NewsBytes: Singapore

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In this Issue

News

LegisBytes

CaseBytes

Deals

Authored Publications

Events

News

Rajah & Tann Wins Coveted Asian Law Firm of the Year Grand Prize at Asia Legal Awards

Rajah & Tann Singapore has won the coveted Asian Law Firm of the Year Grand Prize at this year's Asia Legal Awards, a sign of its growing reputation as a firm with broad expertise and an increasing presence in the region.

The annual awards, now in its tenth edition, honour the most outstanding firms and legal practitioners in Asia, and Rajah & Tann Singapore has emerged as the clear winner among a highly competitive field of international finalists. The results were announced on 30 March 2023 by Law.com International, the US-based online legal magazine that is part of the ALM group of leading legal media brands.

A high-powered judging panel along with Law.com International's editorial staff chose Rajah & Tann Singapore after considering various factors such as the firm's growth, strategy and vision, deal representation and broad successes across the region, investment in people and practices, and peer group views and opinions.

"Law.com International award judges handed Rajah & Tann the Asian Law Firm of the Year Grand Prix for its success in holding key market share in the region," the judges said.

"The firm's growing expertise around digital assets and crypto-related deals and matters in recent months, as well as the form's non-linear attitude and approach to its broader growth strategy and people have also been noted," they added.

Click here to read our Press Release.

Rajah & Tann Asia Wins Several Awards Including Indonesia Law Firm of the Year and Net-zero Transition Awards at IFLR Asia-Pacific Awards 2023

Assegaf Hamzah & Partners ("**AHP**"), Rajah & Tann Asia's Indonesia member firm, has won three awards at the IFLR Asia-Pacific Awards 2023. The firm clinched the covered Indonesia Law Firm of the Year for the third consecutive year, as well as the Debt & Equity-linked Deal of the Year, and Restructuring Deal of the Year awards. Rajah & Tann Singapore bagged the Net-zero Transition Award.

The Indonesia Law Firm of the Year award, which AHP has won for the third in a row, is a testament to the firm's commitment to providing top-notch legal services to its clients. The award recognises the firm's expertise and leadership in working on the most innovative cross-border transactions in Indonesia.

Rajah & Tann Singapore received the Net-zero Transition Award for its exceptional work in taking positive steps towards net-zero transition and supporting clients to transition towards a more sustainable future. The firm's commitment to environmental sustainability is reflected in its internal

initiatives and external work with clients to develop innovative legal solutions that drive positive change and promote sustainable practices.

Click here to read our Press Release.

Rajah & Tann Bolsters Regional International Arbitration Practice with Appointment of New Partner in Bangkok

Rajah & Tann has appointed Dr Vanina Sucharitkul, a distinguished international specialist, to join its regional International Arbitration practice as a partner as of 1 March 2023.

Dr Vanina brings a wealth of experience to the firm, having been admitted to the California Bar holding degrees from top institutions in the US and Paris, including a Juris Doctor from the University of California College of the Law, San Francisco and a Docteur en Droit on Investor-State Dispute Settlement from the University of Paris Panthéon-Assas. Being of mixed Thai and French heritage and a citizen of France, Thailand and the US, Dr Vanina has a unique cross-cultural perspective on international disputes. Her experience working at international law firms in San Francisco, Bangkok, Paris and Hong Kong has also equipped her with expertise that goes beyond geographical boundaries. As a result, Dr Vanina is well placed to advise on issues that arise both within and outside of the regions. She is also fluent in English, Thai and French.

A leading practitioner in international arbitration, Dr Vanina was previously a member of the International Court of Arbitration of the International Chamber of Commerce ("**ICC**") for Thailand for nine years. She currently chairs the Thailand Branch of the Chartered Institute of Arbitrators (CIArb) and has served as Director of ArbitralWomen for two terms. In addition, Dr. Vanina regularly sits as arbitrator under the auspices of a number of arbitral institutions including the ICC, Singapore International Arbitration Centre (SIAC), Asian International Arbitration Centre (AIAC), Shenzhen Court of International Arbitration (SCIA), and the Thai Arbitration Institute (TAI).

Click here to read our Press Release.

LegisBytes

General

Singapore Becomes a Member of UNIDROIT

On 1 March 2023, Singapore formally became a member of the International Institute for the Unification of Private Law ("**UNIDROIT**") through its accession to the UNIDROIT Statute.

Founded in 1926 as part of the League of Nations, UNIDROIT is an independent intergovernmental organisation with the goal of studying needs and methods for modernising, harmonising, and coordinating private and in particular commercial law between States and groups of States. It is one of the world's main organisations tasked with the development of international treaties and modern standards in private law, with special relevance in the areas of secured transactions, contract law, capital markets, digital economy, banking law, and agriculture.

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Singapore is one of the 127 States which have benefited from UNIDROIT's instruments to date, being a party to two instruments adopted under UNIDROIT's auspices – the 2001 Cape Town Convention on International Interests in Mobile Equipment and the 2001 Protocol on Matters Specific to Aircraft Equipment.

As UNIDROIT's 64th Member State, Singapore's participation in UNIDROIT will strengthen its position as a global legal hub. The Ministry of Law ("**MinLaw**") has been designated as Singapore's National Authority and contact point with UNIDROIT.

Click on the following links for more information:

- MinLaw Press Release titled "Singapore Becomes a Member of the International Institute for the Unification of Private Law (UNIDROIT)" (available on the MinLaw website at www.mlaw.gov.sg)
- UNIDROIT News Release titled "UNIDROIT welcomes the Republic of Singapore as a New Member" (available on the UNIDROIT website at www.unidroit.org)

Capital Markets

MAS Imposes Business Conduct Requirements for Corporate Finance Advisers with Effect from 1 October 2023

On 23 February 2023, the Monetary Authority of Singapore ("**MAS**") issued a new Notice SFA-04-N21 on "Business Conduct Requirements for Corporate Finance Advisers" ("**Notice**"). The Notice imposes a mandatory baseline standard of conduct for corporate finance advisers.

MAS views this exercise to be important for enhancing the overall quality of the corporate finance industry, strengthening public confidence and promoting informed decision-making by investors via quality disclosures.

The Notice applies to holders of a capital markets services licence to advise on corporate finance, and persons who are exempted from holding a capital markets services licence under section 99(1)(a), (b) or (c) of the Securities and Futures Act 2001 of Singapore in respect of advising on corporate finance, which include banks, merchant banks, and finance companies (each a "**CF Adviser**") and their representatives in respect of advising on corporate finance.

Part 1 of the Notice – General Requirements

Part 1 of the Notice applies when a CF Adviser advises on corporate finance and pertains to:

(a) identifying and mitigating any potential or actual material conflict between the CF Adviser's interests and the interests of the customer and disclosing, to the extent appropriate, any such conflict to the customer; and

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(b) ensuring proper governance and supervision of the CF Adviser's business.

Part 2 of the Notice – Due Diligence Requirements

Part 2 of the Notice covers the due diligence requirements. The Due Diligence for Transactions Generally requirement in paragraph 19 of the Notice applies when a CF Adviser advises on corporate finance, other than as provided in paragraph 3(a)(i) of the Notice.

The remainder of Part 2 of the Notice applies when giving advice on corporate finance in the capacity of an issue manager, sponsor or financial adviser (as the case may be) for entities listed or to be listed on the Singapore Exchange Securities Trading Limited relating to:

(a) an initial public offer of shares, units in a business trust or collective investment scheme ("**IPO**");

(b) a reverse takeover ("**RTO**"); and

(c) a business combination entered into by a special purpose acquisition company.

Implementation

The Notice comes into effect on 1 October 2023 and applies to all engagements to advise on corporate finance entered into by a CF Adviser on or after 1 October 2023. Nonetheless, CF Advisers are encouraged to start applying the requirements in the interim, particularly when advising on IPOs and RTOs.

For more information, click here to read our Legal Update which provides a summary of the salient requirements in the Notice.

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Corporate Commercial

Merging of ACRA, Singapore Accountancy Commission and Accounting Standards Council as One Entity with Effect from 1 April 2023

On 10 March 2023, the Accounting and Corporate Regulatory Authority ("**ACRA**") announced that ACRA, the Singapore Accountancy Commission ("**SAC**") and the Accounting Standards Council ("**ASC**") will merge as one entity with effect from 1 April 2023. The merged entity will take on the name of ACRA.

