RAJAH & TANN ASIA

NewsBytes: Singapore

2023 JUNE

RAJAH & TANN ASIA
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Rajah & Tann Asia Bags Seven Benchmark Litigation Awards

Rajah & Tann Asia ("**RTA**") member firms and their partners have won seven Benchmark Litigation awards, including Singapore Firm of the Year for Rajah & Tann Singapore ("**R&T Singapore**") and Indonesia Firm of the Year for Assegaf Hamzah & Partners ("**AHP**"), for the fourth and third consecutive year, respectively. R&T Singapore was also named Commercial and Transactions Firm of the Year.

Murali Pillai SC, Partner at R&T Singapore, was named the Singapore Lawyer of the Year, exemplifying the firm's exceptional talent and expertise. Widely regarded for his expertise in employment law and financial services, Murali has established himself as an astute and highly competent lawyer with an unwavering dedication to his clients and a remarkable legal acumen honed over his impressive 27-year practice, according to Benchmark, a New York-based publication that recognises market leaders in litigation and dispute practices in the world.

Eri Hertiawan, Senior Partner at AHP, bagged the Indonesia Lawyer of the Year award. Eri regularly works on high-profile tort, corporate, banking, antitrust and criminal cases as an all-round litigator whose exceptional skills in arbitration have also often brought him before the Indonesian National Arbitration Board (BANI) and other alternative dispute resolution forums.

Another RTA member firm, Christopher & Lee Ong of Malaysia, secured the Impact Case Winner award for outstanding representation in the *Persatuan Insurans Am Malaysia v MyCC* case. R&T Singapore also landed an Impact Case Winner award for its pivotal role in the PDV Marina windup.

Click here to read our Press Release.

LegisBytes

Corporate Commercial

New Exemptions for Foreign Companies from Keeping Register of Members, Register of Registrable Controllers and Register of Nominee Shareholders

A foreign company that is registered under the Companies Act 1967 ("**CA**") ("**foreign company**") is, unless exempted, subject to various disclosure requirements including:

(a) Keeping a register of its members ("**ROM**") pursuant to section 379 of the CA; and
(b) Keeping a register of its shareholders who are nominees ("**RONS**") and a register of its registrable controllers ("**RORC**") pursuant to Part 11A of the CA.

With effect from 28 June 2023, new exemptions from the above requirements are available to certain foreign companies subject to the fulfilment of prescribed conditions.

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Exemption from Requirements to Keep a ROM

A foreign company that is listed on a securities exchange in a country or territory outside Singapore is exempt from the requirement to keep a public ROM if it fulfils the prescribed conditions. Please refer to Companies (Listed Foreign Companies — Exemption from Section 379) Regulations 2023.

Exemption from Requirements to Keep a RORC and a RONS

The categories of foreign companies which are exempt from keeping a RONS and a RORC are set out in the Fifteenth Schedule to the CA and have been expanded pursuant to this amendment. Before the amendment, the requirements to keep a RORC and a RONC under Part 11A of the CA do not apply to a foreign company that is: (i) a Singapore financial institution; (ii) a wholly-owned subsidiary of a foreign company that is a Singapore financial institution; and (iii) listed on a securities exchange in a country or territory outside Singapore and which is subject to: (a) regulatory disclosure requirements; and (b) requirements relating to adequate transparency in respect of its beneficial owners, in each case imposed through stock exchange rules, law or other enforceable means.

With effect from 28 June 2023, a foreign company that is listed on the Singapore Exchange Securities Trading Limited (SGX-ST) by way of primary listing is also not required to comply with Part 11A of the CA. This is set out in the Companies Act 1967 (Amendment of Fifteenth Schedule) Notification 2023.

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

Corporate Real Estate

Conducting Collective Sale-related Meetings through Virtual Means

During the COVID-19 period, when in-person meetings could not be conducted, the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings) Orders ("**Meetings Orders**") was passed to enable entities, including management corporations ("**MCSTs**"), to conduct meetings through virtual means. However, the Meetings Orders ceased on 1 July 2023. The Ministry of Law ("**MinLaw**") has now amended the Second and Third Schedules to the Land Titles (Strata) Act ("**LTSA**") to facilitate the conduct of general meetings for the purpose of a collective sale and meetings of the collective sale committee ("**CSCs**") by virtual means from 1 July 2023 onwards.

The amendments provide guidelines for MCSTs and CSCs on how to hold the meetings governed by these schedules through partial or wholly virtual means. They will provide more flexibility to MCSTs and CSCs in conducting such meetings to facilitate greater participation by the owners.

The majority of the new requirements are largely similar to those under the Meetings Order. However, there are certain changes to the conduct of collective sale-related meetings:

(a) While MCSTs and CSCs will continue to be allowed to convene the meetings governed by the LTSA as fully in-person, fully virtual or partial virtual meetings by default, owners or subsidiary proprietors now have the option to pass a resolution at a general meeting for the purpose of a collective sale to prevent future meetings from being held in a fully virtual manner.

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(b) Refinements have been made to the requirements for notices issued for the general meetings for the purpose of a collective sale, as well as the information to be recorded in the minutes for such meetings.

There are also transitional arrangements for meetings scheduled before 26 June 2023, and these include:

(a) For a general meeting in which a notice of meeting has been sent prior to 26 June 2023, no new meeting notice is required to be issued if there are no changes to the meeting, even if the scheduled meeting takes place after 1 July 2023.

(b) Where an MCST or CSC has made adjustments to such a meeting held after 1 July 2023 which results in changes to the key information required to be captured in the meeting notices, a new meeting notice will be required to be served. The new meeting notice will need to meet the requirements under the amended schedules to the LTSA as of 1 July 2023.

(c) Where these meetings have originally been scheduled as fully physical meetings, an MCST or CSC that wishes to change the mode of meeting may only convert them to partial virtual meetings. These meetings would be subject to the new requirements under the amended schedules to the LTSA as of 1 July 2023.

Click on the following link for more information:

- MinLaw Announcement titled "Amendments to the Land Titles (Strata) Act for the Conduct of Collective Sale-Related Meetings through Virtual Means" (available on the MinLaw website at www.mlaw.gov.sg)

Employment & Benefits

COMPASS Framework: MOM Announces List of Companies to Verify Educational Qualifications of Employment Pass Applicants

On 30 June 2023, the Ministry of Manpower ("**MOM**") announced that 12 background screening companies have been selected to provide services for employers to verify educational qualifications of their Employment Pass ("**EP**") applicants.

By way of background, the Complementarity Assessment Framework ("**COMPASS framework**") requires EP applicants to obtain a minimum of 40 points under six criteria. Where a new EP applicant relies on points earned under criterion C2, which relates to the applicant's qualifications, employers must provide verification for diploma-level and above qualifications. This can be obtained through the methods set out on MOM's website, namely:

(a) The 12 background screening companies;
(b) Online verification portals of countries' government or educational institutions; and
(c) Digital certificates issued by educational institutions and verified through the OpenCerts portal.

The COMPASS framework, and therefore the verification requirement, will come into effect on 1 September 2023 for new EP applications and on 1 September 2024

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for renewals. More details on the COMPASS framework are set out in our March 2022 Legal Update titled "Key Changes to Policies for Foreign Workforce, Lower-Wage Workers".

Administratively, employers should note that:

(a) In general, each verification check will cost between S$30 and S$60 and take one to two weeks to be processed, depending on the country the qualification was obtained from. When planning their hiring timeline, employers should allow sufficient time for the verification checks to be completed.
(b) An applicant's qualifications need only be verified once, as verification checks are not required for subsequent EP renewals.
(c) MOM will accept verification proof obtained from the selected screening companies before 1 September 2023.

Ahead of the implementation of the COMPASS framework, MOM has launched the enhanced Workforce Insights tool on the myMOM portal to ascertain their firm's scores on criteria C3 (diversity) and C4 (support for local employment). MOM is also developing a COMPASS guide to assist employers on the EP application process.

For any queries on the COMPASS framework, please contact our Employment Law partners.

