NewsBytes: Singapore

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Rajah & Tann Singapore Ranked in *Best Lawyers* 2024 Edition

Rajah & Tann Singapore is pleased to share that we have 101 lawyer recognitions in the 2024 edition of *The Best Lawyers* in Singapore. In particular, three of our lawyers have been named "Lawyer of the Year" for the second year running. This recognition is awarded annually to the lawyer with the highest overall peer review feedback and only one lawyer is recognised as the "Lawyer of the Year" per specialty in the country.

The partners who have been named "Lawyer of the Year" Singapore are:

- Arnold Tan - Private Funds
- Sim Kwan Kiat - Insolvency and Reorganization Law
- Regina Liew - Regulatory Practice

The following three partners have also been recognised for the first time:

- Mark Cheng - Defamation Law
- Shemane Chan - Construction Law
- V Bala - Shipping and Maritime Law

Click here to read our Press Release with the complete list of ranked lawyers.

Rajah & Tann Recognised as Top Employer in The Straits Times "Singapore's Best Employers 2023" List

Rajah & Tann Singapore is the top ranked law firm and the only law firm that has been named as one of Singapore's top employers in The Straits Times "Singapore's Best Employers 2023" list.

The annual list, now in its fourth edition, is based on a comprehensive nation-wide survey of over 1,700 employers, and comprises evaluations from over 17,000 employees. Only 250 companies in Singapore achieved high enough scores to be included on the list.

Patrick Ang, Managing Partner of Rajah & Tann Singapore, said: "We are honoured to be recognised as one of Singapore's best employers, which is testament to our work culture of striving for excellence, the rewards and incentives we provide to staff, and our belief in work-life balance. Rajah & Tann offers a supportive and inclusive workplace where employees – be they lawyers, paralegals or support staff – can develop to their full potential. We work hard but we also prioritise time to spend with our family and friends, and pursue interests such as community service."

Click here to read our Press Release.

Rajah & Tann Asia Recognised Among World's Top 100 International Arbitration Practices for 15 Consecutive Years

Rajah & Tann Asia has been recognised among the world's top 100 International Arbitration Practices by *The Global Arbitration Review* ("**GAR100**") for 15 consecutive years. This recognition highlights the team's exceptional expertise and dedication to providing outstanding legal counsel in the field of international arbitration.

Maintaining the largest portfolio of work among the vast majority of firms in Asia, our Regional International Arbitration team has acted in significant multi-billion-dollar matters across the region. Highlights include (i) acting for a conglomerate in a US$21 billion Singapore International Arbitration Centre ("**SIAC**") arbitration over alleged breaches of non-disclosure agreements; (ii) acted for a former government official in relation to a US$2.5 billion investment arbitration under the US-Vietnam trade agreement; and (iii) defending a Vietnamese state-owned company in an over US$3 billion SIAC arbitration over a thermal power plant project.

Our lawyers have also acted for governments including Laos, Lesotho, Indonesia, the Philippines, Kazakhstan, the Maldives and Mauritius's State Trading Corporation in international arbitration matters. Clients have praised our top-notch Regional International Arbitration team, with one client commenting we are "proactive, solution-focused, diligent, and did an outstanding job preparing ten inexperienced witnesses for the arbitration hearing," while others also lauded the vast experience of our regional Partners.

Kelvin Poon, SC, Head of the International Arbitration Practice at Rajah & Tann Singapore, said: "We are honoured to be recognised by the GAR100 once again. This achievement reflects our dedication as a regional network in providing high-quality legal services to our clients as well as our commitment to continuously improve our skills and knowledge in the field of international arbitration."

The GAR100 is an annual ranking of the world's top 100 law firms with specialist international arbitration practices.

Visit Arbitration Asia, a one-stop arbitration website which spotlights on Asia: https://arbitrationasia.rajahtannasia.com/.

Find out more about Rajah & Tann Asia's International Arbitration Practice here.

LegisBytes

Capital Markets

When Shareholders Requisition Meetings: What Boards and Requisitionists Should Take Note of

Under the Companies Act 1967 ("**CA**") (for companies incorporated in Singapore) and the SGX-ST Listing Rules, issuers are required to hold a general meeting after the end of each financial year ("**annual general meeting**"). Additionally, issuers may hold general meetings at any other point in a year. Where a shareholder (or shareholders acting together) ("**requisitionists**") wish to draw certain matters to the attention of other

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shareholders, they may requisition a general meeting to put resolutions before other shareholders.

On 27 April 2023, the Singapore Exchange Regulation ("**SGX RegCo**") issued a Regulator's Column on "What boards and requisitionists should take note of in shareholder-requisitioned meetings". The column elaborates on SGX RegCo's expectations of an issuer's board of directors ("**Board**") and shareholders in shareholder-requisitioned meetings ("**Requisitioned Meetings**") to ensure that the interests of shareholders are protected, setting out:

(a) How a Requisitioned Meeting may be convened, noting that it may be convened by either the Board or the requisitionists;
(b) Actions that requisitionists should take to requisition a meeting; and
(c) Actions that Boards should take upon receiving a requisition,

as summarised below.

Convening a Requisitioned Meeting

Please note that the mechanisms relating to Requisitioned Meetings are typically contained in and subject to the relevant laws governing the issuer's constitution or incorporation.

For a Singapore-incorporated company, the validity of Requisitioned Meetings is determined under sections 176 and 177 of the CA, which each set out a method through which a meeting may be requisitioned. Key differences are as follows:

	Section 176	Section 177
Minimum number (and minimum shareholding) of requisitionists	One (10%)	Two (10%)
Board's involvement	Board to take steps to convene the Requisitioned Meeting Failure to comply with a valid requisition	Shareholders to call the Requisitioned Meeting
Timeline	The Board has up to 21 days to convene the Requisitioned Meeting, which must be held as soon as practicable, and within two months after the date of receipt of the requisition. If the meeting is not convened within 21 days after the date of the deposit of the requisition, requisitionists may convene the Requisitioned Meeting,	There is no specific provision that requisitionists need to give any notice to the Board, or exhaust any timeline for the Board to act.

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	which must be held within three months after the date of the deposit of the requisition.	
Costs	Borne by the issuer. Any reasonable expenses incurred by requisitionists due to the Board's failure to convene the Requisitioned Meeting will be recoverable from the company.	No specific provision that costs will be borne by the issuer
Procedural requirements for requisitionists	The requisition must: • state the objects of the Requisitioned Meeting; • be signed by the requisitionists; and • be deposited at the issuer's registered office.	Written notice of the Requisitioned Meeting must be served on every shareholder having a right to attend the Requisitioned Meeting, not less than 14 days or such longer period as is provided in the issuer's Constitution for ordinary resolutions.

Actions that Requisitionists Should Take

Requisitionists may elect to utilise either section 176 or 177 of the CA to convene a Requisitioned Meeting, and note the following:

(a) For a Requisitioned Meeting to be convened under section 176 of the CA, requisitionists should:

- ensure that a valid requisition is submitted to the Board; and
- be forthcoming in providing the Board with any information they may reasonably require to convene, and table the requisite resolutions at, the Requisitioned Meeting

(b) For a Requisitioned Meeting to be convened under section 177 of the CA, requisitionists should:

- ensure that all applicable procedural requirements relating to the convening and conduct of the Requisitioned Meeting are adhered to, including those in the CA, the SGX-ST Listing Rules and the issuer's Constitution. This includes giving proper notice of the Requisitioned Meeting to all shareholders; and
- (depending on the nature of the proposed resolutions) accompany the notice with additional details on the tabled proposals by way of a circular.

In all cases, requisitionists should not put forth any proposal or material that is clearly frivolous, vexatious or defamatory.

Actions that Boards Should Take Upon Receiving a Requisition

When the Board receives a requisition for a Requisitioned Meeting, the issuer should immediately inform shareholders through SGXNET and provide the Board's response. Shareholders should also be kept updated on subsequent material developments.

