RAJAH & TANN ASIA

NewsBytes: Singapore

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RAJAH & TANN ASIA
LAWYERS WHO KNOW ASIA

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News

Ranked Lawyers in Best Lawyers (2022 Edition)

Sixty-four lawyers of Rajah & Tann Singapore have been ranked in the 2022 edition of Best Lawyers.

Additionally, six partners have also been named "Lawyer of the Year" for their respective practice groups. The "Lawyer of the Year" recognition is awarded to individual lawyers with the highest overall peer feedback for a specific practice area and geographic region. These six partners are:

- Elaine Tay – Insurance Law
- Lee Eng Beng, SC – Litigation
- Rajesh Sreenivasan – Telecommunications Law
- Regina Liew – Derivatives
- Steve Tan – Information Technology Law
- Vikna Rajah – Trusts and Estates

Click here to read our Press Release, which includes the full list of the ranked lawyers.

Rajah & Tann Tops Client Service Excellence Ratings in Asialaw Client Service Excellence 2021

Rajah & Tann Singapore has been named best overall firm for quality of service in the fields of capital markets, corporate and M&A, insurance, and investment funds in the latest Asialaw Client Service Excellence 2021 report.

Assegaf Hamzah & Partners, the Indonesia member firm of the Rajah & Tann Asia network, has also been recognised as best overall firm in the fields of capital markets and corporate and M&A.

Funds and Investment Management partner Anne Yeo from Rajah & Tann Singapore has been featured in the report which recognises the highest-rated attorneys in each practice area for each jurisdiction.

Click here to read our Press Release.

Rajah & Tann Partners Showsuite to Digitise Legal Documentation for Sales of Properties

Rajah & Tann Singapore has signed a contract with Singapore-based property-tech company, Showsuite, to digitise the voluminous amount of legal documentation that comes with real estate transactions.

Under the agreement, Showsuite's digital platform will streamline and automate back-end work processes and digitise legal documentation associated with the sales of new homes by property developer clients.

Showsuite is a pioneer in the field of digitisation of transactions of new homes for property developers connecting them with their property agents, lawyers and architects. Over S$4 billion worth of new homes in Singapore have been transacted on Showsuite's digital booking platform since its

launch in 2018. Its clients include GuocoLand, Hong Leong, CEL Development, Heeton Holdings & TID Development, among others.

Click here to read our Press Release.

LegisBytes

Capital Markets

SGX Intends to Enhance Sustainability Reporting Rules to Help Disclosures on Climate-related Information

In the Singapore Exchange Limited ("**SGX**") news release on 23 April 2021, the Singapore Exchange Regulation ("**SGX RegCo**") indicates that it intends to enhance sustainability reporting rules to help listed companies better address increasing and more immediate interest around climate-related information.

A recent joint study by SGX RegCo, NUS Business School and KPMG shows that escalating stakeholder expectations, and government and tax incentives are top drivers pushing the sustainability agenda in the financial services sector. Among other things, the study shows that financial institutions in Singapore place significant importance on Environmental, Social and Governance ("**ESG**") performance, with a heavy focus on climate considerations. They are evolving their processes to fully integrate sustainability into their investment strategy by 2030, including emphasising governance of sustainability, such as their Boards having oversight on sustainability-related matters in their organisations. Participants in the study wanted the current quality and quantity of ESG disclosures to be strengthened, with consistency across and within industries for easy comparison.

Noting the importance of the joint study in shaping the work-plan for SGX RegCo as companies listed on the Singapore Exchange Securities Trading Limited are becoming more accustomed to sustainability reporting, SGX RegCo sees its role as one to guide companies concerning "the distillation of key information so that challenges in ESG reporting – namely, quantification, comparability and harmonisation – can be addressed". As a next step, SGX RegCo stated that it will review how companies are doing on the sustainability reporting front three years after it was mandated, and enhance the sustainability reporting rules to help listed companies better address increasing and more immediate interest around climate-related information.

The study is a precursor for the Singapore Green Plan 2030, particularly the Green Economy pillar. In disclosing ESG aspects, listed companies need to emphasise capacity-building at the company level, including improving systems and structure as well as capability development at the professional level, including honing skills and mindsets.

Click on the following link for more information:

- SGX News Release titled "SGX RegCo, NUS Business School, KPMG in Singapore study shows ESG, particularly climate, important in key financial institutions' asset allocation, lending and underwriting" (available on the SGX website at www.sgx.com)

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Further Extension of Alternative Meeting Arrangements Beyond 30 June 2021

On 6 April 2021, the Ministry of Law ("**MinLaw**") announced that it has further extended the duration of various subsidiary legislation which were previously issued to enable various types of entities to hold meetings via electronic means. The legislation will now be in force beyond 30 June 2021 until the same is revoked or amended by MinLaw, per its statement that "it is envisaged that (these subsidiary legislation) will continue to be in force for at least as long as the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 is in force".

We provide a brief highlight of this extension concerning alternative meeting arrangements in respect of the following entities:

(a) companies incorporated under the Singapore Companies Act ("**companies**");
(b) variable capital companies covered by the Singapore Variable Capital Companies Act 2018 ("**VCCs**");
(c) business trusts registered under the Singapore Business Trusts Act ("**BTs**");
(d) unit trusts that are authorised or restricted collective investment schemes under the Singapore Securities and Futures Act ("**relevant unit trusts**"); and
(e) holders of a series of debentures governed by Singapore law ("**debenture holders**").

Alternative Meeting Arrangements: Extension Beyond 30 June 2021

The COVID-19 (Temporary Measures) Act ("**Act**") provides, among other things, that meetings convened, held, conducted or deferred, on or after 27 March 2020, in accordance with the alternative arrangements prescribed under the Act will be deemed to have satisfied the relevant requirements under the written law or legal instrument, despite anything to the contrary in any law or legal instrument. Legal instrument is defined to include a constitution of a company, a trust deed constituting a series of debentures, or a fiscal or other agency agreement in respect of a series of debentures, governed by Singapore law.