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

- MOM Press Release titled "12 Background Screening Companies Selected to Verify Educational Qualifications in Employment Pass Applications"
- Rajah & Tann Singapore April 2023 Legal Update titled "Updates for Employers of Foreign Workforce: COMPASS Bonus Criteria, Enhanced Mandatory Medical Insurance Coverage"

Updated Progressive Wage Model Requirements for Cleaning, Waste Collection and Materials Recovery Sectors

On 30 June 2023, the Ministry of Manpower ("**MOM**") announced that the Government has accepted recommendations by the Tripartite Cluster for Cleaners and the Tripartite Cluster for Waste Management, respectively, in relation to:

(a) Conservancy Truck Drivers (Class 4/5) ("**CTDs**") under the Cleaning Progressive Wage Model ("**PWM**"); and
(b) The waste collection and materials recovery sub-sectors.

	Cleaning Sector	Waste Collection and Materials Recovery Sub-sectors
New PWM requirements	Annual wage increases for Conservancy Truck Drivers (Class 4/5) ("**CTDs**") to be implemented over six years from 1 July 2023 to 30 June 2029. The wages will follow the job role of	Annual wage increases for waste management ("**WM**") workers in all appointed Public Waste Collectors, licensed General Waste Collectors and licensed General Waste Disposal Facilities to be implemented over six years

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	"Driver" under the Waste Management PWM.	from 1 July 2023 to 30 June 2029.
	Updated definition of CTD to include only drivers in cleaning services: "*[a] person who possesses Class 4/5 driving licence and who operates mechanical vehicle whose un-laden weight exceeds 2,500kg* ***for cleaning services***".	Mandatory annual bonus ("**PWM Bonus**") to be effective from 1 January 2024 for eligible full- and part-time resident WM workers who have worked for the same employer for 12 months.
Implementation	Cleaning businesses that seek to be licensed must ensure that their submitted progressive wage plans for resident cleaners comply with the latest PWM guidelines. Licensed cleaning businesses that do not comply may have their licences suspended or revoked and are liable to a fine not exceeding S$5,000.	Implemented through NEA's licensing regime and supplemented by MOM's work pass system such that WM companies must pay the required PWM wages in order to hire new foreign workers.

For any queries on your obligations under the relevant PWM for your sector, please contact our Employment Law partners.

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

- MOM Press Release titled "Government accepts and Commissioner of Labour implements updated recommendations for Conservancy Truck Drivers (Class 4/5) by The Tripartite Cluster for Cleaners"
- MOM Press Release titled "Commissioner For Labour Implements Tripartite Cluster for Waste Management's Recommended Wage Increases and Mandatory Annual Bonus"

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Financial Institutions

SC-STS Finalises Transition Approach for SIBOR Loans to SORA

On 30 June 2023, the Steering Committee for SOR & SIBOR Transition to SORA ("**SC-STS**") finalised its recommendations on the approach to convert Singapore Interbank Offered Rate ("**SIBOR**") loans to Singapore Overnight Rate Average ("**SORA**"), in particular the setting of adjustment spreads to account for the difference between SIBOR and Compounded SORA.

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SIBOR will be discontinued after 31 December 2024, the recommendations will allow the industry to complete its transition from SIBOR ahead of SIBOR's discontinuation. Once the transition from Singapore Dollar Swap Offer Rate ("**SOR**") to SORA has completed, the industry will focus on the SIBOR transition.

By way of context, the conversion of a legacy SIBOR contract to a SORA-based contract requires an adjustment spread because SIBOR incorporates term and credit risk premium. This typically results in a higher interest rate than SORA, which is an overnight near risk-free interest rate. SC-STS issued an earlier Consultation Paper in March 2023 seeking views on the adjustment spreads for the conversion of legacy SIBOR loans to SORA. A summary is available in our March 2023 issue of Newsbytes (Page 15). On 30 June 2023, SC-STS issued its Response to the Consultation Paper where it also set out its final recommendations, briefly outlined below.

SIBOR Corporate Loan Transition

Adjustment spreads of 0.2059% and 0.3571% respectively will apply to convert loans referencing one-month and three-month SIBOR to compounded SORA. These represent the five-year historical median spreads between SIBOR and compounded-in-advance SORA in the relevant tenor over the period of 30 June 2018 to 30 June 2023. Corporate loans include small and medium-sized enterprises (SME) loans, bilateral corporate loans and syndicated loans.

SIBOR Retail Loan Transition

The transition will take place in two key phases as follows:

(a) **Active transition phase from 1 September 2023 to 30 April 2024**

The SIBOR–SORA Conversion Package ("**SIBOR-SCP**") will be structured as: three-month SORA compounded-in-advance + customer's existing SIBOR margin + Adjustment Spread (Retail). The Adjustment Spread (Retail) will be determined as the average difference between SIBOR and compounded-in-advance SORA over the preceding three-month period. Customers may choose to take up either the SIBOR–SCP or any of their bank's prevailing packages.

(b) **Automatic conversion in June 2024 for remaining customers who did not participate in the active transition phase**

Their bank will apply the SIBOR-SCP with the Adjustment Spread (Retail) set at 0.2426% and 0.3571% respectively to convert loans referencing one-month and three-month SIBOR to three-month compounded-in-advance SORA. These represent the five-year historical median spreads between SIBOR and compounded-in-advance SORA over the period of 30 June 2018 to 30 June 2023.

SC-STS earlier announced fee waivers and loan rules exemptions. SC-STS 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**") 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.

SC-STS encourages market participants and customers with SIBOR loans to adopt the guidance to convert their SIBOR exposures to SORA.

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Click on the following links for more information (available on The Association of Banks in Singapore ("**ABS**") website at www.abs.org.sg):

- ABS Media Release titled "Final Transition Approach for SIBOR Loans to SORA"
- SC-STS Consultation Paper on Adjustment Spreads for the Conversion of Legacy SIBOR Loans to SORA
- Response to Consultation Feedback and Final Recommendations on Adjustment Spreads for the Conversion of SIBOR Loans to SORA

MAS Issues Consultation Paper on Proposed Enhancements to the Deposit Insurance Scheme in Singapore

On 27 June 2023, the Monetary Authority of Singapore ("**MAS**") issued a public consultation on the proposed change11s to increase deposit insurance ("**DI**") from S$75,000 to S$100,000 per depositor per DI scheme member from 1 April 2024, and improve the clarity and operational efficiency of the DI scheme. The consultation closes on 31 July 2023.

By way of background, the DI scheme in Singapore was established in 2006 with the primary objective of protecting small depositors while maintaining the incentives for banks, creditors and depositors to exercise market discipline. The Singapore Deposit Insurance Corporation ("**SDIC**") administers the DI scheme and has established systems and processes to provide expeditious compensation to insured depositors in the event of a DI payout. MAS, in consultation with SDIC, conducts regular reviews of the DI scheme to ensure that it continues to meet its objectives. The DI limit was last reviewed in 2019 when it was raised from S$50,000 to S$75,000, covering 91% of depositors at that time.

This consultation paper sets out the recommendations arising from MAS' periodic reviews of the DI scheme. The proposed increase of DI coverage to S$100,000 will ensure that the vast majority of smaller depositors continue to be fully covered, keeping pace with the growth in average deposit balances. MAS is also proposing changes to improve clarity and enhance the operational efficacy of the DI scheme.

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

- MAS Media Release titled "MAS Proposes to Increase Deposit Insurance Coverage"
- Consultation Paper on Proposed Enhancements to the Deposit Insurance Scheme in Singapore

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MAS Sets Finalised Implementation Timeline for Final Basel III Reforms in Singapore

On 8 June 2023, the Monetary Authority of Singapore ("**MAS**") issued Circular PPD 08/2023 ("**Circular**") on "Implementation Timeline for the Final Basel III Reforms in Singapore".

The Circular details the finalised implementation timeline for the final Basel III reforms for locally-incorporated banks.

Most of the final Basel III reforms in Singapore will come into effect from 1 July 2024.

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In particular, the requirements in the revised MAS Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore will come into effect as follows:

(a) **For all standards other than the revised market risk and credit valuation adjustment ("CVA") standards**: with effect from 1 July 2024;

(b) **For the revised market risk and CVA standards**: with effect from 1 July 2024 for compliance with supervisory reporting requirements, and with effect from 1 January 2025 for compliance with capital adequacy and disclosure requirements; and

(c) **For the output floor transitional arrangement**: to commence from 1 July 2024 and reach full phase-in on 1 January 2029.

