NewsBytes: Singapore

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Rajah & Tann Asia Shines in *Chambers Global 2023*, Garnering the Highest Number of Recognitions in Southeast Asia

Rajah & Tann Asia ("**RTA**") has outshone itself in the 2023 edition of *Chambers Global* ranking tables. Growing from strength to strength, 64 lawyers have been recognised as leading or notable practitioners and a total of 33 departments have been ranked. With accolades reflected across 11 locations, RTA has once again amassed the greatest number of rankings for an Asian legal network.

Our offices in Malaysia and Myanmar have held on to their Bands 1 and 2 rankings in all practice areas while Singapore has elevated its rankings for Banking & Finance: Domestic to Band 1. In Indonesia, Philippines and Vietnam, our firms maintained a consistent performance across the board for all categories while our Thailand office is newly ranked for its work in M&A. RTA is also recognised for expertise based abroad for China and India.

According to the publication, "[t]he team at Rajah & Tann has always been able to find solutions even when dealing with counterparties across multiple jurisdictions." Our lawyers also "demonstrate professionalism in all situations, showing the patience and willingness to achieve the optimum outcome for the client."

The *Chambers Global* rankings are based on in-depth analysis, facilitated by a team of experienced researchers. Chambers rankings offer reliable recommendations on the best law firms and lawyers globally.

Click here to read our Press Release, which includes the full rankings of our lawyers in the *Chambers Global 2023* edition.

Rajah & Tann Asia Year in Review 2022

We are pleased to present Rajah & Tann Asia's Year in Review 2022.

2022 has been a poignant year. As travel and safe distancing restrictions became relaxed, we rediscovered stronger and more personal connections created by in-person interactions and events.

We were also able to rekindle many relationships with colleagues and friends, as well as clients and business partners across our Rajah & Tann Asia network. It was a perfect time to celebrate a few momentous milestones and build up momentum for more exciting years ahead as we hopefully put the pandemic behind us.

Click here to visit the Year in Review 2022 site.

LegisBytes

Consumer Protection

Nutri-Grade Requirements to be Extended to Freshly Prepared Beverages

In 2022, Singapore introduced a system of Nutri-Grade measures which imposed mandatory nutrition labels and advertising prohibitions for designated beverages. While the measures currently apply only to beverages sold in Singapore in pre-packaged form and from automated beverage dispensers ("**existing Nutri-Grade beverages**"), from end-2023, these requirements are set to be extended to freshly prepared beverages for sale in specified settings in Singapore ("**freshly prepared Nutri-Grade beverages**"). This would include bubble tea, freshly brewed coffee or tea, and freshly squeezed juices.

Additional labelling requirements will also be introduced. These will apply to both beverages under the existing Nutri-Grade measures as well as freshly prepared Nutri-Grade beverages.

The key changes are summarised as follows:

(a) Freshly prepared Nutri-Grade beverage would have to be graded "A", "B", "C" or "D", according to the Nutri-Grade grading system which is based on the beverages' sugar and saturated fat content;

(b) If the freshly prepared or existing Nutri-Grade beverage is graded "C" or "D", the Nutri-Grade mark must be labelled next to beverages listed for sale, such as on physical or online menus at their point of purchase. The labelling of Nutri-Grade beverages graded "A" or "B" will continue to be optional. To better help consumers in their decision making when selecting beverages from menus, a simplified Nutri-Grade mark has been developed and is to be placed next to the individual beverage listings;

(c) Information on freshly prepared Nutri-Grade beverages, such as the amount of sugar and saturated fat, must be available to any person who wishes to view the information, either through an electronic record or a physical copy; and

(d) Advertisements promoting the sale of a freshly prepared Nutri-Grade beverage graded "D" will be prohibited.

To facilitate the new measures, the Ministry of Health and the Health Promotion Board have launched a consultation to seek feedback on the proposed new legislation under the Sale of Food Act 1973. Businesses involved in the production and sale of such beverages should be aware of

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the proposed measures and how it may affect their operations, and should submit any relevant feedback before the consultation ends on 24 April 2023.

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

Corporate Commercial

ACRA/MAS/MOF Seek Comments on Legislative Amendments to Allow Virtual Meetings for Companies, VCCs and BTs

From 9 February 2023 to 20 February 2023, the Accounting and Corporate Regulatory Authority (ACRA), the Ministry of Finance (MOF) and the Monetary Authority of Singapore (MAS) jointly conducted a public consultation to seek feedback on proposed changes to the Companies Act 1967 ("**CA**"), Variable Capital Companies Act 2018 ("**VCC Act**") and the Business Trusts Act 2004 (collectively, the "**Acts**").

The key proposed changes to the Acts primarily aim to expressly clarify in the Acts that companies, variable capital companies ("**VCCs**") and business trusts ("**BTs**") have the option to conduct fully virtual or hybrid general meetings, and to ensure that the rights of the members of the companies and VCCs and unitholders of BTs to attend and participate in such general meetings are safeguarded. The proposed changes to the Acts are set out in the draft Companies, Business Trusts and Other Bodies (Miscellaneous Amendments) Bill 2023 ("**draft Bill**").

The proposed draft Bill is stated to come into effect on 1 July 2023. This will provide companies, VCCs and BTs with the option to conduct general meetings by electronic means after the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020 is revoked with effect from 1 July 2023.

Key Proposed Changes to the Acts

(a) Expressly allow companies, VCCs and BTs to hold general meetings fully virtually (i.e. using virtual meeting technology) or in a hybrid format (i.e. at a physical place and using virtual meeting technology), without having to first amend their constitutions or trust deeds (as the case may be).

(b) Clarify how references in the Acts that are applicable to a general meeting may be applied in the context of a general meeting held using virtual meeting technology.

(c) Give companies, VCCs and BTs the option to amend their constitutions or trust deeds (as the case may be), on or after 1 July 2023, to prohibit the holding of fully virtual and/or hybrid general meetings, or modify or exclude the application of the rules clarifying how references in the Acts that are applicable to a general meeting may be applied in the context of a fully virtual and/or hybrid general meeting.

(d) Subsidiary legislations under the Acts are expected to be passed to regulate the use of virtual meeting technology for fully virtual or hybrid general meetings. The areas that may be regulated under subsidiary

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legislations are anticipated to include safeguards to restrict or mandate the types of virtual meeting technology that may be used, as well as the imposition of verification or authentication requirements, among other things.

(e) Proposed amendments to the CA and the VCC Act to:

- Allow a member of a company or a VCC to apply to the court to invalidate a fully virtual or hybrid general meeting held in accordance with the respective new provisions under the Acts on the basis of the occurrence of a technological disruption, malfunction or outage; and
- Provide that the occurrence of a technological disruption, malfunction or outage does not per se invalidate the general meeting, unless the court is of the view that there was substantial injustice caused by the technological disruption, malfunction or outage that cannot be remedied by any order of the court.

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

MOF and ACRA Respond to Feedback on Proposals Relating to Digitalisation and Compulsory Acquisition in 2020 Consultation Paper on Proposed Amendments to Companies Act

On 6 February 2023, the Ministry of Finance ("**MOF**") and the Accounting and Corporate Regulatory Authority ("**ACRA**") published their responses ("**Response**") to feedback received from the public pursuant to the Public Consultation on Proposed Amendments to the Companies Act which ran from 20 July 2020 to 17 August 2020. The Response covered some of the proposals made by the Companies Act Working Group ("**Working Group**"). We broadly outline certain key proposals and responses below. Responses to other Proposals will be issued by MOF and ACRA in due course.