The merger will strengthen the effectiveness of regulation, standards-setting, and sector development by harnessing synergies across complementary accountancy-related functions.

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The merged ACRA will:

(a) Take on SAC's role to develop the accountancy sector.

(b) Set up the Accounting Standards Committee ("**Committee**"). The Committee will set accounting standards for companies, charities, co-operative societies, and societies in Singapore.

All information pertaining to accounting standard-setting and accountancy professional and sector development matters have been made available on the ACRA website from 1 April 2023.

Click on the following link below for more information:

- ACRA Press Release titled "Serving the Accountancy Sector as One Entity" (available on the ACRA website at www.acra.gov.sg)

Changes to Global Investor Programme to Generate More Jobs, Increase Support for Local Start-ups and Financial Sector

On 2 March 2023, the Singapore Economic Development Board ("**EDB**") announced changes to all three investment options under the Global Investor Programme ("**GIP**"), which have taken effect from 15 March 2023. Aimed at attracting individuals capable of making more economic impact for Singapore and have an affinity to be more rooted in Singapore, the changes will create more good jobs for Singaporeans, as well as direct more support to the local start-up ecosystem and the broader financial sector.

These changes are set out below.

Investment Option		Current Requirements	New Requirements
Option A	Investment conditions	Invest **S$2.5 million** in a new business entity or existing business operation	Invest at least **S$10 million** in a new business entity or in the expansion of an existing business operation
	Re-entry Permit ("**REP**") Renewal Conditions	Hire at least **10** incremental employees, of which at least five must be Singaporean Citizens ("**SCs**") Incur total business expenditure ("**TBE**") of S$2 million by year five of permanent residence ("**PR**") status ("**Year 5**")	Hire at least **30** employees, of which half must be SCs. Of these, at least 10 must be incremental hires.
Option B	Investment Conditions	Invest **S$2.5 million** in a GIP	Invest **S$25 million** in a GIP-select fund that also

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		fund that invests at least 50% in Singapore-based companies	invests in Singapore-based companies
	REP Renewal Conditions	Hire at least **10** incremental employees, of which at least five must be SCs Incur TBE of S$2 million by Year 5	Maintain the S$25 million investment in the GIP-select fund
Option C	Investment Conditions	**Invest S$2.5 million** in a new or existing Singapore-based Single-Family Office ("**SFO**") with Assets-Under-Management ("**AUM**") of at least S$200 million, of which at least S$50 million must be held in Singapore	**Establish** a Singapore-based SFO with AUM of at least S$200 million, of which at least S$50 million has been transferred into Singapore **AND** This S$50 million must be deployed in any of these four investment categories: (a) Equities, real estate investment trusts (REITs) or business trusts listed on Singapore-approved exchanges; (b) Qualifying debt securities listed on MAS' enquiry system; (c) Funds distributed by Singapore-licensed/registered managers or financial institutions; or (d) Private equity investments in non-listed Singapore-based operating companies.
	REP Renewal Conditions	Hire at least **10** incremental employees, of which at least five must be SCs and three must be professionals Incur TBE of S$2 million by Year 5	Maintain at least S$50 million AUM across the four investment categories throughout the 5-year PR status Hire at least five incremental Family Office professionals, of which at least three must be SCs, by Year 5. The five

			professionals in the family office must hold advisory roles or board appointments in functions related to legal, tax, investment or philanthropy.

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

- EDB Media Release titled "Changes to Global Investor Programme will Generate More Spin-offs for the Singapore Economy"
- Latest GIP Factsheet

Corporate Real Estate

New Anti-Money Laundering and Terrorism Financing Measures for Property Developers to be Implemented from 28 June 2023

Property developers are now subject to new requirements regarding anti-money laundering and terrorism financing ("**AML**") measures. The measures were introduced in the Developers (Anti-Money Laundering and Terrorism Financing) Act 2018, which is set to be implemented on 28 June 2023. Subsidiary legislation in the form of the Housing Developers (Anti-Money Laundering and Terrorism Financing) Rules 2023 and the Sale of Commercial Properties (Anti-Money Laundering and Terrorism Financing) Rules 2023 have been published to provide further details on the AML requirements for developers. In addition, the Urban Redevelopment Authority has issued the Guidelines for Developers on Anti-Money Laundering and Counter Terrorism Financing to provide guidance on the above measures.

The new measures set out a series of AML requirements that licensed housing developers under the Housing Developers (Control and Licensing) Act and developers under the Sale of Commercial Properties Act must undertake in the course of their business. These include the following:

(a) Take steps to identify, assess and understand the money laundering and terrorism financing ("**ML/TF**") risks in relation to the developer's purchasers, the countries in which the developer has operations, and the services the developer offers, and to document these risk assessments and keep them up to date;

(b) Implement programmes and measures to prevent ML/TF in relation to the developer's business of property development, having regard to the ML/TF risk facing the developer's business and its purchasers as evaluated by the assessments carried out in accordance with the requirement above;

(c) Notify purchasers of the documents and information that developers must obtain to perform Customer Due Diligence ("**CDD**") measures;

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(d) Perform appropriate CDD checks on new and existing property purchasers based on their risk profiles and the nature of the transaction, with proper records and documentation;

(e) Screen property purchasers against the lists of terrorists, terrorist entities and designated individuals, as required under the Terrorism (Suppression of Financing) Act 2002 and the United Nations Act 2001; and

(f) Submit a Suspicious Transaction Report to the Suspicious Transaction Reporting Office of the Commercial Affairs Department where there are suspicious activities.

The new measures also serve to bar persons from being involved in developer activities if they have been convicted of ML/TF offences.

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

Employment & Benefits

Updates for Employers of Foreign Workforce: COMPASS Bonus Criteria, Enhanced Mandatory Medical Insurance Coverage

In March 2022, the Ministry of Manpower ("**MOM**") announced a slew of changes relating to Singapore's foreign workforce. Key among them was the introduction of the Complementarity Assessment ("**COMPASS**") framework for Employment Pass ("**EP**") applications. Once the points-based framework comes into effect, EP applicants will be required to score a total of 40 points under its four foundational criteria and two bonus criteria.

MOM also announced that the mandatory medical insurance ("**MI**") coverage for Work Permit (including migrant domestic workers) and S Pass holders (collectively "**migrant workers**") would be enhanced. As employers are responsible for the medical bills of their migrant workers, this move aimed to better protect employers from having to bear large unexpected medical bills.

On 31 March 2023, MOM provided further details on the two bonus criteria under the COMPASS framework, and further announced a phased approach to implementing the enhanced mandatory MI coverage.

COMPASS Bonus Criteria

C5 Skills Bonus

Under this criterion, a candidate may obtain a further 10 or 20 points if their job is on the Shortage Occupation List ("**SOL**"). MOM has now released the inaugural SOL, setting out occupations that exhibit strategic importance to Singapore's economic priorities coupled with a significant degree of labour shortage. MOM will review the SOL every three years, but will add or remove occupations annually if market conditions so require.

Employers and prospective EP applicants should note that MOM will impose additional safeguards by implementing checks on applicants, such as verifying their past work experience and qualifications. Further, EP applicants relying on the SOL bonus points will be subject to a reassessment

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of their EP eligibility if their employer wishes to redeploy them to a different job role.

C6 SEP Bonus

To qualify for the SEP Bonus, firms must be supported by sector agencies or the National Trades Union Congress (NTUC). To be considered, firms must participate in one of the eligible programmes run by agencies listed here and demonstrate commitment to developing the local workforce. The award of the SEP bonus will be at the discretion of the supporting agency running the relevant programme.

Supported firms will be notified by MOM from end-July 2023, and will receive the SEP Bonus for up to three years. Thereafter, to continue receiving the SEP Bonus, they must meet expectations (i.e. receive a minimum of 10 points) under criteria C3 (diversity) and C4 (support for local employment) in the three months prior to renewal, as specified by MOM here.

Enhancements to Mandatory MI Coverage

On 31 March 2023, MOM announced that the mandatory MI coverage for all migrant workers will be enhanced in two stages.

(a) Stage 1 – applies to all MI policies, renewals or extensions that have a start date effective on or after 1 July 2023. Medical expenses of migrant workers will be covered as follows:

- Up to S$15,000 – employers will continue to be fully insured (first dollar coverage).
- Above S$15,000 – insurers will co-pay 75% for amounts above S$15,000 up to an annual claim limit of at least S$60,000.