By way of background, MAS issued Circular PPD 11/2022 dated 19 December 2022 which covered the submission of reporting schedules via MAS' data collection gateway ("**DCG**"). The implementation timeline reflects Singapore's commitment to fully implement the Basel III reforms, and allows the industry sufficient time for proper implementation of systems needed to adopt the revised framework, including for regulatory reporting via MAS' DCG.

For more information, please refer to Circular PPD 08/2023 available here.

MAS Publishes Toolkit for Responsible Use of AI in Financial Sector

On 26 June 2023, the Monetary Authority of Singapore ("**MAS**") announced the release of the Veritas Toolkit version 2.0, an open-source toolkit to enable the responsible use of Artificial Intelligence ("**AI**") in the financial industry.

The Veritas Toolkit version 2.0 has been developed by a consortium of 31 industry players led by MAS, and aims to help financial institutions ("**FIs**") carry out the assessment methodologies for the Fairness, Ethics, Accountability and Transparency ("**FEAT**") principles. The FEAT principles provide guidance to firms offering financial products and services on the responsible use of AI and data analytics.

The Veritas Toolkit is the first responsible AI toolkit developed specifically for the financial industry. Following from its initial version, Veritas Toolkit version 2.0 has an improved Fairness assessment methodology and includes assessment methodologies for Ethics, Accountability, and Transparency. The main developers of the toolkit are Accenture and Bank of China, with BNY Mellon, DBS Bank, OCBC Bank, United Overseas Bank Limited contributing to the pilot testing of this toolkit.

In addition, the consortium has published a white paper setting out the key lessons learnt by seven FIs which piloted the integration of Veritas methodology with their internal governance framework. The key lessons include the importance of having:

(a) A consistent and robust responsible AI framework that spans geographies;
(b) A risk-based approach to determine the governance required for the AI use cases; and
(c) Responsible AI practices and training for the new generation of AI professionals in the financial sector.

Looking to the future, the consortium will focus on training in the area of responsible AI and facilitate the adoption of the Veritas Methodologies and Toolkit by more FIs.

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On MAS' part, it has also worked with some AI solution providers to integrate the Veritas Toolkit with their AI solutions to better serve their financial sector customers. The consortium will work closely with these industry players to build the Veritas open-source developer community and train more responsible AI talents.

Click on the following link for more information:

- MAS Media Release titled "MAS-led Industry Consortium Releases Toolkit for Responsible Use of AI in the Financial Sector" (available on the MAS website at www.mas.gov.sg)

MAS Proposes Common Protocol for Use of Digital Money

Digital assets have been receiving increased recognition in terms of legitimacy and potential to positively reform the financial ecosystem. However, the use of digital money at a more widespread level carries certain challenges, including structural concerns over the fragmentation of payment systems and the fungibility of digital money, and practical concerns over security and privacy.

The Monetary Authority of Singapore ("**MAS**") has been looking towards developing an institutionalised framework for the organised development of digital money usage. MAS has taken formative steps by issuing a Purpose Bound Money ("**PBM**") Technical Whitepaper ("**Whitepaper**"). The Whitepaper provides a technical overview to the concept of PBM, proposing it as a common protocol for interacting with different forms of medium of exchanges.

Under a PBM protocol, underlying digital money is programmed with specific conditions upon which it can be used. Once the conditions are met, the digital money is released, and it becomes unbounded once again. The digital money issuer retains control over the digital money, preventing fragmentation and ensuring easy maintenance.

The stages in the PBM lifecycle are as follows:

(a) **Issue**. A PBM smart contract is created, and PBM tokens are minted.
(b) **Distribute**. The PBM tokens are distributed by the PBM Creator to PBM Holders for usage.
(c) **Transfer**. PBM tokens may be transferred from one entity to another.
(d) **Redeem**. After all the conditions in a PBM have been fulfilled, the PBM Holder may redeem the PBM token.

The Whitepaper proposes a PBM protocol to address the identified challenges of digitisation in the financial sector, setting out: (i) the system architecture; (ii) PBM components; (iii) roles and interactions; (iv) lifecycle; and (v) sequence flow.

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The Whitepaper sets out the following design considerations for the implementation of a PBM, providing guidance for its design and execution:

(a) **Interoperability**. PBM technology should be designed at the onset to be interoperable across different platforms.
(b) **Digital money**. It is important to consider the reserve assets backing the digital money, as well as their regulatory implications and compliance requirements.
(c) **Privacy**. To protect the privacy of the user, the framework may separate the roles of PBM creator and issuer.
(d) **Digital readiness.** The digital savviness of the stakeholders should be factored into the design of the PBM scheme.
(e) **Security**. It is crucial to establish a governance framework that ensures the safety of the code as part of the software deployment process.

Click on the following link for more information:

- Purpose Bound Money Technical Whitepaper (available on the MAS website at www.mas.gov.sg)

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Funds & Investment Management

Appointment of Seven Fund Management Companies as Global Investor Programme ("GIP")-select Funds

The Global Investor Programme ("**GIP**") accords Singapore Permanent Resident (PR) status to global investors who intend to conduct their businesses and drive investment growth from Singapore, and meet the eligibility criteria set by the Singapore Economic Development Board ("**EDB**"). Interested individuals have three investment options to obtain PR status through the GIP, one of which is the investment of S$25 million into a GIP-select fund ("**GIP Option B**").

On 1 June 2023, EDB announced the appointment of another seven fund management companies as GIP-select funds, namely:

(a) B Capital Group Singapore Pte Ltd;
(b) East Ventures Advisory Pte Ltd;
(c) GGV Capital Pte Ltd;
(d) HHLR Management Pte Ltd;
(e) Insignia Ventures Partners Pte Ltd;
(f) Jungle Ventures Pte Ltd; and
(g) Vertex Venture Management Pte Ltd.

The fund managers were chosen based on the eligibility criteria listed in the March 2023 Call for Proposal exercise, such as possessing a good track record of previous private equity/venture capital (PE/VC) fund management experience and funds' performance, including:

(a) Total Assets Under Management (AUM) of at least S$1 billion;
(b) Has raised at least three funds; and
(c) A General Partner with at least 10 years of investment track record.

The GIP-select funds will invest at least 50% or S$50 million of GIP monies received (whichever is lower) from GIP Option B investors into Singapore-based companies in sectors promoted by EDB and other economic agencies. These sectors are set out in **Annex B** of the Media Release (available in the PDF version accessible via

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the below link), and could include Aerospace Engineering, Alternative Energy/Clean Energy, Healthcare, Logistics & Supply Chain Management, and Shipping.

The three-year appointment of the GIP-select funds commenced on 12 May 2023, during which time they are required to submit quarterly reports of their investment activities to EDB. Thereafter, their status will be renewed subject to a review of their local investments.

EBD's appointment of the new GIP-select funds is part of the broader changes made to the GIP in March 2023, including a tenfold increase from the previous requirement of S$2.5 million under GIP Option B. These changes aim to direct more support to the local start-up ecosystem and the broader financial sector, generate more good jobs for Singaporeans, and create positive spin-offs for Singapore companies.

Click on the following link for more information:

- EDB Media Release titled "EDB appoints seven fund management companies as Global Investor Programme (GIP)-select funds" (available on the EDB website at www.ebd.gov.sg)

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Medical, Healthcare & Life Sciences

Healthcare Services Act: Licensing Framework for Hospital and Ambulatory Care Services & Changes to Regulatory Framework w.e.f. 26 June 2023

On 26 June 2023, the Healthcare Services Act 2020 ("**HCSA**") was amended to implement the following key changes:

(a) Transitioning existing licensees offering hospital and ambulatory care services and specified services under the Private Hospitals and Medical Clinics Act ("**PHMCA**") to HCSA ("**Phase 2 implementation of HCSA**");
(b) Enhancing the regulatory regime governing healthcare services; and
(c) Ensuring greater clarity and transparency in healthcare services advertising.

The HCSA was enacted in 2020 to replace the PHMCA to ensure that healthcare regulations remain relevant in the changing healthcare landscape in Singapore. The HCSA is being implemented progressively with licensees coming onboard HCSA in three phases, with: (i) Phase 1 implemented for clinical support services (e.g. laboratory, radiological) in January 2022; (ii) Phase 2 implemented for various hospital and ambulatory care services and specified services (e.g. liposuction, endoscopy) on 26 June 2023; and (iii) Phase 3 to be implemented for long-term care services and other specialised and new services (e.g. preventive health) by the end of 2023.