(a) **Facilitating digital general meetings and digital board meetings**. The Working Group proposed to revise the Companies Act 1967 ("**CA**") to clarify that a company may hold general meetings digitally and in more than one location, unless the company's constitution provides otherwise. To facilitate this, it was proposed to amend the provisions of the CA to address shareholders' rights in relation to digital meetings.

The CA will explicitly specify that companies that hold digital general meetings must use technology that enable members to attend, listen, speak and vote at the meeting, and to specify that companies may hold digital general meetings unless expressly prohibited by their constitution. Additional safeguards and requirements may be introduced later through subsidiary legislation.

General meetings held using digital means will also be subject to section 392(3) of the CA, which allows an application to be made to the court to declare proceedings at a general meeting to be void, on the grounds of a procedural irregularity that has caused or may cause substantial injustice.

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There will be an enabling provision which provides that nothing in the CA prohibits board meetings from being held digitally.

The CA will mandate all companies to accept proxy instructions given by electronic means, modifying the current practice where the manner for appointing a proxy and providing proxy instructions is prescribed in a company's constitution.

(b) **Clarifying the application of existing digitalisation provisions to documents under the CA**. The CA provisions that permit the giving, sending or serving of notices of meetings, accounts, balance sheets, financial statements, reports and other documents using electronic communications will be revised to include all documents that the CA requires or permits companies or directors to send to members, officers or auditors.

The CA provisions that permit the keeping of company records in electronic form and the inspection of company records by electronic means will be revised to apply to all documents that the CA requires companies and foreign companies to keep or make available for inspection.

The CA will be amended so that a document may be sent using a mode of electronic communication (including via publication on website) by (i) companies or directors to persons who are not members, officers or auditors of the company; (ii) members, officers, or auditors to companies or directors; and (iii) persons who are not members, officers, or auditors to companies or directors, where in each case there is an agreement between the parties for the document to be sent using that mode of electronic communication.

MOF and ACRA will further clarify what constitutes an agreement between parties for a document to be sent using electronic communications.

(c) **Other areas concerning digitalisation**. MOF and ACRA agreed with the Working Group that the CA should not be amended to address the sending of documents by foreign companies using digital means, because this may potentially contradict foreign law.

MOF and ACRA will conduct further study on the following proposals concerning digitalisation in other areas, as these proposals may have implications on other sections of the CA:

- whether and how court-ordered meetings under section 210 of the CA may be held digitally;
- whether common seals can be in digital form;
- whether certain things made by companies, directors, members, auditors or accounting entities (e.g. debentures, certificates, declarations and reports) can be in digital form; and
- the sending of documents between certain persons (e.g. transferees, auditors, officers and the Minister) using digital means.

(d) **Review of the threshold for the compulsory acquisition of shares under section 215 of the CA**. Section 215 of the CA provides for the right of a person ("**transferee**") to compulsorily acquire the shares of any dissenting shareholder where a scheme or contract involving the transfer of all the shares, or all of the shares in any particular class, in a company ("**transferor company**") to the transferee has been approved by at least 90% of the holders of all the shares or the shares of that class ("**90% threshold**"). Shares held or acquired by persons connected to the transferee are excluded from the computation of the 90% threshold.

Working Group's Proposal: Computation of the 90% threshold for compulsory acquisition under section 215 of the CA should also exclude the shares held or acquired by:

- a person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of the transferee in respect of the transferor company;
- a body corporate **controlled*** by the transferee;
- a person who is, or is a nominee of, a party to a share acquisition agreement with the transferee;
- the transferee's close relatives;
- a person whose directions, instructions or wishes the transferee is accustomed or is under an obligation whether formal or informal to act in accordance with, in respect of the transferor company; and
- a body corporate **controlled*** by a person described in the preceding item.

*The Consultation Paper sought comments on whether the threshold to be adopted to establish a control of a body corporate referred to in the second and sixth bullet points above should be 30%.

MOF's and ACRA's Response: The threshold to establish control of a body corporate will be revised to 50%, instead of the 30% threshold that was originally proposed. Based on feedback received, a person who is, or is a nominee of, a party to a share acquisition agreement with a transferee will not be excluded in computing the 90% threshold for compulsory acquisition under section 215 of the CA.

For details on the proposals in the Consultation Paper, click here to read our July 2020 Legal Update titled "Proposed Changes to Companies Act to Cope with Evolving Business Environment". For more information on the Response, please click on the following links (available on the ACRA website at www.acra.gov.sg):

- ACRA Press Release titled "Summary of Responses to Public Consultation on Proposed Amendments to the Companies Act"
- Annex: MOF and ACRA's responses to key feedback on the proposed amendments to the Companies Act

Corporate Real Estate

Land Betterment Charge Table of Rates Updated

On 28 February 2023, the Land Betterment Charge (Table of Rates and Valuation Method) (Amendment) Regulations 2023 was published in the Government Gazette. It replaces the Table of Rates in the Second Schedule of the Land Betterment Charge (Table of Rates and Valuation Method) Regulations 2022 ("**Regulations**") with updated rates. The amendments have come into effect from 1 March 2023.

The Land Betterment Charge Act 2021 came into operation on 1 August 2022. It 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.

The Regulations provide for the rates and methods to calculate a pre-chargeable valuation and post-chargeable valuation for any land, so as to facilitate the Table of Rates method for ascertaining the amount of the LBC in respect of any chargeable consent in relation to a development of any land. The applicable rates at any time are set out in the Table of Rates in the Second Schedule of the Regulations.

The current set of amendments provides an updated Table of Rates, with certain rates having been revised. The full amendments are available here.

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Government Implements New Measures on Buyers' Stamp Duty

On 14 February 2023, as part of the Budget Statement for Budget 2023, the Minister for Finance, Lawrence Wong, announced the implementation of an increase in the Buyer's Stamp Duty ("**BSD**") rates for residential and non-residential properties "*to enhance the progressivity of the BSD regime*". The new measures have since taken effect from (and including) 15 February 2023.

The measures are expected to affect 15% of residential properties and 60% of non-residential properties. The two broad measures that have come into effect are:

(a) BSD for residential properties: An increase in BSD for residential properties in excess of S$1.5 million; and
(b) BSD for non-residential properties: An increase in BSD for non-residential properties in excess of S$1 million.

These revised BSD rates would apply to cases where the contract for the sale/purchase is entered into or the Option to Purchase ("**OTP**") is granted on or after 15 February 2023.

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Where the contract for the sale and purchase is entered into or the OTP is granted on or before 14 February 2023, the pre-15 February 2023 BSD rates would apply for cases that meet all of the following conditions:

(a) The OTP is granted by the sellers to buyers on or before 14 February 2023;
(b) This OTP is exercised on or before 7 March 2023, or within the OTP validity period, whichever is earlier; and
(c) This OTP has not been varied on or after 15 February 2023.

Potential purchasers and developers of all properties should be aware of the changes imposed by the new measures and determine whether such changes are applicable to their respective transactions.

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

Dispute Resolution

Reciprocal Enforcement of Foreign Judgments Regime in Singapore to be Consolidated from 1 March 2023

Singapore, as a regional hub for dispute resolution, has been developing its framework for the enforcement of foreign judgments, with arrangements in place with a number of countries for the reciprocal enforcement of judgments.

The reciprocal enforcement of foreign judgments regime in Singapore has now been consolidated under the Reciprocal Enforcement of Foreign Judgments Act ("**REFJA**"). The Commonwealth countries with which Singapore has reciprocal enforcement arrangements have been duly transferred to the REFJA from 1 March 2023.