(b) Stage 2 – applies to all MI policies, renewals or extensions that have a start date effective on or after **1 July 2025**

- Standardisation of allowable exclusion clauses (list set out here) to provide greater clarity on coverage and eligible claims;
- Introduction of age-differentiated premiums for those aged 50 and below, so as to keep premiums affordable; and
- Requirement for insurers to reimburse hospitals directly upon the admissibility of the claim, thus freeing up cashflow for businesses and households.

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

Financial Institutions

Singapore and Malaysia Launch Cross-border QR Code Payments Connectivity

On 31 March 2023, the Monetary Authority of Singapore ("**MAS**") and Bank Negara Malaysia ("**BNM**") launched a cross-border QR code payment linkage between Singapore and Malaysia. The payment linkage will allow customers of participating financial institutions to make retail payments by

scanning NETS QR and DuitNow QR codes. It also supports online cross-border e-commerce transactions.

By way of background, NETS QR is the QR code solution operated by Singapore's electronic payment network, Network for Electronic Transfers (Singapore) Pte. Ltd ("**NETS**"), and DuitNow QR is the national QR code solution in Malaysia operated by Payments Network Malaysia Sdn. Bhd. (PayNet). NETS QR and DuitNow QR allow merchants to accept payments from customers of participating financial institutions using a unified QR code.

The participating financial institutions as at 31 March 2023 are as follows:

(a) Singapore – DBS Bank, OCBC Bank and UOB.

(b) Malaysia – Ambank Malaysia Berhad, Boost, CIMB Bank Berhad, Hong Leong Bank Berhad, Malayan Banking Berhad, Public Bank Berhad, Razer Merchant Services Sdn. Bhd.,TNG Digital Sdn. Bhd., and United Overseas Bank Malaysia Berhad.

The NETS-DuitNow QR code payment linkage is a key milestone in the on-going collaboration between Singapore and Malaysia to enhance cross-border payments connectivity. This initiative is testament to both countries' commitment to improve the cost, speed, access and transparency of cross-border payments, in line with the ASEAN Payment Connectivity Initiative and the G20 Roadmap for Enhancing Cross-border Payments.

In the pipeline, MAS and BNM plan to expand the payment linkage to enable cross-border account-to-account fund transfers and remittances. This will allow users to make real-time fund transfers between Singapore and Malaysia using the recipient's mobile phone number via PayNow and DuitNow. This service is expected to go live by the end of the year.

Click on the following link below for more information:

- MAS Press Release titled "Launch of Cross-border QR Code Payments Connectivity between Singapore and Malaysia" (available on the MAS website at www.mas.gov.sg)

Legislative Changes Tabled in Parliament to Permit FIs to Share Customer Information for Mitigation of Money Laundering, Terrorism Financing & Proliferation Financing Risks

On 20 March 2023, the Financial Services and Markets (Amendment) Bill ("**FSM(A) Bill**") was tabled for First Reading in Parliament. The changes set

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out in the FSM(A) Bill intend to address a gap in Singapore's defences to prevent money laundering ("**ML**"), terrorism financing ("**TF**"), and proliferation financing ("**PF**"). This gap arises as financial institutions in Singapore ("**FIs**") are currently not permitted to alert each other to unusual activity occurring in their customers' accounts. Hence, the FSM(A) Bill sets out the provisions to enable the establishment of a secure digital platform for FIs to share information with each other regarding customers that exhibit multiple red flags indicative of potentially illicit activities.

The secure digital platform, named COSMIC (short for "Collaborative Sharing of ML/TF Information & Cases"), will enable FIs to conduct sharper analysis of customer behaviours and activities thus allowing for the faster detection of potential illicit activities and enabling FIs to warn each other of such activities. COSMIC will be governed by a legislative framework to be introduced under the Financial Services and Markets Act 2022.

Background

In October 2021, the Monetary Authority of Singapore ("**MAS**") conducted a public consultation exercise on the key features of COSMIC in the Consultation Paper on the FI-FI Information Sharing Platform for AML/CFT. For a summary of the key proposals in the consultation paper, please click here to read our Legal Update titled "MAS Consults on Features & Legislative Framework of Digital Platform for FIs to Share Information for AML/CFT Purposes". On 20 March 2023, MAS issued its Response to feedback received pursuant to the earlier consultation; please click here to read the MAS Response.

Phased Implementation

The FSM(A) Bill sets out the provisions only for the initial phase of COSMIC. During this initial phase, all sharing will be on a voluntary basis.

COSMIC will be jointly developed by MAS and six major commercial banks in Singapore – DBS, OCBC, UOB, SCB, Citibank, and HSBC. Initially, COSMIC will focus on three key financial crime risks in commercial banking: the abuse of shell companies, misuse of trade finance for illicit purposes and PF. During this initial phase, the six banks will be permitted to share information on COSMIC. Moving forward, MAS plans to make some aspects of sharing mandatory, and in subsequent phases progressively extend COSMIC's coverage to more focus areas and FIs.

Key Features of the FSM(A) Bill

The key features of the FSM(A) Bill include:

(a) **Sharing only permitted for the mitigation of ML, TF and PF risks**

- The sharing of information solely for the purposes of mitigating ML, TF and PF risks will be permitted. Such sharing may occur despite any restrictions that may be imposed by any written law or contract.
- Additionally, information sharing will only be permitted if the customer's behaviour or transaction activities exhibit pre-determined red flags that cross stipulated thresholds and thereby suggest that potential financial crime could be occurring.

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(b) **Tight controls to safeguard information security and confidentiality**

- FIs will be prohibited from disclosing the information obtained from COSMIC except in certain specified circumstances.
- Additionally, FIs will be required to establish systems and implement processes to maintain the confidentiality of the information obtained from COSMIC and guard against the unauthorised use and disclosure of information.

(c) **Statutory protection against civil liabilities for disclosures on COSMIC**

- FIs will be provided with statutory protection from civil liability regarding their disclosure of risk information on COSMIC. This is subject to the disclosure having been made with reasonable care and in good faith, and in accordance with the disclosure thresholds.

(d) **Access and use of COSMIC information by MAS and the Suspicious Transaction Reporting Office ("STRO") for AML/CFT purposes**

- MAS will have access to information on COSMIC for supervisory purposes.
- STRO will have direct access to COSMIC, and be able to use information obtained from COSMIC as an additional data source for its own analysis.

The FSM(A) Bill is slated for second reading on the next available sitting of Parliament on or after 2 May 2023.

Click on the following links for more information:

- Explanatory Brief for Financial Services and Markets (Amendments) Bill 2023 (available on the MAS website at www.mas.gov.sg)
- Financial Services and Markets (Amendment) Bill (available on the Parliament of Singapore website at www.parliament.gov.sg)

SC-STS Consults on Adjustment Spreads for the Conversion of Legacy SIBOR Loans to SORA

On 15 March 2023, the Steering Committee for SOR & SIBOR Transition to SORA ("**SC-STS**") published a consultation paper on its recommendations for the setting of adjustment spreads to convert legacy loans referencing the Singapore Interbank Offered Rate ("**SIBOR**") to a Singapore Overnight Rate Average ("**SORA**") reference.

As the transition from Singapore Dollar (SGD) Swap Offer Rate ("**SOR**") to SORA nears completion, the industry will focus on the SIBOR transition in 2023 and 2024. The conversion of a legacy SIBOR contract to a SORA-

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based contract requires an adjustment spread because SIBOR incorporates term and credit risk premiums. This typically results in a higher rate than SORA, which is an overnight near risk-free rate. The consultation ends on 28 April 2023.

The SIBOR transition will closely mirror the SOR transition, and the key recommendations include the following:

(a) For the SIBOR corporate loan transition, application of the 5-year historical median spread between SIBOR and Compounded SORA as the applicable adjustment spread. The advantages of a 5-year historical median are that it reflects a fair rate over the lifetime of the loan, is consistent with international practices and the SOR corporate loan transition, and would also give a reasonable estimate of the spread in the long run. The actual 5-year historical median will be calculated and published by SC-STS in 3Q 2023 to facilitate this transition.

