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Banking & Finance

MAS to Eliminate Corporate Cheques by end-2025 and Banks to Charge for Singapore Dollar Cheques by 1 November 2023

On 28 July 2023, the Monetary Authority of Singapore ("**MAS**") announced that all corporate cheques will be eliminated by end-2025 while individuals will still be able to use cheques for a period after 2025. The banks will also commence charging for Singapore Dollar ("**SGD**")-denominated cheques by 1 November 2023 to recover the cheque processing costs. These new requirements follow MAS' public consultation, from 2 November 2022 to 13 December 2022, on the termination of the cheque truncation system ("**CTS**") and the elimination of corporate cheques by 2025. A summary of the public consultation is available in our November 2022 issue of Newsbytes (Page 7).

To transit cheque users to e-payment solutions, MAS is working closely with The Association of Banks in Singapore ("**ABS**"), the financial industry and government agencies on a series of initiatives and this includes a specific e-payment solution that can serve as an alternative for post-dated cheques. MAS has also published its response to the feedback received on the public consultation and will work with ABS on the key measures to facilitate the transition to zero corporate cheques by end-2025.

The key measures, among others, are set below:

(a) ABS will work with the Domestic Systematically Important Banks ("**D-SIBs**") to build an electronic deferred payment ("**EDP**") solution to allow users to make a deferred payment or issue a cashiers' order, without the need for cheques. The EDP solution will leverage on existing payments solutions like PayNow and GIRO and be ready by 2025.
(b) Banks will cease the issuance of new cheque books to all corporates in 2025, after the launch of the EDP solution.
(c) The D-SIBs in Singapore will commence charges for SGD-denominated cheques issued by both corporates and individuals by 1 November 2023, while other banks will do so by 1 July 2024. The charges for SGD-denominated cheques deposited by corporates and individuals will be implemented in phases and will vary among banks.

MAS is further studying the use of cheques by individuals and will develop appropriate initiatives to encourage these users to switch from cheques to other payment methods. MAS will also conduct a second public consultation next year to set out the initiatives and timeline to eliminate individual cheques and terminate the CTS.

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

- MAS Media Release titled "MAS Announces end-2025 Timeline to Eliminate Corporate Cheques"
- Response to Feedback Received - Roadmap to Terminate the SGD Cheque Truncation System – Eliminating Corporate Cheques by 2025

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Capital Markets

Proposed Mandatory Climate Reporting for Listed Issuers and Large Non-Listed Companies

From 6 July 2023 to 30 September 2023, the Accounting and Corporate Regulatory Authority ("**ACRA**") and Singapore Exchange Regulation ("**SGX RegCo**") are seeking views on recommendations and proposals in the Consultation Paper containing the Sustainability Reporting Advisory Committee's ("**SRAC**") recommendations to implement mandatory climate reporting requirements in a tiered and phased manner, beginning with issuers of equity securities on the Singapore Exchange Securities Trading Limited ("**Listed Issuers**"), and extending these requirements to large non-listed companies ("**NLCos**") above a certain annual revenue threshold via the Companies Act 1967, among other recommendations and proposals.

Key Recommendations and Proposals

(a) **Mandatory climate reporting disclosure ("CRD") requirements**. From financial year ("**FY**") commencing on or after 1 January 2025, all Listed Issuers must report International Sustainability Standards Board ("**ISSB**") -aligned CRDs. SGX RegCo aims to consult on any amendments to the SGX Listing Rules (Mainboard) and SGX Listing Rules (Catalist) on sustainability reporting by the end of 2023. NLCos limited by shares with an annual revenue of at least S$1 billion ("**Large NLCos**") will be subject to mandatory CRD reporting requirements from FY 2027. In 2027, SRAC recommends a review to decide whether to mandate CRD reporting requirements for NLCos limited by shares with an annual revenue of at least S$100 million to less than S$1 billion, by around FY 2030.

(b) **ISSB Standards as baseline requirements subject to reliefs**. Listed Issuers and Large NLCos will, subject to reliefs, need to report CRD using the local prescribed baseline standards that mirror the requirements in the ISSB Standards, to the extent practicable.

(c) **External assurance requirements**. SRAC proposes that external assurance requirements will begin two years after mandatory CRD reporting requirements commence.

(d) **Reporting and filing timelines**. SRAC recommends applying the existing statutory timelines for circulation, tabling at annual general meetings, and filing for financial statements to CRD, along with the mechanism to apply for extension of time. SRAC recommends the CRD to be filed in a structured digital format as prescribed by ACRA and SGX RegCo.

(e) **Other legal requirements**. SRAC recommends applying the same legal requirements as those for financial reporting to climate reporting, except for the requirements to devise and maintain internal controls systems, which at this stage, will be encouraged but not mandated.

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

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Guidelines for Independent Financial Advisers (IFAs) and Directors in Procuring IFA Advice for SGX-Listed Issuers

On 3 July 2023, the Singapore Exchange Regulation ("**SGX RegCo**") issued a set of "Guidelines on Independent Financial Advisers" ("**Guide**") and an accompanying Regulator's Column setting out SGX RegCo's expectations and guidance for independent financial advisers ("**IFAs**") and their opinions on the role and expectations of directors in procuring an IFA opinion, in the context of the Singapore Exchange ("**SGX**") Listing Rules. The SGX Listing Rules require the appointment of an IFA and an IFA opinion for exit offers, interested person transactions ("**IPTs**") and, in some cases, under a Notice of Compliance, to direct the issuer to undertake certain actions or review transactions as required by SGX.

Key Aspect of Guide

(a) **Guidance for directors in appointing an IFA**, with SGX RegCo's expectations/guidance concerning an IFA opinion under the SGX Listing Rules. An effective IFA opinion requires: (i) the IFA to be independent; and (ii) the IFA opinion to represent the objective views of the IFA. SGX RegCo also shares principles it will have regard to when considering the independence of an IFA.