Boards should additionally consider taking the following actions:

(a) seriously and objectively considering the objects of the requisition, including the merits of any proposed resolutions both from the perspective of the issuer and its shareholders as a whole;
(b) reaching out to the requisitionists to discuss their concerns; and
(c) seeking to find common ground with the requisitionists. This may include taking on some of the suggestions proposed.

Additional Key Points

SGX RegCo noted that it expects all parties (Board, requisitionists and their respective professional advisers) to work together towards the successful conduct of the Requisitioned Meeting. It is important that the shareholders have all facts available to them, including the Board's position, to enable them to make informed decisions on the tabled resolutions.

SGX RegCo also emphasised that the Requisitioned Meeting should be conducted expeditiously. A protracted delay would result in uncertainty to shareholders and also unnecessarily detract the issuer's management and Board from the conduct of the issuer's business.

Click on the following link for more information:

- Regulator's Column: What boards and requisitionists should take note of in shareholder-requisitioned meetings (available on the SGX RegCo website at www.sgx.com)

Corporate Commercial

Conducting Virtual or Hybrid Meetings for Companies, VCCs and BTs: Passing of Bill, Amendment of Practice Notes

To allow various business entities to convene, hold, or conduct their general meetings despite various movement control orders during the COVID-19 pandemic, the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020 ("**Order**") came into effect on 27 March 2020 and was extended multiple times.

Since then, almost all COVID-19 movement restrictions have been lifted. Accordingly, the Ministry of Law ("**MinLaw**") announced that the Order will be revoked on 1 July 2023.

On 18 April 2023, the Companies, Business Trusts and Other Bodies (Miscellaneous Amendments) Bill 2023 ("**Bill**") was tabled for First Reading in Parliament (and has since been passed on 9 May 2023). Among other matters, the Bill enables the continued utilisation of virtual and hybrid meetings. Key changes include:

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(a) Clarifying that companies, variable capital companies ("**VCCs**") and business trusts ("**BTs**") have the option to conduct fully virtual or hybrid meetings;

(b) Ensuring that the rights of the members of the companies and VCCs and unitholders of BTs to attend and participate in such general meetings are safeguarded;

(c) Addressing technological disruptions, malfunctions or outages during a meeting conducted using virtual meeting technology; and

(d) Addressing conflicts between the constitution or trust deed of a company, VCC, or BT and the relevant provisions of the Bill.

To provide additional guidance on the conduct of general meetings for issuers (including an issuer that is a real estate investment trust (REIT) or BT) primary-listed on the Mainboard of the Singapore Exchange Securities Trading Limited ("**SGX-ST**") and Catalist (collectively, "**Issuers**"), the Singapore Exchange Regulation ("**SGX RegCo**") issued amendments to Practice Note 7.5 (*General Meetings*) of the SGX Mainboard Rules and Practice Note 7E (*General Meetings*) of the SGX Catalist Rules (collectively, "**Practice Notes**"). Key changes include:

(a) Provisions relating to the conduct of hybrid general meetings, such as:

- Setting out requirements for the notice of general meeting if virtual meeting technology will be utilised; and
- Setting out requirements for hybrid meetings, including requirements regarding the verification and authentication of the identities of attendees, and requirements for real-time voting; and

(b) Shareholders' rights to fully participate in such meetings.

The amendments to the Practice Notes apply to general meetings held on or after 1 July 2023, regardless of when the notice of general meeting is disseminated. Issuers who are conducting general meetings held on or before 30 June 2023 may continue to refer to the Checklist issued by the Accounting and Corporate Regulatory Authority (ACRA), the Monetary Authority of Singapore (MAS) and SGX RegCo, read together with the Regulator's Column issued by SGX RegCo.

For more information on the key points relating to the holding of virtual or hybrid meetings of the Bill and the Practice Notes, click here to read our Legal Update.

Corporate Governance

Revised Code of Corporate Governance Applies to Charities for Financial Year Starting from 1 January 2024

On 4 April 2023, the Charity Council ("**Council**") released the revised Code of Governance for Charities and Institutions of a Public Character ("**IPCs**") ("**revised Code**") with changes that will impose a higher standard of governance on charities in Singapore. The revisions were made with the aim of assuring Singapore donors that their donations are utilised in accordance with the objectives of charities. The revised Code will apply to the charities'

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financial year starting from 1 January 2024, on a "comply or explain" basis. By way of background, the Council has issued a public consultation (page 15) to seek feedback on the proposed simplified Code from 17 May 2022 to 16 June 2022. The revised Code has incorporated the feedback received pursuant to the public consultation, where appropriate.

The key changes introduced in the revised Code are as follows:

(a) **New Principle-Based Code with Guidelines**. The revised Code sets out six principles, accompanied with an explanation and guidelines. The guidelines encourage charities to take a more active role in reviewing and assessing whether their operations are in line with the overarching principle based on their organisation's own setting and operating context. This application of mind is a paradigm shift from a box-ticking exercise.

(b) **Maximum of ten-year Board Term Limits**. All IPCs and large non-IPC charities should set a maximum term limit of ten consecutive years for all Board members, with the option to re-elect Board members to serve subsequent terms. This guideline's intent is to encourage charities to practice succession planning at the board-level.

(c) **Environmental, Social and Governance ("ESG") Activities**. Charities are encouraged to: (i) conduct their activities in an environmentally-friendly and sustainable manner; (ii) maintain good relationships with their stakeholders; and (iii) maintain high standards of governance. The revised Code also recommends charities to communicate these ESG activities to their stakeholders.

(d) **Tiers of Charities Reduced from Four to Two**. Charities will be categorised into two tiers as follows, instead of four tiers:

- **Tier 1** consists of small and medium non-IPC charities with gross annual receipts or total expenditure (whichever is higher) from S$50,000 to less than S$10 million.
- **Tier 2** consists of all IPCs and large non-IPC charities, where large non-IPC charities refer to charities with gross annual receipts or total expenditure (whichever is higher) of S$10 million or more.

(e) **Revised Governance Evaluation Checklist Compliance and Scoring Matrix**. The revised Code will continue to operate on the principle of "comply or explain". Charities that have been taking steps to comply with the Code but have yet to achieve full compliance can select the "Partial Compliance" option in their Governance Evaluation Checklist ("**GEC**"), instead of the "Non-Compliance" option. When selecting the "Partial Compliance" option, charities will need to detail the measures put in place to partially comply with the Code. The GEC Scoring Matrix has also been included to help charities understand their scores against the governance standards easily. This revision will enhance the charity sector's level of transparency and encourage better disclosure practices.

Among other things, the following new requirements will apply to the Tier 2 charities:

(a) In addition to the current prescribed internal policies, Tier 2 charities should also set the following internal policies and review them on a regular basis:

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- Anti-money laundering and countering the financing of terrorism (AML/CFT);
- Information technology (IT) including data privacy management and cybersecurity; and
- Data protection.

(b) Tier 2 charities should also implement a media communication policy to help the Board and Management build positive relationships with the media and the public.

Commercial Litigation Practice Partner, Gregory Vijayendran, SC, is a member of the Charity Council. Among the key objectives of the Council is to promote good governance standards and best practices and to enhance public confidence in the charity sector.

Click on the following links for more information (available on the Charity Portal at www.charities.gov.sg):

- Ministry of Culture, Community and Youth Media Release titled "Code of Governance for Charities Revised to Set Board Term Limits and Strengthen Disclosure Practices" (including Annex A on Six Principles, Annex B on Revised Tiers of Charities, Annex C on Summary of Feedback and Response to the Public Consultation, and Annex D on the Code of Governance)
- Code of Governance for Charities and IPCs (April 2023)
- Slides from "In Conversation with Commissioner of Charities & Charity Council 2023" held on 4 April 2023

Corporate Real Estate

Government Increases Additional Buyer's Stamp Duty Rates to Promote a Sustainable Property Market

On 26 April 2023, the Ministry of Finance, Ministry of National Development, and Monetary Authority of Singapore jointly announced in a press release the increase in Additional Buyer's Stamp Duty ("**ABSD**") rates to "*promote a sustainable property market*". The new measures have since taken effect from (and including) 27 April 2023.