(b) For the SIBOR retail loan transition, transition in two key phases:

- *active transition from 1 August 2023 to 30 April 2024*: The adjustment spread on the SIBOR-SORA Conversion Package ("**SIBOR-SCP**") for each month will be determined as the average spread between SIBOR and Compounded SORA over the preceding three months. During this period, customers may choose to: (i) switch to the SIBOR-SCP; (ii) switch to the banks' prevailing packages; or (iii) do nothing and be converted automatically after the period of active transition; and

- *industry-wide automatic conversion around June 2024*: A bank-facilitated automatic conversion will convert all outstanding SIBOR retail loans to reference SORA by April 2024, to prevent loan disruption to customers when SIBOR is discontinued. The adjustment spread applied at automatic conversion will be determined as the 5-year historical median spread between SIBOR and Compounded SORA, and will be published by SC-STS before 1 August 2023.

From now to 31 December 2024, SC-STS announced that it has worked with banks in Singapore to offer customers with existing SIBOR retail loans a one-time fee-free switch to any prevailing package offered by the same bank.

The Monetary Authority of Singapore ("**MAS**") has also affirmed that the taking up of the SIBOR-SCP and prevailing packages offered by banks to customers with existing SIBOR property loans will not be regarded as refinancing their property loans under MAS' property loan rules. As such, MAS will not require financial institutions to re-compute the Total Debt Servicing Ratio, Loan-To-Value and Mortgage Servicing Ratio requirements for affected customers making the switch within the same financial institution.

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- Consultation Paper titled "Consultation on Adjustment Spreads for the Conversion of Legacy SIBOR Loans to SORA"
- ABS Media Release titled "SIBOR to SORA Transition Commences"

New Circular on Money Laundering and Terrorism Financing Risks in the Wealth Management Sector

The Monetary Authority of Singapore ("**MAS**") has issued Circular No. AMLD 02/2003 ("**Circular**") on 3 March 2023 to remind all financial institutions ("**FIs**") to stay vigilant to the money laundering and terrorism financing ("**ML/TF**") risks in wealth management. The Circular sets out MAS' expectations for FIs to review their existing controls to ensure that they remain adequate to mitigate the ML/TF risks from high growth areas.

The key expectations set out in the Circular are as follows:

(a) **Strengthen Board and Senior Management ("BSM") oversight and risk and control functions**. FIs should ensure that:

- BSM are kept informed of the potential ML/TF risks in high growth areas and set a clear tone on actions to be taken.
- BSM are kept updated on the results of quality assurance reviews and testing done on the effectiveness of ML/TF controls.
- The risk and control functions are adequately resourced and familiar with changes in business strategy or target customer segments.

(b) **Conduct added review and quality assurance testing**. FIs should:

- Review existing Customer Due Diligence ("**CDD**") practices in high growth areas.
- Quality assurance testing should be done on key controls areas relating to the identification of higher risk customers and the corroboration of the source of wealth and funds of customers.
- FIs should promptly enhance their existing CDD practices where inadequate.

(c) **Continue to exercise vigilance over higher risk customers and transactions**. FIs should:

- When dealing with legal structures/arrangements for wealth management established for the benefit of the beneficial owners:
  - Conduct in-depth enquiry to understand its purpose and risks and take necessary measures to identify and verify the ultimate beneficial owners;
  - Adequately understand and identify key controllers behind the structures/arrangements used, beyond obtaining the ownership structure; and
  - Conduct appropriate checks to independently corroborate the source of wealth and funds of the legal structures/arrangements and the beneficial owners.
- For prospective customers that withdraw their applications due to an inability or unwillingness to provide requisite CDD

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information: Have processes to monitor for such situations, and to consider the need to file a Suspicious Transactions Report.
- Remain watchful of anomalous transaction spikes and unexpected fund flows with third parties or purportedly for business purposes, and be vigilant to related party transactions to detect risks associated with insider trading or anomalous commingling of business and personal funds.

Click on the following link for more information:

- Circular No. AMLD 02/2003 on Money Laundering and Terrorism Financing Risks in the Wealth Management Sector (available on the MAS website at www.mas.gov.sg)

Medical Law

Misuse of Drugs (Amendment) Bill and Constitution of the Republic of Singapore (Amendment) Bill Passed in Parliament

On 21 March 2023, the Misuse of Drugs (Amendment) Bill 2023 ("**MDA Bill**") and the Constitution of the Republic of Singapore (Amendment) Bill (collectively, "**Bills**") were passed. The Bills seek to amend the Misuse of Drugs Act 1973 ("**MDA**") by introducing a new legislative framework for psychoactive substances. The Bills also seek to increase the penalties for the possession of certain quantities of controlled drugs. We previously covered the introduction of the Bills in Parliament in our Update titled "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" (available here (page 16)).

In his Speech for the Second Reading of the Bills and Wrap-Up Speech, Assoc Prof Muhammad Faishal Ibrahim (Minister of State, Ministry of Home Affairs ("**MHA**") and Ministry of National Development) discussed, among others, the following key changes:

New Legislative Framework for New Psychoactive Substances

The new legislative framework

New Psychoactive Substances ("**NPS**") are synthetically-produced substances which mimic the effects of traditional controlled drugs, including cocaine, heroin and cannabis. Unlike the current approach under the MDA which classifies harmful substances based on their molecular structure, the new legislative framework will deal with NPS based on their capacity to produce a psychoactive effect. The new framework criminalises the manufacture, import and export, traffic, possession, and consumption of psychoactive substances, defined in the MDA Bill as substances or products that have the "capacity to have a psychoactive effect" if consumed. 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".

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Under the existing law, an NPS once detected will be listed in the Fifth Schedule of the MDA for up to one year, during which time CNB can seize the substance to restrict its circulation while scientific studies and industry consultations are being conducted to determine if it has any legitimate uses. The authorities cannot prosecute traffickers and abusers during this interim period. The substance will be listed in the First Schedule of the MDA ("**First Schedule**") as a controlled drug if it is found not to have any legitimate uses. It is only at that time when a person is found trafficking, manufacturing, importing, exporting or possessing such substance can he be prosecuted.

The approach under the new legislative framework allows the Central Narcotics Bureau ("**CNB**") to take enforcement action against potentially dangerous NPS without the need to wait for their molecular structure to be identified and listed in the First Schedule. There are some exclusions under the new legislative framework. These include substances or psychoactive substances that have legitimate uses such as caffeine, alcohol, tobacco, food, and any medicinal product.

Enforcement powers

The MDA Bill amends the MDA to extend the current powers of law enforcement officers in respect of controlled drugs (such as the powers of search, seizure, arrest, and forfeiture of substances seized) to psychoactive substances.

Treatment and rehabilitation for abusers of psychoactive substances

The MDA Bill expands the definition of "drug addict" to include a person who is addicted to a psychoactive substance. This allows the Director of CNB ("**Director**") to subject him to supervision, or treatment and rehabilitation which includes committal to the Drug Rehabilitation Centre (DRC).

To ensure that the laws relating to the misuse of drugs, such as the MDA authorising the arrest and detention of any person for purposes of treatment and rehabilitation, are valid under the Constitution of the Republic of Singapore ("**Constitution**"), the Constitution will be amended to include "psychoactive substances" in Article 9(6)(b). This will ensure the constitutional validity of the proposed powers of the Director under the MDA Bill to commit persons who have abused psychoactive substances to detention for treatment and rehabilitation.

<u>Enhanced Penalties for Possession of Selected Controlled Drugs</u>

The current penalties for possession offences are not differentiated by the type and quantity of the drugs involved. To have a more deterrent effect, the MDA Bill seeks to enhance the penalties for the possession of selected controlled drugs above certain weight thresholds. This applies to certain controlled drugs deemed to be more dangerous and harmful such as cannabis, cannabis mixture, cannabis resin, cocaine, diamorphine, methamphetamine, morphine and opium.

Currently, the maximum punishment for the possession of any controlled drug, regardless of weight, is 10 years' imprisonment, or a fine of up to S$20,000, or both. The tiered punishment framework for drug possession offences under the MDA Bill is as follows:

	Punishment	
Lowest tier	maximum of 10 years' imprisonment or a fine of up to S$20,000, or both	
	Minimum mandatory sentence	Maximum mandatory sentence
Middle tier	10 years' imprisonment and five strokes of the cane	20 years' imprisonment and 10 strokes of the cane
Highest tier	20 years' imprisonment and 10 strokes of the cane	30 years' imprisonment and 15 strokes of the cane

Reviewing System Enablers to Support Healthcare Transformations – Developing the Health Information Bill

Healthier SG is an initiative of the Government aimed at transforming the healthcare system of Singapore. One aspect that the Government is looking into to implement Healthier SG is the transformation of data communication and sharing among healthcare clusters, family doctors and community care providers for a more holistic and coordinated care journey. In this regard, the Ministry of Health ("**MOH**") intends to introduce the Health Information Bill ("**Bill**") in the second half of 2023 to facilitate the proper collection, use and sharing of patient information across different healthcare providers and care settings in a safe and secure manner.