The second and third phases set out above are introduced in the Healthcare Services (Amendment) Act 2023 ("**Amendment Act**") which was passed in Parliament on 27 March 2023. The Amendment Act refines the HCSA to address developments which have an impact on the healthcare industry since the HCSA was enacted in 2020.

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Phase 2 Implementation of HCSA

Pursuant to the Phase 2 implementation of HCSA, the majority of the services currently regulated under the PHMCA is now regulated under the HCSA. These include acute and community hospital, outpatient medical and dental, assisted reproduction, ambulatory surgical centre, human tissue banking, nuclear medicine and outpatient renal dialysis services. In addition, the following healthcare providers who deliver medical or dental services from premises apart from clinics, including those that deliver services via teleconsultation, must hold a HCSA licence from 26 June 2023. These healthcare services were not previously licensed under the PHMCA:

(a) Home medical or dental and home palliative care service providers;
(b) Medical or specialist clinics that engage or employ doctors to offer teleconsultation services;
(c) Telemedicine platform companies that engage or employ doctors to provide teleconsultation services;
(d) Individual doctors who offer teleconsultation services in their own professional capacity;
(e) Doctors or dentists who offer home medical/dental care in their own professional capacity; and
(f) Medical or dental practitioners who provide services outside of permanent clinic settings, e.g. workplaces, community clubs, ad-hoc tentages.

Enhancements to Regulatory Regime for Healthcare Services

The key changes introduced include the following:

(a) **Approval of service delivery modes for each licensable healthcare service ("LHS")**. 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 of Health: (i) at permanent premises; (ii) at any premises other than permanent premises; (iii) using a conveyance; or (iv) by remote provision.

(b) **Approval of the provision of specified services**. A licensee for the provision of a LSH is required to seek **additional approval** before it is allowed to provide delivery of certain specified services.

(c) **Appointment of Clinical Governance Officers ("CGO")**. A licensee authorised to provide a LHS or granted approval to provide a specified service, is mandated to appoint a suitable qualified individual as CGO to oversee the clinical or technical matters relating to the LHS or specified service.

Greater Clarity and Transparency in Healthcare Services Advertising

The key amendments introduced include the following:

(a) **Use of specialty term or name**. A licensee is not allowed to use any terms or names that are associated with a defined specialty if it does not employ or engage the relevant specialist to practise in that specialty.

(b) **Advertisement of healthcare services**. The Amendment Act stipulates, among others, that 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.

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

Mergers & Acquisitions

Revised Criteria for Computing 90% Threshold for Compulsory Acquisition under Companies Act w.e.f. 1 July 2023

On 1 July 2023, section 215 of the Companies Act 1967 ("**CA**") has been revised to expand the scope of shareholders whose shares will be excluded from the computation of the 90% threshold requirement for compulsory acquisition to, in broad terms, also cover shares owned by related parties who are controlled by the acquiror and shares owned by related parties who control the acquiror.

This amendment is one of the key changes under the Companies, Business Trusts and Other Bodies (Miscellaneous Amendments) Act 2023 which was passed by Parliament on 9 May 2023.

Compulsory Acquisition Provision under Section 215 of the CA

The compulsory acquisition provision under section 215 of the Companies Act 1967 ("**CA**") allows an acquiror ("**acquiror**") in a takeover offer who has acquired a very substantial number of shares in the target company (the "**target company**") to compulsorily acquire the shares of the minority dissenting shareholders. This allows the acquiror to convert the target company into a wholly-owned subsidiary, an important right if the objective of the takeover is to delist the target company.

Section 215 of the CA provides that the acquiror is entitled to exercise the right to compulsorily acquire the shares of any dissenting shareholders in the target company when the takeover offer for all the shares in the target company has been approved by shareholders who hold at least 90% of the shares of the target company ("**90% threshold requirement**").

Revised Criteria for 90% Threshold w.e.f 1 July 2023

From 1 July 2023, the scope of the exclusions under section 215 of the CA was expanded to exclude shares held or acquired by the following persons when computing the 90% threshold:

(a) 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 acquiror in respect of the target company;

(b) the acquiror's spouse, parent, brother, sister, son, adopted son, stepson, daughter, adopted daughter or stepdaughter;

(c) a person whose directions, instructions or wishes the acquiror is accustomed or is under an obligation, whether formal or informal, to act in accordance with, in respect of the target company; and

(d) a body corporate that is "controlled" by the acquiror or a person mentioned in paragraphs (a), (b) and (c) above ("**Excluded Persons**"). A body corporate is "controlled" by the acquiror or Excluded Persons if:

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- the acquiror or Excluded Persons is entitled to exercise or control the exercise of not less than 50% of the voting power in the body corporate or such percentage of the voting power in the body corporate as may be prescribed, whichever is lower; or

- the body corporate is, or a majority of its directors are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of the acquiror or Excluded Persons.

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

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Shipping & International Trade

ABS Counters Trade Finance Fraud with Newly Launched Trade Finance Registry

On 23 June 2023, the Association of Banks in Singapore ("**ABS**") launched the Trade Finance Registry ("**TFR**"), an industry utility that aims to securely maintain a centralised record of trade finance transactions in Singapore with data provided by participant banks.

TFR intends to mitigate the risk of duplicate financing for the same underlying trade, thereby strengthening the trust and confidence among banks and traders, and Singapore's role as a key trading hub.

Key Aims of TFR

(a) **Removal of information asymmetry**

TFR aims to remove information asymmetry faced by banks and help detect duplicate financing. Participating banks will register new trade financing transactions on TFR. The system will trigger notifications for the bank's investigation in the event that registered new transactions are found to be duplicated.

(b) **Data Security**

Only information on corporate customers will be provided to the TFR. Data on the TFR is hashed into an encrypted format. This not only protects personal data, but also avoids exposing the banks' underlying data fields to other participating banks when matching potentially duplicate transactions.

(c) **Enhancing transparency**

TFR aims to improve the transparency of trade financing transactions through API connections to the Singapore Trade Data Exchange ("**SGTraDex**"), a public digital platform that facilitates trusted and secure sharing of data between supply chain ecosystem partners. The exchange of data with SGTraDex is intended to enhance participant banks' ability to validate the authenticity of the underlying transaction.

Click on the following link for more information:

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- ABS Media Release titled "ABS launches Trade Finance Registry to counter trade finance fraud" (available on ABS website at www.abs.org.sg)

Sustainability

MAS Announces Various Initiatives to Support Sustainable and Credible Transition Financing Solutions for Financial Institutions and Industry

In June 2023, the Monetary Authority of Singapore ("**MAS**") announced several initiatives to support sustainable and credible transition financing solutions. We highlight some of those key initiatives below.

Supervisory Expectations for Financial Institutions' Credible Transition Planning

On 8 June 2023, MAS announced that it will set supervisory expectations to direct the transition planning processes of financial institutions ("**FIs**") in order to facilitate credible decarbonisation efforts by their clients and plans to issue a consultation paper later this year.

MAS' guidance on transition planning will cover the FIs' governance frameworks and client engagement processes to manage climate-related financial risks. The guidance will enable transition in the real economy towards net-zero. MAS has emphasised that FIs should not indiscriminately de-risk from particular sectors and should instead carefully assess their clients' transition plans and provide the needed financing for transition where the plans are credible.

Establishment of the Singapore Sustainable Finance Association

MAS, in collaboration with the financial industry, will set up the Singapore Sustainable Finance Association ("**SSFA**"). The Association of Banks in Singapore is leading the coordination and setting up of the SSFA. The SSFA will include representatives from financial institutions, financial industry associations, relevant corporates and service providers such as ESG rating agencies.

The SSFA will build upon the Green Finance Industry Taskforce's strong achievements and continue to cultivate a vibrant ecosystem for green and transition finance in Singapore. The initial focus of the SSFA will be on initiatives to scale voluntary carbon markets, transition finance, and blended finance.

Enhancing the Sustainable Loan Grant Scheme and Sustainable Bond Grant Scheme to Include Transition Instruments

As part of MAS' Finance for Net-Zero Action Plan, MAS has enhanced and extended the Sustainable Loan Grant Scheme and Sustainable Bond Grant Scheme to include transition instruments. The schemes promote the adoption of internationally-recognised standards, principles and taxonomies.