Previously, the countries which fell within the reciprocal enforcement of foreign judgments regime were split between the REFJA and the Reciprocal Enforcement of Commonwealth Judgments Act ("**RECJA**"), with the RECJA governing prescribed Commonwealth countries. To consolidate the reciprocal enforcement regime, the reciprocating Commonwealth countries under the RECJA have been transferred to the REFJA pursuant to the Reciprocal Enforcement of Foreign Judgments (United Kingdom and the Commonwealth) Order 2023 ("**UK and Commonwealth Order**"), and the RECJA has been repealed from 1 March 2023.

Previously, the RECJA only allowed for the registration of money judgments given by superior courts in civil proceedings. After the transfer, the scope of registrable judgments from the countries listed in the UK and Commonwealth Order has been expanded to include:

(a) Money judgments from lower courts (in as far as such courts are listed as recognised courts in the UK and Commonwealth Order);

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(b) Interlocutory money judgments (in as far as they are final and conclusive as between the parties to it); and
(c) Judicial settlements, consent judgments and consent orders (in as far as they are final and conclusive and a sum of money is payable under them).

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

Employment & Benefits

Singapore Moves Another Step Closer to Workplace Anti-Discrimination Legislation

Seeking to address how best to create a strong and robust system that will promote workplace fairness, the Tripartite Committee on Workplace Fairness ("**Committee**") was formed in July 2021. The Committee's Terms of Reference were to:

(a) determine if the best policy to enhance workplace fairness is legislation;
(b) review the scope of requirements for employers;
(c) develop the regulatory and claims regime; and
(d) conduct engagements to gather feedback and understand concerns.

The Committee released its interim report on 13 February 2023. The Committee's interim report contains 20 recommendations to enhance workplace fairness. Notably, the Committee recommends that legislation be enacted to implement its recommendations to tackle workplace discrimination. It is proposed that the legislation will run in unison with the Tripartite Guidelines on Fair Employment Practices.

For more information, click here to read our Legal Update which outlines the recommendations made in the Committee's interim report and details the steps that employers should consider in order to remain fair employers.

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Heightened Safety Period is Extended till 31 May 2023 and Additional Measures Introduced to Improve Workplace Safety and Health

On 10 February 2023, the Ministry of Manpower ("**MOM**") announced an extension to the Heightened Safety Period and the implementation of additional Workplace Safety and Health ("**WSH**") measures to run in tandem with the extended Heightened Safety Period ("**HSP**"). The HSP was first introduced on 1 September 2022 and was due to end on the 28 February 2023. It included measures targeted at addressing the rising number of workplace fatalities that occurred in 2022.

Extended Heightened Safety Period

The HSP has been extended by three months and will run from 1 March 2023 to 31 May 2023. In its announcement, MOM highlighted that during the initial HSP the annualised workplace fatality rate improved. However, during

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that same period the annualised workplace major injury rate increased. Further, the impact of the HSP was uneven across sectors. MOM's concerns are that major injuries are reflective of persistent safety lapses within the workplace, and these types of injuries are likely to have debilitating effects. Hence, the need to extend the HSP.

Additional Measures During the Extended Heightened Safety Period

Four additional measures will be implemented during the extended HSP. These additional measures take into account the recommendations made by the International Advisory Panel for Workplace Safety and Health in January 2023.

The additional measures complement the existing measures of tighter enforcement measures, strengthened support for small and medium enterprises who require assistance to improve their WSH practices and processes via the expansion of StartSAFE, targeted measures for the construction sector, and the setting up of the Multi-Agency Workplace Safety Taskforce ("**MAST**").

The additional measures are:

(a) **Mandatory half-day in-person workplace safety and health training course for Chief Executives and Board of Directors**. This measure applies to companies found to have serious WSH lapses following serious or fatal workplace accidents. MOM will notify companies whose senior leadership are required to attend this training course. The training course curriculum will be an enhanced version of the existing bizSAFE training for senior management and will include additional modules on the Approved Code of Practice for Chief Executives and Board of Directors' WSH Duties, and root cause analysis of top incident types.

This is in addition to existing HSP measures which stipulate that companies found to have serious WSH lapses following serious or fatal workplace accidents may be debarred, for up to three months, from employing new foreign workers. Additionally, MOM continues to require company leaders to personally account to MOM and take responsibility for WSH rectifications.

(b) **Maximum fines increased**. For breaches of WSH Act subsidiary legislation that could result in death or serious bodily injury, the maximum fine has been increased from S$20,000 to S$50,000.

(c) **Raising awareness of channels to report WSH concerns and protecting workers who speak up**. In April 2023, the WSH Council will launch a National WSH Campaign to encourage workers to report unsafe workplace practices. Workers should first report WSH concerns to their employers to allow for swifter resolution. If the employer fails to act, then the matter should be raised to the authorities. The campaign will also heighten awareness of the types of protection available to workers who report or raise WSH issues. Members of the public can also report unsafe workplaces or acts to the MOM.

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(d) **Bite-sized versions of WSH guidance materials**. From May 2023, the WSH Council will introduce bite-sized versions of WSH guidance materials. This aims to better support companies, especially small and medium enterprises, to cultivate a stronger safe operations culture.

Long Term Measures to Sustain WSH Standards

MOM and MAST will work together to consider further measures to strengthen WSH standards and practices. MOM has stated that these measurers will include placing greater accountability on employers and senior management, enhancing safety training, reviewing incentives and penalties, and sectoral strategies.

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

- MOM Press Release titled "MOM Extends Heightened Safety Period by Three Months with Additional Measures"
- Report of the 8th Meeting of the International Advisory Panel 2023 for Workplace Safety and Health

Network Formed to Develop Operational Policies and Implementation Details of Work Injury Compensation Regime for Platform Workers

On 3 February 2023, the Ministry of Manpower ("**MOM**") announced that it has formed the Platform Workers Work Injury Compensation Network ("**PWIN**"). This follows from the Government's acceptance in November 2022 of all 12 recommendations detailed in the Advisory Committee on Platform Workers ("**Committee**") report titled "Strengthening Protection for Platform Workers" ("**Report**"). A key recommendation in the Report was ensuring adequate financial protection for platform workers in case of work injury. To fulfil this key recommendation the Committee recommended:

(a) Requiring platform companies to provide platform workers with the same scope and level of work injury compensation as those employees covered by the Work Injury Compensation Act ("**WICA**") are entitled to;

(b) Requiring the platform company that the platform worker was working for at the point of injury to be responsible for compensation, based on the platform worker's total earnings from the platform sector in which the injury was sustained;

(c) Determining sector-specific definitions of when a platform worker is considered "at work"; and

(d) Retaining the strengths of the current WICA regime, including the provision of work injury compensation insurance through the existing open insurance market.

PWIN comprises tripartite partners, platform companies and insurers. PWIN will develop key operational policies and implementation details for the Work Injury Compensation regime for Platform Workers. The key operational policy issues considered will include the process for reporting work injuries,

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claims processing in exceptional scenarios where platform workers are injured whilst in the course of undertaking work for multiple platform companies at the same time, and how to determine platform workers' earnings to compute loss of income compensation. Implementation details to be developed by PWIN will include the operational processes required to support insurance claims processing and dispute resolution.

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

- MOM Press Release titled "Formation of Platform Workers Work Injury Compensation Implementation Network"
- Full Report by the Advisory Committee on Platform Workers – "Strengthening Protection for Platform Workers"

Financial Institutions

MAS and RBI Launch Real-time Payments between Singapore and India

On 21 February 2023, the Monetary Authority of Singapore ("**MAS**") and the Reserve Bank of India ("**RBI**") launched a safe, simple, and cost-effective way to make cross-border fund transfers between Singapore and India. The tie-up between Singapore's PayNow and India's Unified Payments Interface ("**UPI**") enables customers of participating financial institutions in Singapore and India to send and receive funds between bank accounts or e-wallets across the two countries in real-time by using mobile phone number, UPI identity, or Virtual Payment Address (VPA).