By way of background, the National Electronic Health Record ("**NEHR**") was established in 2011 as a central repository of patient summary health records drawn from and shared amongst various healthcare providers. Key health summaries from NEHR such as medications and COVID-19 test results are being shared with patients and caregivers through HealthHub for their health management. There has been an increase in the number of healthcare institutions and organisations that access NEHR over the past years. As such, the enactment of a law on health information will provide patients, residents and healthcare providers with the following benefits:

(a) **Improved functionality of the central NEHR repository.** This is achieved through mandatory contribution of summary data to NEHR by licensed healthcare providers, and extending access and/or contribution to prescribed users like retail pharmacists.

(b) **Enhanced legal framework**. This will facilitate proactive data sharing across MOH entities, Healthcare Services Act (HCSA) licensees and appointed community partners for better monitoring and follow-up.

(c) **Safeguards for data sharing**. This is to protect patient health information and respect patient autonomy.

(d) **Cybersecurity, data security and data protection measures**. This will be put in place for purposes of preserving the confidentiality of health information.

Addressing Concerns on Cybersecurity and Data Security

MOH has reached out to key stakeholders to gain a better understanding of their concerns in relation to the Bill. Although most of them were supportive of the Bill and generally agreed with the benefits of data sharing, some

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expressed concerns in relation to medicolegal liabilities, cybersecurity and data security.

To address these concerns, MOH will provide guidance for healthcare professionals on cybersecurity and data security. For example, MOH will set out cyber and data requirements for healthcare entities. In addition, data intermediaries must ensure that their IT systems and services maintain good cyber hygiene. In terms of training, healthcare staff must be adequately trained in cybersecurity. MOH will also align data security and protection in the healthcare industry with the current policies and standards under the Personal Data Protection Act (PDPA).

Patient Autonomy as Regards Health Information

MOH is cognisant of the fact that health information is personal and patient autonomy relating to his health information must be respected. Given this, MOH is reviewing ways to allow patients greater control over access to their records. This includes situations where patients decide not to access their health records initially but subsequently choose to get hold of the same.

Click on the following link for more information:

- MOH Press Release titled "Reviewing System Enablers to Support Healthcare Transformations – Health Information Bill" (available on the MOH website at www.moh.gov.sg)

Sustainability

Climate Impact X to Launch Nature-based Standardised Contract on its Carbon Credit Spot Trading Platform

On 27 March 2023, Climate Impact X ("**CIX**"), a global marketplace, auctions house and exchange for trusted carbon credits based in Singapore, announced that it is set to launch a nature-based standardised contract called CIX Nature X ("**Nature X**"). CIX was jointly established by DBS Bank, Singapore Exchange (SGX Group), Standard Chartered and Temasek.

Nature X has been designed to address key market concerns over project delivery risk, market-representative pricing and fragmented liquidity in the voluntary carbon market. Nature X will be the first standardised contract on CIX's spot trading exchange, CIX Exchange. Once launched, CIX Exchange will facilitate two-way spot trading of standardised contracts and individually listed carbon credit projects.

At launch, Nature X will represent 11 well-established and globally accepted carbon credit projects. These projects, from across the Americas, Africa and Asia, support REDD+. REDD+ is a framework created by the United Nations Framework Convention on Climate Change Conference (UNFCCC) of the Parties (COP) to guide activities in the forest sector that reduce greenhouse gas (GHG) emissions from deforestation and forest degradation, in addition to the sustainable management of forests and the conservation and enhancement of forest carbon stocks in developing countries.

Nature X will initially contain four tradable contracts, each representing credit vintages over a fixed period of four years, with vintages between 2016 and 2022. The vintage of a carbon credit refers to the year in which it was issued. Each lot of CNX, the contract code under which Nature X will trade, equates

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to 1,000 carbon credits. Each credit represents one tonne of avoided or reduced carbon dioxide from the verified projects.
In selecting projects for contractual delivery into Nature X, CIX considers the following:

(a) the size of a project by volume of issued and unretired credits;
(b) the recognition of a project among active market participants and by independent carbon rating agencies; and
(c) the project's level of traded activity in the spot market.

Additionally, qualifying projects should not demonstrate specific characteristics which adversely affect their tradability, broad market acceptability or price.

Further information, including a list of the projects with credits eligible for delivery into CIX Nature X, can be viewed at the following link:

- CIX Media Release titled "Climate Impact X to mark step change in carbon contract performance and price transparency with global nature-based benchmark" (available on the CIX website at www.climateimpactx.com)

Resource Sustainability (Amendment) Bill Passed to Address Packaging and Food Waste

On 22 March 2023, the Resource Sustainability (Amendment) Bill ("**Bill**") was passed. The Bill amends the Resource Sustainability Act 2019 ("**Act**"), and introduces measures to address packaging waste and food waste. In particular, they: (i) require registered retailers to collect a charge for each disposable carrier bag provided to customers; (ii) provide for a beverage container return scheme ("**BCRS**"); and (iii) provide for a food waste reporting framework for industrial and commercial premises. For background, please refer to our Legal Update (available here) covering the First Reading of the Bill. The Speech for the Second Reading of the Bill ("**Speech**") explained the Bill in more detail. Below we briefly highlight some key points from the Speech.

Disposable Carrier Bag Charge

The new Part 4A to the Act that will give effect to the disposable carrier bag charge will commence on 3 July 2023. A regulated retailer that exceeds a prescribed annual turnover threshold for its class must be registered ("**Registered Retailers**"). Operators of Singapore Food Agency (SFA)-licensed supermarkets with an annual turnover of more than $100 million will be required to register as a Registered Retailer with the National Environment Agency ("**NEA**"). Registered Retailers must charge a minimum of 5 cents per bag provided to customers, and must publish information such as (i) the number of disposable carrier bags provided, (ii) the total amount of charge proceeds collected, and (iii) how and where charge proceeds have been applied.

Beverage Container Return Scheme

The BCRS is an extended producer responsibility scheme where producers are responsible for the collection and recycling of beverage containers. Key features of the BCRS include:

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(a) All producers of prescribed beverage products are required to join a licensed scheme.
(b) A deposit will be collected for prescribed beverage products. The deposit is first provided by the producer to the scheme operator, and the deposit must be collected by every supplier for each prescribed beverage product the supplier sells.
(c) The deposit is not part of the price of the beverage product, the beverage container, or the use of the beverage container.
(d) Any person may obtain a refund of the deposit by returning the empty beverage container at designated return points.
(e) Containers of prescribed beverage products must be labelled with: (i) a deposit mark for customers to identify prescribed beverage products; and (ii) a barcode to facilitate the acceptance of empty beverage containers at designated return points.

Food Waste Reporting Framework

Food waste segregation and treatment requirements, which have not come into force, were first introduced in 2019 to promote resource recovery. A food waste reporting framework will be introduced to complement these requirements. The framework will include a new requirement for building managers to submit food waste reports to NEA. The implementation of the food waste segregation, treatment and reporting requirements will be staggered as follows:

(a) For new buildings, the requirements will commence from 1 January 2024. New buildings refer to buildings for which application for planning approval was submitted on or after 1 January 2021.
(b) For existing buildings, the requirements will commence progressively from the second half of 2025.

Singapore and Indonesia Sign MOUs for Closer Cooperation in Renewable Energy and Digital Economy

On 16 March 2023, it was announced that Singapore and Indonesia will work more closely in the areas of renewable energy and digital economy, and both countries have entered Memoranda of Understandings ("**MOUs**") in this regard.