The press release (available here) noted that "*the implementation of the property market measures in December 2021 and September 2022 have had a moderating effect*". However, property prices have showed "*renewed signs of acceleration amid resilient demand*" in 1Q 2023. The press release also notes the "*renewed interest from local and foreign investors in our residential property market*" and concludes that "*if left unchecked, prices could run ahead of economic fundamentals, with the risk of a sustained increase in prices relative to incomes*". The Government is raising the ABSD rates to "*pre-emptively manage investment demand*" and "*prioritise housing for owner-occupation*".

The new rates for Additional Buyers' Stamp Duty ("**ABSD**") are set out in the table below:

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Profile of Buyer		ABSD rates from 16 December 2021 to 26 April 2023	ABSD rates on or after 27 April 2023
Singapore Citizens	Buying 1st residential property	Not applicable	Not applicable (No change)
	Buying 2nd residential property	17%	**20%**
	Buying 3rd and subsequent residential property	25%	**30%**
Singapore Permanent Residents	Buying 1st residential property	5%	5% (No change)
	Buying 2nd residential property	25%	**30%**
	Buying 3rd and subsequent residential property	30%	**35%**
Foreigners buying any residential property		30%	**60%**
Entities buying any residential property		35%	**65%**
Housing developers buying any residential property		35% (Developers may apply for remission of this ABSD, subject to conditions) Additional upfront non-remittable 5% ABSD for housing developers	35% (Developers may apply for remission of this ABSD, subject to conditions) Additional upfront non-remittable 5% ABSD for housing developers (No change)
Trustees buying any residential property		35% (can be refunded if all conditions for remission are met)	**65%** (can be refunded if all conditions for remission are met)

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

Dispute Resolution

Family Justice Reform Bill Passed in Parliament to Strengthen Family Therapeutic Justice

On 20 April 2023, the Family Justice Reform Bill ("**Bill**") was tabled for First Reading in Parliament to amend various pieces of legislation such as the Family Justice Act ("**FJA**"), the Women's Charter, and the Guardianship of Infants Act. The reforms introduced in the Bill are part of the ongoing efforts by the Ministry of Law ("**MinLaw**"), Ministry of Social and Family Development (MSF) and Family Justice Courts ("**FJC**") to strengthen therapeutic justice elements in the family justice system in Singapore. The Bill has since been passed on 8 May 2023.

Simplifying Family Proceedings and Procedure in FJC

The Bill amends primary legislation to support the upcoming revamp of the Family Justice Rules, which will simplify the rules of family proceedings. It also implements the remaining recommendations by the Committee to Review and Enhance Reforms in the Family Justice System ("**Committee**"). The recommendations seek to reduce acrimony in family proceedings and ensure fairness in the resolution of cases without undue delay, complexity and cost. On this front, the Bill amends the relevant law in three key ways:

(a) **Efficiency in court proceedings**. Unnecessary applications result in, among other things, protracted proceedings and acrimonious relations. The Committee's recommendation was for the concerned party to seek the court's permission before filing further applications, in appropriate cases. To implement this recommendation, the Bill will empower the court to, among other things, disallow the filing of any further application or document in support of an application without its consent when such filing is likely to (i) obstruct the resolution or disposal of the matter; or (ii) have an adverse effect on a child's welfare.

(b) **Clarity in judge-led approach in family proceedings**. Introduced in 2014, the judge-led approach has contributed to the just, expeditious, and economical disposal of proceedings. The Committee's recommendation was to provide clarity on how the judge-led approach can be applied in family proceedings. To deal with this, several provisions have been included in the Bill relating to the judge-led approach, such as empowering judges to make orders of a substantive nature on their own accord so as to address the immediate needs of the family, where necessary.

(c) **Simplified court terminology**. The Bill will simplify the terms used in family proceedings to make it easier for the laypersons to understand the proceedings (e.g. use "originating application" instead of "writ", and "applicant" instead of "plaintiff").

Facilitating More Sustainable Maintenance and Outcomes

Several issues have been raised in relation to the current maintenance enforcement process. Among others, parties may find it time-consuming and resource-intensive to attend hearings. Moreover, relevant information for maintenance enforcement such as the parties' assets and means may not be readily available. As this information is crucial in determining whether a respondent cannot pay or merely refuses to pay, maintenance enforcement

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becomes challenging. Finally, compliance with maintenance orders continues to be an issue.

To address these, the Bill seeks to establish a new Maintenance Enforcement Process (MEP) with the following key features:

(a) **Conciliation and access to information on parties' assets and means**. The current mediation process will be replaced by a conciliation process to be undertaken by Maintenance Enforcement Officers ("**MEOs**") who are empowered to (i) obtain information on parties' assets and means directly from stipulated entities (i.e. Government agencies, banks and Central Depository (Pte) Ltd.); and (ii) provide such information to the court.

With the information obtained, MEOs and the court can more accurately determine the parties' financial circumstances and distinguish between respondents who *cannot pay* maintenance and those who *refuse to pay*. Moreover, MEOs will be in a better position to (i) assist parties to reach an amicable settlement through the conciliation process; and (ii) refer suitable parties for financial assistance.

(b) **Other changes to facilitate more suitable maintenance outcomes**. The Bill also introduces measures to facilitate more suitable maintenance outcomes. In situations where a maintenance order is breached and the parties do not reach a settlement, the court must make a Show-Payment Order, and specify a term of imprisonment that the respondent will be liable for non-compliance with the Show-Payment Order, except in special circumstances.

Click on the following link for more information:

- MinLaw Press Release titled "Family Justice Reform Bill To Strengthen Family Therapeutic Justice" (available on the MinLaw website at www.minlaw.gov.sg)

Rajah & Tann is fully committed to using the therapeutic justice lens in helping families resolve their issues. Our Partner from the Commercial Litigation Practice, Kee Lay Lian, is the Co-Chairperson of the Family Law Practice Committee and also a member in the working group for the Family Therapeutic Justice Certification programme organised by the Singapore Academy of Law (SAL). Partner Gregory Vijayendran, SC was an Advisor to that working group.

Financial Institutions

Implementation of First Phase of Financial Services and Markets Act 2022 Relating to Supervisory and Regulatory Powers of MAS over FIs Commenced on 28 April 2023

The Financial Services and Markets Act ("**FSMA**") was passed in Parliament on 5 April 2022. For more information, click here to read our Legal Update covering the key areas of the Financial Services and Markets Bill, titled "Singapore Parliament Passes Bill to Regulate Certain Digital Token Service Providers, Harmonise and Enhance MAS Regulatory Power over FIs".

The FSMA is an omnibus Act for the sector-wide regulation of financial services and markets that applies to financial institutions ("**FIs**"). The FSMA

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consolidates the provisions and powers that relate to the Monetary Authority of Singapore's ("**MAS**") regulatory oversight of different FIs into a single Act.

On 27 April 2023, MAS announced that the FSMA will be implemented in phases. The first phase commenced on 28 April 2023. The remaining phases are targeted to be implemented between the second half of 2023 and 2024.

The first phase relates to the porting of the following supervisory and regulatory powers of MAS over FIs, which were provided under the Monetary Authority of Singapore Act 1970, to the FSMA:

(a) General powers over FIs, including inspection powers, offences and other miscellaneous provisions (Parts 2, 10, 11 and 12 of the FSMA). Note that section 183, recovery of fees, expenses etc, within Part 12 of the FSMA will be implemented in a latter phase.

(b) Anti-Money Laundering/Countering the Financing of Terrorism framework (Part 4 of the FSMA).