*Sustainable Loan Grant Scheme ("**SLGS**")*

The extended and enhanced SLGS assists qualifying borrowers to defray eligible expenses of engaging independent service providers to validate the sustainability credentials of sustainable and transition loans.

A summary of the scheme's key criteria is highlighted below:

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Grant Criteria	Details
Qualifying Borrower ("QB")	Company (including international organisations but excluding sovereigns) or FI based onshore or offshore. Alignment to international disclosure frameworks and standards is strongly recommended
Qualifying Instruments	Green, Social, Sustainability, Sustainability-Linked and Transition Loans
Qualifying Loan Criteria	Loan tenure of at least three years Loan size of at least S$20 million
External Review Requirements	Green, Social, and Sustainability Use of Proceeds Loans: • ***Pre-origination*****:** External review to demonstrate loan's alignment with internationally-recognised green loan principles Transition Use of Proceeds Loans: • ***Pre-origination*****:** QB develops and publicly discloses an entity-level transition plan • External review demonstrates the transition loan's alignment with internationally-recognised transition finance principles and alignment of the use of proceeds of the loan with transition activities under the Singapore-Asia Taxonomy or a comparable internationally-recognised taxonomy • ***Post-origination*****:** Annual external review for the three-year funding period, to verify attainment of Sustainability Performance Targets ("**SPTs**") Sustainability-Linked Loan: • ***Pre-origination*****:** External review to demonstrate loan's alignment with internationally-recognised sustainability-linked loan principles • ***Post-origination*****:** External review, on an annual basis, for the three-year funding period to verify attainment of SPTs. SPTs no longer need to include a minimum of two environmental objectives of the UN Sustainable Development Goals or Sustainability-Linked Loan Principles following amendment of the requirement by MAS
Revenue	• ***Banks*****:** More than 50% gross revenue from loan is attributable to the bank (a licensed FI in Singapore) • ***Sustainability advisory and assessment service providers*****:** More than 50% of the services gross revenue is attributable to Singapore-based service providers
Eligible Expenses	Costs incurred by the QB to engage service providers for the development of a loan framework or SPTs, pre and post loan origination external review (excluding ESG ratings services) or reporting on loan use and expected impact, or SPTs impact
Per Loan Cap	100% funding on all Eligible Expenses capped at the lower of either S$100,000 where issuer has not complied with any

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	internationally-recognised disclosure standards, or S$125,000 where issuer has complied with the standards
Per Borrower Cap	Capped at a maximum of two instruments
Funding Period	Three years from the applicant's loan origination date

Applicants should submit their applications by no later than three months after the origination date.

By way of background, MAS launched the Green and Sustainability-Linked Loan Scheme ("**GSLS**") on 1 January 2021. The GSLS has two tracks: Track A (Green & Sustainability-Linked Loans) and Track B (Green & Sustainability-Linked Loan Frameworks). MAS will discontinue Track B after its expiry on 1 January 2024. For more details on the GSLS, click here for our earlier Legal Update (November 2020).

Sustainable Bond Grant Scheme

Under the extended and enhanced Sustainable Bond Grant Scheme, MAS is offering a grant to qualifying issuers of eligible green, social, sustainability, sustainability-linked and transition bonds to help issuers defray costs incurred in respect of external reviews to assess alignment of bonds with internationally-recognised standards, principles and taxonomies.

A summary of the scheme's key criteria is highlighted below:

Grant Criteria	**Details**
Qualifying Issuer	First time and repeat green, social, sustainability, sustainability-linked and transition bonds

Qualifying Issuance	• Bonds of any currency with a pre-issuance external review undertaken
	• Bonds issued and listed in Singapore
	  ○ *Sustainability-linked bonds*: Post-issuance external review done annually for the first three years or till the tenure of the bond
	  ○ *Transition bonds*: Developed and publicly disclosed entity-level transition plan and the use of proceeds from the issuance demonstrates alignment with the transition category under the Singapore Asia Taxonomy or a comparable internationally recognised taxonomy
	• S$200 million minimum size or a bond programme size of at least S$200 million with an initial issuance of at least S$20 million
	• Minimum tenure of one year
	• External reviews/reporting work done by external reviewers in Singapore
	• Singapore FIs perform part of the sustainability advisory and assessment work

Eligible Expenses	Costs incurred in respect of the independent external reviews undertaken based on applicable internationally-recognised principles, standards or guidance

Per-issuance Cap	Cap of up to S$125,000 or 100% of the eligible expense per qualifying issuance

Applicants should submit their applications by no later than three months after the issue date.

Both schemes will run until 31 December 2028. Interested parties can write to fsdf@mas.gov.sg to obtain the application form.

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

- MAS Media Release titled "MAS to Set Expectations on Credible Transition Planning by Financial Institutions"
- Sustainable Loan Grant Scheme
- Sustainable Bond Grant Scheme

CIX Launches Global Carbon Spot Trading Platform Promoting Greater Carbon Market Transparency, Certainty and Liquidity

Earlier in June 2023, Climate Impact X ("**CIX**"), a global marketplace for quality voluntary carbon credits, successfully launched its globally accessible spot trading platform, CIX Exchange, which completes CIX's core suite of venues and services.

CIX Exchange enables two-way spot trading of standardised contracts and individually listed carbon credit projects, concentrating liquidity and providing the market with price transparency and risk management solutions.

Trading commenced on 7 June 2023, with bids, offers and transactions from a range of participants including leading project developers and suppliers and major financial institutions, among others.

Key Features of CIX Exchange

(a) **Promotes price transparency, liquidity and certainty**. Utilising Nasdaq technology, the platform enables transparent price discovery of firm orders for particular projects and concentrates liquidity for standard contracts.

(b) **First standardised benchmark contract: CIX Nature X** ("**CNX**") is designed to address key market concerns over project delivery risk, market-representative pricing and fragmented liquidity. Each lot of CNX equates to 1,000 carbon credits, and one carbon credit represents one tonne of reduced or avoided carbon dioxide from verified projects. CNX represents a curated delivery basket of 11 large, well-established and globally-accepted carbon credit projects that support Reducing Emissions from Deforestation and Forest Degradation ("**REDD+**"), the conservation and sustainable management of forests, and the enhancement of forest carbon stocks.

(c) **First daily on-exchange liquidity window (at the intersection of APAC and European trading hours) in the voluntary carbon market with firm bids and offers**. This sharpens benchmark prices and improves order depth for spot nature-based credits.

(d) **Custom-built for extensibility and modularity** to enable effective and dynamic scaling alongside market demands for new credit types, projects and standardised contracts.

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(e) **Anchored in Singapore** which has a dynamic carbon services and trading ecosystem and established commodity trading and financial community, and is a gateway to end-users in Asia and to investment in regional projects.

(f) **Verified and curated nature-based climate projects**. As a start, CIX Exchange is focused on the trading of offsets from verified and curated nature-based climate projects. These projects support REDD+, Improved Forest Management (IFM) and Afforestation, Reforestation & Revegetation (ARR).

Other CIX Core Services

(a) CIX Marketplace provides seamless access to curated projects to reduce friction for businesses starting on their carbon compensation journey, help them go further in climate action and support corporate sustainability goals.

(b) CIX Auctions is a specialised platform for discovering the value of unique and desirable projects, newly issued credits or customised portfolios of projects.

Click on the following link for more information:

- Climate Impact X Media Release titled "Climate Impact X launches CIX Exchange to level up carbon market transparency, certainty and liquidity" (available on CIX website at www.climateimpactx.com)

IMDA Introduces Sustainability Standard for Data Centres Operating in Tropical Climates

On 8 June 2023, the Infocomm Media Development Authority ("**IMDA**") launched the Singapore Standard for "Deployment and operation of data centre IT equipment under tropical climate" ("**Standard**"). The Standard is one of the world's first standards for optimising energy efficiency for data centres ("**DCs**") in tropical climate countries.

The Standard is a product of a working group comprising domain and technical experts from both industry and academia, as well as government agencies. It provides a set of guidelines to enable the operation of DCs at higher temperature settings while optimising energy efficiency.