Renewable Energy

Both countries signed an MOU on Renewable Energy Cooperation, under which both countries will develop a cooperative institutional framework to facilitate investments in the development of renewable energy manufacturing industries in Indonesia and cross-border electricity trading projects between Indonesia and Singapore, including:

(a) Facilitating investments to develop upstream and downstream renewable energy manufacturing industries and capabilities in Indonesia, building on investments for electricity export projects to Singapore;
(b) Supporting the development of solar farms and Battery Energy Storage Systems (BESS) to supply renewable energy into Indonesia and for energy export;
(c) Promoting investments to attract industries using renewable energy into Green Corridors in Indonesia; and

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(d) Facilitating commercial arrangements and creating frameworks and transmission infrastructure for cross-border electricity trading between both countries, which create capital inflows into Indonesia.

Both governments are reviewing commercial proposals that can meet their mutual needs and remain open to receiving new ones.

This MOU builds on the Energy Cooperation between Indonesia and Singapore that was signed last year, and the MOU on Climate Change and Sustainability signed in March 2022.

Digital Economy

Singapore and Indonesia also signed an MOU on Singapore-Indonesia Tech:X Programme, which establishes the Tech:X Programme aimed at, among others, growing young tech talent in both countries and developing the tech ecosystems in both countries. More details on the Tech:X Programme will be released in due course. Various partnership documents between Singapore and Indonesia companies were also signed. The partnerships are in the digital economy, including in healthtech and edtech. The MOUs represent the strong belief that Indonesia and Singapore have in the deep synergies and strategic and economic value of renewable energy and digital economy initiatives between the two countries.

Click on the following links for more information (available on the Ministry of Trade and Industry Singapore ("**MTI**") website at www.mti.gov.sg):

- MTI Press Release titled "Indonesia and Singapore Sign MOU on Renewable Energy Cooperation, Reviewing Promising Commercial Projects for win-win Outcomes"
- MTI Press Release titled "Singapore and Indonesia deepen collaboration in Renewable Energy and the Digital Economy"

Singapore and UK Sign MOU on Green Economy Framework

On 1 March 2023, Singapore and the United Kingdom ("**UK**") entered a Memorandum of Understanding ("**MOU**") on the UK-Singapore Green Economy Framework ("**UKSGEF**"). The MOU outlines key areas of green economy cooperation that both countries will work on to create green growth opportunities while promoting decarbonisation. The main aims of the UKSGEF are to:

(a) Support both countries' energy security and net zero by 2050 goals;
(b) Facilitate academic and industry partnerships that will catalyse the net zero transition; and
(c) Promote more sustainable investment and trade between Singapore and the UK.

The UKSGEF covers three main Pillars: (i) Green Transport; (ii) Low Carbon Energy and Technologies; and (iii) Carbon Markets and Sustainable Finance. The key areas of cooperation under each Pillar include:

Pillar 1: Green Transport

(a) Decarbonisation measures in maritime transport and air transport. Maritime transport decarbonisation measures include green

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and digital shipping corridors, which are priorities embraced by agencies such as the Maritime and Port Authority of Singapore and the key industry players in our world-leading marine fuel trading hub here. Air transport decarbonisation measures include sustainable aviation fuels, improvement in air traffic management, carbon credits, and green airport initiatives.

(b) Continued bilateral and multilateral cooperation in international fora and negotiations to attain targets for decarbonisation.

(c) Strategies and legal frameworks for zero emission vehicles and charging infrastructure.

Pillar 2: Low Carbon Energy and Technologies

(a) Development of low-carbon hydrogen technologies, as well as standards and wider regulations to facilitate the growth of the hydrogen economy.

(b) Policy, regulatory and technical aspects of carbon capture, utilisation and storage (CCUS), grid interconnection, cross-border electricity trade and solutions to enhance system resiliency and flexibility.

Pillar 3: Carbon Markets and Sustainable Finance

(a) Increase transparency in carbon markets and advance climate action and ambition through high-integrity international carbon markets. This will be done through bilateral cooperation and multilateral initiatives.

(b) Cooperation on sustainable finance under the annual UK-Singapore Financial Dialogue, co-chaired by the Monetary Authority of Singapore (MAS) and the HM Treasury.

The UKSGEF will also promote collaborations between both countries' governments, academia and business communities towards green economy objectives.

Click on the following link for more information:

- Ministry of Trade and Industry Singapore ("**MTI**") Press Release titled "Singapore and the United Kingdom sign Green Economy Framework" (available on the MTI website at www.mti.gov.sg)

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Trade

Consultation on Bill to Enhance Oversight of Goods Passing through Free Trade Zones

On 20 March 2023, the Ministry of Finance ("**MOF**") announced that it is proposing legislative amendments to the Free Trade Zones Act 1966. The amendments will update and strengthen the free trade zone ("**FTZ**") regime and thereby support Singapore's position as a trusted global trade hub by:

(a) enabling the better detection, deterrence and prevention of money laundering, associated predicate offences and terrorism financing; and

(b) protecting Singapore's financial system against illegal activities and illicit fund flows.

The key changes proposed in the draft Free Trade Zones (Amendment) Bill ("**Bill**") include:

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(a) the proposed requirements for licensed FTZ operators, licensed FTZ cargo handlers, shipping agents and air cargo agents; and
(b) the proposed regulatory and enforcement regime.

MOF was seeking comments on the draft Bill and released the draft Bill only for the purpose of the public consultation. The draft Bill does not represent the final legislation. The public consultation ended on 9 April 2023. MOF will publish the consultation response on its website in April 2023.

For more information, click here to read our Legal Update which provides a summary of the key changes proposed in the draft Bill.

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CaseBytes

Determining an Employer's Liability for Employee's Copyright Infringement

As businesses rely increasingly on technology, technology risk management has become a vital part of operations. It is critical that information technology ("**IT**") security and governance is properly addressed in company policies and procedures, including the use of copyrighted software and managing the use of and access to office IT equipment.

These issues arose in the Singapore High Court case of *Siemens Industry Software Inc v Inzign Pte Ltd* [2023] SGHC 50. An employee of the defendant employer had installed an unauthorised version of a commercial software onto a laptop which he found at his workplace. The Court had to determine whether the employer was liable for the employee's copyright infringement.

The Court ultimately found the employer to be vicariously liable for the employee's actions. In reaching its decision, the Court considered a number of key issues, including the novel question of whether the doctrine of vicarious liability in tort extends to cases involving copyright infringement. Despite the lack of local case law on this point, the Court answered the above question in the affirmative.

The Court's decision also provides guidance on issues of employment law, including the adequacy of administrative controls over office IT equipment, the supervision and management of employees, and internal policies relating to technology, training and anti-software piracy. In particular, employers should take note of the following key points:

(a) **Anti-software piracy policy**. Employers should ensure that they have a comprehensive anti-software piracy policy in place. The existence of such a policy may not be sufficient; the policy must also be adequately implemented and communicated to employees.

(b) **Management of equipment**. Employers should ensure that all computers, laptops and other IT equipment are adequately managed. Only computers and laptops issued by the employer should be allowed to be used in the workplace, and these should have the requisite administrative controls installed to prevent unauthorised downloading and installation of software.

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(c) **Management of employees**. Employers should ensure that employees are subject to policies and procedures regarding their access to IT equipment and the use of software. Employers should conduct regular training for their employees to educate on and emphasise the importance of respect for copyright, the installation and use of unauthorised software, and the protection of confidential information. Access to computers and laptops should be restricted according to the scope of work of the employee.

For more information, click here to read our Legal Update

Landmark Singapore Decision on GST Liability for Goods Sold via Direct Selling Business Model

The recent landmark decision of *Herbalife International Singapore Pte Ltd v Comptroller of Goods and Services Tax* [2023] SGHC 54 lays down the principles in calculating the Goods and Services Tax ("**GST**") liability for goods sold via a direct selling model where the goods are supplied only to members who are registered with the business ("**Members**") at a discount and the Members may in turn sell the goods to consumers.

The primary issue before the Singapore High Court was whether GST should be levied on the discounted rate of goods sold by the business to its Members or the open market value of the goods. Ruling in favour of the business in this case, namely Herbalife International Singapore Pte Ltd ("**Herbalife**"), the Singapore High Court held that it should be the discounted rate of the goods.

The Singapore High Court's decision provides helpful guidance on the meaning of consideration under GST law and whether contractual undertaking of obligations could constitute non-monetary consideration for the purposes of section 17(3) of the Goods and Services Tax Act 1993.

This landmark decision will impact all direct marketing companies. Herbalife was represented by Vikna Rajah, Head of Tax & Trust Practice and Koh Chon Kiat, Senior Associate in the Tax & Trust Practice.