The tie-up between PayNow-UPI is the world's first real-time payment systems linkage to use a scalable cloud-based infrastructure which can accommodate future increases in the volume of remittance traffic. It is also the first linkage to feature a non-bank financial institution as a participant.

The service will be made available to Singapore customers of DBS Bank and Liquid Group under a phased approach. Indian customers of all participating Indian banks will be able to receive funds through the service from the onset. The sending of funds is limited to customers of four Indian banks at the time of launch and this scope will be gradually expanded.

The participating financial institutions have committed to ensuring that the service is cost-efficient and accessible, including to foreign workers and students residing in Singapore and India, enabling them to make and receive low-cost cross border remittances back to and from their home countries. MAS and RBI will also review and progressively increase the number of participating financial institutions.

The tie-up is the result of extensive collaboration between MAS, RBI, both countries' payment system operators, payment scheme owners, and participating banks and non-bank financial institutions. It is a major milestone in enhancing the infrastructure for cross-border payments and supports India's G20 Presidency priorities to improve the cost, speed, access and transparency of cross-border payments.

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Click on the below links for more information (accessible on the MAS website at www.mas.gov.sg):

- MAS Press Release titled "Launch of Real-time Payments between Singapore and India"
- Remarks by Prime Minister Lee Hsien Loong at the Launch of the PayNow-UPI Linkage on 21 February 2023

Medical Law

Misuse of Drugs (Amendment) Bill and Constitution of the Republic of Singapore (Amendment) Bill Tabled in Parliament to Introduce New Legislative Framework for Psychoactive Substances

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On 24 February 2023, the Misuse of Drugs (Amendment) Bill ("**MDA Bill**") and the Constitution of the Republic of Singapore (Amendment) Bill were introduced for First Reading in Parliament. The proposed amendments to the Misuse of Drugs Act 1973 ("**MDA**") and the Constitution of the Republic of Singapore seek to introduce a new legislative framework for psychoactive substances and increase the penalties for the possession of certain quantities of more dangerous and harmful controlled drugs. In so far as it concerns the reporting duty of medical practitioners, i.e. that they are required to report if they believe or has reasonable grounds to suspect that their client is a drug addict, this provision has remained unchanged.

New Legislative Framework for Psychoactive Substances

New psychoactive substances ("**NPS**") are defined by the United Nations Office on Drugs and Crime (UNODC) as substances of abuse which are not controlled by international drug control conventions but which may pose a public health threat. Under the existing law, NPS are listed as controlled drugs in the First Schedule of the MDA ("**First Schedule**"). The listing is based on their chemical structure. New forms of NPS are temporarily listed in the Fifth Schedule of the MDA ("**Fifth Schedule**") for up to 12 months, during which time the Central Narcotics Bureau ("**CNB**") officers are empowered to seize these so as to restrict their circulation while scientific studies and industry consultations are being conducted to determine their legitimate uses. If these substances are found not to have legitimate uses, they will then be listed in the First Schedule as controlled drugs.

In this current set-up, the authorities cannot prosecute traffickers and abusers who are quick to produce or switch to new forms of psychoactive substances during the interim period, i.e. from the time a new form of psychoactive substance is first detected and listed in the Fifth Schedule until it is classified as a controlled drug and listed in the First Schedule.

New legislative framework introduced by the MDA Bill

To address this gap, the MDA Bill introduces a new legislative framework to control psychoactive substances based on their **capacity to produce a psychoactive effect**, rather than on their specific chemical structure. The MDA Bill proposes to criminalise the trafficking, manufacture, importing, exporting, possession, and consumption of psychoactive substances,

thereby allowing CNB officers to seize such substances that are not yet scheduled as controlled drugs, and prosecute offenders.

MDA Bill defines a psychoactive substance as a substance or product that has the "capacity to have a psychoactive effect on an individual if the individual smokes, administers to himself or herself or otherwise consumes, the substance or product". Psychoactive effect means the "stimulation or depression, whether directly or indirectly, of an individual's central nervous system, affecting the individual's mental functioning or emotional state".

The new legislative framework will not apply to excluded substances or psychoactive substances that have legitimate uses, such as alcohol, tobacco and food additives.

Enhanced Penalties for Possession of Large Quantities of More Dangerous and Harmful Controlled Drugs

It has been observed that syndicates are willing to deal in larger quantities of controlled drugs in each transaction, resulting in greater potential harm. In order to have a more deterrent effect, the MDA Bill proposes increased punishments, including caning, for the possession of large quantities of certain controlled drugs that are deemed to be more dangerous and harmful. These include morphine, diamorphine, opium, cocaine, cannabis, cannabis resin, cannabis mixture and methamphetamine.

Click on the following links for more information:

- MDA Bill (available on the Parliament of Singapore website at (www.parliament.gov.sg)
- Full text of the Constitution of the Republic of Singapore (Amendment) Bill (available on the Parliament of Singapore website at (www.parliament.gov.sg)
- Ministry of Home Affairs ("**MHA**") Press Release titled "Amendments to the Misuse of Drugs Act and the Constitution of the Republic of Singapore to Introduce a New Legislative Framework for Psychoactive Substances" (available on the MHA website at www.mha.gov.sg)
- Annex – Amendments to Misuse of Drugs Act Infographics

Changes to Healthcare Services Act Passed in Parliament to Enhance Regulatory Framework

The Healthcare Services (Amendment) Bill ("**Bill**"), introduced in Parliament on 6 February 2023, was passed on 6 March 2023. The Bill amends the Healthcare Services Act 2020 ("**HCSA**") to, *inter alia*, enhance the regulatory regime governing healthcare services and ensure greater clarity and transparency in healthcare services advertising. We covered the key features of the Bill in our Legal Update titled "Changes to Healthcare Services Act Introduced in Parliament to Enhance Regulatory Framework" (link here). The HCSA amendments under the Bill are targeted for implementation in mid-2023, together with Phase 2 of the implementation of HCSA, with two exceptions. First, the redesignation of the Director of

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Medical Services to Director-General of Health ("**Director-General**") will be implemented within two months. Second, the restrictions on employing individuals discussed in (c) below will be implemented at the end of 2023 when the screening process for the prospective employees would be operationalised.

To recap, the HCSA was enacted in 2020 to replace the Private Hospitals and Medical Clinics Act. The HCSA is being implemented progressively in three phases, with Phase 1 completed in January 2022. The implementation of the HCSA will be completed in end-2023.

Enhancements to Regulatory Regime for Healthcare Services

(a) **Approval of service delivery modes for each licensable healthcare service ("LHS")**. The Bill seeks to regulate the different modes by which a LHS under the HCSA is to be provided in the face of emerging non-brick-and-mortar care models for patients. Licensees that are providing a LHS may only provide that LHS through the following prescribed service delivery mode if it is approved by the Director-General: (i) at permanent premises; (ii) at any premises other than permanent premises; (iii) using a conveyance; or (iv) by remote provision.

(b) **Approval for provision of specified services**. The Bill requires a licensee for the provision of a LSH to seek additional approval before it is allowed to provide delivery of certain specified services. Currently, HCSA licensees are only required to notify the Ministry of Health ("**MOH**") before providing such services.