DCs are important enablers of the digital economy. On the flip side of the coin, DCs are also intensive users of resources, contributing to our carbon footprint. Cooling systems in a typical DC account for up to 40% of total energy consumption, with many operators choosing to operate their equipment at temperatures of 22°C and below. The cooling of DCs in a warmer tropical climate environment presents additional challenges as more energy is required to operate the cooling systems.

The demand for DCs is continuing to grow, and energy efficiency will be critical for ensuring sustainable growth of the industry. There is also increased awareness that it is possible to operate DCs at higher temperatures while achieving optimal results. However, the industry has suffered from a lack of established industry guidelines on how to safely raise DCs' operating temperatures in a tropical climate, and at higher humidity levels.

To address the lack of guidelines in this regard, the Standard aims to help DCs develop a roadmap to support the gradual increase in the DC operating

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temperatures to 26°C and above. This could lead to DCs potentially benefiting from a 2% to 5% cooling energy savings with every 1°C increase in the DC operating temperature.

IMDA's new Standard forms part of the Digital Connectivity Blueprint, in which sustainability will be a paramount design factor in Singapore's digital infrastructure. The Standard complements other sustainability-related industry standards and best practices that are key in Singapore's push for sustainability in the ICT ecosystem. In the longer term, the Government will also chart a roadmap towards net-zero DCs that are powered by renewable energy.

To encourage greater adoption of the standards by the DCs operating in Singapore, IMDA is working with the Building & Construction Authority to update the Green Mark scheme for DCs, which sets the energy efficiency and sustainability benchmarks for the DC industry.

The launch of the Standard comes after the lifting of the moratorium on new DCs, which had been in place in Singapore since 2019, and had initially been imposed in light of the rapid growth of DCs and their corresponding energy consumption and greenhouse gas emission.

Following up from the lifting of the moratorium, in the second half of 2022, the Economic Development Board ("**EDB**") and IMDA launched a pilot Data Centre - Call for Application Exercise to facilitate the building of new DC capacity and allow for the calibrated and sustainable growth of DCs in Singapore. The key evaluation requirements of the exercise were as follows:

(a) The use of state-of-the-art technologies and best practices for sustainability;
(b) Strengthening Singapore as a regional and/or international connectivity hub; and
(c) Broader contributions to Singapore's economic objectives.

IMDA has worked with several DC operators in Singapore to trial this new Standard to reduce energy use. IMDA invites DC operators to use this Standard to help determine the best operating temperature for optimising energy efficiency in tropical climates while safeguarding operational reliability.

Click on the following link for more information:

- IMDA Press Release titled "Introduces Sustainability Standard for Data Centres Operating in Tropical Climates" (available on the IMDA website at www.imda.gov.sg)

Tax

MOF Consults on Proposed Amendments to Income Tax Act

On 6 June 2023, the Ministry of Finance ("**MOF**") announced a public consultation on 33 proposed amendments to the Income Tax Act 1947 by way of the Income Tax (Amendment) Bill 2023. The consultation covers:

(a) 19 proposed amendments to implement tax measures announced in the 2023 Budget Statement, including:

    - Introduction of the Enterprise Innovation Scheme (EIS);

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- Enhancement of the Double Tax Deduction for Internationalisation (DTDi) Scheme;
- Introduction of the pilot Philanthropy Tax Incentive Scheme for Family Offices; and
- Extension and/or refinement of various schemes until 31 December 2028.

(b) 14 proposed amendments arising from international tax developments and MOF's periodic review of Singapore's tax system, including:

- Taxing gains from the sale of foreign assets received in Singapore on and after 1 January 2024 by entities of multinational (MNE) groups that do not have economic substance in Singapore; and
- Extending the tax treatment for the transfer of credit-impaired loans on revenue account to non-bank taxpayers.

The consultation ran from 6 June to 30 June 2023. MOF will publish a summary of comments together with MOF's response in August 2023.

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

Technology, Media & Telecommunications

Ensuring the Responsible Use of AI – Singapore Launches the AI Verify Foundation

On 7 June 2023, the Infocomm Media Development Authority ("**IMDA**") announced the launch of the AI Verify Foundation ("**Foundation**"), which aims to harness the collective contributions of the global open-source community to develop the AI Verify testing tool for the responsible use of artificial intelligence ("**AI**"). The Foundation will look to boost AI testing capabilities and assurance to meet the needs of companies and regulators globally.

The responsible use of AI has become a key issue for regulators and organisations utilising AI systems. In particular, the rise of generative AI throughout a plethora of use-cases across various industries has raised concerns about the resulting risks, including: (i) mistakes and hallucinations; (ii) privacy and confidentiality; (iii) disinformation, toxicity and cyber-threats; (iv) copyright challenges; (v) embedded bias; and (vi) values and alignment.

The development of tools that are able to adequately test the performance of AI systems is thus becoming an ever more pressing need. To address this, the launch of the Foundation will support the development and use of AI Verify to address the relevant risks of AI.

AI Verify was developed by IMDA to provide organisations with an AI Governance Testing Framework and Toolkit to help validate the performance of their AI systems. It is a single integrated software toolkit that operates within the user organisation's enterprise environment, facilitating the conduct of technical tests on the user's AI models and the recording of process checks. User organisation can use the resulting test reports to be more transparent about their AI by sharing them with their shareholders.

In recognition of the fact that the sciences and technologies for AI testing are still in the process of development, the Foundation aims to utilise expertise from the open-source community to expand AI Verify's capability to evaluate AI. The Foundation will:

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(a) Foster a community to contribute to the use and development of AI testing frameworks, code base, standards, and best practices;
(b) Create a neutral platform for open collaboration and idea-sharing on testing and governing AI; and
(c) Nurture a network of advocates for AI and drive broad adoption of AI testing through education and outreach.

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

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CaseBytes

Timelines for SOPA Payment Claims, Responses, and Adjudication

The Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) ("**SOPA**") sets out a regime for interim payments and a procedure to resolve payment disputes in the construction industry. To ensure the smooth flow of payment, the SOPA contains strict timelines for responses, notices, and adjudication.

Parties to construction contracts are free to customise their agreements to provide for specific dates or periods for the service of payment claims and responses. Does such freedom extend to having "weekly progress claims" and having payment conditioned on the provision of a performance bond? The Singapore High Court decision in *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 gives us some food for thought.

Section 10 of the SOPA provides that payment claims must be served by the date or period specified in the contract or, if there are no such terms, by the "prescribed date". A payment claim served before such "prescribed date" is deemed to have been served on the "prescribed date". The date of service of the payment claim would then determine when the payment response must be served and when the adjudication application and response must be lodged.

The dispute in this case was over the "prescribed date" for the service of payment claims where there is no provision for date of service of payment claims in the contract. The Court held that the "prescribed date" for the purposes of section 10 of the SOPA is "the last day of the month", with "month" referring to a calendar month. Therefore, in such a situation, a payment claim served before the end of the calendar month is deemed to have served at the end of the calendar month.

The Court also provided some guidance on two other issues.

(a) First, the Court considered a provision for "weekly progress claims" in the contract and whether this took the contract out of the ambit of the SOPA. While the Court did not have to decide on the issue, it observed that the inclusion of the "weekly progress claims" provision did not thwart the operation of the SOPA or contravene its provisions.

(b) Second, the Court considered a provision for a performance bond. It was not clear on the face of the judgment whether the contract provided that the contractor's entitlement to progress payments would be contingent on the employer providing a performance bond. However, the Court provided insight in this regard by observing that it is not stated anywhere in the SOPA that a contractor's entitlement to a progress payment is contingent on the

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provision of a performance bond, even if there is a contractual stipulation for the provision of such a bond.

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

First Case Applying the Simplified Process for Intellectual Property Claims

The "Simplified Process for Certain Intellectual Property Claims" ("**Simplified Process**") under Part 2 of the Supreme Court of Judicature (Intellectual Property) Rules 2022 ("**SCJ(IP)R**") came into effect on 1 April 2022. For further information on the Simplified Process, you may refer to our March 2022 Legal Update titled "New Simplified Track for Intellectual Property Litigation".

The case of *Tiger Pictures Entertainment Ltd v Encore Films Pte Ltd* [2023] SGHC 138 is the first case invoking the Simplified Process to have come before the courts. Here, the General Division of the Singapore High Court emphasised that the ultimate purpose behind the Simplified Process is to increase access to justice by ensuring that costs and time spent remain proportionate to the complexity and value of the action. Further, the courts play a crucial role in facilitating this process which involves active identification and case management of suitable cases under the Simplified Process.