For a detailed analysis of the decision of the Singapore High Court and the implications for relevant businesses, click here to read our Legal Update.

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Landmark Appeal Decision on Whether Ratification of Agent's Acts after Litigation Starts can Retrospectively Supply Cause of Action

In *Asidokona Mining Resources Pte Ltd & Anor v Alternative Advisors Investments Pte Ltd* [2023] SGHC(A) 6, the Appellate Division of the High Court allowed an appeal in a case that raised "several difficult questions" (in the words of the Court). The Appellate Division considered the law regarding when a principal may ratify a contract purportedly entered into on its behalf. There were important issues considered by the Court such as: (i) can a principal ratify a contract (in this case, a loan agreement) when the alleged agent did not even purport to act on behalf of the principal; and (ii) can the principal ratify when it cannot show that it has performed the contract (in this case, a loan disbursement)? The especially difficult question of law analysed by the Court was "where legal action has been commenced on a contract that has not yet been ratified, can ratification hereafter retrospectively

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remedy the cause of action and so provide legal basis for the action" ("**Post-Action Ratification Issue**")? The Appellate Division, accepting the appellant's case on the Post-Action Ratification Issue, answered all these questions in the negative.

The purported contract sued on was a set of Loan Documents between two companies, Asidokona Mining Resources Pte Ltd ("**Asidokona**") and Supreme Star Investments ("**SSI**"). Mr Soh, the sole shareholder and director of Asidokona, had sought the assistance of one Mr Wong, the principal director and shareholder of Alternative Advisors Investments Pte Ltd ("**AAI**"), to arrange a loan of S$2 million to Asidokona. Mr Wong managed to arrange for a lender to loan part of this sum and raised the remaining S$1 million himself. Mr Soh signed the Loan Documents in July 2016, but the Loan Documents were not executed by SSI at the time. Asidokona defaulted on repaying the loan in 2017. In 2018, when Mr Wong discovered that the Loan Documents had not been executed by SSI, he proceeded to sign the Loan Documents (for and on behalf of SSI) and purported to assign SSI's rights under the Loan Documents to AAI, both pursuant to Deeds of Assignment. AAI then commenced proceedings against Asidokona and Mr Soh to recover the loan amount.

Sometime after the commencement of proceedings, one Ms Lou, SSI's sole shareholder and director, procured SSI to pass a director's resolution to ratify Mr Wong's execution of the Loan Documents and Deeds of Assignment, AAI's commencement of the action below and the joinder of SSI to the action ("**Ratification**"). However, the Appellate Division held that AAI failed to show that the Ratification was valid and dismissed AAI's claim. In particular, AAI failed to discharge its burden of proof in showing that SSI could ratify the Loan and the Loan Documents as: (i) AAI failed to show that Mr Wong had acted or purported to act on SSI's behalf in relation to the Loan; and (ii) AAI failed to show that the monies purportedly disbursed pursuant to the Loan came from SSI. When a principal ratifies a contract with a third party, the principal is obliged to perform the contract. Here, prior to Ratification, performance of the contract had already taken place and was spent. AAI had not shown evidentially that the performance was by SSI.

On the Post-Action Ratification Issue, the Court found that the Ratification, even if valid, could not retrospectively furnish a basis for AAI's action because it occurred *after the commencement of the action*. There was no valid cause of action at the time of the suit's start because neither the Loan Documents nor the Deeds of Assignment had been ratified yet. AAI should have either: (i) sued afresh after the Ratification; or (ii) sued after the Ratification.

Gregory Vijayendran, SC, assisted by Lester Chua, Tomoyuki Ban, and Kevin Wong from the Commercial Litigation Practice, was instructed Counsel for the successful co-appellant in the appeal.

Contracts for the Sale of Cryptocurrency – Determining Illegality and Proper Parties

With the proliferation of cryptocurrency investment and transactions, the courts are increasingly faced with novel issues relating to cryptocurrency. The Singapore High Court case of *Rio Christofle v Malcolm Tan Chun Chuen* [2023] SGHC 66 involved a contract for the sale of Bitcoin. The Court had to determine if the contract was unenforceable for illegality, as well as who the proper parties to the contract were.

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The Plaintiff (through his company GCX) and the Defendant (through his company Qrypt) entered into a peer-to-peer agreement ("**Agreement**") for the sale of Bitcoin from the Plaintiff to the Defendant (or his company as an intermediary). The intermediary would in turn on-sell the acquired Bitcoin to an ultimate buyer via a separate agreement and receive an administration fee for facilitating the transaction.

To resist enforcement of the Agreement, the Defendant argued that the Agreement was void for illegality as the Plaintiff and GCX were not licenced to operate as a payment service provider under section 5 of the Payment Services Act ("**PSA**"), which prohibits the carrying on of the business of providing payment services in Singapore without a licence. However, the Court found that the Agreement itself was not illegal as contracts for the sale and purchase of Bitcoin or cryptocurrency are not in and or themselves prohibited by section 5 of the PSA. The Court also found that the Agreement did not have an illegal object as the Plaintiff was not carrying on a business of providing digital payment services – he was merely selling Bitcoin in its possession to the Defendant and was not acting as an intermediary himself.

The Court further found GCX and Qrypt were the proper parties to the Agreement, rather than the Plaintiff and the Defendant. From the facts, the Court found the Plaintiff and the Defendant were not acting in their personal capacities. An important factor was the fact that Qrypt held an exemption from holding a licence under the PSA for the provision of a digital payment token service, and not the Defendant.

In the circumstances, the Court dismissed the Plaintiff's claim, as he ought to have included GCX as a second plaintiff, and Qrypt as second defendant.

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Deals

Landmark S$8.7 Billion Merger of Sembcorp Marine Ltd and Keppel Offshore & Marine Ltd

Sandy Foo, Hoon Chi Tern, Chua Choon King, Lee Xin Mei, Lim Chen Chen, Goh Jun Yi, Eugene Lee, Adzfar Alami and Dodo Lim from the Mergers & Acquisitions Practice, Shipping & International Trade, and Banking & Finance Practice acted as lead counsel to Temasek Holdings (Private) Limited ("**Temasek**") in its capacity as majority shareholder of Sembcorp Marine Ltd and substantial shareholder of Keppel Corporation Limited, in the landmark S$8.7 billion merger of Sembcorp Marine Ltd and Keppel Offshore & Marine Ltd, with the objective of creating sustainable value over the long term for two of the world's leaders in global O&M engineering and energy sectors.

The transaction created waves not just in the offshore marine industry globally but is also seen as an epic landmark transaction that underscores the city state's commitment and drive towards promoting green growth and its strategic pivot towards renewable and clean energy.

The team also acted for Temasek in a connected transaction involving the sale of Keppel Offshore & Marine Ltd's legacy rigs and associated receivables to a new entity held by Baluran Limited, Keppel and Temasek. (*Please refer to the write-up below.*)

Joint Venture between Baluran Limited and Kyanite Investment Holdings Pte. Ltd

Favian Tan and Cheryl Tan from the Mergers & Acquisitions Practice and Banking & Finance Practice acted for Baluran Limited ("**Baluran**"), an indirect wholly-owned subsidiary of ASM Connaught House Fund V, in its joint venture with Kyanite Investment Holdings Pte. Ltd ("**Kyanite**"), an indirect wholly-owned subsidiary of Temasek Holdings (Private) Limited and Kepinvest Holdings Pte. Ltd. ("**Kepinvest**"), a wholly-owned subsidiary of Keppel Corporation Limited to acquire legacy rigs and associated receivables from Keppel Offshore & Marine Ltd ("**Keppel O&M**"). The acquisition was carried out through a joint venture company ("**AssetCo**") held by Baluran. Kyanite and Kepinvest, and the consideration for the sale assets, was approximately S$4.0582 billion. The asset acquisition was a key transaction connected with the landmark merger of Sembcorp Marine Ltd and Keppel O&M.

S$333 Million Purchase and Leaseback of Properties from Cycle & Carriage

Norman Ho and Gazalle Mok from the Corporate Real Estate Practice, alongside Cindy Quek from the Banking & Finance Practice and Benjamin Liew from the Financial Institutions Group acted for M&G Real Estate in the S$333 million purchase and leaseback of a portfolio of four properties from Cycle & Carriage Industries Pte. Limited ("**Cycle & Carriage**"). The properties are currently used as auto showrooms, service centres, workshops, and warehouses, and will all be leased back for at least 10 years to Cycle & Carriage.

