide judicial assistance to the bank, the People's Court of Ho Chi Minh City ("People's Court") adopted the principle of reciprocity and set out the relevant factors to be taken into account. On an application of the principle of reciprocity, the People’s Court found in favour of the bank, recognising and enforcing the Singapore Court Order.

The decision of the Vietnam Court grants some assurance for parties entering into contracts with Vietnamese individuals or entities. Should there be a need to recognise or enforce a Singapore judgment in Vietnam, parties may take heed of this precedent. The decision also demonstrates how Singapore court judgments are being increasingly recognised in foreign jurisdictions, even in countries which have no reciprocal agreement or treaty with Singapore.

To read more, please find our Client Update [here](#).

**Property Law**

Singapore’s property market is often the subject of much attention, and this includes the legislative measures that are in place to govern property transactions. Apart from commercial disputes involving property, cases involving compliance with the relevant legislative framework also find their way before the Singapore courts.
Dispute Resolution

What makes a valid collective sale

Collective sales are have seen a sharp rise in recent years, and efforts have been made to manage the process through statutory and judicial oversight. Therefore, before a collective sale can be given effect, there are certain legal requirements which must be fulfilled.

Where the collective sale of a development is objected to by minority owners at the hearing of an application made by the majority owners for an order permitting such sale before the Strata Titles Board ("STB"), a fresh application has to be made to the High Court for such an order. However, there are a number of grounds on which the court may reject such an application. This was explored by the Singapore Court of Appeal in *Kok Yin Chong and others v Lim Hun Joo and others* [2019] 2 SLR 46.

In this case, a number of subsidiary proprietors had objected to the order for collective sale based on a litany of grounds. The objections were mainly concerned with procedural irregularities as well as an alleged lack of good faith on the part of the collective sale committee ("CSC"). The High Court had allowed the Respondent CSC members' application, and the Court of Appeal here upheld the decision.

Notably, the Court of Appeal examined the issue of good faith in the context of the collective sale regime in Singapore under the Land Titles (Strata) Act, including which party bore the burden of proving good faith (or lack thereof). The Court of Appeal authoritatively held that, as a matter of law, the legal burden of proving lack of good faith rested with the Appellants (objectors) and found that they had failed to discharge this burden, and thus dismissed their appeal. This decision by the Court of Appeal has settled the position in Singapore on the issue of burden of proof as there were divergent High Court decisions.

The Respondents were successfully represented by Adrian Wong and Ang Leong Hao from the Commercial Litigation Practice.

To read more, please find our Client Update [here](#).

Contract Law

Contracts are almost always at the core of any commercial dispute. It is thus unsurprising that the Singapore courts have issued a number of judgments which deal with novel issues of contract law.

It is noteworthy that, in 2019, Singapore saw its first dispute involving cryptocurrency. Cryptocurrency and online payments are seeing a momentous growth in popularity. However, as with all new developments, the law is faced with the challenge of catching up with the relevant legal issues which may emerge.

In Singapore, one of the steps taken to effectively manage such issues is the introduction of the Payment Services Act 2019 which came into force on 28 January 2020. The Payment Services Act 2019 regulates payment systems and payment service providers in Singapore with an expanded scope of regulated payment services to keep up with new technological developments in payment services and the various...
risks they pose. Apart from legislative management, the Singapore courts have been tackling such key issues.

**SICC rules on landmark cryptocurrency-related dispute**

SICC has found cryptocurrency exchange operator, Quoine Pte Ltd (“Quoine”), liable for breach of contract and breach of trust in unilaterally reversing a customer’s Bitcoin/Ethereum trades, in the first cryptocurrency-related dispute that has come before the Singapore court.

In arriving at its decision in *B2C2 Ltd v Quoine Pte Ltd* [2019] 4 SLR 17, the Court delved into novel issues relating to recognition of cryptocurrencies as property, segregation and trusts over cryptocurrencies, nature of relationship between customers and an exchange, doctrine of mistake in contracts made through automated computer programs, and incorporation of contractual terms posted on a website, to name a few.

The Court here allowed the Plaintiff’s claim that Quoine had unilaterally cancelled its trade orders, that Quoine had no right to do so, and that its action was in breach of the terms and conditions governing the trading relationship between the Plaintiff and Quoine at the material time.