(c) Financial Dispute Resolution Schemes framework (Part 6 of the FSMA). Part 6 relates to the dispute resolution schemes approved by MAS under section 31(1) of the FSMA for the resolution of disputes arising from or relating to the provision of financial services by FIs.

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

- MAS Announcement titled "Financial Services and Markets Act 2022"
- Explanatory Brief for Financial Services and Markets Bill 2022
- Second Reading Speech by Mr Alvin Tan, Minister of State, Ministry of Culture, Community and Youth and Ministry of Trade and Industry on the Financial Services and Markets Bill
- Consultation Paper titled "Consultation Paper on a New Omnibus Act for the Financial Sector"
- Response to Feedback Received on the Consultation Paper on a New Omnibus Act for the Financial Sector

Proposals for Tighter Controls on Prospecting and Marketing of Financial Products in Singapore

To better protect retail investors in Singapore against inappropriate prospecting and marketing activities and tactics engaged by some financial institutions ("**FIs**") and their representatives, the Monetary Authority of Singapore ("**MAS**") issued two consultation papers below. Comments on the consultation papers must be submitted to MAS by **30 June 2023**.

(a) Consultation Paper on Enhancing Safeguards for Proper Conduct of Prospecting Activities at Public Places and Telemarketing ("**PPA Consultation Paper**") that focuses on safeguards for prospecting and marketing activities by physical means and telemarketing. Key proposals include:

- **New MAS Notice to set out legally binding requirements for prospecting and marketing of investment products and long-term accident and health policies ("LT A&H policies").** Currently, the Guidelines on Standards of Conduct for Marketing and Distribution Activities ("**Guidelines**") set out the best practice

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standards which MAS expects the FIs to observe to ensure that prospecting activities at public places ("**PPAs**") are conducted in a responsible and professional manner. MAS proposes to set out the existing safeguards in the Guidelines and the measures proposed in the PPA Consultation Paper in a new MAS Notice which will apply to an FI and its representatives when they are conducting PPAs in respect of: (i) investment products; and (ii) LT A&H polices. The Guidelines (and the proposed measures in the PPA Consultation Paper) will continue to be relevant to the FIs and their representatives when they are conducting PPAs for other financial products.

- **Proposed new measures FIs and representatives must observe when conducting PPAs.**

  (i) Clear and upfront disclosure of intention to customers and obtaining their consent before commencing prospecting activity;
  (ii) New ex-ante measures to give customers adequate time to consider purchase decisions;
  (iii) Prohibition against the use of gifts or mention of gift offers to entice a customer;
  (iv) Conduct PPAs in proper and conducive settings;
  (v) Conduct PPAs in a responsible and professional manner;
  (vi) Approval of use of promoters by FIs; and
  (vii) Continued prohibition against street canvassing and door-to-door prospecting.

  MAS also proposes to apply the above proposed measures (i) and (iii) to telemarketing of financial products and services.

- **Practice of offering gifts**. MAS proposes various measures to mitigate the risks of a customer being unduly influenced by the gifts offered by an FI to purchase a financial product that he/she does not need, or make larger purchases than he/she actually needs.

- **Implementation timeline.** MAS proposes to provide a transition period of six to nine months for FIs to comply with the new MAS Notice and revised Guidelines.

(b) Consultation Paper on Enhancing Safeguards for Proper Conduct of Digital Prospecting and Marketing Activities that focuses on safeguards for digital prospecting and marketing activities. Currently, advertisements of financial products and services are governed by the requirements prescribed under the regulations issued under the Financial Advisers Act 2001 and the Securities and Futures Act 2001 ("**Product Advertisement Regulations**"). Key proposals include:

- **New Guidelines on Standards of Conduct for Digital Prospecting and Marketing Activities ("Proposed Guidelines")** setting out best practice standards for FIs and their representatives in conducting digital prospecting and marketing activities, that will supplement the requirements in the Product Advertisement Regulations.

- **Proposed new requirements in the Product Advertisement Regulations and the relevant MAS Notices** to address risks

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posed by misleading non-product advertisement, anonymous advertisements and digital lead generation activities.

- **Implementation timeline.** MAS proposes to provide a transition period of six to nine months for FIs to comply with the Proposed Guidelines and new proposed requirements.

For more information, please refer to our Legal Update here.

MAS Issues Information Paper on Corporate Finance Thematic Inspection: Good Practices and Key Findings

On 17 April 2023, the Monetary Authority of Singapore ("**MAS**") published an information paper titled "Corporate Finance Thematic Inspection: Good Practices and Key Findings" ("**Information Paper**"). The Information Paper sets out MAS' supervisory expectations for financial institutions ("**FIs**") carrying out corporate finance ("**CF**") advisory activities for initial public offerings ("**IPOs**").

By way of background, between June 2018 to September 2021, MAS conducted thematic inspections of eight Issue Managers ("**IMs**"), which included banks and holders of a capital markets services licence to carry out CF advisory activities, that focused on their controls, policies and procedures ("**P&P**") relating to the due diligence process for IPOs. Where such IMs were also acting as placement agents, MAS also covered their placement activities. The Information Paper sets out the good practices and weaknesses observed, and MAS' expectations from the inspections. MAS expects all IMs to incorporate these expectations, and where appropriate, the good practices into their conduct of CF advisory and placement activities. MAS also expects them to periodically review their internal controls and P&Ps and strengthen their management oversight and control over such activities.

The areas covered are as follows:

(a) **MAS' Expectations of IMs' Due Diligence Process**. When conducting due diligence on issuers, IMs should:

- have a critical and questioning mind and not overly rely on representations made by issuers, particularly when encountering unusual or unfamiliar circumstances;
- be alert to information that contradicts or brings into question the reliability of any other statements, representations and information obtained during the due diligence process;
- perform checks to verify material information or representations, such as through interviews, on-site visits and background checks on the issuer, its group of companies, directors, management and controlling shareholders. Independent verification checks should be made where potential red flags are identified; and
- form a holistic understanding of the issuer's business and risk profile, particularly if the issuer is operating in unfamiliar markets, or has significant operations in higher-risk jurisdictions.

Factors that determine the extent and depth of the due diligence to be undertaken by IMs include, but are not limited to, the following:

- familiarity with the issuer's business, the jurisdictions where it operates and the regulatory environment;

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- character and integrity of directors, management and controlling shareholders;
- complexity of the issuer group (i.e. group structure and ownership structure);
- sustainability of the issuer's business model;
- risks to the issuer's business and potential conflicts of interest;
- risk mitigation strategies; and
- past performance and future trends.

IMs should also take guidance from The Association of Banks in Singapore Listings Due Diligence Guidelines.

(b) **Governance, Compliance and Audit**. IMs should exercise adequate management oversight of its CF advisory activities, including establishing robust P&Ps and ensuring that there is proper supervision of its representatives carrying out CF advisory activities. Effective compliance and internal audit arrangements should also be put in place to support management in their oversight of CF advisory activities.

(c) **Due Diligence on Issuers**. IMs should perform their role with rigour, due care and appropriate professional scepticism in order to assess the suitability of potential issuers for listing in Singapore. IMs should also consider the MAS' expectations on the conduct of IMs' due diligence set out above.

(d) **Experts and Advisers**. Experts and advisers (i.e. third parties engaged to assist in the due diligence process, such as accountants, auditors, legal advisers, valuers and private investigators) play an important part in the due diligence process. IMs should take steps to satisfy themselves that they can rely on the findings and opinions of such third parties, such as assessing that these parties are suitably qualified and independent, and that the scope of services provided by these parties is appropriate for the purpose of the IPO transaction.

(e) **Record Keeping**. Sufficient documentation of due diligence work performed by the IM serves to demonstrate that the IM has discharged its duties and obligations under the relevant rules and regulations.