(b) **An IFA must exercise due care, skill and professional judgement** to prepare an objective opinion. This includes selecting the most appropriate methodology or methodologies for the given circumstances when conducting their analysis.

(c) **Elaborates on SGX RegCo's expectations** that IFAs must undertake in their evaluation of a proposed transaction, as well as examples of what methodologies may generally be appropriate.

(d) **Guidance in the context of exit offers and IPTs**. For exit offers, the Guide explains the distinct concepts of "fair and reasonable", the possible IFA opinions that may be provided and shares practical observations by SGX RegCo.

There are practice statements issued by the Securities Industry Council ("**SIC**") in relation to the appointment and advice by IFAs in connection with offers, whitewash transactions and disposals which fall within the ambit of the Singapore Code on Take-overs and Mergers ("**Take-over Code**"). Such guidance provided by SIC will continue to apply to transactions governed by the Take-over Code and are not overridden by the Guide.

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

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Competition & Antitrust

CCCS Seeks Views on Guidance Note for Environmental Sustainability Collaborations

From 20 July 2023 to 17 August 2023, the Competition and Consumer Commission of Singapore ("**CCCS**") consulted on proposals for the Guidance Note on Business Collaborations Pursuing Environmental Sustainability Objectives ("**Environmental Sustainability Collaboration GN**").

The Environmental Sustainability Collaboration GN specifically addresses how businesses can collaborate to achieve environmental sustainability objectives in a way that does not contravene competition laws. Particularly, it seeks to clarify how CCCS will assess such business collaborations in the context of section 34 of the Competition Act 2004 ("**Act**"), which prohibits agreements between businesses which have as their object or effect the prevention, restriction, or distortion of competition within Singapore ("**section 34 prohibition**").

Guidance in the proposed Environmental Sustainability Collaboration GN includes the following salient aspects:

(a) assessing whether collaboration is in pursuit of environmental sustainability objectives;
(b) examples of environmental sustainability collaborations that do not or are unlikely to raise competition concerns;
(c) agreements that are highly likely to raise competition concerns; and
(d) net economic benefits ("**NEB**") exclusion, and guidance on how CCCS would assess the NEB of such collaborations.

Though businesses are not legally required to notify their collaborations, where there is uncertainty as to whether a specific collaboration pursuing environmental sustainability objectives complies with the Act, they should notify the collaboration to CCCS for guidance or decision as to whether it would infringe the section 34 prohibition. CCCS also proposes adopting a streamlined two-phased notification process to provide a quicker decision.

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

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Corporate Real Estate

Refinements to the Meaning of "Residential Property" under the Residential Property Act

On 19 July 2023, the Ministry of Law ("**MinLaw**") and the Singapore Land Authority ("**SLA**") jointly announced certain amendments to the Schedule of the Residential Property Notification ("**RPN**") to update the list of land use zones designated as non-residential property for the purposes of the Residential Property Act 1976 ("**RPA**"). The amendments took effect on 20 July 2023.

The Schedule of the RPN contains a list of land use zones. Lands that fall within these zones in the Master Plan or which are permitted to be used for the purposes set out in the Schedule pursuant to the Planning Act 1998 or any other written law will be considered as non-residential property for purposes of the RPA. If a foreign person intends to acquire residential property, he is required to seek approval from the Land Dealings Approvals Unit ("**LDAU**") for such acquisition.

Prior to 20 July 2023, one of the land use zones listed in the Schedule of the RPN was "Commercial & Residential". With effect from and including 20 July 2023, land zoned as "Commercial & Residential" has been removed from the Schedule of the RPN. The effect of this change is that the following types of land would now be considered residential properties under the RPA (collectively, "**CR Land**"):

(a) land zoned under the Master Plan as "Commercial & Residential"; or

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(b) land permitted to be used (other than for temporary use) pursuant to the Planning Act 1998 or any other written law for commercial and residential purposes.

Consequently, foreign persons who wish to acquire CR Land would be required to seek LDAU's approval for such acquisition.

MinLaw and SLA have also added seven other types of land use zones as non-residential properties to the Schedule of the RPN, as "*residential uses are typically not allowed on such land use zones*". Based on the list of possible land zoning issued in the Master Plan Written Statement 2019, the latest changes to the Schedule of the RPN would mean that for land which is zoned for the following uses in the Master Plan, LDAU's approval must be sought for foreign persons to acquire such lands:

(a) Residential;
(b) Residential with Commercial at 1st Storey;
(c) Commercial & Residential;
(d) White (note that this is different from a site that is zoned as "Business 1 – White" and "Business 2 – White");
(e) Business Park – White;
(f) Residential/Institution;
(g) Place of Worship; and
(h) Civic & Community Institution.

There is a transitional provision, where foreign persons transferring, purchasing or acquiring in any land that, as at the date of the transfer, purchase, or acquisition, is CR Land pursuant to an option to purchase for the sale and purchase of the CR Land ("**OTP**"), can be exempted from obtaining approval under the RPA if all of the following conditions have been met:

(a) the OTP is granted by the sellers to potential buyers on or before 20 July 2023;
(b) the OTP is exercised on or before 9 August 2023; and
(c) the OTP has not been varied on or after 20 July 2023.

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

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New Law Governing Terms of Lease of Retail Premises Passed

The Lease Agreements for Retail Premises Bill ("**Bill**"), which had its first reading in Parliament on 4 July 2023, was passed on 3 August 2023. The Bill makes it mandatory for retail lease contracts to comply with the Code of Conduct for Leasing of Retail Premises in Singapore ("**Code**"). The Bill is expected to take effect in early February 2024.

The Code (available here) was issued by the Fair Tenancy Pro Tem Committee in 2021 and was last updated in 2022. It sets out guidelines and principles for landlords and tenants of qualifying retail premises to enable fair and balanced lease negotiations. For further details, please see our earlier Legal Update on "Code of Conduct for Leasing of Qualifying Retail Premises", available here.