Various subsidiary legislation was issued under the Act to effect this. For instance, the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020 ("**Order**") was issued on 13 April 2020 and deemed to take effect on 27 March 2020 for alternative arrangements to convene, hold or conduct meetings by electronic means ("**Alternative Arrangements**") for companies, VCCs, BTs, relevant unit trusts, and debenture holders.

This Order was amended several times. In September 2020, amendments were made which, among other things, extended the Order to 30 June 2021. This latest round of amendment extends the Order beyond 30 June 2021. A similar period of extension is also provided for other Orders which were issued prescribing Alternative Arrangements for conducting meetings for various other types of entities and meetings, such as:

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(a) meetings in relation to the insolvency matters of a company, limited liability partnership or VCC (including winding up and judicial management);
(b) meetings in relation to the bankruptcy matters of an individual; and
(c) general meetings of a management corporation and subsidiary management corporation, as well as meetings of a collective sale committee.

Guidance for Conducting Meetings for Listed and Non-Listed Entities

Issuers listed on the SGX-ST Mainboard and Catalist, and other non-listed entities (such as companies, VCCs, BTs, unit trusts and issuers of debentures), may continue to use the earlier Checklist on "Guidance on the Conduct of General Meetings Amid Evolving COVID-19 Situation" issued by the Accounting and Corporate Regulatory Authority (ACRA), MAS and the Singapore Exchange Regulation to guide entities on the conduct of their general meetings.

To provide certainty to entities organising meetings, MinLaw stated it will give at least six months' advance notice before the Alternative Arrangements will cease to be available. This will cater to entities who have relied on the Orders to make early preparations for meetings, before the end date is announced.

For more information, click here to read our Legal Update.

Corporate Commercial

ACRA's Two-tier Penalty Framework for Filing Annual Returns/Declarations Deferred to Allow for Transition

On 29 April 2021, the Accounting and Corporate Regulatory Authority ("**ACRA**") announced that the implementation of the 2-tier penalty framework for filing of annual returns and annual declarations for Singapore-incorporated companies, variable capital companies ("**VCCs**") and limited liability partnerships ("**LLPs**") has been put on hold to allow more time for transition. The current penalty framework (set out below) will continue to apply for the late filing of annual returns and annual declarations.

Entity Type	Late Lodgement Penalty
Local companies	Flat rate of S$300
Variable Capital Companies	
Foreign Companies	8-tier penalties ranging from S$50 to S$350
Limited Liability Partnerships	

By way of background, in December 2020, ACRA announced plans for the 2-tier penalty framework to take effect on 30 April 2021. Under the 2-tier penalty framework, Singapore-incorporated companies, VCCs, and LLPs would incur a late lodgement penalty of S$300 if the annual return or annual declaration is filed within three months after the filing due date, or S$600 if the lodgement is filed more than three months after the filing due date.

ACRA urges all entities to comply with the statutory timelines for filing annual returns and annual declarations to avoid incurring the late lodgement penalty.

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Click on the following link for more information:

- ACRA News Release titled "2-tier Penalty Framework Deferred to Allow More Time For Transition" (available on the ACRA website at www.acra.gov.sg)

Corporate Real Estate

Land Betterment Charge Bill Introduced to Replace Development Charge and Differential Premium

The Land Betterment Charge Bill ("**Bill**"), introduced in Parliament on 5 April 2021, was passed on 10 May 2021. The Bill provides for the imposition of a tax (called a Land Betterment Charge or "**LBC**") on the increase in the value of land resulting from a chargeable consent given in relation to land.

Under the existing framework, landowners and developers currently have to pay a Development Charge ("**DC**"), Temporary Development Levy ("**TDL**"), or a Differential Premium ("**DP**") to either the Urban Redevelopment Authority (URA) or the Singapore Land Authority ("**SLA**") where there is an enhancement in land value for various reasons.

The LBC would replace the DC, TDL, and DP and would be payable to a single entity, consolidating these charges and taxes under SLA. The principles for computing LBC and the proposed rates of charging remain largely unchanged from the current regime.

The Bill sets out the framework for the operation of the LBC, including the rules for calculating the applicable tax, who is liable for payment, and how the obligation is to be satisfied and enforced.

For more information, click here to read our Legal Update.

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Financial Institutions

MAS New Regulatory Technology Grant Scheme & Enhancement of Digital Acceleration Grant Scheme

To accelerate technology adoption in the financial sector, the Monetary Authority of Singapore ("**MAS**") announced on 30 April 2021 a new Regulatory Technology ("**RegTech**") grant scheme and an enhancement of the Digital Acceleration Grant ("**DAG**") scheme.

New RegTech Grant Scheme for Singapore-based Financial Institutions ("**FIs**")

The RegTech grant scheme is available to Singapore-based FIs and aims to promote the adoption and integration of technology solutions in the risk management and compliance functions of FIs. The RegTech grant scheme will cover two tracks.

(a) Under the pilot track, FIs can seek funding to pilot potential RegTech solutions before embarking on full-scale integration of the product into its operating environment. Funding for this track will be capped at S$75,000.

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(b) Through the production level project track, FIs can seek funding to develop larger scale customised projects that can be fully integrated into the FI's systems. Funding for such projects will be capped at S$300,000.

Both tracks can be used to support either in-house development or commercial partnerships with RegTech firms based in Singapore. Applications are open for the RegTech Grant. To request an application form for the RegTech Grant, please contact fintech_office@mas.gov.sg.

