

## Potential Legal Recourses for Greenwashing Claims in Singapore

*We are pleased to present you our Sustainability Update which shares insights from our Sustainability Partners and experts across sectors and domains on key environmental, social and governance ("ESG") developments and trends.*

*In this issue, we explore briefly the potential legal recourses which are available to a person making a claim against greenwashing in Singapore. This is a developing area and we invite you to get in touch with our Partners in our [Sustainability Practice](#) who are ready to assist you with queries on greenwashing.*

### What is Greenwashing?

Generally, "greenwashing" refers to the conduct of making untrue or misleading statements or representations about how certain products or investments are environmentally friendly, or green, which turn out to fall short of what the statements or representations claim.

Greenwashing may take various forms. The most common example includes marketing communications for a product or a service that do not accurately reflect the level and/or extent of an organisation's consideration of environmental-related risks and opportunities in its processes.

### Legal and Regulatory Framework Providing Recourse for Greenwashing Action

The table below provides a non-exhaustive summary of the range of legal actions under Singapore law which may be taken in relation to greenwashing claims against a person or body corporate and forms of recourse.

Legal Recourse	Summary
Consumer Protection (Fair Trading) Act 2003 ("CPFTA")	<p>To address greenwashing in respect of consumer transactions, claimants may invoke the CPFTA and its provisions, which are worded widely. The Competition and Consumer Commission of Singapore ("<b>CCCS</b>") is responsible for meting out sanctions for acts in contravention of the CPFTA.</p> <p>For instance, section 4 of the CPFTA provides a general prohibition against "unfair practices" and is relevant for capturing "greenwashed" consumer transactions. An aggrieved consumer has the right to sue the supplier for unfair practices. Generally, a consumer who has entered into a consumer transaction involving an unfair practice may commence an action in a court of competent jurisdiction against the supplier, to claim up to the prescribed</p>

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	<p>limit of S\$30,000, or such other amount as the Minister may prescribe. In addition, CCCS may deal with alleged breaches of section 4 in a broad number of ways, such as conducting an investigation into a supplier (upon reasonable grounds for suspicion), requiring documents etc. to be produced to CCCS, and entering premises with or without a warrant.</p> <p><b>Applicability to financial products and financial services</b></p> <p>The CPFTA was amended in 2009, extending its ambit to capture "financial products" and "financial services" regulated by the Monetary Authority of Singapore ("<b>MAS</b>"), including, commodity trading under the Commodity Trading Act 1992. The amendment broadened the applicability of the CPFTA to various "greenwashed" forms of equity funds, bonds and products branded as purporting to meet various ESG-related objectives.</p>
<p>Singapore Code of Advertising Practice (3<sup>rd</sup> Ed.) ("<b>SCAP</b>")</p>	<p>SCAP is an industry guideline implemented by the Advertising Standards Authority of Singapore ("<b>ASAS</b>"). It regulates and encourages ethical advertising, with the basic premise of the SCAP being that all advertisements should be legal, decent, honest, and truthful, and "prepared with a sense of responsibility to the consumer and society".</p> <p>In this regard, Clause 5 under the header entitled "II. General Principles" of the SCAP stipulates that advertisements should not mislead in any way by inaccuracy, ambiguity, exaggeration, omission or otherwise, and should not "misrepresent any matter likely to influence consumers' attitude to any product..." or "misrepresent any information to mislead consumers into believing any matter that is not true, such as the source of the product, quality of the product... and others". These broad principles may apply to regulate advertisements involving greenwashing.</p> <p>The SCAP does not have the force of law and operates through self-regulation, but ASAS may nevertheless impose sanctions on advertisers that fail to comply with the SCAP.</p>
<p>Common law doctrine of misrepresentation</p> <p>Misrepresentation Act 1967</p>	<p>At its core, grounds for an action for greenwashing may be distilled to the trite legal doctrine of misrepresentation. Apart from a claim grounded in the CPFTA discussed above, a consumer transaction that involves greenwashing statements and misrepresentations may give rise to a claim by the consumer at common law or under the Misrepresentation Act. In brief:</p> <ul style="list-style-type: none"> <li>• Under the common law doctrine of misrepresentation, a claimant may bring an action for fraudulent misrepresentation or negligent</li> </ul>