The Bill serves the following functions:

(a) establishes the Fair Tenancy Industry Committee to administer the Code;

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(b) requires a landlord and a tenant of a qualifying lease to comply with the leasing principles in the Code; and
(c) establishes a dispute resolution process in relation to complaints of non-compliance with the leasing principles or obligations.

The introduction of the Bill follows a public consultation on the proposed legislation held by the Ministry of Trade and Industry from 18 July 2022 to 5 August 2022.

While adoption of the Code has thus far been voluntary, the Bill – when it comes into force – will require compliance with the Code's leasing principles. Landlords and tenants of retail premises should thus be aware of their obligations under the Code to ensure compliance.

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

Dispute Resolution

New Penal Code Offence to Deal with Technologically Enabled and Complex Fraudulent Schemes for Contracts for Goods and Services

Recent years have seen the emergence of novel and complex fraudulent schemes that may not be captured by the existing cheating offences in the Penal Code, such as where a wrongful gain or loss was intended but a victim is not easily identified. A significant example is the manipulation of the London Interbank Offered Rate ("**LIBOR**") in the UK via fraudulent representations made by banks. As LIBOR is often used as a benchmark for financial products, it had far-reaching consequences on financial markets and products. However, it was difficult to identify any specific person who suffered loss or show that the victims relied upon the fraudulent representations.

To address this loophole, the Criminal Law Reform Act introduced sections 424A and 424B of the Penal Code. The new sections focus on the culpability of the offender instead of the effect on the victim – unlike existing cheating offences, they do not require the prosecution to establish that a victim has been deceived. Section 424A deals with fraud that is not directly connected with a written or oral contract for the supply of goods or services, while section 424B deals with fraud in connection with contracts for goods and services.

Section 424A had earlier come into effect on 1 January 2020. However, the commencement of section 424B was delayed to allow for the development of a mechanism to enable private individuals to obtain recourse for common and smaller losses, such as transactions on e-commerce platforms.

Several developments have since laid the groundwork, namely:

(a) the launch of the E-Commerce Marketplace Transaction Safety Ratings in May 2022;
(b) the revision of Technical Reference 76, the national standard for e-commerce transactions; and
(c) the implementation of remediation measures by most major e-commerce platforms to allow individuals to obtain recourse for smaller losses.

On 27 July 2023, the Ministry of Home Affairs announced that section 424B would come into effect on 28 July 2023.

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

Singapore Moves towards Recognising Electronic Statutory Declarations, Oaths and Affirmations, and Notarisations

As electronic transactions quickly become the new norm, Singapore's legal system has continued to keep pace with developments in technology and practice. A prime demonstration of this is the execution of statutory declarations ("**SDs**"), oaths and affirmations ("**OAs**"), and notarisation, which have traditionally had to be performed in person and via wet ink signatures. However, this is set to change with the introduction of legislative amendments to facilitate electronic SDs, OAs and notarisation.

The Oaths, Declarations and Notarisations (Remote Methods) Bill and the Constitution of the Republic of Singapore (Amendment) Bill ("**Bills**") had their first reading in Parliament on 3 July 2023, and were passed on 2 August 2023. The Bills provide individuals and businesses in Singapore the option to make SDs, OAs, and to notarise documents through remote means. The amendments seek to provide greater convenience and efficiency, while imposing safeguards to protect the integrity of the process.

The Bills will amend the Oaths and Declarations Act 2000, the Notaries Public Act 1959 and certain other Acts to:

(a) clarify that certain oaths of office, or oaths relating to or in connection with appointment to an office, or affirmations in lieu of such oaths, may be taken through a live video link or live television link;
(b) enable certain other OAs to be taken or made, and SDs to be made, in accordance with prescribed requirements through prescribed remote communication modalities; and
(c) enable certain functions or powers of a notary public to be exercised remotely in accordance with prescribed requirements through prescribed remote communication modalities.

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

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Employment

Enhancing Representation for Platform Workers: Government Accepts Eight Recommendations by Tripartite Workgroup

On 12 July 2023, the Ministry of Manpower ("**MOM**") announced that the Government had accepted all eight recommendations by the Tripartite Workgroup on Representation for Platform Workers ("**Tripartite Workgroup**"). The recommendations will be implemented from the second half of 2024, and are grouped as follows:

(a) **Process for platform worker ("PW") representative body to obtain legal mandate to represent PWs**
- The mandate can be obtained through direct recognition or secret ballot.
- Only very new or inactive PWs will be excluded from voting in a secret ballot.
- Voting will be done electronically and conducted by MOM.

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- A mandate requires a majority of votes cast, subject to a 20% quorum of eligible PWs.

(b) **Scope of negotiations**
- PW representative bodies and Platform Operators will have the flexibility to determine the areas for negotiation.
- The Tripartite Workgroup will draw up a set of principles to guide negotiations.
- A collective agreement must be certified at the Industrial Arbitration Court.

(c) **Dispute resolution between representative bodies and Platform Operators**
- Disputes may be surfaced to MOM for conciliation. If a dispute remains unresolved, parties may commence arbitration at the Industrial Arbitration Court.

The Tripartite Workgroup was formed following the Government's acceptance in November 2022 of 12 recommendations to strengthen protections for PWs, covering issues such as enhancement of representation for PWs, work compensation, and Central Provident Fund (CPF) contributions.