Click on the following link for more information:

- Information Paper on Corporate Finance Thematic Inspection: Good Practices and Key Findings (available on the MAS website at www.mas.gov.sg)

Apart from the Information Paper, FIs carrying out CF activities should also note the requirements under Notice SFA 04-N21 on "Business Conduct Requirements for Corporate Finance Advisers" ("**Notice**") issued by MAS on 23 February 2023, which applies to all engagements to advise on corporate finance entered into on or after 1 October 2023 by, among others, a holder of a capital markets services licence to advise on CF ("**CF Adviser**") and its representatives in respect of advising on CF.

The Notice requires CF Advisers to manage conflicts of interest and ensure proper governance and supervision, and imposes detailed requirements on the conduct of due diligence by CF Advisers acting in the capacity of an IM, sponsor or financial adviser (as the case may be) for IPOs and reverse takeovers ("**RTOs**"), including business combinations. MAS encourages CF

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Advisers to start applying the requirements set out in the Notice in the interim, particularly when advising on IPOs and RTOs. For a summary of the salient requirements in the Notice, please click here to read our Legal Update.

Gaming

Proposed Automatic Class Licence for Mixed Distributors of Video Games and Films

The Infocomm Media Development Authority ("**IMDA**") has proposed an automatic class licence for mixed distributors of video games and non-age restricted films. The Notice on Proposed Amendment to the Video Games Class Licence was issued on 11 April 2023, with representations from interested persons on the draft amendment received until 12 May 2023.

Since 2019, distributors of video games have been regulated under an automatic class licence regime which allows distributors to distribute or publicly exhibit appropriate or exempt video games. From July 2021, IMDA also introduced an automatic class licence regime to regulate distributors of non-age restricted films.

With the distributors of video games and distributors of non-age restricted films regulated separately under their respective class licences, IMDA proposes to also move persons who distribute *both* video games and non-age restricted films from individual licence to automatic class licence. This will be done through a variation of the Films (Class Licence for Video Games Distribution) Order 2019 ("**Video Games Class Licence**") to allow for the distribution of non-age restricted films.

IMDA has stated that there are no changes to the other conditions of Video Games Class Licence. The requirements for classification, and affixing of classification labels and consumer advice (where applicable) continue to apply. There is no licence fee or security deposit imposed on class licensees.

Click on the following link for more information:

- Notice on Proposed Amendment to the Video Games Class Licence (available on the IMDA website at www.imda.gov.sg)

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Mergers & Acquisitions

Changes to Criteria for Computing 90% Threshold for Compulsory Acquisition Passed in Parliament

On 9 May 2023, the Companies, Business Trusts and Other Bodies (Miscellaneous Amendments) Bill 2023 ("**Bill**") was passed in Parliament, having been introduced on 18 April 2023. Among other key changes, the Bill amends the exclusion criteria for the computation of the 90% threshold requirement for compulsory acquisition under section 215 of the Companies Act 1967 ("**CA**"). For more information, click here to read our Legal Update titled "Upcoming Changes to Criteria for Computing 90% Threshold for Compulsory Acquisition".

The compulsory acquisition provision under section 215 of the CA allows an acquiror ("**acquiror**") in a takeover offer who has acquired a very substantial number of shares in the target company ("**target company**") to compulsorily

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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**").

Under the amended section 215 of the CA, the shares held or acquired by the following persons will also be excluded 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: (i) 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 (ii) 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.

At present, there is no indication as to when the amended section 215 of the CA will take effect.

Click on the following links for more information:

- Second Reading Speech by Second Minister for Finance, Ms Indranee Rajah on the Companies, Business Trusts and Other Bodies (Miscellaneous Amendments) Bill (available on the Ministry of Finance website at www.mof.gov.sg)
- Companies, Business Trusts and Other Bodies (Miscellaneous Amendments) Bill 2023 (available on the Parliament of Singapore website at www.parliament.gov.sg)

Sustainability

ASEAN Taxonomy V2: Enabling a Just Transition Towards Sustainable Finance Adoption by ASEAN

The ASEAN Taxonomy for Sustainable Finance Version 2 ("**ASEAN Taxonomy V2**") was released on 27 March 2023 by the ASEAN Taxonomy Board. The release follows extensive stakeholder consultations upon the earlier released ASEAN Taxonomy for Sustainable Finance Version 1. A crucial addition to the ASEAN Taxonomy V2 is the inclusion of social aspects as the third essential criteria, adding a holistic dimension to the taxonomy

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principles. Other additions include the completion of the Foundation Framework, building upon the broad framework laid out previously, and also finalisation of the details in the initial Plus Standard.

The ASEAN Taxonomy seeks to enable a just transition towards sustainable finance adoption by ASEAN Member States ("**AMS**") by providing a common and credible framework for AMS and their stakeholders to assess and classify sustainable economic activities. Having an ASEAN Taxonomy will attract more capital flow into the region to help AMS and their stakeholders to transition to a low carbon economy and achieve AMS' climate change goals.

While designed to be interoperable with other international taxonomies, there are unique aspects of the ASEAN Taxonomy V2, such as the following:

(a) The adoption of a multi-tiered approach with two main elements:

- A Foundation Framework that uses principles-based guiding questions and a decision tree to assess and classify sustainable activities; and
- A Plus Standard which is developed as an advanced form of assessment approach that uses both threshold-based (quantitative) and process-based or practice-based (qualitative) technical screening criteria to assess and classify sustainable activities.

(b) A global first for a regional taxonomy, the ASEAN Taxonomy V2 introduces coal phase-out as an activity eligible for classification as a sustainable activity. The novel inclusion of coal phase-out provides an avenue to expedite energy transition efforts within ASEAN.

The ASEAN Taxonomy also details how it can be applied by different users. For example:

(a) AMS governments and regulators can be guided by the ASEAN Taxonomy when setting sustainability reporting requirements.
(b) A company or banking institution may apply the ASEAN Taxonomy in issuing corporate "green" bonds and reporting on bond sustainability credentials.
(c) Asset managers may use the ASEAN Taxonomy as a reference for green bond credentials to guide their investment decisions.
(d) Rating agencies may apply the ASEAN Taxonomy to derive environmental, social and governance (ESG) ratings of bonds and the issuers.

The ASEAN Taxonomy strives to be an interoperable and inclusive guide that can be utilised by all AMS as they move forward in their sustainability journey. Following the release of the ASEAN Taxonomy V2, the ASEAN Taxonomy Board ("**ATB**") will engage in further targeted consultations with key stakeholders. The ATB aims to release further updates to the ASEAN Taxonomy in early 2024 and 2025.

For more information, click here to read our Legal Update which provides a brief overview of the ASEAN Taxonomy V2 and what it means for AMS and businesses in the region.

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Green Finance Taskforce Established to Strengthen Collaboration in Green and Transition Finance between China and Singapore

On 21 April 2023, the Monetary Authority of Singapore ("**MAS**") and the People's Bank of China ("**PBC**") announced the establishment of the China-Singapore Green Finance Taskforce ("**GFTF**").

The GFTF is co-chaired by MAS' Assistant Managing Director (Development and International) and Chief Sustainability Officer, Ms Gillian Tan, and Chair of the China Green Finance Committee, Dr Ma Jun. The members of GFTF comprises senior representatives and sustainable finance experts from Singapore and China's financial institutions, and green FinTech companies. See the Annex below for the list of GFTF members.

To better meet the region's needs as it transitions to a low carbon future, the GFTF seeks to:

(a) provide a platform for knowledge exchange;

(b) enhance bilateral cooperation between China and Singapore in green and transition finance; and

(c) facilitate greater public-private sector collaboration.

At the inaugural meeting held in Chongqing on 21 April 2023, the GFTF discussed joint initiatives that aim to scale up green and transition financing flows between China, Singapore, and the region.