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<p><b>("Misrepresentation Act")</b></p>	<p>misrepresentation. Damages may be awarded to victims of greenwashing claims if loss can be proved. All losses that flowed directly from the transaction is recoverable if fraudulent misrepresentation is established, including all consequential loss. On the other hand, only loss that is reasonably foreseeable is recoverable if negligent misrepresentation is established.</p> <ul style="list-style-type: none"> <li>• Alternatively, a customer may also commence a claim for misrepresentation under section 2(1) of the Misrepresentation Act. Where greenwashing claims are made innocently (i.e. not negligently), the usual remedy is a rescission of the contract under common law. However, section 2(2) of the Misrepresentation Act permits a claimant to invoke the Court's discretion to award damages in lieu of rescission in appropriate situations.</li> </ul>
<p>Shareholders' action against company engaging in greenwashing activities</p>	<p>Directors of a company owe fiduciary duties to that company. Section 157 of the Companies Act 1967 imposes a duty on directors to act honestly and use reasonable diligence in the discharge of their duties. The section encapsulates the common law duties of a director to act bona fide in the best interests of the company, and to exercise due care, skill and diligence. All directors are subject to a minimum objective standard of care which entails the obligation to take reasonable steps to place oneself in a position to guide and monitor the management of the company.</p> <p><b>Breach of directors' duties</b></p> <p>Shareholders who are concerned about greenwashing by companies may obtain recovery against errant directors by commencing a derivative action in the name of the company against such directors. Where a breach of fiduciary duties has been established, the company may obtain damages against the director for losses to the company caused by his/her breach of fiduciary duties.</p> <p><b>Dishonest assistance by officers of company</b></p> <p>Besides an action against errant directors, it is also possible for shareholders to obtain recovery from officers of the company who dishonestly assisted the errant directors in greenwashing.</p>
<p>Disclosure Requirements under</p>	<p>Issuers that are publicly listed on the Singapore Exchange Securities Trading Limited ("<b>SGX-ST</b>") are required to comply with the SGX Mainboard Rules of the Listing Manual and Section B: Rules of Catalist of the Listing Manual</p>

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<p>the SGX Listing Manual</p>	<p>(collectively, "<b>Listing Rules</b>"). Since 2016, as part of continuous disclosure obligations, issuers are required under the Listing Rules to publish a Sustainability Report for each financial year that must include specified components.</p> <p>Generally, pursuant to Listing Rule 114 of the SGX Mainboard Rules, an issuer's directors and executive officers are responsible for ensuring that the information submitted to the Singapore Exchange Limited ("<b>SGX</b>") (which would include information contained in the Sustainability Report) is complete and accurate in all material respects, and not misleading. In relation to Catalist-listed issuers, under the Rules of Catalist, the directors of the issuer are responsible for the accuracy of the information submitted to SGX.</p> <p>Greenwashing resulting in inaccuracy of disclosure in violation of the Listing Rules or non-compliance with the specific disclosure requirements in relation to the Sustainability Reporting may therefore be subject to enforcement actions by Singapore Exchange Regulation (SGX RegCo). In addition, the abovementioned continuous disclosure requirements are given statutory backing under section 203 of the Securities and Futures Act 2001 ("<b>SFA</b>") which provides that a person must not intentionally, recklessly or negligently fail to notify SGX of such information required to be disclosed under the Listing Rules. A breach may be considered an offence under the SFA and have serious legal consequences for the issuer and its officers.</p>
<p>Liability under the SFA</p>	<p>A provision with general applicability to the offering of "greenwashed" securities is section 199 of the SFA, which provides that a person must not make a false or misleading statement which is likely to induce the subscription of securities, induce the sale or purchase of securities, or affect the market price of securities. Otherwise, the person will be liable if he or she does not care whether the statement is true or false, or if the person knows or ought reasonably to have known that the statement or information is false or misleading. Under section 232 and/or section 236B of the SFA, MAS may bring a civil action against the person and/or company, which may attract severe financial penalties.</p> <p>In addition, under section 330 of the SFA, any person who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to SGX or any officers thereof relating to, among other things, dealing in capital markets products (including securities, collective investment schemes, etc.), the enforcement of the Listing Rules, or the affairs of an entity, is guilty of an offence.</p>

## Rajah & Tann Sustainability Practice

We are amongst the pioneers in Singapore when it comes to matters to do with environmental advisory, business conduct and other sustainability issues. We are proud to have been involved in many "first of its kind" transactions, ranging from the green and sustainable financing, sustainable investment, renewable project and sustainable technology.