(c) **Flexibility to vary scope of restrictions for employees in different healthcare settings**. Currently, certain licensees may be prohibited from employing any individual who has been convicted of a prescribed offence, except with the approval of MOH. The Bill introduces flexibility for MOH to vary the scope of restrictions for selected individuals employed or engaged in different healthcare settings, based on the anticipated risk of patient harm.

Greater Clarity and Transparency in Healthcare Services Advertising

(a) **Use of specialty term or name**. Currently, the HCSA prohibits a licensee from using any term or name that misleads or causes confusion, or is likely to mislead or cause confusion, as to the LSH provided by the licensee. The Bill provides specifically that a licensee is not allowed to use any terms or names that are associated with a defined specialty (i.e. a specialty in dentistry recognised by the Dental Specialists Accreditation Board or a specialty/sub-specialty in medicine recognised by the Specialists Accreditation Board) if it doesn't employ or engage the relevant specialist to practise in that specialty.

(b) **Advertisement of healthcare services**. The Bill introduces a new Part in the HCSA to govern the advertisement of healthcare services.

- *Prohibited advertisement*. A person who is not a LHS licensee must not advertise any skill or service relating to the treatment of any ailment or disease so as to induce any person to seek advice or treatment from that person.

- *Restriction on use of the title "Doctor" or any abbreviation or derivative thereof.* A person who advertises a healthcare service, and in the advertisement refers to any person who is not a "specified person" by a protected title (namely, "Doctor" or any derivative of that title) must include in the advertisement the person's educational qualification in relation to the use of the title and a disclaimer that his educational qualification is not a medical or dental qualification. If that person has a medical or dental qualification but does not hold a valid practising certificate, the advertisement must also state this fact. Specified persons include allied health professionals, dentists, medical practitioners, nurses, optometrists, pharmacists and traditional Chinese medicine practitioners who are (i) registered under the relevant laws and (ii) hold valid practicing certificates.

Click on the following links for more information:

- Healthcare Services (Amendment) Bill (available on the Parliament of Singapore website at www.parliament.gov.sg)
- Opening Speech for Second Reading of Healthcare Services (Amendment) Bill by Dr Janil Puthucheary, Senior Minister of State, Ministry of Health, 6 March 2023 (available on the MOH website at www.moh.gov.sg)
- Closing Speech for Second Reading of Healthcare Services (Amendment) Bill by Dr Janil Puthucheary, Senior Minister of State, Ministry of Health, 6 March 2023 (available on the MOH website at www.moh.gov.sg)

Sustainability

GFIT Issues Third Consultation Paper on Taxonomy for Green and Transition Activities for Singapore-Based FIs

On 15 February 2023, the Green Finance Industry Taskforce ("**GFIT**") issued the third consultation paper ("**2023 Consultation Paper**") on the taxonomy it has been developing for Singapore-based financial institutions (FIs) ("**Singapore Taxonomy**") to identify and classify green and transition activities.

The key proposals in the 2023 Consultation Paper include: (i) the thresholds and technical screening criteria to classify economic activities as green, amber or red categories under the traffic light approach for five sectors; and (ii) Do No Significant Harm ("**DNSH**") criteria.

The 2023 Consultation Paper follows two earlier consultation papers:

(a) The first consultation paper was issued in January 2021 ("**2021 Consultation Paper**"). The 2021 Consultation Paper set out the broad principles and approach for the Singapore Taxonomy, and introduced the traffic light approach to classify an economic activity as green, amber, or red to differentiate an activity's contribution to one or more of

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the environmental objectives proposed by GFIT. The five environmental objectives are:

- Climate change mitigation;
- Climate change adaptation;
- Protect biodiversity;
- Promote resource resilience and circular economy; and
- Pollution prevention and control.

(b) The second consultation paper, issued in May 2022 ("**2022 Consultation Paper**"), expanded on the traffic light approach and proposed more detailed application and thresholds for classification, that are supported by science and data.

For further details, please refer to our earlier Legal Updates on the 2021 Consultation Paper and 2022 Consultation Paper, available here and here.

Thresholds and Technical Screening Criteria for Activities in Five Sectors

The Singapore Taxonomy covers activities in eight focus sectors, namely: (i) Energy; (ii) Transport; (iii) Building; (iv) Industry; (v) Information and Communications Technology ("**ICT**"); (vi) Waste and Water; (vii) Agriculture and Forestry; and (viii) Carbon Capture and Storage/Sequestration ("**CCS**").

The 2022 Consultation Paper consulted on the thresholds and technical screening criteria for activities in three sectors: (i) Energy, (ii) Transport and (iiii) Building.

In the 2023 Consultation Paper, GFIT sets out the proposed thresholds and technical screening criteria to classify economic activities under either green, amber or red categories for the other five focus sectors: (i) Industry; (ii) ICT; (iii) Waste and Water; (iv) Agriculture and Forestry; and (v) CCS.

Do No Significant Harm (DNSH) Criteria

GFIT proposed a DNSH assessment based on a set of DNSH criteria to ensure that when an activity makes a substantial contribution to climate change mitigation, the activity does not cause significant harm to all the other environmental objectives of the Singapore Taxonomy (i.e. climate change adaptation, protect healthy ecosystems and biodiversity; promote resource resilience and circular economy; and pollution prevention and control).

The details of the DNSH criteria are contained in the document "Proposed DNSH Criteria" (15 February 2023). GFIT indicated that the application of the DNSH criteria has not been decided at this stage.

The consultation period for the 2023 Consultation Paper ran from 15 February 2023 to 15 March 2023. GFIT intends to issue the final taxonomy by the first half of 2023.

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

Potential Legal Recourses for Greenwashing Claims in Singapore

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

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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.

We briefly set out below a non-exhaustive list 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:

(a) **Consumer Protection (Fair Trading) Act 2003 ("CPFTA**"). 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 is responsible for meting out sanctions for acts in contravention of the CPFTA.

The CPFTA was amended in 2009, extending its ambit to capture "financial products" and "financial services" regulated by the Monetary Authority of Singapore, including commodity trading under the Commodity Trading Act 1992.

(b) **Singapore Code of Advertising Practice (3rd Ed.) ("SCAP**"). SCAP is an industry guideline implemented by the Advertising Standards Authority of Singapore ("**ASAS**"). 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". 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.

(c) **Common law doctrine of misrepresentation and/or Misrepresentation Act 1967 ("Misrepresentation Act")**. 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.

(d) **Shareholders' action against company engaging in greenwashing activities**. 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.

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. 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.

(e) **Disclosure requirements under the SGX Listing Manual**. Issuers that are publicly listed on the Singapore Exchange Securities Trading Limited (SGX-ST) are required to comply with the SGX Mainboard Rules of the Listing Manual and Section B: Rules of Catalist of the

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Listing Manual (collectively, "**Listing Rules**"). 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.

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).

Further, the abovementioned continuous disclosure requirements are given statutory backing under section 203 of the Securities and Futures Act 2001 ("**SFA**") 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.

(f) **Liability under the SFA**. 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.

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

Resource Sustainability (Amendment) Bill Proposes Regulations to Reduce Packaging and Food Waste

On 6 February 2023, the Resource Sustainability (Amendment) Bill ("**Bill**") was tabled for First Reading in Parliament. The Bill seeks to amend the Resource Sustainability Act 2019 ("**Act**"), which was enacted in October 2019 to address three priority waste streams (e-waste, packaging waste and food waste).

The Bill proposes to amend the Act in these key areas:

(a) For packaging waste: (i) require registered retailers (prescribed supermarkets, for a start) to collect a charge for each disposable carrier bag provided to customers; and (ii) provide for a beverage container return scheme ("**BCRS**"); and

(b) For food waste: require (i) segregation and treatment of food waste generated in prescribed buildings; and (ii) reporting on the treatment of food waste.