DAG Scheme – Key Enhancements to Institution Project Track and Extension of DAG Eligibility

In April 2020, the DAG scheme was launched to help smaller FIs and FinTech firms (defined as FIs and FinTech Firms with not more than 200 employees) adopt digital solutions to cope with the impact of COVID-19 and to position themselves for subsequent recovery and growth. The DAG scheme has two tracks:

(a) Institution Project track which supports 80% of qualifying expenses for the adoption of digital solutions by smaller FIs and FinTech firms, up to a cap of S$120,000 per entity, over the duration of the scheme.

(b) Industry Pilot track which supports collaborations among at least three smaller FIs to customise digital solutions for implementation within their institutions by co-funding 80% of qualifying expenses, capped at S$100,000 per participating FI per project.

For more information on the DAG scheme, please click here.

Key changes to DAG Institution Project Track

(a) **Ex-post applications**: To be eligible for the grant, applicants will need to fulfil a minimum six months prior usage of the digital solution.

(b) **Publishing pre-approved solutions list**: Applicants can refer to the General Solutions list to ascertain if a solution can be funded under this grant. Applicants can still obtain an in-principle approval for solutions not found in the list.

(c) **Cessation of support for certain solutions**: Given the transition from work from home arrangements to working in the office, funding will no longer be available for all hardware, equipment that support alternative work arrangements and basic digital solutions such as email services and office productivity tools.

(d) **Extension of DAG eligibility**: Aside from smaller FIs and FinTech firms, Life Insurance and General Insurance Agencies with less than 200 representatives and employees will also be eligible for DAG support. Life Insurance and General Insurance Agencies will be able to submit claims for expenses incurred after 1 April 2021.

To encourage prompt submission of applications, applicants are to submit their applications not later than six months from their last expense. For details, please refer to Annex A – Key Changes to Digital Acceleration Grant Institution Project Track.

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Applications are open for the DAG scheme. For more information and the application form for DAG, please refer to the MAS website.

Click on the following link for more information:

- MAS Media Release titled "MAS commits $42m to spur adoption of technology solutions for risk management and regulatory compliance" (available on the MAS website at www.mas.gov.sg)

Funds & Investment Management

New MAS-Industry Group to Fortify Singapore's Fund Management Ecosystem

On 27 April 2021, the Monetary Authority of Singapore ("**MAS**") announced a new partnership between MAS and the private sector to strengthen Singapore's value proposition as a leading full-service asset management and fund domiciliation hub.

The Singapore Funds Industry Group ("**SFIG**") will bring together all the key players across the entire asset management value chain. These key players include fund managers and service providers who work closely with fund managers to support a fund's operations throughout its life cycle in areas such as fund structuring and set-up, fund administration, regulatory reporting, tax advisory, and fiduciary oversight. These service providers include lawyers, tax advisors, fund administrators, and directors.

SFIG will identify emerging industry trends and formulate strategies to develop the asset management ecosystem, and comprises four working groups ("**WGs**"):

(a) The Infrastructure and Innovation WG that will monitor market developments and spur innovation to transform the funds servicing value chain.

(b) The Policy WG that will provide advice and recommend improvements to regulatory, legal, and tax frameworks to better serve the needs of fund managers and investors.

(c) The Capabilities and Training WG that will focus on building a deep pool of fund specialists and directors in areas such as product development, administration, distribution, and fund oversight and governance.

(d) The Promotion and Advocacy WG that will raise the global profile of Singapore as a leading asset management and fund domiciliation hub through outreach and engagements with Singapore-based and global asset managers, asset owners, and service providers.

Rajah & Tann Singapore's Arnold Tan (Co-head, Funds and Investment Management Practice) is one of the members of SFIG.

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Click on the following links for more information:

- MAS Media Release titled "New MAS-Industry Group to Strengthen Singapore's Fund Management Ecosystem" (available on the MAS website at www.mas.gov.sg)
- Information on SFIG (available on the SFIG website at singaporefunds.sg)

Intellectual Property

Singapore IP Strategy 2030 – What Does it Mean for Your Business

Singapore has unveiled its Singapore IP Strategy 2030 ("**SIPS 2030**") at the World IP Day event on 26 April 2021. SIPS 2030 is a 10-year blueprint to strengthen Singapore's position as a global intangible assets ("**IA**") and intellectual property ("**IP**") hub as well as maintain Singapore's position as a top-ranked IP regime.

The full SIPS 2030 report ("**Report**") (available here) was published in a joint press release from the Ministry of Law, Ministry of Finance, Ministry of Trade and Industry, and the Intellectual Property Office of Singapore ("**IPOS**"). The Report details the various aspects of SIPS 2030, which consists of three main objectives:

(a) Strengthen Singapore's position as a global hub for IA/IP;
(b) Attract and grow innovative enterprises using IA/IP; and
(c) Develop good jobs and valuable skills in IA/IP.

The Report highlights that, with rapid advancements across diverse technology fields, the global economy is increasingly driven by IA, with global IA value standing at an all-time high of more than US$65 trillion, surpassing the value of tangible assets. It is thus vital for Singapore to remain at the forefront of this movement, and for businesses to fully utilise the opportunities afforded in this thrust of initiatives.

Singapore businesses should be aware of the impending changes to Singapore's IA/IP regime, both in policy and infrastructure. Businesses should also consider how they can benefit from the government's efforts to increase enterprises' access to IA/IP services and to help enterprises unlock potential new sources of capital through IA/IP.

For more information, click here to read our Legal Update.

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Mergers & Acquisitions

Challenges to the One-Proxy Rule in a Recent Trust Scheme of Arrangement

Since 2017, there has been a wave of consolidation and privatisation of real estate investment trusts ("**REITs**"), business trusts, and stapled trusts which have been effected through trust schemes of arrangement ("**Trust Schemes**") in accordance with the provisions of the Singapore Code on Take-overs and Mergers ("**Code**") and the applicable trust deed(s).