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

- MOM Press Release titled "Government Accepts Recommendations by Tripartite Workgroup to Enhance Representation for Platform Workers"
- Enhancing Representation for Platform Workers – Tripartite Workgroup on Representation for Platform Workers Report

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Financial Institutions

MAS Issues Industry Perspectives on Best Practices – Management of Money Laundering, Terrorism Financing and Sanctions Risks from Customer Relationships with a Nexus to Digital Assets

On 11 July 2023, the Monetary Authority of Singapore ("**MAS**") published a paper titled "Industry Perspectives on Best Practices – Management of Money Laundering, Terrorism Financing and Sanctions Risks from Customer Relationships with a Nexus to Digital Assets" ("**Paper**"). The Paper is produced by the AML/CFT Industry Partnership ("**ACIP**") working group on Digital Assets Risk Management.

By way of background, the Digital Assets Risk Management Group was established under the ACIP in August 2022 and included representatives from the banks (OCBC, SCB, HSBC, JP Morgan, DBS, UOB, Citibank, Maybank), MAS, Commercial Affairs Department and Ernst & Young.

The Paper aims to provide financial institutions ("**FIs**") with a foundational framework to advance understanding and management of money laundering ("**ML**"), terrorism financing ("**TF**") and sanctions risks arising from customer relationships with nexus to digital assets in the Singapore context by:

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(a) presenting a high-level overview on the classes of digital assets and proposing risk factors for assessing relevance of digital assets from the AML/CFT perspective;
(b) identifying the possible types of customer nexus to digital assets such as cryptocurrencies and analysing the underlying risk profiles; and
(c) clarifying risk management objectives and assessing incremental risk management capabilities required to manage these associated risks.

The Paper also shares case studies and highlights the "red flags" and best practices that FIs could adopt to identify, manage and mitigate the associated ML, TF and sanctions risks.

Singapore and Cambodia to Collaborate on Creation of Financial Transparency Corridor to Support SMEs

On 11 July 2023, the Monetary Authority of Singapore ("**MAS**") and the National Bank of Cambodia announced that they have signed a Memorandum of Understanding to collaborate on a Financial Transparency Corridor ("**FTC**") initiative.

The FTC initiative aims to establish supporting digital infrastructures to facilitate trade and cross-border related financial services between small and medium-sized enterprises ("**SMEs**") in Singapore and Cambodia. Under the FTC, when a Singapore financial institution is assessing financing support for a Singapore SME buyer's cross-border business with a Cambodian SME seller, the Singapore financial institution can utilise the FTC to acquire trusted information from a Cambodian financial institution on the Cambodian SME seller. Likewise, a Cambodian financial institution supporting a Cambodian seller can obtain trusted information on the Singapore buyer through the FTC.

This enhanced trusted information flow will assist SMEs in Singapore and Cambodia to access broader digital trade networks, for instance the Business Sans Border Proxtera global network which is a digital platform that aims to facilitate cross border trade connectivity among emerging market SMEs, thereby providing SMEs with greater trade connectivity within ASEAN and other growth regions.

The supporting digital infrastructures under the FTC aims to:

(a) support the provision of cross-border financial services to SMEs by establishing a consent-based digital infrastructure that facilitates information exchange between participating financial institutions in Singapore and Cambodia; and
(b) support financial institutions' loan assessments for trade financing and an SME's compliance with anti-money laundering rules to mitigate risks and potential trade disputes.

SMEs and financial institutions based in Singapore can contact our listed partners and SMEs and financial institutions based in Cambodia can contact R&T Sok & Heng, which is part of the Rajah & Tan Asia network, to discuss this development further.

Click on the following link for more information:

- MAS Media Release titled "Monetary Authority of Singapore and National Bank of Cambodia set up Financial Transparency Corridor to support SMEs" (available on the MAS website at www.mas.gov.sg)

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MAS Consults on Proposed New Requirements for Digital Payment Token Service Providers to Enhance Investor Protection and Market Integrity

From 3 July 2023 to 3 August 2023, the Monetary Authority of Singapore ("**MAS**") sought feedback on the following two consultation papers which will introduce legal requirements that aim to enhance investor protection and address market integrity risks in Digital Payment Token ("**DPT**") services:

(a) Consultation Paper on Proposed Amendments to the Payment Services Regulations ("**Investor Protection Consultation**")
(b) Consultation Paper on Proposed Measures on Market Integrity in Digital Payment Token Services ("**Market Integrity Consultation**")

This development follows from the earlier "Consultation Paper on Proposed Regulatory Measures for Digital Payment Token Services" issued by MAS in October 2022 to seek comments on regulatory measures which aim to reduce the risk of consumer harm in trading in DPTs. The October 2022 consultation contains proposals to introduce consumer access measures for retail customers, business conduct measures and enhanced measures to manage technology and cyber risks for DPT service providers.

The Investor Protection Consultation seeks comments on the legislative amendments to implement the requirements on segregation, custody and safeguard of assets and money of customers of DPT service providers. The requirements on segregation and custody of customers' assets and money which are set out in the Investor Protection Consultation are targeted to take effect by October 2023. MAS stated that although it is consulting on the draft legislative changes to implement these requirements, as MAS has already finalised and published its policy positions on the segregation and custody requirements, DPT service providers should prepare to comply with these policy positions by October 2023.

The Market Integrity Consultation focuses on the proposed regulatory measures a DPT service provider should establish to ensure market integrity and measures to prevent market abuse in the DPT market.

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

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MAS to Revise Restrictions on E-money Payment Accounts by H2 2023

On 18 October 2022, the Monetary Authority of Singapore ("**MAS**") published a Consultation Paper to seek feedback on proposed changes to the Payment Services Act 2019 ("**PS Act**") to: (i) revise the limits on stock cap and flow cap ("**Caps**") imposed on personal payment accounts containing e-money ("**e-wallet**") issued by a Major Payment Institution ("**MPI**") to a user; and (ii) introduce a new exemption for a MPI with regard to its arrangements which contemplate White-Label e-wallet Account issuance from the requirement under the PS Act to aggregate all the e-money in the e-wallets issued to the same user for purposes of applying the Caps to the user ("**WLA exemption**"). Refer to our October 2022 Legal Update titled "MAS Consults on Revised Restrictions on E-money Payment Accounts" (available here) for more information. On 7 July 2023, MAS shared its Response to Feedback received on the Consultation Paper ("**Response**") and indicated that it expects to implement the proposals by the second half of 2023.