Disposable Bag Charge Framework

The Bill introduces a new disposable bag charge framework under which a regulated retailer who exceeds a prescribed annual turnover threshold for its class must be registered ("**Registered Retailers**"). Registered Retailers must impose and collect a prescribed minimum charge on each disposable carrier bag it provides to customers. The Bill also provides for other requirements that the Registered Retailers must comply with under the framework.

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Beverage Container Return Scheme ("**BCRS**")

The Bill introduces a BCRS, which requires producers of beverage products to join a producer responsibility scheme for beverage containers and pay to the scheme operator an amount as a deposit for each beverage product supplied in Singapore. Any person may obtain the refund of the deposit by returning the container of the beverage product at a return point, which is either (i) operated by the scheme licensee; or (ii) managed by the scheme licensee through a return point operator.

Food Waste Segregation, Treatment and Reporting Requirements

Currently, Part 5 of the Act imposes requirements on segregation and treatment of food waste. The Bill repeals the existing Part 5 of the Act (which has not come into effect) and replaces it with a new Part 5. Under the new Part 5, an occupier of a prescribed building (or part thereof) must comply with requirements on segregating and treating food waste generated in that building. The Bill also introduces reporting requirements on treatment of food waste.

For more information and a discussion on the significance of the proposed amendments, please refer to our Legal Update here.

Singapore Launches Largest Energy Storage System in Southeast Asia

On 2 February 2023, Sembcorp Industries ("**Sembcorp**") and the Energy Market Authority ("**EMA**") announced in a joint media release the opening of Sembcorp Energy Storage System ("**ESS**"), which is the largest ESS in Southeast Asia. The utility-scale ESS was commissioned in six months and commenced operations in December 2022.

The utility-scale ESS is reported to be the fastest in the world of its size to be deployed. The utility-scale ESS helps to support the active management of electricity supply and improves the stability of Singapore's power grid. It represents a significant milestone in Singapore's transition to cleaner energy sources.

The utility-scale ESS has a maximum storage capacity of 285 megawatt hour (MWh), and in a single discharge is able to fulfil the electricity demands of around 24,000 four-room HDB households for a day. Among its many features, the integrated system uses fast response lithium iron phosphate batteries to maximise energy storage and maintain grid reliability. For more details of the technological features, please refer to Annex A of the media release (link provided below).

To encourage ESS adoption in Singapore, EMA has introduced various initiatives. For instance, the Accelerating Energy Storage for Singapore ("**ACCESS**") programme promotes use cases and business models with industry partners and other government agencies. The programme also helps to secure space, match demands and solutions, and facilitate regulatory approvals for ESS deployment. Please click here for more information on the ACCESS programme.

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Rajah & Tann was involved in the project from the onset, having negotiated and finalised the engineering, procurement and construction contract for the ESS.

Click on the following link for more information:

- EMA Media Release titled "Southeast Asia's largest energy storage system officially opens" (available on the EMA website at www.ema.gov.sg)

Proposed Enhancements to Regulatory Regime for Electricity Retailers

On 1 February 2023, the Energy Market Authority ("**EMA**") issued a public consultation ("**Consultation**") seeking feedback on proposed enhancements to the regulatory regime for electricity retailers. The consultation exercise ended on 3 March 2023.

The proposed changes are aimed at making electricity retailers more resilient to market volatility and improving the stability of the retail market. In particular, the proposed changes seek to address two main gaps. First, the fact that electricity retailers may have large unhedged positions and are not adequately prepared for market volatilities. Second, the insufficient protection of consumers when electricity retailers exit the market, or if electricity retailers prematurely terminate contracts.

To address these gaps and strengthen the regulatory regime for electricity retailers, EMA is proposing four main measures:

(a) **Requiring all electricity retailers to have a paid-up capital (PUC) or Tangible Net Worth (TNW) of at least S$1 million**. The intent is to ensure that electricity retailers have sufficient financial standing and are credible. The requirement to have a minimum paid-up capital is also imposed on licensees in other key sectors in Singapore, such as banking, insurance, and telecommunications.

(b) **Requiring electricity retailers to obtain EMA's approval to appoint Key Appointment Holders ("KAHs")**. This requirement seeks to ensure that competent and honest individuals lead electricity retailers. KAHs include: (i) the company's Accounting and Corporate Regulatory Authority (ACRA)-Registered Director(s), Chief Executive Officer ("**CEO**")/Managing Director ("**MD**"), and personnel who directly report to the CEO/MD; and (ii) any person who has substantial direct or indirect influence over the key decisions of the company. All licence applicants will be required to comply with this requirement. Existing licensees will be required to comply with this requirement for any change in KAH when the requirement comes into effect. Employing KAHs without obtaining EMA's approval will be a breach of licence conditions.

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(c) **Increasing the hedging requirements for all electricity retailers** (i.e. both Open Electricity Market and non-Open Electricity Market retailers) to:

- On a rolling 24-month forward basis, hedge at least 80% of their retail contract quantity. Acceptable hedging contracts include contract-for-differences with any supplier with physical generation assets (e.g. gencos, waste-to-energy, solar, etc.) or those traded in the Electricity Futures Market; and
- Provide a Performance Bond to cover their projected residual unhedged quantities (which should not be more than 20% of total retail contract quantity).

This proposed measure aims to strengthen the resiliency of electricity retailers. Further details of this enhanced hedging requirement is set out in the Consultation and an illustration of how it will operate is provided at Annex B of the Consultation.

(d) **Strengthening consumer protection against premature termination of contracts** by electricity retailers through:

- Amending the Code of Conduct for Retail Electricity Licensees to clarify that the electricity retailer is not permitted to unilaterally terminate the contract as long as there is no payment or contractual default even if the consumer is insolvent, bankrupt, or deceased; and
- Requiring electricity retailers that impose early termination charges on consumers to compensate consumers in the event of early termination. The compensation provided for early termination must be at least as much as the penalties levied on consumers for early termination.

In the event the electricity retailer exits the market, EMA is also considering whether electricity retailers should be required to compensate consumers for the positive difference between the consumers' existing contract and applicable default supply arrangement for the remaining tenure.

Click on the following links for more information:

- Consultation document titled "Enhancements to Regulatory Regime for Electricity Retailers" and relevant Annexes (available on the REACH website at www.reach.gov.sg)
- EMA Media Release titled "Proposed Changes to Strengthen Protection for Electricity Consumers" (available on the EMA website at www.ema.gov.sg)

Tax

Singapore Budget 2023: Moving Forward in a New Era

The Budget Statement for Budget 2023 was delivered on 14 February 2023. Following the lowering of the Disease Outbreak Response System Condition (DORSCON) level from yellow to green on 13 February 2023, Budget 2023 sets out a comprehensive range of measures to deal with the transition to a post-COVID-19 Singapore. This includes the strengthening of Singapore's social compact, and addressing concerns about inflation and the higher cost of living in Singapore.

The Budget Statement includes a number of tax measures and changes, which are categorised and summarised below.