For a Trust Scheme to be implemented, approvals must be obtained from the unitholders for amendments to the trust deed and for the Trust Scheme. In the absence of a prescribed statutory framework for Trust Schemes, market practice has been to follow closely the established practice for schemes of arrangements involving companies ("**Company Schemes**").

Accordingly, the trust deed is usually amended to implement the one-proxy rule, whereby each unitholder (i) is entitled to appoint only one proxy to vote at the Trust Scheme meeting, and (ii) may only cast all the votes it uses at the Trust Scheme meeting in one way.

Although the one-proxy rule is consistent with industry practice (for both Company Schemes and Trust Schemes), an issue which may arise is whether its application distorts the voting results, particularly where investors hold units indirectly through a custodian or nominee who must cast all its votes in one way. This opens up the risk of challenge to a Company Scheme/Trust Scheme on the basis that the one-proxy rule should not have been applied.

Such a challenge from a unitholder was recently dealt with by the Courts in relation to Soilbuild Business Space REIT ("**SB REIT**"), where the application of the one-proxy rule was upheld. Although the Court accepted that no prejudice had been caused in SB REIT adopting the one-proxy rule for the Trust Scheme meeting, it observed that the one-proxy rule may have the potential to cause prejudice in certain cases.

For more information, click here to read our Legal Update.

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Shipping

Grants, Digitalisation, Partnerships – Boosts for Maritime Innovation in Singapore

On 20 April 2021, the Maritime and Port Authority of Singapore ("**MPA**") announced a few new initiatives, ranging from the adoption of digitalisation initiatives to new grants for maritime technology start-ups, in an effort to boost maritime innovation in Singapore.

Developing a vibrant and conducive environment for start-ups

S$10 million has been set aside from the Maritime Innovation and Technology ("**MINT**") fund to support the growth and development of maritime technology start-ups in Singapore, with the ambition for Singapore to become the top maritime start-up hub in the world. MPA will also develop (i) a digital technology marketplace to connect start-ups with maritime and

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venture capital companies, and (ii) a start-up playbook, being a comprehensive guide for start-ups for schemes and support programmes.

Additionally, a new grant scheme called MINT-STARTUP will offer grants up to S$50,000 or S$100,000 for eligible start-ups.

Digitalising business-to-government and business-to-business bunkering reporting processes

MPA has launched a digitalisation plan for the bunkering sector. This comprises the development of digitalBunker@SG, a secure system for bunker companies to automate data submission for regulatory reporting purposes, and a call-for-proposal ("**CFP**") on projects seeking to digitalise documentations and the bunker purchase and delivery process.

The CFP seeks proposals on industry solutions (B2B), automated and secured regulatory reporting (B2G), and the development or enhancement of hardware and software to enable automated and secured data transmission from mass flow metering (MFM) systems. Selected projects may be eligible for up to 70% of project grant for qualifying items, and the application deadline is 10 June 2021.

Push for industry adoption of electronic bills of lading

The Singapore Parliament passed the Electronic Transactions (Amendment) Bill on 1 February 2021. This enacts significant updates to the Electronic Transactions Act, which come into effect on 19 March 2021 ("**Amended Act**"). The Amended Act has paved the way for the adoption in Singapore of the UNCITRAL Model Law on Electronic Transferable Records ("**Model Law**") in relation to bills of lading, with Singapore becoming among the first jurisdictions in the world to enact a legislative framework for adoption of electronic transferable records ("**ETRs**") based on the Model Law.

The Amended Act includes a new Part 2A which adopts the Model Law with certain modifications. The Model Law enables the creation and use, both domestically and internationally, of ETRs. This includes electronic bills of lading ("**eBLs**").

Against this backdrop, having successfully completed an eBL trial that demonstrated significant time savings, MPA is issuing a CFP to develop and pilot eBL solutions. The projects must be able to demonstrate benefits such as manpower savings and lowered fraud risk in commercial use cases.

The CFP seeks proposals on encouraging industry adoption through consortiums and the development of eBL solutions. Similarly, selected projects may be eligible for up to 70% of project grant for qualifying items. The application deadline is 31 July 2021.

For further details on the amendments to the ETA, please see our Legal Update titled "Proposed Changes to Electronic Transactions Act to Allow Digitalisation of Trade Documents and Other Key Items".

Additions to the digitalOCEANS initiative

With a focus on shaping and harmonising global data standard for maritime digitalisation, the digitalOCEANS initiative has been boosted by the participation of the Digital Container Shipping Association ("**DCSA**"). DSCA

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will contribute cargo and vessel operational data standards, offering a boost towards interoperability of digital maritime platforms.

All partners will work on data harmonisation and target to jointly publish a set of Application Programming Interfaces (API) specifications for sharing across the international maritime community by end 2021.

Signing of 4th Memoranda of Understanding ("**MOU**") with PSA International

The MOU relates to the Port Technology R&D programme, which aims to accelerate technology research and development, and facilitate live trials in the areas of automated container port systems, advanced port optimisation techniques, and green port technologies for application in existing container terminals and the new Tuas Port. The programme will also uplift capabilities of the local port ecosystem including small and medium enterprises and research institutes.

Click on the following link for more information:

- MPA Singapore Press Release titled "Maritime Innovation in Singapore Receives Boost" (available on the gov.sg website at www.gov.sg)

Trade

Singapore Ratifies the Regional Comprehensive Economic Partnership Agreement

Singapore has ratified the Regional Comprehensive Economic Partnership ("**RCEP**") Agreement, making it the first RCEP Participating Country to complete the official ratification process.