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Proposed Revision to Caps in E-Wallets

In the Consultation Paper, MAS proposed to raise the stock cap (i.e. maximum amount of funds that can be held at any given time) from S$5,000 to S$20,000, and the flow cap (i.e. maximum total outflow over a rolling 12-month period) from S$30,000 to S$100,000. As the proposals received support from the majority of respondents, MAS will be proceeding to increase the Caps as proposed.

Rationale for higher Caps

MAS' surveys and review of consumer feedback and monthly household spending data indicated that there was demand for higher Caps and that higher Caps would facilitate greater consumer convenience and innovation. MAS expects payment service providers to put in place robust anti-scam controls commensurate with their respective business risks, in particular controls to address risks arising from the implementation of the revised Caps. MAS is working with the industry on the specifics of these controls and aims to finalise these in the next few months. MPIs should keep abreast of these developments and implement the anti-scam controls as required or expected by the MAS. MPIs should also take note of the already existing guidance provided by MAS in the E-payments User Protection Guidelines.

Caps to be determined by individual MPIs that issue e-wallets

Several respondents suggested that MAS allow e-wallet issuers to either: (i) benefit from higher Caps where their risk control measures are assessed to be more robust; or (ii) set their own caps in relation to their risk appetite/risk management framework, and/or be able to "adjust" the caps for each user depending on user sophistication or preference. MAS has taken a holistic view and assessed that the proposed revised Caps will be sufficient in meeting the diverse needs of consumers without compromising on financial stability, but will continue to monitor if changes in industry and consumer needs will require further changes to the Caps in future. E-wallet providers will also have the flexibility to set Caps below the maximum stock cap of S$20,000 and flow cap of S$100,000.

Foreign-denominated currencies held in e-wallets

In response to feedback that foreign-denominated currencies should be exempted from counting towards the Caps, MAS stated that the Caps are already calibrated to be sufficient to cater to both domestic and foreign currency spending, and that "*funds that are transferred from e-wallets into the user's own overseas bank account will continue to be excluded from the caps*". Accordingly, MAS will continue to require all currencies to count towards the Caps but stated that they will continue to review the Caps if there are future use cases that should be accommodated.

Proposed WLA Exemption

The proposed WLA exemption received support from the majority of respondents and MAS responded to some clarifications on the scope of the proposed WLA exemption.

MAS remains supportive of the WLA exemption for genuine use cases, but notes the diversity of potential white-label account issuance arrangements, and a class exemption from section 24(1)(c) of the PS Act may not address all these arrangements. MAS will review applications by MPIs that wish to be exempted

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on a case-by-case basis, and will take into account considerations that include (but not limited to): the structure of the white-label account issuance arrangement and whether the MPI has clearly disclosed or will clearly disclose the respective responsibilities of the MPI vis-à-vis the e-money issuer(s) to users, and has in place the relevant controls to track each user's holdings and spending of each type of e- money held in e-wallets issued by the MPI against the Caps.

Insurance & Reinsurance

Insurers to Be Permitted to Offer Option of Online Nomination of Insurance Beneficiaries

On 26 July 2023, the Monetary Authority of Singapore ("**MAS**") announced that insurance policy owners will have online options to nominate their beneficiaries. Amendments to the Insurance (Nomination of Beneficiaries) Regulations 2009, made via the Insurance (Nomination of Beneficiaries) (Amendment) Regulations 2023, will permit insurers to provide these alternative online options from 2 January 2024.

The current process for nominating beneficiaries involves hardcopy submissions with in-person witnessing. From 2 January 2024, insurers will be able to provide alternatives to in-person witnessing via online means under two approaches:

(a) **Online witnessing**. Instead of in-person, the witnessing of the policy owner's signing of the online form can be carried out using an audio-visual link.
(b) **Online attestation**. Instead of witnessing the signing of the form online, an attestor will make an online declaration on the policy owner's circumstances.

Secure electronic signatures must be used for online submissions to ensure the authenticity and integrity of records on insurance beneficiary nominations. An example of a secure electronic signature provider is Sign with Singpass, which uses signing certificates issued by Singapore's National Certificate Authority. Both the online witness and online attestor, as the case may be, must declare that, to the best of their knowledge and belief, the policy owner is not under any undue pressure and understands the purpose and effect of making the nomination.

Given that technological advancements and the development of national digital infrastructures provides suitable online alternatives to in-person witnessing, MAS encourages insurers to make these alternative online options available to their customers, from 2 January 2024, whilst ensuring that robust controls remain in place.

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

- MAS Media Release titled "MAS Enables Online Nomination of Insurance Beneficiaries"
- Insurance (Nomination of Beneficiaries) Regulations 2009
- Insurance (Nomination of Beneficiaries) (Amendment) Regulation 2023

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Medical, Healthcare & Life Sciences

HSA Consults on Proposed Regulatory Controls on Active Ingredients under Health Products Act

On 17 July 2023, the Health Sciences Authority ("**HSA**") announced a public consultation on new subsidiary legislation under the Health Products Act 2007 ("**HPA**"), namely the proposed Health Products (Active Ingredients) Regulations 2023 ("**Regulations**").

"Active ingredients" are defined as ingredients that contribute to the intended function of the product, and are pharmacologically active substances that may be used to manufacture health products. At present, active ingredients are regulated under the Poisons Act 1938 (which imposes a licensing requirement on importers and wholesalers), and the Medicines Act 1975 (on application for certification).

To ensure that active ingredients are consistently manufactured, stored and distributed in accordance with appropriate quality standards, HSA seeks to implement risk-based regulatory controls that will be streamlined and consolidated under the HPA by way of the Regulations. Further, the proposed Regulations will provide a fit-for-purpose and risk-based licensing framework for active ingredients that will be aligned with international standards.