(a) **Tax Implications on Corporations**

- Implementation of the Global Anti-Base Erosion Rules and Domestic Top-up Tax
- Introduction of the Enterprise Innovation Scheme
- Enhancement of the Double Tax Deduction for Internationalisation Scheme
- Option to accelerate the write-off of the cost of acquiring plant & machinery
- Extension and refinement of the Qualifying Debt Securities Scheme
- Extension of the Investment Allowance Scheme
- Extension of the Pioneer Certificate Incentive and Development and Expansion Incentive
- Extension and refinement of the Financial Sector Incentive Scheme

(b) **Tax Implications on Individuals**

- Introduction of a fixed dollar tax relief for the Working Mother's Child Relief
- Lapse of the Foreign Domestic Worker Levy Relief

(c) **Encouraging a Culture of Giving**

- Extension of the 250% tax deduction for qualifying donations to Institutions of a Public Character and eligible institutions
- Extension and enhancement of the Corporate Volunteer Scheme
- Introduction of a Philanthropy Tax Incentive Scheme for Family Offices

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(d) **Increased Tax for Purchases of Higher-value Properties and Vehicles**

- Increased Buyer Stamp Duty rates for higher-value properties
- Increase in vehicle taxes

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

Technology, Media & Telecommunications

MAS Sets Out Revised Expectations for Notification of Data Breaches by Licensed Insurers

Data breaches are a key concern for organisations, particularly in light of the increasing incidents of data leaks. As part of Singapore's regulatory framework to protect personal data, there are various requirements in place regarding notification of data breaches to the relevant authorities. For licensed insurers, which collect and hold large quantities of personal data, it is important to be aware of the applicable notification requirements and timelines.

On 22 February 2023, the Monetary Authority of Singapore ("**MAS**") issued Circular No. ID 03/23 – Notification of Data Breaches to the Monetary Authority of Singapore ("**Circular 03/23**"). Circular 03/23 sets out the revised expectations for licensed insurers regarding notifying MAS of data breaches. It replaces Circular No. ID 10/14 – Notification to the Monetary Authority of Singapore on Events of Significant Impact, which has been cancelled from 22 February 2023, the date Circular 03/23 came into effect.

Circular 03/23 sets out the data breaches that must be notified to MAS under the following categories:

(a) Data breaches under the Personal Data Protection Act 2012 ("**PDPA**");
(b) Data breaches that meet the criteria under MAS Notice 127 – Notice on Technology Risk Management ("**Notice 127**") and the MAS Guidelines on Outsourcing ("**Outsourcing Guidelines**"); and
(c) Other data breaches.

The data breach notification requirements under Circular 03/23 are summarised in the table below.

Type of Data Breach	Notifiable Data Breach	Timeline for Notification
Pursuant to PDPA	Data breaches likely to result in significant harm to	As soon as is practicable, but no later than three calendar days

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	the relevant individuals, or is of a significant scale	after the day the licensed insurer assesses that the data breach is notifiable
Pursuant to Notice 127	System malfunctions or IT security incidents which have a severe and widespread impact on the insurer's operations or materially impacts the insurer's service to its customers	As soon as possible, but not later than one hour, upon the discovery of the relevant incident
Pursuant to Outsourcing Guidelines	Any adverse development arising from outsourcing arrangements, including any breach of security and confidentiality of the institution's customer information	As soon as possible
Other Data Breaches	Data breaches outside the above categories	On a consolidated basis, within three weeks from the last day of each quarter

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

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CaseBytes

Receivership vs Judicial Management – Court Considers Interplay of Regimes in Insolvent Company

When a company enters financial trouble, the Singapore restructuring and insolvency framework provides a number of avenues through which the rights of the company's creditors may be addressed. In *Yap Sze Kam v Yang Kee Logistics Pte Ltd* [2023] SGHC 43, the Singapore High Court was faced with a scenario where it had to consider the interplay between the judicial management regime and the receivership regime. The case involved bondholders, with a debt of about S$110 million, who had appointed receivers over the majority of the shares of the relevant companies, thus achieving effective control of the companies. However, a creditor and a founder of the companies sought to appoint judicial managers over the companies instead.

The Court declined to appoint judicial managers in the circumstances, finding that it would not achieve the statutory purposes of judicial

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management, and would not be in the best interests of the creditors as a whole.

The purpose of the purported appointment of judicial managers was to block the acceptance of an offer for the purchase of the charged shares of the companies in favour of a more "holistic" solution. However, the Court was of the opinion that there was insufficient evidence that judicial managers could reach such a solution, and that in any event, the proposed sale of the shares was in the interests of the companies' creditors as a whole. The Court further dismissed the complaint that the receivers were accountable to the bondholders rather than the creditors generally, as this was a feature of the security arrangements for the bonds.

Jansen Chow from the Fraud, Asset Recovery & Investigations Practice and Commercial Litigation Practice successfully represented one of the largest bondholders in this matter.

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

Appointment of Solicitor by a Liquidator: Can the Court Retroactively Grant Authorisation?

In *Re: Kirkham International Pte Ltd* [2023] SGHC 19, the Singapore High Court considered the issue of whether it has the power to retrospectively authorise the appointment of a solicitor by a liquidator. Here, the Applicant liquidator sought to appoint solicitors to assist him in his duties, and asked the Court for such appointment to take effect retrospectively because he had not sought the Court's authorisation when initially appointing the solicitors.

The requirement for a liquidator to obtain the authorisation of the Court or the Committee of Inspection ("**COI**") before appointing a solicitor is provided for by section 144(1)(f) of the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**"). In this decision, the Court set out the main factors to be taken into account in deciding whether to authorise the appointment of a solicitor, further providing that the threshold for authorisation is not a high one. Applying these principles to the present case, the Court was of the view that the Applicant's appointment of solicitors should be authorised.

The Court held that it has no power to *retrospectively* authorise the appointment of a solicitor, finding that the Applicant should have obtained authorisation from the Court or the COI before he appointed solicitors. For the purposes of section 144(1) of the IRDA, the Applicant's appointment of solicitors was therefore only be deemed to have been authorised from the date of the resulting order in the present application.

However, this did not mean that the Applicant's initial appointment of solicitors was invalid. A liquidator can still appoint a solicitor without the authorisation of the Court or the COI. The absence of such authority does not render the action incompetent; rather, it goes towards the question of

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whether the liquidator is entitled to costs out of the estate or whether he should personally bear the costs.

On the question of costs, the Court found that the Applicant had good reasons for not having obtained authorisation before the initial appointment of the solicitors and had acted in good faith in the discharge of his duties as liquidator. The Court thus did not order that the Applicant bear the costs of the legal fees incurred before the Court's authorisation, instead ordering the costs to be paid from the assets of the company.

Court of Appeal Examines Test for Grant of Mareva Injunction

In *Milaha Explorer Pte. Ltd v Pengrui Leasing (Tianjin) Co. Ltd.* [2023] SGCA 6, the Singapore Court of Appeal considered the test for the grant of a Mareva injunction, setting out that the key inquiry is whether there is "solid evidence" of an objective and real risk that a judgment may not be satisfied because of a risk of unjustified dealings with assets.

The Applicant had obtained a Mareva injunction prohibiting the Defendant from dealing with its assets, including a Vessel. The High Court found that there was a real risk that the Defendant would dissipate its assets given its express intention to sell the Vessel to other buyers.

On appeal, the Court of Appeal considered whether there was a real risk of dissipation of assets. The Court of Appeal provided guidance in this regard, highlighting that dealing with assets in and of itself would be insufficient to show a real risk of dissipation; the dealing must be unjustified. Further, the foreign origin or foreign connection of a company/person is a relevant factor, but cannot conclusively lead to a finding of a real risk of dissipation of assets. Ultimately, the inquiry turns on whether there are circumstances suggesting that the defendant not only can but likely will frustrate the judgment.