Initially, the GFTF will establish three workstreams focusing on the following priority areas:

(a) **Taxonomies and Definitions**. Under the International Platform on Sustainable Finance ("**IPSF**"), MAS and PBC will collaborate to:

- achieve interoperability between the China and Singapore taxonomies;
- enhance the use of the IPSF's Common Ground Taxonomy. The IPSF's Common Ground Taxonomy provides an in-depth comparison of the existing taxonomies for environmentally sustainable investments and puts forward areas of commonality and differences between the European Union and China's green taxonomies; and
- deepen understanding of transition activities defined by China and Singapore.

(b) **Products and Instruments.** China International Capital Corporation and the Singapore Exchange will establish a workstream to strengthen sustainability bond market connectivity between China and Singapore. This includes the issuances of, and mutual access to, green and transition bond products in China and Singapore.

(c) **Technology.** A workstream will be established by Beijing Green Exchange and Metaverse Green Exchange that leverages technology to facilitate sustainable finance adoption. This will include the piloting of digital green bonds with carbon credits.

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

- MAS Media Release titled "Singapore and China Establish Green Finance Taskforce to Strengthen Collaboration in Green and Transition Finance"
- Annex – List of GFTF Members as at 21 April 2023

MAS Launches Finance for Net Zero Action Plan to Mobilise Financing to Catalyse Net Zero Transition and Decarbonisation Activities

On 20 April 2023, Mr Lawrence Wong, Deputy Prime Minister and Minister for Finance, and Monetary Authority of Singapore ("**MAS**") Deputy Chairman, announced the launch of MAS' Finance for Net Zero ("**FiNZ**") Action Plan.

The FiNZ Action Plan expands the scope of MAS' Green Finance Action Plan, launched in 2019, to include transition finance, and sets out MAS' strategies to mobilise financing to catalyse Asia's net zero transition and decarbonisation activities in Singapore and the region. Transition finance refers to investment, lending, insurance and related services to progressively decarbonise areas such as buildings, power generation and transportation.

The FiNZ Action Plan seeks to achieve four strategic outcomes:

(a) **Data, Definitions and Disclosures.** To guide financial market participants' decision making, and safeguard against the risk of greenwashing, MAS will continue promoting consistent, comparable, and reliable climate data and disclosures. This will include the following:

- Working with the industry, MAS will co-create a code of conduct that will require environmental, social and governance (ESG) ratings and data product providers to disclose how they factor transition risks into their products. To gather wider feedback on this issue, a public consultation will be conducted in the second half of 2023.
- To catalyse cross-border green and transition finance flows, MAS will work with counterparts and stakeholders to enhance the interoperability of taxonomies across jurisdictions.
- MAS has been collaborating with the Singapore Exchange and other government agencies to create a roadmap for key financial institutions ("**FIs**") and listed companies to make International Sustainability Standards Board-aligned disclosures on a risk-proportionate basis. MAS will also partner with relevant bodies to build up companies' sustainability reporting capabilities.

(b) **Climate Resilient Financial Sector.** MAS will continue engaging with FIs to cultivate reliable environmental risk management practices and enhance climate scenario analysis and stress testing to identify climate-related financial risks.

(c) **Credible Transition Plans**. MAS will engage with international partners, such as the International Energy Agency, to support FIs' adoption of science-based transition plans and the development of credible regional

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sectoral decarbonisation pathways. FIs can reference these pathways when setting their emissions reduction targets, and when engaging with their clients on initiatives to decarbonise their businesses.

(d) **Green and Transition Solutions and Markets.** MAS will promote innovative and credible green and transition financing solutions and markets to support decarbonisation efforts and climate risk mitigation. This will include:

- Expansion of the scope of MAS' sustainable bond and loan grant schemes to include transition bonds and loans. Safeguards will be implemented to mitigate the risk of "transition-washing" and ensure alignment with internationally-recognised taxonomy and transition finance principles. Moreover, to promote transparency in the sustainable debt market, MAS will incentivise the early adoption of entity-level sustainability disclosure by issuers or borrowers. Thus, to qualify for the grants, the transition bonds and loans must be aligned with internationally-recognised taxonomy and transition finance principles and disclosure of an entity-level transition plan is required.

- Extension of the Insurance-Linked Securities Grant Scheme till the end of 2025 to support the continued growth of catastrophe bonds and additional climate risk financing instruments that are also forms of insurance-linked securities, such as sidecars and collateralised reinsurance arrangements.

- Continued scaling of blended finance, in partnership with the private sector and philanthropic foundations, to mobilise financing for the decarbonisation of carbon-intensive sectors, such as managed phase-out of coal-fired power plants. Additionally, to channel financing towards carbon abatement and removal projects in Asia, MAS will support the development of carbon services and carbon credit markets in Singapore.

To enable the above strategic outcomes, MAS will continue to grow and scale Green FinTech solutions and continue investing in the Singapore workforce to develop its skills and capabilities.

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

- MAS Media Release titled "MAS Launches Finance for Net Zero Action Plan"
- FiNZ Action Plan Infographic

Trade

Singapore Conducts World's First Live Electronic Transferable Record Cross-Border Trade

The digitalisation of trade has been the subject of increasing focus, with accelerating developments in both the technology and the legal framework required to support the necessary transformation. Countries are looking to digitalisation for the advantages it carries in terms of efficiency, security and cost savings. In this regard, Singapore has taken a position as a regional leader

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in trade digitalisation, with numerous programmes and initiatives directed at achieving effective implementation.

In line with this, the Infocomm Media Development Authority ("**IMDA**") has announced that it has successfully executed a live shipment from Singapore to Thailand during the first quarter of 2023. This fully paperless, live cross-border trade was conducted using an Electronic Transferable Record ("**ETR**"), that is functionally equivalent to a paper Bill of Lading using Singapore's TradeTrust framework.

IMDA has provided further details on the ETR cross-border trade it conducted with the participation of industry partners. ExxonMobil Asia Pacific Pte. Ltd. was the shipper, Bunkerchain was the digital platform provider, and VLK was the vessel owner. The process took place as follows:

(a) ExxonMobil Asia Pacific shipped liquid chemicals from Singapore to Thailand.

(b) VLK issued an electronic Bill of Lading ("**eBL**") using Bunkerchain, which is a TradeTrust-enabled digital platform.

(c) A Digital Passports for Ships was created on the eBL, ensuring that digital identity used in the signing was onboarded and verified.

(d) The eBL was surrendered on the TradeTrust Reference Implementation, demonstrating interoperability across different systems, and interoperability between digital and paper-based processes.

(e) VLK was supported by their Protection and Indemnity Club, on the basis that liabilities arising from the use of the eBL are equivalent to the liabilities under the use of a paper-based Bill of Lading.

(f) The eBL was legally supported solely by statutory law without the use of any contract law or rulebook, demonstrating that an eBL issued using the TradeTrust framework can be used in a jurisdiction that has not implemented the United Nations Commission on International Trade Law Model Law on Electronic Transferable Records (UNCITRAL MLETR), such as Thailand.

This is the world's first ETR cross-border trade, and demonstrates Singapore's championing of the pushing of boundaries of digitalisation for global trade. Parties involved in international trade should be aware of Singapore's growing capabilities in this regard, and the development of trade options that they may be able to take advantage of in the near future.

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

European Commission Amends Article 102 TFEU Enforcement Priorities

On 27 March 2023, the European Commission ("**EC**") published a Communication and Annex ("**Amending Communication**"), amending its 2008 Guidance on enforcement priorities concerning exclusionary abuses ("**Guidance on Enforcement Priorities**"). This came in conjunction with a Call for Evidence to seek feedback on the proposed introduction of Guidelines on exclusionary abuses of dominance ("**Proposed Guidelines**") by the EC. These

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Proposed Guidelines are slated to be released for public consultation by mid-2024 and the EC is seeking to adopt them by end 2025.