The claim centred around the popular Chinese film titled "Moon Man". The claimant, Tiger Pictures Entertainment Ltd, was the exclusive licensee in respect of the distribution, reproduction and publicity rights to "Moon Man" in all jurisdictions worldwide bar the People's Republic of China and the Republic of Korea. The defendant, Encore Films Pte Ltd, and the claimant entered into negotiations via WeChat and e-mail regarding a possible distribution of "Moon Man" in Singapore. The parties disagreed on whether a binding agreement was formed. The claimant submitted that an agreement was not formed. Conversely, the defendant submitted that an agreement was formed pursuant to the parties' discussions over WeChat and e-mail. The defendant proceeded to screen "Moon Man" in Singapore.

The claimant commenced an action against the defendant for copyright infringement and elected for the claim to come under the Simplified Process. The defendant denied liability and raised two counterclaims against the claimant for making groundless threats and for infringing the defendant's copyright in another film. The defendant applied for an order that the Simplified Process did not apply to the claimant's action, which brought the matter before the Court.

For a case to be assessed as suitable for the Simplified Process, the three cumulative conditions listed in rule 4(1) of the SCJ(IP)R must be fulfilled. The Court analysed the three cumulative conditions and found that:

(a) **Does the dispute involve an intellectual property right?** As the dispute was a claim for copyright infringement, the first condition was fulfilled.

(b) **Does the monetary relief claimed by each party not exceed S$500,000, or have the parties agreed to the application of Part 2 of the SCJ(IP)R?** The second condition was fulfilled as the claimant had filed and served the form to abandon any claim for monetary relief above S$500,000 and the defendant's counterclaims were unlikely to exceed S$500,000.

(c) **Analysing all of the factors listed in rule 4(1)(c) of the SCJ(IP)R in totality, should the claim fall under the Simplified Process?** The Court held that greater emphasis should be placed on the factors expressly

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highlighted in rules 4(1)(c)(i) to 4(1)(c)(iii) of the SCJ(IP)R, i.e., whether a party can only afford to bring or defend a claim under the Simplified Process, the complexity of issues and the estimated length of the trial. The Court held that in most cases, it is the latter two factors that will be determinative as to whether a case is suitable for the Simplified Process.

Here, the Court found that the issues before it were neither legally nor factually complex. The sole legal issue was whether there was a legally binding agreement between the parties which permitted the defendant to distribute "Moon Man" in Singapore. The facts were limited to the communications largely confined to the relevant WeChat messages and e-mails. Further, the trial was unlikely to exceed two days. Finally, the Court found that the quantum of the claimant's claim, being less than S$154,000, made it suitable for the Simplified Process. The Court opined that, generally, the lower the quantum of the claims sought, the more likely a case will be suitable for the Simplified Process.

Having found that all three cumulative conditions in rule 4(1) of the SCJ(IP)R were fulfilled, the Court was satisfied that this case was appropriate to apply the Simplified Process.

Cap on Maximum Overtime under the Employment Act: Protection for Employers or Employees?

Section 38(5) of the Employment Act ("**EA**") ("**section 38(5)**") states that "[a]n employee must not be permitted to work overtime for more than 72 hours a month." However, is the legislative purpose of this section to protect employees from onerous work hours? Or is it intended to prevent them from claiming overtime for hours worked above the limit of 72 hours a month?

In *Hossain Rakib v Ideal Design & Build Pte Ltd* [2023] SGHC 166, the appellant had been employed by the respondent as a construction worker, during which time he was required to work beyond the statutorily prescribed limit of 72 overtime hours per month. He brought a claim against the respondent for overtime pay for over 700 hours of overtime work between February 2021 and November 2021.

At first instance, the Tribunal Magistrate ("**Judge**") interpreted section 38(5) as imposing a maximum cap of 72 hours that an employee may claim as overtime pay per month ("**Overtime Cap**"). His reasoning included that: (i) the Overtime Cap was introduced to limit workers from earning extra salary at the expense of allowing another person to be employed by the company; and (ii) employers already had a disincentive to agree to working beyond the Overtime Cap, as they would then be exposed to criminal liability.

Accordingly, the Judge found that the appellant could not claim for more than 72 hours of overtime pay per month. The appellant appealed, arguing that the proper interpretation of section 38(5) was to prevent an employer from requiring or allowing their employee to carry out more than 72 hours of overtime work per month, and did not act as a bar for claiming for overtime pay.

The answer lay in identifying the legislative purpose of section 38(5), and broadly Part 4 of the EA in which it resides. While the High Court found that both the Judge's interpretation and the appellant's interpretation were possible, it held that the latter was better aligned with the current legislative purpose of section 38 and Part 4 of the EA, namely, to protect an employee and not to prejudice his/her rights against the employer.

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In coming to this conclusion, the High Court noted:

(a) Subsequent statutory amendments may be taken into account to ascertain the legislative purpose of a provision, even where the amendments do not relate to the provision in question. Taking into account relevant parliamentary debates and Second Reading Speeches, the Court agreed with the appellant that the original purpose of section 38(5) had been superseded by a new purpose of protecting employees in light of subsequent statutory amendments.

(b) Conversely, the Judge's interpretation was premised on the previous legislative intention that had since been updated through subsequent amendments to both section 38(5) as well as Part 4 of the EA. It would be inconsistent to say that section 38(5) is meant to protect an employee from onerous overtime work hours, but then turn a blind eye when an employee is in fact working beyond the Overtime Cap and thereafter claims for overtime pay.

(c) With regard to the EA itself, section 38(5) did not expressly prohibit an employee from claiming for overtime pay beyond the Overtime Cap. Moreover, section 41A of the EA allows the Commissioner to exempt an employee from section 38(5), meaning it is possible for employees to work beyond the Overtime Cap and claim overtime pay for such work.

The High Court allowed the appellant's appeal, finding that he was entitled to overtime pay beyond the Overtime Cap.

Employers should be aware that Part 4 of the Employment Act is intended to protect employees, and its provisions are therefore unlikely to constitute a defence against a claim brought by an employee. Should you require any advice on salary disputes or other employment law issues, please contact our Employment Law partners.

Privacy and Confidentiality in the Enforcement of Arbitral Awards

As a general rule, court proceedings are subject to the principle of open justice. Imposing a cloak of privacy on court proceedings is an exceptional measure taken only in certain circumstances, such as when a statute provides for it, as this privacy departs from the principle of open justice. For instance, sections 22 and 23 of the International Arbitration Act 1994 ("**IAA**") protect the confidentiality of arbitration by requiring any court proceedings under the IAA to be heard in private by default, and set out restrictions on the reporting of such proceedings.

However, under what circumstances can this protection be lost? This was the key question in *The Republic of India v Deutsche Telekom AG* [2023] SGCA(I) 4 where the applicant, the Republic of India ("**India**"), sought to protect the confidentiality of arbitration-related court proceedings.

By way of background, the respondent Deutsche Telekom AG ("**DT**") commenced arbitration proceedings in Switzerland ("**Arbitration**") against India, alleging a violation of a bilateral investment treaty between India and Germany. The Tribunal issued a Final Award in DT's favour, and DT obtained a Leave Order to enforce the Final Award in Singapore. India unsuccessfully applied to set aside the Leave Order, and then appealed against the dismissal of its setting aside application ("**Appeal**").

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India then applied to the Court of Appeal ("**CA**") for certain privacy orders to, among others, have the Appeal heard in private, the case file sealed, and for any published judgment to be redacted (collectively, "**SUM 4 Orders**"). India relied on sections 22 and 23 of the IAA and/or the court's inherent powers as bases for the application.

The CA noted that the effect of section 22(1) of the IAA is that court proceedings relating to arbitration matters under the IAA are presumptively private, and proceedings are to be heard in private by default. This is, however, subject to the courts' powers to issue directions pursuant to section 23 to permit certain disclosure of information to balance the interests of open justice and parties' reasonable interests in confidentiality.

However, in relation to India's application for the SUM 4 Orders, the CA noted that the threshold question was whether the confidentiality of the arbitral proceedings had already been lost. The court should not be made to go through an empty exercise to protect confidentiality when there was nothing left to protect, particularly since keeping court proceedings private was otherwise an exceptional measure that departed from the general principle of open justice.