Broadly, the Regulations cover:

(a) prohibitions against the manufacture, import or supply of adulterated, counterfeit or unwholesome active ingredients;
(b) licensing requirements;
(c) duties imposed;
(d) issuing of certificates of compliance with the relevant standards; and
(e) routine inspections.

Once the proposed Regulations are implemented, the regulatory controls under the Poisons Act 1938 and Medicines Act 1975 will no longer apply. Licensed importers and wholesalers will no longer need to hold a separate Form A Poisons Licence under the Poisons Act.

For more information on the scope, overview, and licensing framework proposed in the draft Regulations, click here to read our Legal Update.

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Private Client

MAS Consults on Revised Licensing Exemption Framework, New Notification and Reporting Requirements for Single Family Offices

On 31 July 2023, the Monetary Authority of Singapore ("**MAS**") launched a public consultation on a revised framework to manage money laundering ("**ML**") risks in Singapore's Single Family Office ("**SFO**") sector.

As a regulator, one of MAS' functions is to ensure that Singapore financial institutions ("**FIs**") address ML risks that their customers, including SFOs, may bring to Singapore. In light of the increasing number of SFOs being set up in Singapore, MAS intends to take additional measures to strengthen surveillance and defence against ML risks in the SFO sector.

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Currently, SFOs can either rely on existing class exemptions from licensing requirements under the Securities and Futures Act 2001 ("**SFA**") or apply to MAS for case-by-case exemptions. The proposed revised framework will:

(a) introduce a harmonised class exemption from licensing under the SFA that will eliminate case-by-case exemptions;
(b) introduce new notification and annual reporting requirements to better monitor SFOs operating in Singapore; and
(c) allow for a transitional period of six months.

The public consultation closes on 30 September 2023.

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

In addition to the above development, the tax exemption schemes for Single Family Office have also been updated. Refer our write-up titled "Tax Exemption Schemes for Single Family Offices: Updates to S13O & S13U Application Criteria, Launch of New Philanthropy Scheme" for more details.

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Sustainability

UK and Singapore to Deepen Collaboration in Sustainable Finance and FinTech

During the 8th UK-Singapore Financial Dialogue reported here, the United Kingdom ("**UK**") and Singapore discussed, among others , working more closely in the areas of sustainable finance and fintech.

Sustainable Finance

(a) **Transition finance**. Both countries agreed on the need for globally comparable and transparent transition plans. Singapore shared the Monetary Authority of Singapore's ("**MAS**") initiatives on scaling blended finance and addressing energy transition needs in Asia, e.g. MAS' Finance for Net Zero Action Plan (FiNZ Action Plan).

(b) **International standards**. Both countries will implement initiatives supporting a global framework of sustainability disclosures based on the International Sustainability Standards Board's (ISSB) final standards for general reporting on sustainability and for climate-related disclosures. Both sides shared their respective Environmental, Social, and Governance (ESG) data and ratings codes of conduct which have been published for consultation, e.g. MAS recently conducted a consultation on a proposed code of conduct for ESG rating and data product providers (refer to our July 2023 Legal Update titled "MAS Consults on Code of Conduct for ESG Rating and Data Product Providers" (available here)).

(c) **Nature and biodiversity**. Both countries re-affirmed the need to better understand the impact of nature and biodiversity loss on the financial sector. The UK shared its efforts to quantify UK's financial and economic risks from exposure to nature degradation, and updated on the latest developments from the Taskforce on Nature-related Financial Disclosures ("**TNFD**"), ahead of the final publication of the TNFD framework in September 2023.

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FinTech and Innovation

(a) **Crypto and digital assets**. Both countries will contribute to efforts to develop global regulatory standards for crypto and digital assets as part of international standard setting bodies. They welcomed the Financial Stability Board's recommendations on crypto-assets including stablecoins. Singapore shared on regulatory developments on stablecoins and consumer protection measures for digital payment token services. MAS recently consulted on proposed new requirements for digital payment token service providers to enhance investor protection and market integrity. Refer here for our July 2023 Legal Update titled "MAS Consults on Proposed New Requirements for Digital Payment Token Service Providers to Enhance Investor Protection and Market Integrity".

(b) **Central Bank Digital Currency ("CBDC")**. Singapore's approach involves exploring use cases for a digital Singapore Dollar and to foster interoperability. Singapore also updated on exploring wholesale CBDC for cross-border foreign exchange settlement.

(c) **Asset Tokenisation**. Singapore shared the latest developments on its private-public sector collaborative initiative to test the potential and feasibility of asset tokenisation. The UK and Singapore agreed to consider future collaboration opportunities in this area.

(d) **E-Wallets**. The UK welcomed the outcome of MAS' review of e-wallet caps, including the increase to the relevant limits imposed on e-wallets. Refer to our write-up titled "MAS to Revise Restrictions on E-money Payment Accounts by H2 2023" for more details.

MAS Consults on Code of Conduct for ESG Rating and Data Product Providers

From 28 June 2023 to 22 August 2023, the Monetary Authority of Singapore ("**MAS**") is seeking views on a draft voluntary industry code of conduct ("**CoC**") for Environmental, Social, and Governance ("**ESG**") rating and data product providers set out in the Consultation Paper on "Proposed Code of Conduct for ESG Rating and Data Product Providers". Key proposals in the Consultation Paper include:

(a) **Broad definitions of "ESG Rating" and "ESG Data Product".** Similar to how the terms are defined under the International Organisation of Securities Commissions ("**IOSCO**") Report and the established codes of conduct for other jurisdictions.

(b) **Providers covered by CoC.** MAS proposes that the CoC should cover providers who have a nexus to activities and institutions in the securities and derivatives industry in Singapore.