Reebelo's Series A Fundraising Round

Terence Quek and Cheryl Tan from the Mergers & Acquisitions Practice and Banking & Finance Practice acted for Reebelo in its Series A fundraising round which was led by Cathay Innovation, with participation from Moore Strategic Ventures, Antler and Gandel Invest. Reebelo is APAC's fastest growing marketplace for sustainable consumer electronics.

Authored Publications

Rajah & Tann Asia Member Firms Contribute to *Contract Laws of Asia – Model Clauses for Contracting in Asia*

Two member firms of Rajah & Tann Asia, Rajah & Tann Singapore and R&T Asia (Thailand), have contributed to the *Contract Laws of Asia – Model Clauses for Contracting in Asia* guide jointly published by the Asian Business Law Institute ("**ABLI**") and the Singapore Academy of Law. This is the third publication under ABLI's Contracts Project which is a series of publications that discuss various aspects of contract law under the laws of each of the jurisdictions.

This publication aims to address some of the problems in commercial contracts between parties from different jurisdictions. It provides (to the extent possible) parties entering into cross-border contracts, governed by the laws of select jurisdictions, with a framework that is neutral as to the governing law chosen as well as the subject matter of the contract. Each

model clause is designed to ensure that it is enforceable irrespective of which jurisdiction is selected as the governing law and irrespective of the subject matter of the contract.

The guide covers the following jurisdictions: Australia, China, England and Wales, India, Indonesia, Japan, Malaysia, New York, Philippines, Singapore, Thailand and Vietnam.

Sim Chee Siong, Soh Lip San, Matthew Koh, Loh Chun Kiat, Goh Jun Yi and Debbie Woo from Rajah & Tann Singapore are contributors from the Singapore jurisdiction, while Ittichai Prasongprasit and Thamolwan Cheewakriengkrai from R&T Asia (Thailand) are contributors from the Thailand jurisdiction.

Rajah & Tann Asia is one of the Founding Partners of ABLI, a non-profit permanent think tank dedicated to providing practical guidance in the field of Asian legal development and promoting the convergence of Asian business laws.

To read the full guide, please click here.

Rajah & Tann Provides Jurisdictional Insights to the Guide on Conducting an Out-of-court Workout in Asia

The Guide on Conducting an Out-of-court Workout in Asia ("**Guide**") has been jointly released by the Asian Business Law Institute and the International Insolvency Institute as part of their Asian Principles of Business Restructuring Project. Rajah & Tann Singapore and Rajah & Tann (Laos) have assisted in this publication by providing Singapore and Laos jurisdictional insights.

One way of dealing with insolvency is a private agreement between creditors and the debtor to effect a restructuring. This is known in the industry as a "workout". The Guide sets out a model of best practices, in the form of both principles and practice tips, for workouts of corporate debtors in Asia. The Guide considers the diverse cultures, heterogeneous economic development, and different legal systems in Asia. It confronts head-on the challenges of workouts in Asia, with especial challenges in developing jurisdictions. In particular, the Guide accentuates issues which are not necessarily identified, or accentuated, in the approaches of other jurisdictions and which may apply in some parts of Asia.

The Guide was produced with input from experts from Australia, Brunei, Cambodia, Hong Kong Special Administrative Region of China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, Philippines, Singapore, South Korea, Thailand and Vietnam, and with the involvement of international organisations like INSOL International, the Insolvency Law Academy, the United Nations Commission on International Trade Law and the World Bank.

Sim Kwan Kiat, Head of Rajah & Tann Singapore's Restructuring & Insolvency Practice, and Lee Hock Chye, Managing Partner of Rajah & Tann (Laos), have provided input from the Singapore and Laos perspectives, respectively.

The full Guide can be read here.

Rajah & Tann Singapore Contributes to Practical Law Global: (i) Practice Note on Third-Party Litigation Funding in Singapore, (ii) Quick Guide on Litigation Funding Options in Singapore, and (iii) Quick Compare Chart on Litigation Funding Options

Alina Chia Partner from the Commercial Litigation Practice contributed the following to the Global Practice Areas section of Practical Law Global (registration required to access the articles):

- Practice Note on "Third Party Litigation Funding: Overview (Singapore)"
- Litigation Funding Options: A Quick Guide (Singapore)
- Litigation Funding Options – Quick Compare Chart

The Practice Note provides an overview of third-party funding in Singapore. It discusses, among other things, (i) the risks and advantages associated with litigation funding; (ii) the legal and ethical constraints that might affect funding agreements; (iii) the issues relating to disclosure, confidentiality, and attorney-client privilege; (iv) the factors to consider when seeking funding; (v) the terms of funding agreements to consider; and (vi) the legal costs and expenses that third-party funders may cover. The Practice Note also highlights recent developments on third-party litigation funding in Singapore.

The Quick Guide provides a checklist highlighting differences among the various methods of funding that may be available to parties to a civil litigation in Singapore.

The Quick Compare Chart builds on the Practice Note and the Quick Guide to address questions on litigation funding such as (i) the commonly used methods of litigation funding in Singapore; and (ii) the legality and/or validity of certain conditional or contingency fee agreements in Singapore.

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Find out more about our Commercial Litigation Practice here.

Events

The Changing Face of the Workforce in Asia Pacific

On 30 March 2023, Ius Laboris and Rajah & Tann Asia jointly organised a conference titled "The Changing Face of the Workforce in Asia Pacific". The regional employment conference provided thought leadership around salient issues and recent developments relating to the Asian workforce and digital workplaces of the future.

At the conference, a panel of distinguished international speakers hailing from 14 countries provided various perspectives and rich insights on trending employment issues such as remote working, the Metaverse, and ESG. The speakers from Rajah & Tann Asia comprised Ahmad Maulana (Assegaf Hamzah & Partners), Yee Ming Yau (Christopher & Lee Ong), Cesar Santamaria (C&G Law), Desmond Wee, Jonathan Yuen, Ang Tze

Phern and Rajesh Sreenivasan (Rajah & Tann Singapore), and Piroon Saengpakdee (R&T Asia (Thailand)).

Digital Tokens – A Whole New Frontier

On 22 March 2023, Rajah & Tann organised its monthly "LearningBytes" lunchtime series, with this month's seminar titled "Digital Tokens – A Whole New Frontier". Benjamin Cheong, Deputy Head of the Technology, Media & Telecommunications Practice, Tanya Tang Partner (Chief Economic and Policy Advisor) and Justin Lee Partner from the Technology, Media & Telecommunications Practice shared about the use cases of digital tokens, fundamental issues stemming from the technology, its outlook for 2023, as well as key regulatory concerns in Singapore.

Contract Technologies & Horizon Scanning: GPT4 – A Balanced View of the Benefits

On 21 March 2023, Rajah & Tann Singapore organised the first of the Legal Service Innovation Meetup Series titled "Contract Technologies & Horizon Scanning: GPT4 – A Balanced View of the Benefits".

The speakers at the hybrid event talked about the evolving world of contract lifecycle management and drafting technologies, the latest high profile AI development, Generative Pre-trained Transformer ("**GPT**") including ChatGPT, and how these fields can intersect in the future. The panel of distinguished speakers was chaired by Michael Lees, the Chief Operating Officer of Rajah & Tann Technologies.

The event was supported by Rajah & Tann Technologies, Clifford Chance Asia Pacific Singapore, Allen & Overy Singapore, and Dentons Rodyk.

Import and Export Issues across Southeast Asia

On 20 March 2023, Japan External Trade Organization (JETRO) and Rajah & Tann co-organised a seminar titled "Import and Export Issues across Southeast Asia". The speakers at the seminar covered the following topics:

- Overview of key trade issues, including general import and export requirements and common offences
- Export control regulations across Southeast Asia, including red flag indicators in export transactions
- Sanction regimes across Southeast Asia
- Leveraging of Free Trade Agreements (FTAs) and how businesses can benefit from ASEAN's FTA network

Kala Anandarajah, BBM, Head of the Competition & Antitrust and Trade Practice, Tanya Tang, Partner (Chief Economic and Policy Advisor) from the Competition & Antitrust and Trade Practice, and Shuhei Otsuka, Head of the Japan Business Unit of Rajah & Tann Asia, were the speakers.

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