In a press release on 9 April 2021 (available here), the Ministry of Trade and Industry ("**MTI**") announced that Singapore had deposited its instrument of ratification with the Secretary-General of the Association of Southeast Asian Nations ("**ASEAN**"). The RCEP is an economic partnership that builds on existing ASEAN agreements with its five Free Trade Agreement ("**FTA**") Partners (Australia, China, Japan, New Zealand, and South Korea). Comprising about 30% of global Gross Domestic Product and close to a third of the world's population, the RCEP is the world's largest FTA to date. It complements Singapore's existing network of FTAs and further broadens Singapore's economic linkages and connectivity within the region, which will open up considerable opportunities by, among other means, providing businesses with preferential access.

The RCEP Agreement will enter into force 60 days after six ASEAN Member States and three ASEAN FTA Partners have deposited their instrument of ratification, acceptance or approval with the Secretary-General of ASEAN. MTI has stated that the RCEP Participating Countries are targeting for the RCEP to enter into force on 1 January 2022.

For more information, click here to read our Legal Update.

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Singapore Ratifies the ASEAN Trade in Services Agreement

Singapore has ratified the Association of Southeast Asian Nations ("**ASEAN**") Trade in Services Agreement ("**ATISA**"), becoming the first of the ASEAN Member States to do so. In a press release on 5 April 2021 (available here), the Ministry of Trade and Industry ("**MTI**") announced that Singapore had completed the ratification process, and that its rights and obligations under the ATISA had commenced on the same day. MTI also stated that other ASEAN Member States would be continuing their internal procedures to ratify the ATISA within the year.

The ATISA reduces "beyond-the-border" barriers, providing a legally binding guarantee of the widest preferential services market access into ASEAN markets to date. The ATISA seeks to benefit businesses and workers by further promoting trade in services in the ASEAN region and improving business confidence for businesses and service suppliers in all sectors. It has a wide coverage of service sectors, including Professional Services, Telecommunications, Financial Services, Computer and Related Services, Distribution and Logistics Services.

The measures under the ATISA include the following:

(a) It establishes services liberalisation commitments, including the reduction of discriminatory regulatory barriers and creation of a more transparent regime for ASEAN services suppliers.
(b) It establishes a built-in agenda for ASEAN Member States to convert their liberalisation commitments to a negative list approach.

For more information, click here to read our Legal Update.

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Postal Services Act Amended to Support Deployment of Parcel Locker Network

On 5 April 2021, the Postal Services (Amendment) Bill ("**Bill**"), introduced in Parliament on 5 March 2021, was passed. The amendments to the Postal Services Act ("**PSA**") came into operation on 14 May 2021. They aim to support the transformation of Singapore's last-mile parcel delivery infrastructure to better address market and technological changes in light of the growth in e-commerce and the decline in mail volumes in recent years. The PSA was last revised in 2007.

The key features of the PSA amendments are set out below.

Deployment of a nationwide public parcel locker network

The amendments to the PSA confer on the Infocomm Media Development Authority ("**IMDA**"), as the appointed Postal Authority, the exclusive privilege to establish, install, operate and maintain Singapore's public parcel locker network ("**Network**"). By virtue of the relevant provision of the amended PSA, IMDA has in turn appointed its wholly-owned subsidiary, Pick Network Pte Ltd, as the Network operator tasked to deploy and maintain the Network at specified premises. These specified premises include: (i) common areas of Housing Development Board (HDB) estates; (ii) public transportation nodes; and (iii) community centres and clubs managed by the People's Association. The Network was launched on 30 April 2021.

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The parcel lockers are made available for use by all logistics service providers ("**LSPs**"), e-commerce marketplaces and their customers.

The Network complements existing doorstep deliveries and provides consumers greater convenience and flexibility in collecting their online purchases. It also enhances the efficiency and productivity of the logistics sector amidst the growing demand for e-commerce deliveries.

Improved Letterbox Infrastructure and Last-mile Delivery Services

Under the amended PSA, the public postal licensee, SingPost, is required to provide LSPs and online merchants wholesale access to letterboxes for the delivery of non-letters (i.e. small packets or parcels).

The access to letterboxes by LSPs and online merchants will be regulated by IMDA, and is aimed at enhancing competition in the last-mile delivery services market by further closing the infrastructure gaps between the public postal licensee, and the LSPs and online merchants for parcel delivery.

To further improve the letterbox infrastructure, IMDA will mandate building owners to provide and maintain letterboxes after they take over a property from building developers. This is to ensure that there is no disruption in parcel delivery in their respective areas.

IMDA's Enforcement Powers

To deal with situations where items placed in public parcel lockers are suspected to be the subject of or may have been used in the commission of an offence, the amended PSA has enhanced the enforcement powers of IMDA as the Postal Authority. In these instances, IMDA may open and search the public parcel lockers, and detain and open the items placed or found therein. It may also carry out follow-up actions for detained items and require information for investigative purposes.

The amendment of the PSA is a welcome development in the thriving e-commerce logistics landscape of Singapore.

We issued in December 2020 a client update on the launch of public consultation on the Bill, which discusses, among others, the proposed legislative changes to the PSA. The client update can be accessed here.

Click on the following links for more information (available on the IMDA website at www.imda.gov.sg):

- IMDA Media Release titled "Postal Services Act Amended to Support Evolving Postal and E-commerce Landscape for a Digital Future"
- IMDA Media Release titled "Nationwide Parcel Locker Network Launched"

CaseBytes

Court Intervention in a Judicial Manager's Decision – The Test for Unfair Prejudice

Under Singapore's restructuring and insolvency regime, a judicial manager has a degree of discretion in managing the affairs of the company in judicial management. However, the Court may intervene in a decision of a judicial manager if it is unfairly prejudicial to the interests of the company's creditors or members.