Danny Ong, Sheila Ng and Jason Teo from the Commercial Litigation Practice acted for the successful Plaintiff.

To read more, please find our Client Update [here](#).

**Proving arrangements in the absence of a written contract**

In the context of family property, arrangements regarding ownership tend to be more informal and less likely to be recorded in writing or legal documentation. Often, a party claiming a trust over such property will seek to rely on oral representations or discussions, domestic courses of dealing, understandings between family members, and family practices or customs. Difficult questions of evidence and proof may arise in such cases.

In *Geok Hong Co Pte Ltd v Koh Ai Gek and others* [2019] 1 SLR 908, the Court of Appeal reversed the decision of the High Court that a property registered in the name of a family-owned company was held on trust for one of the sons of the founder by way of a common intention constructive trust and proprietary estoppel. Notwithstanding that the High Court’s decision was reached after a full trial, the Court of Appeal held that the trust had not been proved.

The striking feature of this case was that the claim rested largely on an alleged oral representation from the founder of the company to the son around 1977. However, both individuals had passed away by the time of trial, and the main evidence before the High Court was a statutory declaration made by the son shortly before he passed away.
Dispute Resolution

The company was represented by Lee Eng Beng SC from the Restructuring & Insolvency Practice and John Seow from the Shipping & International Trade Practice in its successful appeal.

To read more, please find our Client Update here.

Shipping Law

Shipping law is perhaps a prime representation of the transnational nature of commercial disputes. The parties involved often come from different countries, the events tend to take place between territories, and issues of jurisdiction are common.

Shipping cases can also be relatively unique in terms of factual complexity and specific legal topics. Here, we look at a sample of the shipping decisions of the Singapore courts in 2019.

Ship collision and apportionment of liability

Disputes on ship collision and apportionment of liability tend to be fairly complex, with heavy involvement of issues of law and facts. While Singapore judgments on collision liability have been sparse in the past years, the Singapore courts have seen a recent spate of cases dealing with ship collisions. The most recent of these is The “Mount Apo” and the “Hanjin Ras Laffan” [2019] 4 SLR 909.

The case involved two large ships which collided in the Singapore Strait. To determine the apportionment of liability, the High Court had to consider issues regarding the crossing of traffic lanes in a traffic separation scheme and the proper use of very high frequency radio communications between ships.

The “Hanjin Ras Laffan”, where liability was determined in her favour, was represented by Leong Kah Wah and Dedi Affandi from the Shipping & International Trade Practice. To effectively present its case, the team had to manage and present technical evidence distilled from the ships’ voyage data recorders in the form of audio, video and animation reconstruction. This was in addition to the already complex tasks of handling conflicting experts’ and mariners’ evidence, the establishment of the factual narrative, and the assessment of the legal framework.

To read more, please find our Client Update here.

Retention of title clauses

Retention of title clauses (also known as Romalpa clauses) have become an essential feature in contracts for the credit sale of goods. Such a clause reserves property in the goods to the seller until the buyer makes payment.
Dispute Resolution

However, retention of title clauses have given rise to considerable case law. In *Mitsubishi Corp RTM International Pte Ltd v Kyen Resources Pte Ltd* [2019] SGHCR 6, the Singapore High Court was faced with novel questions regarding retention of title clauses, including whether a seller can bring an action for the price of unpaid goods despite the seller's retention of title in the goods.

The Court here held in favour of the Plaintiff seller, allowing the action for price of the goods under the Sale of Goods Act. Specifically, under section 49(1), a seller may maintain an action for price where the property in the goods has passed to the buyer.

On the facts of the case, the Court accepted the Plaintiff's submission that the transfer of the property from the Defendant to a sub-buyer was a disposal with the authority of the owner granting the sub-buyer good title. It could thus be said that the parties had agreed that the Plaintiff's retention of title in respect of the goods (but not necessarily the sale proceeds) would come to an end in the event of a sub-sale, in which case property in the goods would be permitted to pass to the Defendant, who would then be in a position to pass title to the sub-buyer.

The Plaintiff was successfully represented by Ting Yong Hong from the Shipping & International Trade Practice.

To read more, please find our Client Update here.

Criminal Law

In this section, we review some of the more pertinent decisions in the area of criminal law which have been issued by the Singapore courts over the course of 2019.