On the facts, the Court of Appeal found that the Defendant's corporate structure (one-ship company and special purpose vehicle with foreign ownership) did not, in itself, support the finding of a real risk of dissipation of assets. The Court of Appeal also found that there was no unjustified dealing with assets by the Defendant as the Vessel had not been sold and, in any event, there could be various legitimate commercial reasons for the sale. Ultimately, the Applicant had not discharged its burden of showing "solid evidence" of a real risk of dissipation.

The Court of Appeal highlighted that, in deciding whether to grant a Mareva injunction, it should balance the effects of the Mareva injunction on the defendant against the potential prejudice or loss that would be caused to the applicant. The purpose of a Mareva injunction is not to provide security to a litigant or to guard against potential insolvency of the counterparty.

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Deals

Underwritten Renounceable Rights Issue of SATS Ltd. to Raise Gross Proceeds of Approximately S$798.8 Million

Raymond Tong from the Capital Markets Practice is acting for DBS Bank Ltd. ("**DBS**") as the lead financial adviser, Merrill Lynch (Singapore) Pte. Ltd. ("**BofA**") and Citigroup Global Markets Singapore Pte. Ltd. ("**Citi**") as the joint financial advisers (and DBS, BofA and Citi being the joint underwriters), and Oversea-Chinese Banking Corporation Limited and United Overseas Bank Limited as the co-lead managers, in the underwritten renounceable rights issue of SATS Ltd. to raise gross proceeds of approximately S$798.8 million, to partially finance the acquisition by SATS Ltd. of Worldwide Flight Services.

US$500 Million Proposed Merger Between DigiAsia Bios Pte. Ltd. and StoneBridge Acquisition Pte. Ltd.

Hoon Chi Tern and Debbie Woo from the Capital Markets Practice are acting for DigiAsia Bios Pte. Ltd., Indonesia's Embeddable 'Fintech-as-a-Service' (FaaS) company, in its US$500 million proposed merger with StoneBridge Acquisition Pte. Ltd., a wholly owned subsidiary of StoneBridge Acquisition Corporation, a special purpose acquisition company (SPAC). Upon completion of the transaction, the combined company will trade on Nasdaq Capital Market.

Disposal of a JTC Industrial Shipyard by Keppel FELS Limited

Norman Ho from the Corporate Real Estate Practice acted for Keppel FELS Limited in the disposal of a JTC industrial shipyard located at 55 Gul Road Singapore, together with the foreshore lots, seabed plots, plant and machineries, and floating docks to ST Engineering Marine Ltd. for a total consideration of S$95 million.

Acquisition of Entire Issued Share Capital of Vac-Tech Engineering Pte. Ltd.

Tracy Ang and Janice Pui from the Mergers & Acquisitions Practice, alongside Lee Xin Mei and Enoch Long from the Banking & Finance Practice, acted for Blue Planet Environmental Solutions Pte. Ltd. ("**Blue Planet**") in its acquisition of the entire issued share capital of Vac-Tech Engineering Pte. Ltd. from Grand Victor Corp Pte. Ltd. and Mencast Energy Pte. Ltd.. Blue Planet is a leading regional waste management player in Asia, focused on driving the vital transition to a circular economy through sustainable technologies.

Events

The Digital Trust Movement

On 24 February 2023, Rajah & Tann Technologies, Singapore University of Social Sciences (SUSS), JonDavidson Consulting and Credence Lab organised a webinar titled "The Digital Trust Movement".

Digital transformation continues to drive new opportunities for businesses worldwide and accelerate the pace of innovation across a multitude of industries. Amidst this development, organisations face novel challenges arising out of misinformation, cybercrimes, fraud and more. In a white paper titled "Digital Trust – Unlocking the Next Wave of Growth for the Digital Economy" issued in October 2022, SGTech highlighted the importance of digital trust, broadly defined as "the confidence participants have in the digital ecosystem to interact securely, in a transparent, accountable, and frictionless manner", in surmounting these obstacles.

In this webinar, Steve Tan, Deputy Head of the Technology, Media & Telecommunications Practice, Director of Rajah & Tann Technologies, and Adjunct Professor of the National University of Singapore (NUS) Faculty of Law (Privacy & Data Protection), together with fellow data privacy and protection veterans, discussed how businesses can become pioneers in building digital trust within a firm and with business partners.

Employment Law: Current Topics and Employment Disputes for the Japanese

On 24 February 2023, Rajah & Tann's Japan Desk organised a seminar titled "Employment Law: Current Topics and Employment Disputes for the Japanese". The seminar covered termination of employment with notice, retrenchment, termination for cause, confidentiality obligations of employees and restrictive covenants.

Jonathan Yuen, Head of the Employment & Benefits (Disputes) Practice, and Shuhei Otsuka, Head of the Japan Business Unit of Rajah & Tann Asia, were the speakers.

Crypto Fraud and Asset Recovery

On 22 February 2023, KPMG in Singapore and Rajah & Tann, the founding members of the Singapore Chapter of The Crypto Fraud and Asset Recovery Network (CFAAR), held its first global event for crypto fraud and asset recovery specialists. At the seminar, industry experts from KPMG in Singapore and Rajah & Tann shared their experience spanning from fintech, blockchain and digital audit, to fraud litigation, international dispute resolution and restructuring litigation.

Speakers from Rajah & Tann comprised Rajesh Sreenivasan, Head of the Technology, Media & Telecommunications Practice, and Danny Ong and Yam Wern-Jhien from the Fraud, Asset Recovery & Investigations Practice.

Tokenisation of Real Estate: A Myth or Reality?

On 17 February 2023, the National University of Singapore Institution of Real Estate & Urban Studies (IREUS) and Rajah & Tann organised a panel discussion titled "Tokenisation of Real Estate: A Myth or Reality?".

By dividing property into smaller portions – each represented by a digital token – real estate tokenisation lowers entry requirements, and hence allows issuers to reach out to a wider pool of investors.

The fractionalisation of real estate is not a new idea. The real estate investment trust ("**REIT**") traces its origins to the 1960s in the US, while here in Singapore, SREITs have been issuing shares and paying dividends to unitholders for over two decades. At the broader level, both REITs and tokenisation are premised on owning equity interest in real estate assets.

The panellists at the session discussed important topics including (i) the value that a new system of real estate commerce based on blockchain and peer-to-peer technologies can bring to the investor; and (ii) the risks associated with a relatively under-regulated sector.

The speakers from Rajah & Tann comprised Larry Lim, Deputy Head of the Financial Institutions Group, Rajesh Sreenivasan, Head of the Technology, Media & Telecommunications Practice, and Norman Ho from the Corporate Real Estate Practice.

Talent Acquisition: Employment & Immigration Issues

On 16 February 2023, Rajah & Tann organised the "LearningBytes" seminar titled "Talent Acquisition: Employment & Immigration Issues". Doreen Chia and Ang Tze Phern from our cross-disciplinary Employment & Benefits Practice shared about confidentiality obligations and dealing with non-competition and non-solicitation obligations for employees. Senior Associate Jonathan Cham provided insights on recent changes to the work pass regime in Singapore.

Asset Recovery and Regulations on Cryptocurrency for the Japanese

On 2 February 2023, Rajah & Tann's Japan Desk organised a seminar titled "Asset Recovery and Regulations on Cryptocurrency for the Japanese". Topics discussed at the seminar included a lookback at the collapse of prominent financial entities in 2022, the legal actions including tracing and recovery of cryptocurrency, the future of cryptocurrency and blockchain technology, and regulations.

Yam Wern-Jhien from the Fraud Asset Recovery & Investigations Practice, Samuel Lim from the Financial Institutions Group and Shuhei Otsuka, Head of the Japan Business Unit of Rajah & Tann Asia, were the speakers.

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