The Guidance on Enforcement Priorities was first adopted by the EC in 2008 to reflect enforcement priorities in applying Article 82 (now Article 102) of the Treaty on the Functioning of the European Union ("**TFEU**"). In the short term, the Amending Communication aims to reflect the EC's change in approach to pursuing Article 102 cases arising from various developments since its adoption. In the long term, the Call for Evidence is the first step in the introduction of formal Guidelines by the EC on Article 102 of the TFEU. Once these guidelines have been adopted (estimated by 2025), the Guidance on Enforcement Priorities will be withdrawn.

The Amending Communication makes several key changes to the Guidance on Enforcement Priorities including the following:

(a) definition of anti-competitive foreclosure;
(b) foreclosure of less efficient competitors;
(c) use of the as-efficient competitor test;
(d) outright and constructive refusals to supply conditions; and
(e) margin squeeze.

These amendments are likely to influence the approach that Singapore and other Southeast Asian regulators will take in assessing abuse of dominance cases. The present set of abuse of dominance guidelines in Singapore for example do not go into as much detail as the Guidance on Enforcement Priorities in analysis, and it is likely that regulators will be interested in the developing European Union practice to fill analytical gaps.

For a discussion of these changes and its implications, please refer to our Legal Update here.

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CaseBytes

Court Grants Extension of Moratoria and Sealing of Documents in Restructuring of Cryptocurrency Business

The law is constantly developing to fit the ever-changing world. Most recently, with the digitalisation of the commercial landscape and the proliferation of cryptocurrencies, non-fungible tokens (NFTs) and metaverse-related businesses, the courts have had to apply or adapt the law to deal with novel situations. This was the case in *Re Babel Holding Ltd and other matters* [2023] SGHC 98, where the Singapore High Court had to apply restructuring and insolvency law in the context of a cryptocurrency-related business.

The applicants were a group of companies in the cryptocurrency industry seeking to extend moratoria under section 64 of the Insolvency, Restructuring and Dissolution Act 2018 to facilitate the formulation of a restructuring plan, as well as to seal certain documents which contained the unredacted versions of lists of the applicants' creditors as well as letters of support in respect of the moratoria extension.

The Court allowed the sealing of the documents, highlighting the need to safeguard the commercially sensitive information at this point in the restructuring process. The Court also allowed the extension of the moratoria, finding that the applicants had met the statutory and common law requirements

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for such extension. In particular, the Court found that: (i) the applications were made *bona fide*; and (ii) there was a reasonable prospect of the intended scheme of arrangement working and being acceptable to the general run of creditors.

The decision demonstrates the application of Singapore's restructuring and insolvency framework to foreign companies and the Court's approach to the grant of moratoria and sealing orders in the particular circumstances of cryptocurrency and other digital businesses.

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

Who has the Standing to Requisition an EGM?

Section 176(1) of the Companies Act 1967 ("**CA**") provides that directors of a company must, on the requisition of members of the company holding not less than 10% of the total number of paid-up shares, immediately proceed to convene an extraordinary general meeting ("**EGM**") of the company. However, does "members" include beneficial shareholders of the company who hold their shares through nominees such as brokerage houses? Would such shareholders have the necessary standing to requisition an EGM? The High Court considered this issue in *Tanoto Sau Ian v USP Group Limited* [2023] SGHC 106, finding that such shareholders do not have the necessary standing.

In *Tanoto Sau Ian v USP Group Limited* [2023] SGHC 106, various shareholders who were the beneficial owners of approximately 11% of the total issued and paid-up ordinary shares of USP Group ("**Requisitionists**") sought to replace USP Group's existing board of directors by requisitioning for an EGM under section 176(1) of the CA ("**section 176(1)**"). Their shares were held in the name of various brokerage houses and they signed off the Requisition Notice in their own names, on behalf of the brokerage houses, for USP Group to convene an EGM. Crucially, however, only the names of the brokerage houses – not the names of the Requisitionists – appeared on USP Group's Register of Members.

USP Group filed OA 218, arguing that the Requisitionists are not "members" for the purposes of section 176(1) because their names did not appear on the Register of Members. In response, the Requisitionists argued, among others, that USP Group was estopped from taking the position that the Requisitionists were not members and/or that the Requisition Notice was invalid. According to the Requisitionists, USP Group's conduct since receiving the Requisition Notice had induced the Requisitionists to believe that USP Group had no objections to the Notice's validity or the Requisitionists' standing.

Were the Requisitionists members for the purposes of section 176(1)?

The Court answered this in the negative. In particular, the Court also considered section 81SJ read with section 81SF of the Securities and Futures Act 2001 and concluded that in respect of a public listed company whose shares may be held as book-entry securities through the Central Depository (Pte) Ltd ("**CDP**"), its members are those whose names appear as account holders or depository agents in a register maintained by CDP. Here, this was USP Group's Register of Members. Since the Requistionists' names were not on the Register of Members, they were therefore not members.

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The Court also found that the fact that the Requisitionists had submitted the Requisition Notice on behalf of the brokerage houses and with the relevant authority letters from the brokerage houses, did not enable the Requisitionists to be considered as "members". The Court also noted that nothing in USP Group's constitution permitted members (i.e. the brokerage houses) to nominate other persons to enjoy or exercise membership rights.

Was USP Group estopped from challenging the status of the Requisitionists as members?

The Court found that USP Group was not estopped from challenging the status of the Requisitionists as members. In coming to the aforesaid decision, the Court had to consider the issue of whether an estoppel can prevent the application of a statutory rule. To this end, the Court held that the issue depended on the content of the statutory provision concerned – was the statutory rule in question an "imperative" rule (i.e. a rule which is made for the benefit of someone other than the person against whom the estoppel is asserted), or was the rule a "non-imperative" rule (i.e. a rule of private law that is to be observed between individuals)? In the former case, an estoppel could not apply so as to "allow a state of affairs which the law has positively declared not to subsist", namely that the Requisitionists did not qualify as members for the purposes of section 176(1).

In this instance, the rule that only "members" could exercise the section 176(1) right was found to be an imperative rule. The restriction to "members" broadly affected the company and its shareholders as well, and was not merely for the benefit of the persons seeking to convene an EGM. As such, the Court took the view that however wrong USP Group's conduct was in leading the Requisitionists to believe that they had standing as "members", such conduct could never override the clear imperative rule prescribed by section 176(1).

Deals

S$300 Million Equity Fund Raising by Keppel Infrastructure Trust

Partners Raymond Tong and Jasselyn Seet, from the Capital Markets/Mergers & Acquisitions Practice, Yon See Ting and Looi Zhi Min, from Christopher & Lee Ong, and Dussadee Rattanopas ,from R&T Asia (Thailand), were involved in the approximately S$300 million equity fund raising undertaken by Keppel Infrastructure Trust for the partial repayment of two bridge facilities of up to S$590 million which were taken out to initially fund three investments and acquisitions in green infrastructure segments. The team acted for Citigroup Global Markets Singapore Pte. Ltd., DBS Bank Ltd., The Hongkong and Shanghai Banking Corporation Limited, Singapore Branch, Oversea-Chinese Banking Corporation Limited and United Overseas Bank Limited in relation to the transaction.

S$200 Million Food Logistics Facility by Commonwealth Capital and Kajima Corporation

Partners Benjamin Tay, Favian Tan and Loh Yong Hui from the Corporate Real Estate Practice, Mergers & Acquisitions Practice, and Construction & Projects Practice acted for Commonwealth Capital Pte. Ltd. in its joint venture with Japanese construction firm Kajima Corporation to develop and lease a S$200 million food logistics facility at 8 Jalan Besut, Singapore.

UOB's Investment in JTC's Punggol Digital District

Senior Partner Norman Ho from the Corporate Real Estate Practice acted for United Overseas Bank Limited ("**UOB**") as incoming lessees at JTC's Punggol Digital District ("**PDD**"), Singapore's first smart and sustainable business district. With this lease, UOB would be the first local bank to establish its presence at PDD, and is the largest commercial investor in the PDD to date. UOB plans to establish a 300,000 square feet centre by the end of 2026, which will house around 3,000 talents engaging in technology, innovation, and digital roles to further UOB's digital ambitions.