**Five Judges of Appeal overturn conviction in illegal import case**

*In Kong Hoo (Pte) Ltd and another v Public Prosecutor* [2019] 1 SLR 1131, the Singapore Court of Appeal quashed the conviction of a Defendant accused of importing Madagascan *Dalbergia* rosewood logs valued in excess of $70 million into Singapore without a permit. Notably, this was one of the rare instances where the Court of Appeal called upon five Judges of Appeal, and rarer still that criminal reference proceedings were successfully brought by an Accused party.

Both Accused parties had been charged with importing the logs without the required permit under the Endangered Species (Import and Export) Act ("ESA"). However, the Court found that the logs had not been "imported" but were in fact "in transit" under the ESA, and thus did not require a Singaporean import permit.

In reaching its decision, the Court examined the purpose and operation of the ESA, providing guidance as to when goods would be considered to be in transit. The decision marks the conclusion of contentious proceedings which have spanned the course of five years.
Dispute Resolution

Murali Pillai SC from Appeals & Issues Practice and Paul Tan and Jonathan Lai from the International Arbitration Practice acted as instructed counsel for the Accused in this matter, including this successful appeal.

To read more, please find our Client Update here.

Retention of property seized for investigations

Law enforcement agencies routinely seize properties for the purposes of investigations. However, what is the extent of the law enforcement agency's power to withhold possession of such property? What is the role of the court in policing the law enforcement agencies' exercise of power?

These questions were considered by the Singapore High Court in a ground-breaking decision, Lee Chen Seong Jeremy and others v Public Prosecutor [2019] 4 SLR 867. The Court in allowing the criminal revision and ordering that the Commercial Affairs Department release the seized properties to the Petitioners, also decided for the first time the appropriate procedure to be applied in future applications concerning the law enforcement agency's application for continued extension of seized properties.

With regard to the above-mentioned application for extension, the Court held that a single comprehensive report must be filed by the law enforcement agency within the one-year deadline set out in the Criminal Procedure Code. Further, a Magistrate hearing such an application can seek clarification, but cannot ask questions which would elicit or require the introduction of fresh material. As a logical corollary, the prosecution can respond to the Magistrate's queries and elaborate orally, but cannot tender fresh material.

The Petitioners were successfully represented by Adrian Wong and Ang Leong Hao from the Commercial Litigation Practice.

To read more, please find our Client Update here.

Construction Law

In the Singapore context, construction disputes are often first submitted to adjudication pursuant to the Building and Construction Industry Security of Payment Act ("SOPA"). The SOPA sets out a dispute resolution framework in which contractors can make progress payment claims, and disputes over such claims are submitted to adjudication for a faster, more efficient determination. While the adjudication determination may eventually be challenged in court, the system effectively regulates cash flow in the construction industry.

As timelines and proper procedure are vital in SOPA proceedings, such issues of procedure are often at the centre of SOPA disputes which find their way before the courts. The courts have, over the past year, issued a number of judgments which provide greater clarity and certainty regarding the SOPA procedure.
When should an adjudication determination be enforced?

A successful claimant in an adjudication will be awarded with an adjudication determination in its favour. The question is: if a subsequent adjudication determination that takes the former determination into account has been made, does the claimant have an option as to which determination to enforce? The Singapore High Court case of United Integrated Services Pte Ltd v Civil Tech Pte Ltd and another [2019] 3 SLR 1426 had the opportunity to decide on such a situation.

The Claimant here had obtained an adjudication determination in its favour ("First AD"). Shortly thereafter, the Claimant referred another payment claim to adjudication, but this time received an adjudication determination against its favour ("Second AD") which expressly took into account the First AD.

The Court held that the Claimant could not enforce both the First AD and Second AD independently at its own choosing, as it could gain a windfall which was unintended by the drafters of the SOPA. This would then incentivise contractors to be slow in enforcing ADs.

The Court thus considered that the Second AD amounted to an AD which had accumulated the findings of all prior ADs and ought to be the proper one enforceable by the Claimant. The decision represents a warning that claimants emerging triumphant in an adjudication proceeding should pause first and think twice before filing another adjudication application for more work done.

To read more, please find our Client Update here.

Can a claimant in liquidation enforce an adjudication determination?

In Seymour Whyte Constructions Pty Ltd v Ostwald Bros Pty Ltd (In liquidation) [2019] NSWCA 11, the New South Wales Court of Appeal unanimously held that as a matter of construction, the Building and Construction Industry Security of Payment Act 1999 (NSW) ("NSW SOP Act") was capable of operating for the benefit of a builder or subcontractor which had gone into liquidation.