(c) **Key Principles and Practices**. The CoC sets out Principles focused on several aspects such as proper governance of providers, implementation of proper policies and procedures to ensure transparency of methodology and data sources, proper management and disclosures of COI, and implementation of robust systems and controls.

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(d) **Disclosure of forward-looking elements.** MAS proposes to enhance the IOSCO good practices on transparency by further explicitly setting out in the CoC what product providers should adequately disclose.

(e) **Implementation of CoC on a voluntary "comply or explain" basis.** Providers will either comply with the best practices or explain why they could not comply with specific best practices.

(f) **Self-Attestation Checklist.** To enable product users to easily identify compliant providers and facilitate interoperability for ESG rating and data product providers' global operations, MAS proposes that the providers also comply with a Self-Attestation Checklist.

For the long-term regulation of ESG rating providers, MAS proposes to apply the Capital Markets Services licensing regime under the Securities and Futures Act 2001 to ESG rating providers.

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

Coal to Green Transition: Consultation on Criteria for Early Coal Phase-Out under the Singapore-Asia Taxonomy

The coal to green transition plays a vital role in reducing global greenhouse gas emissions. The transition will not be possible without adequate financing. However, challenges lie in crafting credible and just coal phase-out guidance that sufficiently allays concerns among financial institutions regarding the financing of such projects.

Seeking to meet this challenge, on 28 June 2023, the Monetary Authority of Singapore released the Fourth Green Finance Industry Taskforce ("**GFIT**") Taxonomy Consultation Paper ("**Consultation Paper**") which sets out the criteria for financing the early phase-out of coal fired power plants ("**CFPPs**") under the Singapore-Asia Taxonomy. The criteria are aligned to global science-based 1.5°C-aligned decarbonisation pathways, and take into consideration other guidance such as the ASEAN Taxonomy, and the "The Managed Phaseout of High-Emitting Assets" report by the Glasgow Financial Alliance for Net Zero. The consultation period closed on the 28 July 2023.

Due to the complexities surrounding the assessment of the credibility of early coal phase-out, it is proposed that early coal phase-out is not classified using the Singapore-Asia Taxonomy's traffic light system.

Instead, the Consultation Paper proposes:

(a) A hybrid approach that marries the taxonomy approach with a transition planning approach.
- Facility level criteria (taxonomy approach) apply to the CFPP facility and determines the level of ambition for the early coal phase-out process.
- Entity and system level criteria (transition planning approach) apply to CFPP owners and provides the necessary safeguards to protect against undesirable outcomes.

(b) Only if all the criteria are met will the managed coal phase-out process be considered aligned with the Singapore-Asia Taxonomy and eligible for transition finance.

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It is proposed that after 2025, a revised criteria accounting for new developments in the field should be adopted.

As the demand for energy transition mechanisms is gaining momentum, a financing framework that provides clear guidance for a credible and just transition is crucial to push climate action. A credible and just framework will enable an acceptable ambition level and the right level of technicality to be set to prevent greenwashing, and which will help transition financing to be scaled up with confidence.

For more information, click here to read our Legal Update which provides a summary of key features of the early coal phase-out criteria contained in the Consultation Paper.

Tax

Tax Exemption Schemes for Single Family Offices: Updates to S13O & S13U Application Criteria and Launch of New Philanthropy Scheme

The Monetary Authority of Singapore ("**MAS**") has implemented the following two key changes to tax schemes related to single family office ("**SFO**").

Updates to S13O & S13U Application Criteria

On 5 July 2023, MAS announced changes to the qualifying criteria for SFO fund vehicles applying for the tax exemptions under sections 13O and 13U of the Income Tax Act 1947 ("**ITA**"). The changes seek to encourage the meaningful deployment of capital and bolster the development and sophistication of Singapore's asset and wealth management industry.

Among the key changes are:

(a) removal of the two-year grace period after the point of application to enable applicants to satisfy the minimum requirements for the tax incentive schemes;
(b) clarification that the minimum assets under management (AUM) must now be deployed in Designated Investments, as defined in the Income Tax (Exemption of Income of Prescribed Persons Arising from Funds Managed by the Fund Manager in Singapore) Regulations 2010;
(c) amendments to the computation of the Tiered Spending Requirement (TSR), such as the exclusion of non-local business spending and the inclusion of eligible donations to local charities;
(d) expansion of investment options that will be included in the computation of the Capital Deployment Requirement (CDR), with certain investments to be scaled up by a multiplier; and
(e) for the section 13O tax incentive scheme, applicants must now be managed by a SFO that employs at least two investment professionals, of whom at least one shall not be a family member of the ultimate beneficial owner(s).

The new application criteria apply to new applicants who have submitted the Annex A preliminary submissions to MAS from 5 July 2023 onwards. However, these changes only affect family-owned fund vehicles which are exempt from Capital Markets Services (CMS) licensing requirements and manage assets for the same family. The application criteria for other applicants, such as family-owned funds managed by MAS-licensed fund managers, remains unchanged.

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Launch of Philanthropy Tax Incentive Scheme

Separate from the section 13O and section 13U schemes, MAS launched the Philanthropy Tax Incentive Scheme on 5 July 2023 to encourage SFOs to use Singapore as a base for overseas philanthropy.

(a) A **100% tax deduction is granted for Overseas Donations** (namely, cash donations made towards any charitable, benevolent, or philanthropic purpose whose main objective is to benefit persons, events or objects outside of Singapore, where donations are as defined in Paragraph 5.1 of IRAS' e-Tax Guide – Guidance on Tax Deductible Donations). This is capped at 40% of the Donor's statutory income.

(b) **Qualifying SFOs managing section 13O/U funds** must:
- appoint and maintain a philanthropy professional (whether in-house or outsourced);
- incur additional local business spending of S$200,000; and
- employ an additional local Professional headcount.