With our deep expertise and experience, we will help you unpack and reconcile the different global standards and regulations on ESG factors in your sustainability journey. Beyond regulatory compliance, we will bring in our expertise in tax, corporate and capital markets, funds, infrastructure, international arbitration, technology, to name a few – because we have seen how various issues pan on the transactions we have worked on. We can help you address the commercial aspects and economic objectives of the transactions, and at the same time fulfil the legal and technical requirements set out in the various ESG principles and guidelines.

If you have any questions regarding sustainability, please feel free to contact our team below who will be happy to assist you.

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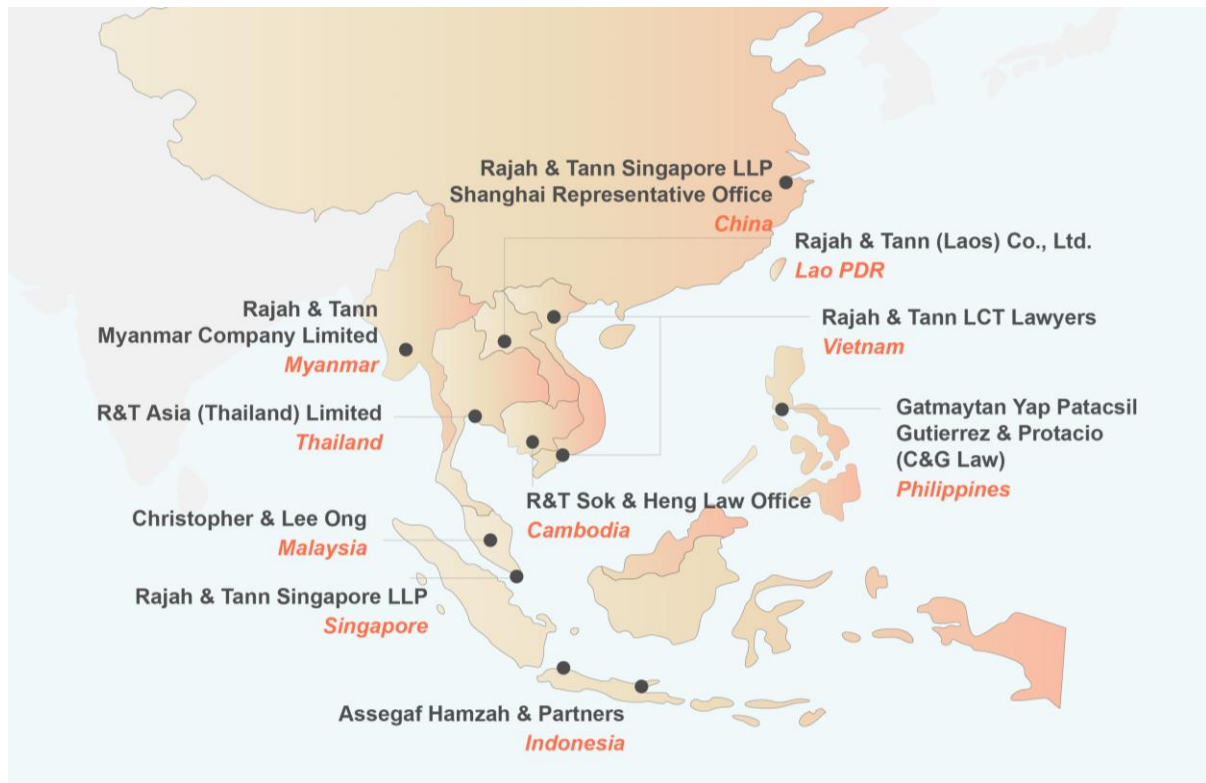
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