On the facts, the CA found that the confidentiality of the Arbitration had been lost, and there was thus no compelling interest in keeping the Singapore enforcement proceedings confidential. Multiple disclosures had been made of considerable information relating to the Arbitration, the identity of the parties and enforcement proceedings in Singapore and abroad. Amongst others:

(a) the Interim and Final Awards issued in the Arbitration were available online;
(b) a Swiss court decision refusing India's application to set aside the Interim Award of the tribunal in the Arbitration was publicly available and named India as a party;
(c) an online article had expressly identified India and DT as parties to the Singapore enforcement proceedings;
(d) information pertaining to DT's enforcement proceedings in other countries (such as the United States and Germany) was also in the public domain; and
(e) decisions of statutory tribunals and the India Supreme Court disclosing the identities of India and DT and the outcome of the arbitration were also publicly available.

As such, there was insufficient basis to override the strong interest in open justice in curial proceedings. The CA also held that there was no basis to invoke the court's inherent powers. India had sought to invoke the court's inherent powers on essentially the same premise that the confidentiality of the Arbitration had not been lost, which on the facts the CA had held was not the case. Since confidentiality had already been lost, the requirement of necessity for invoking the court's inherent powers could not be satisfied. Although India submitted that disclosure of information in the Appeal would allow third parties to tarnish India's reputation, the CA noted that the interest of a party not to be seen in an adverse light is a merely private interest and did not warrant granting privacy orders and departing from the principle of open justice.

The CA therefore dismissed India's application for the SUM 4 orders.

Restoration of Struck-Off Company to the Register of Companies

In *Fu Zhihui Alvin & Anor v Accounting and Corporate Regulatory Authority* [2023] SGHC 177, the Singapore High Court considered an application to have a company restored to the Register of Companies ("**Register**"). The Court considered whether the applicant had *locus standi* despite having previously applied for the company to be struck off, and whether it was just to allow the application.

The applicant in this matter, Mr Fu, had incorporated the Company to provide consultancy services. He subsequently ceased offering consultancy services and applied to the Accounting and Corporate Regulatory Authority ("**ACRA**") for the Company to be struck off. More than three years later, Mr Fu filed the present application for the Company to be restored to the Register as a vehicle to make investments.

The Court held that Mr Fu had established the *locus standi* requirement. Section 344(5) of the Companies Act governs the restoration of companies struck off the Register and provides that an application may be made if "any person feels aggrieved by the name of the company having been struck off the [R]egister".

The Court held that Mr Fu constituted an "aggrieved person", notwithstanding the fact that he had earlier applied on the Company's behalf to strike off the Company. Even though the wording of the statute suggested that an applicant could not be aggrieved by its own previous actions of striking off a company, the Court took a wider view of this provision based on case law and policy, finding that there may be circumstances in which there may be good reason for such an applicant to restore the company.

The Court further held that, having regard to all the circumstances of the case, it was just for the Company to be restored to the Register. The courts in earlier cases have considered it just to restore companies to retain some benefit or value that would otherwise have been lost. Here, the Court found that the restoration of the Company would have the following practicable benefits: (i) conferring Mr Fu the tangible benefit of time and cost savings and allowing him to commence business activity earlier; and (ii) potentially adding value to the local economy and generating employment. Further, the Court was satisfied that the restoration of the Company would cause no prejudice to any third party.

The Court thus granted Mr Fu's application to restore the Company to the Register.

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Events

Dispute Resolutions Options: Developments and Trends

On 22 June 2023, Rajah & Tann Singapore organised its monthly "LearningBytes" lunchtime series, with this month's seminar titled "Dispute Resolutions Options: Developments and Trends". Partners Ho Zi Wie from the Restructuring & Insolvency Practice, Kevin Tan, FCIArb from the International Arbitration Practice, and Daryl Sim from the Construction & Projects Practice explored recent trends and pertinent issues in Singapore's role as a crypto firm restructuring hub, shared the growing prominence of mediation in resolving disputes, as well as providing insights into the use of Third-Party Funding and Contingency Fee Arrangements to obtain rightful recourse.

Navigating the New Frontiers of Digital Assets for Asset Managers

On 6 June 2023, Rajah & Tann Singapore, the Investment Management Association of Singapore (IMAS) and Kaiko held an event titled "Navigating the New Frontiers of Digital Assets for Asset Managers".

Digital assets are continuing to attract ever-increasing interest not only from the public but also from traditional financial institutions, big technology and fintechs, investors, and regulators alike. This digital class of investments has its tandem risks and challenges, such as regulatory uncertainties, market volatility, and technical vulnerabilities, which need to be carefully considered by individuals and organisations. The speakers discussed issues such as: (i) What does compliant / regulated market data and information services mean in the digital asset markets? (ii) How can and should digital token service providers protect and safeguard their customers' interests?; and (iii) How can fraud be traced and what remedies are available to asset owners in the event of insolvency.

Speakers from Rajah & Tann Singapore were Partners Jansen Chow, Co-Head of the Fraud, Asset Recovery & Investigations Practice, and Samuel Lim from the Financial Institutions Group.

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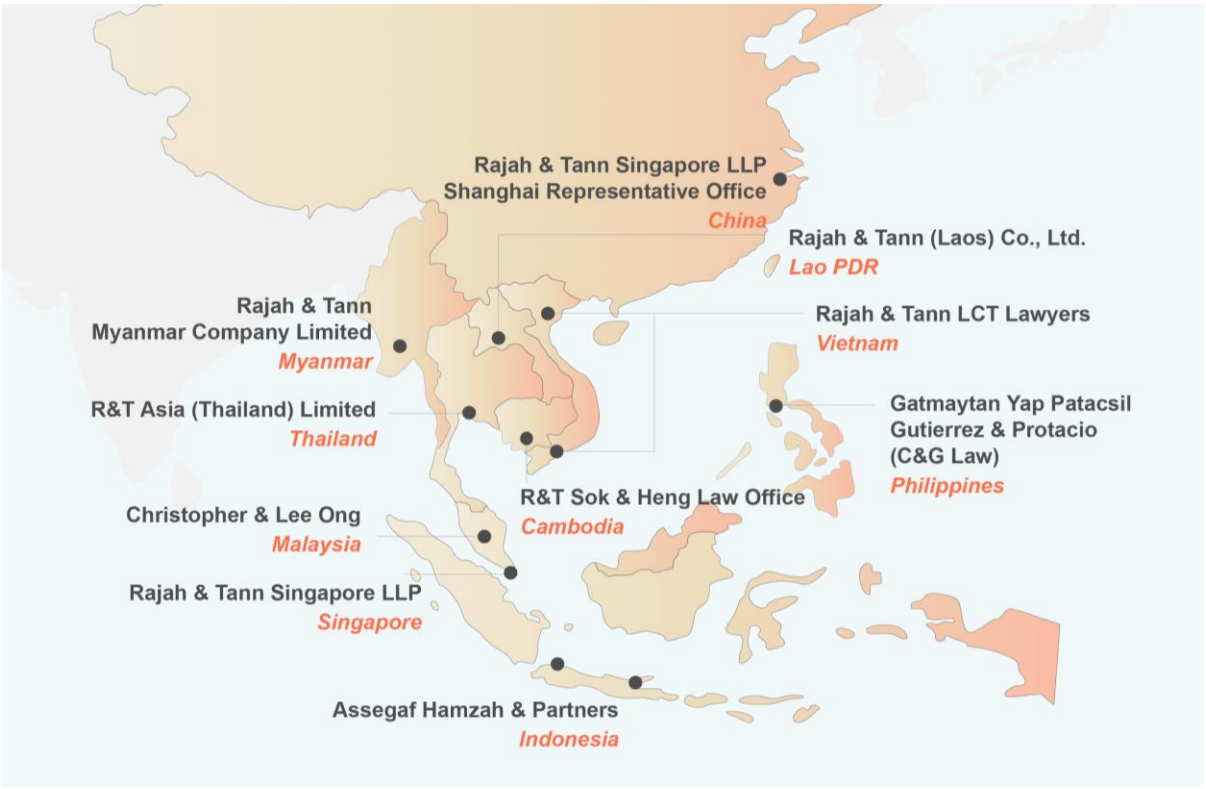

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