The test for when the Court will intervene in the manner in which a judicial manager manages the company's affairs, business, and property, and the relevant standard of unfair prejudice, had yet to be considered in Singapore case law. In the novel decision of *Re HTL International Holdings Pte Ltd* [2021] SGHC 86, the Singapore High Court set out the applicable principles in determining unfair prejudice, clarifying that it would not interfere with the decisions of a judicial manager unless there is plainly wrongful conduct, conspicuous unfairness, or perversity.

In this case, the shareholders of a company sought to invoke the Court's intervention in the judicial managers' decision to sell assets of the company to one party (the Purchasers) rather than another. The Court held, on the facts, that it could not be said that the judicial managers' decision was unfairly prejudicial to the shareholders. The application to declare the sale null and void was therefore refused.

The Purchasers were successfully represented by Mark Cheng, Chew Xiang, Ho Zi Wei, and Tan Tian Hui from the Restructuring & Insolvency Practice (with Audent Chambers LLC as instructed counsel).

For more information, click here to read our Legal Update.

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High Court Issues Largest Award for Fraudulent Trading in Singapore

If the business of a company has been carried on with the intent to defraud creditors, directors and officers who were knowingly a party to the carrying of business in that manner may be liable for fraudulent trading. Under Singapore's restructuring and insolvency regime, they may be held personally liable for all or any the company's debts. In *Tendcare Medical Group Holdings v Gong Ruizhong* [2021] SGHC 80, the High Court issued the largest award for fraudulent trading in Singapore so far, holding a company director (and a company owned and controlled by him) liable for substantially all the debts of the company in the sum of US$65,207,538.03. In addition, the Court found the director to be liable for breaches of fiduciary duties for US$35 million and S$500,000.

The fraudulent trading in this case involved an audacious scheme to defraud the institutional investors of a company ("**Tendcare**"). The defendant director, Mr Gong, had raised funds from debt and equity investors for Tendcare pursuant to a prospective initial public offering ("**IPO**"). However, the evidence showed that the IPO was never on the cards, and that the funds were in most instances misappropriated and transferred out of Tendcare shortly after Tendcare's receipt of the funds from its investors.

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The Court held that Mr Gong was liable for fraudulent trading and breaches of fiduciary duties, and found several other defendants jointly liable for dishonest assistance, holding them responsible for the full sum of the claim. In its decision, the Court set out the principles regarding the law of fraudulent trading and the extent of liability for fraudulent trading.

The plaintiffs – Tendcare and its judicial manager – were successfully represented by Lee Eng Beng, SC, Mark Cheng, Chew Xiang, Priscilla Soh, Tan Tian Hui and Darren Lim from the Restructuring & Insolvency Practice.

For more information, click here to read our Legal Update.

Are "Pay When Paid" Provisions Unenforceable under the SOPA Even for Terminated Contracts?

The Building and Construction Industry Security of Payment Act ("**SOPA**") seeks to facilitate payments for construction projects and also sets out certain restraints on construction contracts. In *Frontbuild Engineering & Construction Pte Ltd v JHJ Construction Pte Ltd* [2021] SGHC 72, the Singapore High Court considered the issue of whether certain provisions take primacy over the other provisions in the SOPA, in particular:

(a) Section 4(2)(c) provides that the SOPA will not apply to a terminated contract in the specified circumstances; while
(b) Section 9 of the SOPA renders "pay when paid" provisions in a construction contract unenforceable and of no effect.

In considering the interaction between these provisions, the Court had to determine whether the SOPA goes so far as to render "pay when paid" provisions in a construction contract unenforceable notwithstanding the termination of the contract.

The Court held that section 4(2)(c) of the SOPA does not take primacy over section 9 of the SOPA. Therefore, if a contractual provision engages both section 9 and section 4(2)(c), the Court will first consider if the provision is rendered unenforceable under section 9; if the provision is not found to be unenforceable, the Court will then consider if section 4(2)(c) applies to exclude the application of the SOPA.

The contractual provision in this case purported to suspend payments upon termination of the contract until the main contract works had been completed. The Court found this to be a "pay when paid" provision which was thus unenforceable.

For more information, click here to read our Legal Update.

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Does the Pre-amendment SOPA Permit Set-off for Liquidated Damages?

The Building and Construction Industry Security of Payment Act ("**SOPA**") is a significant piece of legislation, establishing a fast and low-cost adjudication system to resolve payment disputes in the construction industry. However, does the scope of the SOPA (prior to the 2019 amendments) permit an adjudicator to make a finding on a party's entitlement to set off liquidated damages against the amount it owes to the other party?

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This issue came before the Court of Appeal for the first time in *Range Construction Pte Ltd v Goldbell Engineering Pte Ltd* [2021] SGCA 34. In the adjudication between Range Construction Pte Ltd ("**Range**") as contractor and Goldbell Engineering Pte Ltd ("**Goldbell**") as employer (which was commenced prior to the 2019 amendments to the SOPA), the adjudicator allowed the set off of the liquidated damages claimed by Goldbell due to delayed completion against the amount owed by Goldbell to Range.

Range sought to set that part of the adjudication determination aside, maintaining before the Court of Appeal that the adjudicator had no jurisdiction to determine Goldbell's claim of set-off. It asserted that the SOPA only conferred jurisdiction to value construction work done, whereas liquidated damages were damages for breach of contract and thus fell outside the adjudicator's jurisdiction.

In particular, Range sought to argue that section 17(2A) of the current SOPA – which provides that an adjudicator must disregard claims related to damage, loss or expense unless certain conditions are met – reflected the legal position under the SOPA prior to the 2019 amendments. Range relied on the Ministerial Statement at the second reading of the SOP (Amendment) Bill (Bill No 38/2018) by Mr Zaqy Mohamad, Minister of State for National Development, who observed that claims for "complicated prolongation costs, damages, losses or expenses" went beyond the original scope of the SOPA, which is intended to cover claims for work done or goods and services supplied.