Authored Publications

Rajah & Tann Singapore Contributes Article for Singapore Economic Development Board: How Businesses can Unlock More Value from their Intangible Assets and Intellectual Property in Singapore

Sandy Foo, Head of Mergers & Acquisitions and Deputy Head of the Corporate & Transactional Group, and Rajesh Sreenivasan, Head of Technology, Media & Telecommunications, have contributed an article titled "How businesses can unlock more value from their intangible assets and intellectual property in Singapore" to the Singapore Economic Development Board's Business Insights platform.

The article highlights the importance of intangible assets for businesses and the challenges commonly faced in the valuation and reporting of such assets, particularly in today's digital economy. In light of this, the Accounting and Corporate Regulatory Authority and the Intellectual Property Office of Singapore have proposed an Intangibles Disclosure Framework ("**Framework**") to help businesses disclose and communicate their intangibles. The article goes on to explore the key principles of the proposed Framework and how the Framework may benefit businesses with operations in the Southeast Asian region or seeking to develop a regional presence.

To read the full article, please click here.

We previously issued a Legal Update that discusses the key features of the proposed Framework. To read the Legal Update, please click here.

Events

Interpreting the Rules of Singapore International Arbitration Centre

On 28 April 2023, Partners Tng Sheng Rong and Ching Meng Hang from the Commercial Litigation Practice spoke at a webinar titled "Interpreting the Rules of Singapore International Arbitration Centre". Together with two other speakers, Sheng Rong and Meng Hang covered topics such as comparison of the Singapore International Arbitration Centre ("**SIAC**") Rules with other arbitration rules, arbitration and evidence procedure, and arbitral awards. They also shared valuable insights and expert knowledge on arbitration practices in Singapore from a user's perspective.

The webinar was jointly organised by Law Purpose and Rajah & Tann Asia.

Keeping Pulse on Sustainability Developments and What it Means to You

On 25 April 2023, Rajah & Tann organised its monthly "LearningBytes" lunchtime series, with this month's seminar titled "Keeping Pulse on Sustainability Developments and What it Means to You". Lee Weilin, Head of the Sustainability Practice, and Partners Cynthia Wu, Alvin Tan, and Priscilla Soh covered the following topics:

- Current climate change issues and developments;
- Overcoming challenges in Sustainability Reporting;
- Sustainability developments from a cross-border trade perspective; and
- Minimising and managing the legal risks arising from environmental, social and governance (ESG) issues.

Construction Disputes in Singapore: Typical Causes of Disputes, Adjudication, Arbitration, etc.

On 21 April 2023, Rajah & Tann's Japan Desk organised a seminar on resolution of construction disputes in Singapore for Japanese, titled "Construction Disputes in Singapore: Typical Causes of Disputes, Adjudication, Arbitration, etc.".

As the COVID-19 crisis ends and infrastructure projects resume, the number of conflicts relating to construction projects has increased. The alternative modes of dispute resolution including adjudication and arbitration have grown in importance as the legal recourses to resolve construction disputes. The speakers at the seminar discussed, among other things, the common causes of construction disputes involving Japanese companies, and adjudication and arbitration as the recourses available to resolve the disputes. The speakers discussed how they can use these forms of dispute resolution strategically to achieve the outcome that the parties desire.

Sim Chee Siong, Head of the Construction & Projects Practice, and Shuhei Otsuka, Head of the Japan Business Unit of Rajah & Tann Asia, were the speakers.

Preparing for the Next Generation of Cybersecurity Threats Facing Businesses, In Conversation with Admiral Mike Rogers

On 18 April 2023, Steve Tan, Deputy Head of the Technology, Media & Telecommunications Practice and Director of Rajah & Tann Cybersecurity, was one of the speakers at an event titled "Preparing for the Next Generation of Cybersecurity Threats Facing Businesses, In Conversation with Admiral Mike Rogers". Brunswick's Senior Advisor Admiral Mike Rogers is a four-star admiral whose 37-year career in the U.S. Navy culminated as Commander of the US Cyber Security Command and Director of the National Security Agency.

The cybersecurity landscape is evolving rapidly, accelerated by ongoing digital transformations and remote work. Ransomware is becoming more sophisticated, and state-sponsored attacks are confronting businesses with a new and growing range of challenges. Topics discussed at the event included (i) the next generation of cybersecurity threats and preparing for these; (ii) the implications of rising geopolitical tensions in the cybersecurity domain; (iii) the legal and communications considerations that corporate leaders should be reflecting on to mitigate the risks of cyberattacks; and (iv) some practical considerations in managing data breaches/cyberattacks.

The event was jointly sponsored by Brunswick Group and Rajah & Tann Singapore.

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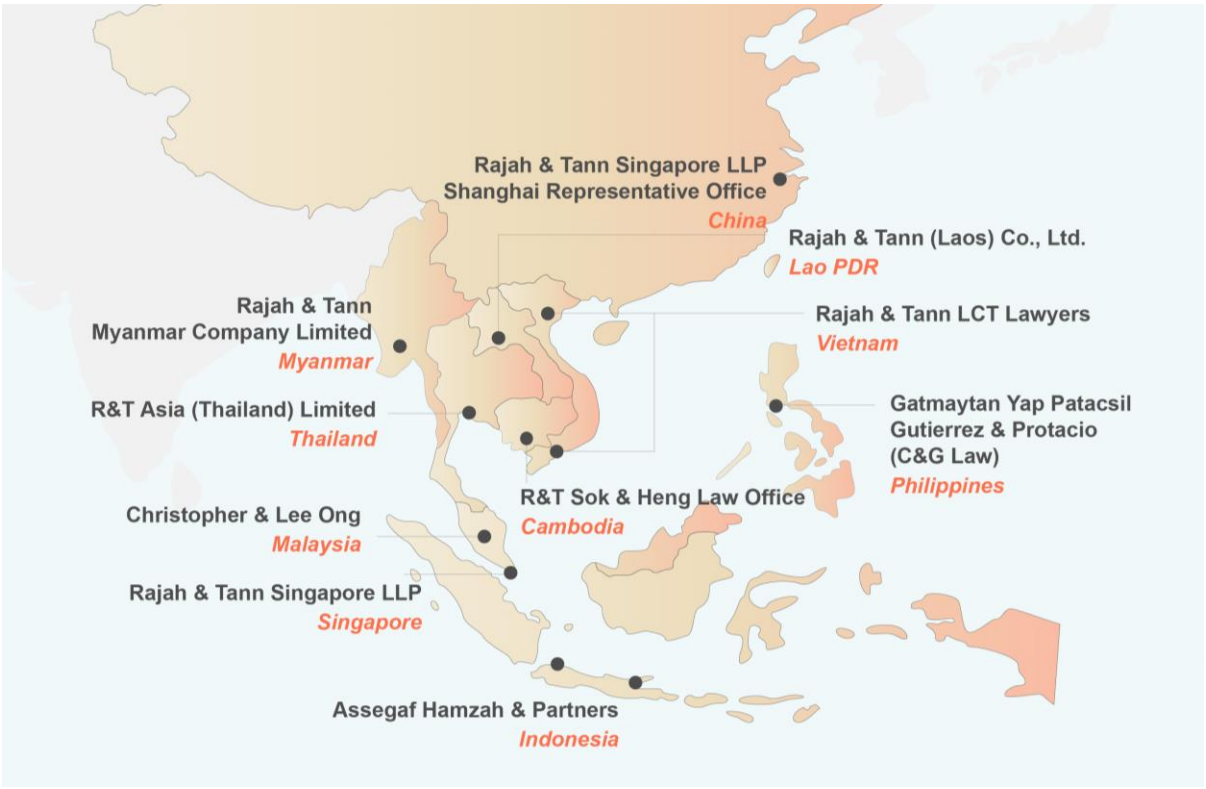

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