Although this was not a decision of the Singapore court, it is relevant because Singapore's SOPA was largely modelled after the NSW SOP Act. The decision is thus likely to have persuasive value in Singapore.

The Court reasoned that an entitlement to a progress payment did not depend on the claimant actually continuing to perform work under a contract. Further, there was nothing in the NSW SOP Act which implied that a person could only serve a payment claim at a time when that person was actually carrying out work under the contract. Therefore, the insolvent contractor in this case was entitled to pursue its payment claim despite its winding-up.

To read more, please find our Client Update here.
Dispute Resolution

**Can a payment claim be made after termination of employment?**

In *Stargood Construction Pte Ltd v Shimizu Corporation* [2019] SGHC 261, the Singapore High Court considered whether a payment claim could still be made despite the claimant's employment having been terminated.

The Plaintiff was one of the Defendant's subcontractors. The Defendant, by a notice of termination, terminated the Plaintiff's employment under the sub-contract. The Plaintiff then served a payment claim on the Defendant. The payment claim was eventually submitted for adjudication, where the adjudicator dismissed the claim on the ground that the payment claim was improperly served on the Defendant or alternatively, on jurisdictional grounds. This was because the Plaintiff had served the payment after the Defendant had already terminated the sub-contract.

The Court set aside the adjudicator’s determination, holding that a contractor who had performed works under a construction contract could continue to claim for such works even after its employment under the contract had been terminated. In this regard, the SOPA and the relevant cases relating to the SOPA did not distinguish between cases where the entire contract was terminated, and cases where only the employment under the contract was terminated.

**Court Structure**

Perhaps one of the more notable developments in the area of dispute resolution in Singapore is the restructuring of the Supreme Court to create a new Appellate Division of the High Court. This is aimed at refining the judicial system so as to enhance the efficiency and flexibility of court processes.

On 5 November 2019, three Bills were passed in Parliament to restructure the High Court into two Divisions – the new Appellate Division and the General Division (which includes the existing SICC and the Family Division of the High Court). The Court of Appeal will remain the apex court.

The new Appellate Division will hear all civil appeals that are not allocated to the Court of Appeal. The Appellate Division will, however, have no criminal jurisdiction. To avoid duplication of function, where a civil appeal has been heard by the Appellate Division, any further appeal may only be brought with the leave of the Court of Appeal.

To read more, please find our NewsBytes [here](#).
Dispute Resolution

Contacts

**Francis Xavier SC**  
Regional Head, Dispute Resolution  
Commercial Litigation  
T +65 6232 0551  
francis.xavier@rajahtann.com

**Leong Kah Wah**  
Head, Dispute Resolution  
Shipping & International Trade  
T +65 6232 0504  
kah.wah.leong@rajahtann.com

**Adrian Wong**  
Deputy Head, Dispute Resolution  
Commercial Litigation  
T +65 6232 0427  
adrian.wong@rajahtann.com

**Murali Pillai SC**  
Partner, Appeals & Issues  
T +65 6232 0768  
k.murali@rajahtann.com

**Kendall Tan**  
Partner, Shipping & International Trade  
T +65 6232 0634  
kendall.tan@rajahtann.com

**Danny Ong**  
Partner, Commercial Litigation  
T +65 6232 0260  
danny.ong@rajahtann.com

**Kelvin Poon**  
Partner, International Arbitration  
T +65 6232 0403  
kelvin.poon@rajahtann.com

**Paul Tan**  
Partner, International Arbitration  
T +65 6232 0719  
paul.tan@rajahtann.com

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

Our Regional Contacts

RAJAH & TANN | Singapore
Rajah & Tann Singapore LLP
T +65 6535 3600
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 | China
SHANGHAI REPRESENTATIVE OFFICE
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 (Lao) 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 | Myanmar
Rajah & Tann Myanmar Company Limited
T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSL
GUTIERREZ & PROTACIO (C&G LAW) | Philippines
Gatmaytan Yap Patacsl Gutierrez & Protacio (C&G Law)
T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
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

Rajah & Tann Asia is a network of legal practices based in South-East Asia. Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This Update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this Update.
Dispute Resolution

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.