The Court of Appeal rejected this argument, holding that the adjudicator's jurisdiction was based on sections 15(3)(*a*) and 17(3) of the pre-amendment SOPA. If section 17(2A) reflected the legal position prior to the 2019 amendments to the SOPA, section 15(3) of the pre-amendment SOPA "would have been devoid of any substantive content". Section 15(3)(*a*) stated that the adjudicator could consider "any reason for withholding any amount, including but not limited to …set-off" [emphasis added]. Had Parliament intended to exclude liquidated damages as a valid form of set-off, the Court would have expected this exclusion to be expressly reflected in the SOPA.

Further, the jurisdiction of adjudicators to determine entitlements to set-offs for liquidated damages was aligned with the overriding aim of the SOPA, which is to provide an efficient and low-cost mechanism for the resolution of non-complex claims. Liquidated damages are typically capable of straightforward computation, and it would be "too limiting a charter" to exclude jurisdiction over liquidated damages given the frequency with which such claims occur.

It is important to note that this decision was based on the SOPA prior to the 2019 amendments. The Court of Appeal highlighted that the position has since changed under section 17(2A) of the SOPA per the 2019 amendments, which requires an adjudicator to disregard any part of a payment claim or payment response relating to damage, loss, or expense, save in select circumstances expressly provided for in section 17(2A).

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Singapore High Court Decides on Landmark Claim for Mass Poaching and Solicitation of Insurance Agents

In mid-2016, the attention of the financial services industry was captured by the exodus of a record number of agents then – numbering more than 240 – from Prudential Singapore ("**Prudential**") to a competitor financial advisory firm ("**Aviva FA**") solely owned by Aviva Ltd ("**Aviva**"). The move led to a landmark claim against a former top agency leader ("**AL**") from Prudential, Peter Tan ("**Tan**"), for orchestrating the mass exodus. Apart from being closely followed by those in the financial services industry, the case has also attracted intense media attention due to the sheer number of agents involved in the mass exodus as well as the immense financial impact and repercussions arising thereof.

After a lengthy 49-day trial conducted over three months in 2019 and 2020, the Singapore High Court has now issued its decision on the claim. In *Prudential Assurance Company Singapore (Pte) Limited v Peter Tan Shou Yi and another* [2021] SGHC 109, the Court, in deciding on Prudential's claims against Tan for breach of his contractual obligations of non-solicitation and breach of fiduciary duties, had to consider issues of incorporation and enforceability of such non-solicitation clauses, as well as whether Tan, by reason of his role and position as a senior AL of Prudential where trust and confidence was reposed in him, could be said to be a fiduciary of Prudential owing certain fiduciary duties and obligations to it.

In the end, the Court found that Tan had, whilst contracted with Prudential, indeed carried out preparatory steps such as having discussions with Aviva on an arrangement which would involve him procuring Prudential's ALs and agents to leave and to join the Aviva FA, as well as the subsequent acts of solicitation. The Court therefore held that Tan was liable for breach of his contractual obligation to conduct his insurance business with integrity and honesty, and also dismissed all of Tan's four counterclaims against Prudential.

In reaching its decision, the Court agreed with Prudential's arguments that Tan had acted in breach of a clause in his agency agreement which provided that Tan shall "conduct his insurance business with integrity and honesty" as such a clause required Tan, whilst he was contracted with Prudential, to deal with and serve Prudential in good faith and with undivided interest and not to do anything during the pendency of his agency agreement which may harm Prudential. Importantly, the Court provided guidance that such a duty was tantamount to a duty of fidelity, and included a duty on the part of Tan not to solicit Prudential's ALs and agents (during the currency of his agency agreement) to join a competitor.

Prudential was represented by Murali Pillai, SC, Luo Qinghui, Jared Kok, Andrea Tan, Tao Tao and Joey Ng from the Commercial Litigation Practice and the Appeals & Issues Practice.

For more information, click here to read our Legal Update.

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Deals

Acquisition of Admirax

Norman Ho, Tan Chon Beng and Cindy Quek from the Corporate Real Estate Practice and Mergers & Acquisitions Practice acted in the S$142 million acquisition of the entire issued and paid-up share capital in a special purpose vehicle which holds a high specification light industrial building along Admiralty Street, Singapore. The industrial building, known as Admirax, is situated on a site with 60-year leasehold tenure. Admirax is zoned Business 1 under the 2019 Master Plan and has a net lettable area of approximately 469,000 square feet.

Mars Veterinary Health's Acquisition of Mount Pleasant Veterinary Group Pte. Ltd.

Terence Quek from the Mergers & Acquisitions Practice acted for Tan Hwa Luck and 10 others in the sale of the entire issued and paid-up share capital of Mount Pleasant Veterinary Group Pte. Ltd. to Mars Veterinary Health.

Acquisition of Stamped.io by WeCommerce

Terence Quek and Lee Jin Rui from the Mergers & Acquisitions Practice advised Stamped.io Pte Ltd, a leading SaaS platform, in its sale of business and assets to WeCommerce Holdings Ltd, a Canadian listed company, for up to US$110 million.

Events

Navigating Volatility and Distress in 2021

On 23 April 2021, the Legal Services Interest Group of the Singapore International Chamber of Commerce (SICC), Rajah & Tann Singapore, Turnaround Management Association, and Deloitte Southeast Asia organised a webinar titled "Navigating Volatility and Distress in 2021".

The financial “hangover” from COVID-19 presents clear challenges for businesses who need to prepare and respond now to position themselves to thrive in a post-COVID-19 "new normal". The webinar examined the economic impact of the pandemic, the strategies that businesses should make, and the commercial and legal restructuring options available to them in Singapore.

Danny Ong from the Restructuring & Insolvency Practice was one of the three speakers at the webinar.

Reimagine an Intelligent Compliance & Risks Management Strategy

On 13 April 2021, Rajah & Tann Singapore and Microsoft organised a webinar titled "Reimagine an Intelligent Compliance & Risks Management Strategy".

A growing and evolving set of laws and regulations is holding organisations more accountable for protecting customer data as data protection is vital to a company's future. As data increases exponentially, it is more challenging

than ever for organisations to meet their compliance obligations. The speakers at the webinar discussed the evolving compliance and risk landscape in Singapore, focusing on how data can be protected in a hybrid work environment. They shared best practices on how to simplify compliance, reduce risks, and meet legal compliance obligations in an organisation.

Rajesh Sreenivasan, Head of the Technology, Media & Telecommunications Practice, was one of the speakers.

Navigating Uncharted Waters in 2021

On 8 April 2021, Rajah & Tann Asia's Shipping & International Trade Practice organised a webinar titled "Navigating Unchartered Waters in 2021".

The Shipping and Maritime industry is seeing rapid development which affects various players in the market, including shipyards and shipowners. This is driven significantly by the recent global focus on issues of Sustainability.

In light of the COVID-19 pandemic, the Association of Southeast Asian Nations (ASEAN) countries are also promulgating new laws and regulations to manage and deal with the pandemic. This development has impacted shipyards and shipowners significantly, being an industry that is necessarily cross-border and international in nature. Industry players must also keep abreast of developments in the law and remedies available to them in the event of disputes.

At the webinar, the speakers from the various regional offices of Rajah & Tann Asia looked into: (i) the impact of the Basel Convention and environmental laws; (ii) an overview of banking and financing issues for shipyard and shipowners; (iii) government regulations impacting shipyard and shipowners; and (iv) remedies involving disputes in the yard.

The speakers comprised Eri Hertiawan and Wildan Lukman (Assegaf Hamzah & Partners), John Mathew (Christopher & Lee Ong), Vladi Miguel Lazaro (C&G Law), Kendall Tan, Jonathan Oon, Ting Hong Yong and Dedi Affandi Ahmad (Rajah & Tann Singapore), Krida Phoonwathu (R&T Asia (Thailand)), and Logan Leung (Rajah & Tann LCT Lawyers).

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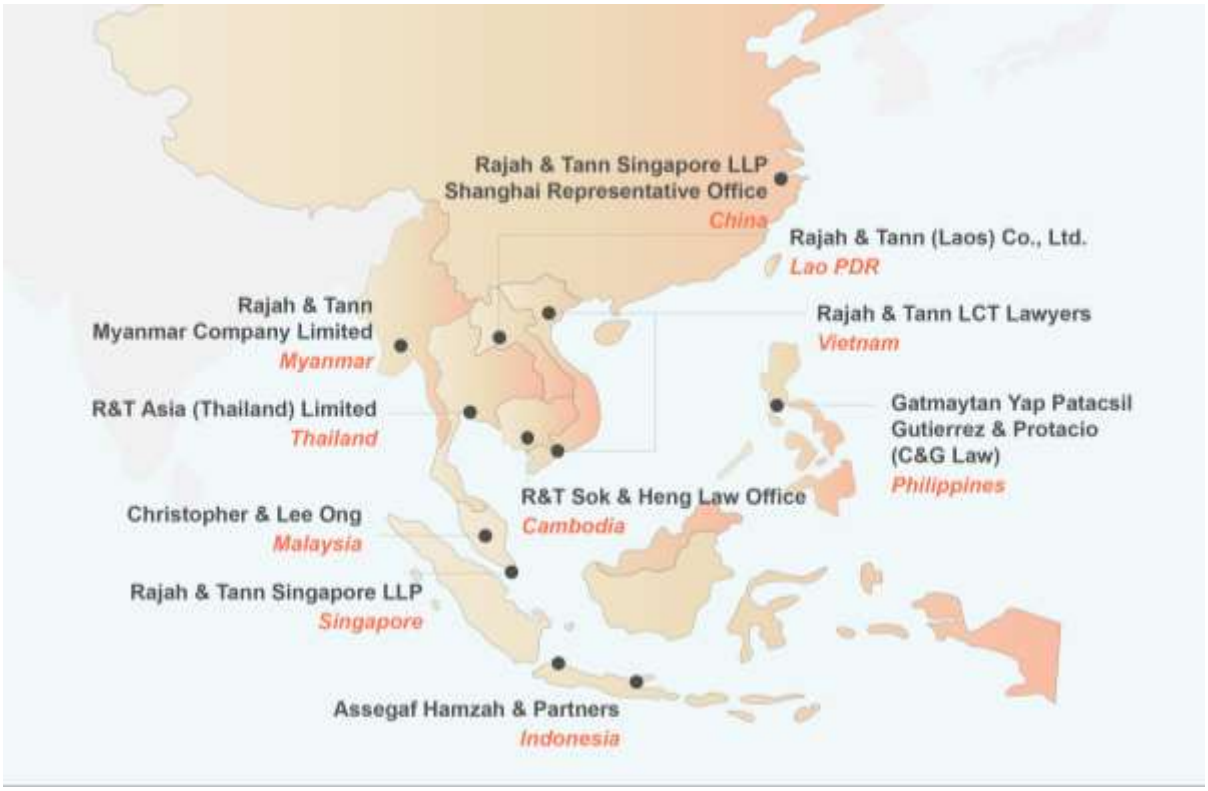
Our Regional Presence



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