(c) **SFOs may only select one eligible recipient over five years** to receive the tax deduction.

(d) MAS has stipulated **qualifying local intermediaries**, such as selected registered and exempt charities with a valid Fundraising for Foreign Charitable Purpose (FRFCP) Permit.

Click on the following links for more information:

- Rajah & Tann Singapore July 2023 Legal Update titled "Updates to S13O & S13U Application Criteria for Family Offices"
- MAS Schemes and Initiatives "Launch of the Philanthropy Tax Incentive Scheme" (available on the MAS website at www.mas.gov.sg)

Technology, Media & Telecommunications

Public Consultation on the Proposed Advisory Guidelines on the PDPA for Children's Personal Data

The Personal Data Protection Commission ("**PDPC**") has launched a public consultation seeking views on the Proposed Advisory Guidelines on the Personal Data Protection Act 2012 ("**PDPA**") for Children's Personal Data ("**Advisory Guidelines**"). It covers issues such as obtaining children's consent, using children's personal data, and according higher standards of protection to children's personal data. The consultation ends on 31 August 2023.

Currently, PDPC has issued guidance on data activities relating to individuals of less than 21 years of age in the Advisory Guidelines on the PDPA for Selected Topics (Chapter 8). PDPC plans to revise this guidance and to move it into the standalone Advisory Guidelines.

These standalone Advisory Guidelines are intended to apply to organisations that offer products or services that are likely to be accessed by children, or are in fact accessed by children, even if the products or services are not targeted at children. Organisations that are data intermediaries or that retain children's

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personal data are also expected to implement additional measures to protect children's personal data.

In this public consultation, PDPC is soliciting views and comments on the following questions:

(a) What are your views on the proposed scope of application of the Advisory Guidelines?
(b) What are examples of reasonable purposes for organisations to collect, use, or disclose children's personal data?
(c) When communicating with children, organisations must use language that is readily understandable by children. What in your view are examples of such communication with children?
(d) How should organisations minimise the collection, use, and disclosure of children's personal data?
(e) What are examples of situations where an organisation should conduct a Data Protection Impact Assessment ("**DPIA**") before releasing products or services likely to be accessed by children? What should an organisation consider when conducting such a DPIA?
(f) The PDPC is considering to adopt the practical view that a child that is between 13 and 17 years of age will have sufficient understanding to be able to consent on his or her own behalf to the collection, use, or disclosure of his or her personal data. What are your views of when a child can give valid consent on his or her own behalf under the PDPA?
(g) The PDPC is considering making it a best practice for organisations handling children's personal data, to implement both the Basic and Enhanced Practices listed in the Guide to Data Protection Practices for ICT systems. Are the practices listed in this Guide adequate, and are there additional measures that organisations should undertake?
(h) Where a notifiable data breach occurs, under what circumstances do you think it would be prudent for the organisation to inform the child's parent or guardian of the breach?

Click on the following link for more information:

- Public Consultation on Proposed Advisory Guidelines on the Personal Data Protection Act for Children's Personal Data (available on the PDPC website at www.pdpc.gov.sg)

Data Protection in the Use of AI Systems – PDPC Proposes Guidelines on Use of Personal Data in AI Recommendation and Decision Systems

The Personal Data Protection Commission ("**PDPC**") has launched a public consultation ("**Consultation**") seeking views on the Proposed Advisory Guidelines on Use of Personal Data in AI Recommendation and Decision Systems ("**Guidelines**"). The purpose of these Guidelines is to clarify how the Personal Data Protection Act 2012 ("**PDPA**") applies to the collection and use of personal data by organisations to develop and deploy systems that embed machine learning models ("**AI Systems**") which are used to make decisions autonomously or to assist a human decision-maker through recommendations and predictions.

The release of these proposed Guidelines for consultation is timely given the rapid development of AI technology and their deployment by businesses across a wide variety of functions. The proposed Guidelines are intended for situations where the design or deployment of AI Systems involves the use of

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personal data in scenarios governed by the PDPA. The aims of these Guidelines are to:

(a) clarify how the PDPA applies when organisations use personal data to develop and train AI Systems; and
(b) provide baseline guidance and best practices for organisations on how to be transparent about whether and how their AI Systems use personal data to make recommendations, predictions, or decisions.

The Guidelines are organised according to the stages of AI System implementation as follows:

Stage of AI System Implementation	Topics
Development, testing and monitoring: Using personal data for training and testing the AI System, as well as monitoring the performance of AI Systems post-deployment.	• Consent • Business Improvement and Research Exceptions • Implementing data protection measures • Anonymisation
Deployment: Collecting and using personal data in deployed AI Systems (business to consumer or B2C).	• Notification and Consent Obligations • Accountability Obligation
Procurement: AI System or solution provider providing support to organisations implementing the AI System (business to business or B2B).	• Notification and Consent Obligations • Accountability Obligation

The Consultation ends on 31 August 2023. Businesses utilising AI Systems may wish to digest the practices proposed in the Guidelines regarding the use of personal data, and to provide feedback on the Guidelines where relevant.

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

Online Safety Code for Designated Social Media Services Comes into Effect

The Infocomm Media Development Authority ("**IMDA**") has issued the Code of Practice for Online Safety ("**Code**"), which has taken effect from 18 July 2023. The Code sets out obligations that designated Social Media Services ("**SMSs**") have to meet to enhance online user safety, particularly for children, and curb the spread of harmful content on their service.

The Code is part of Singapore's effort to improve the safety of digital spaces for Singapore users. The Online Safety (Miscellaneous Amendments) Act, which came into effect on 1 February 2023, introduced new provisions in the Broadcasting Act to tackle harmful online content, including empowering IMDA to issue online codes of practice applicable to providers of any regulated online communication service. On this basis, IMDA has issued the Code, which is applicable to designated SMSs.

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SMSs which fail to take all reasonably practicable steps to comply with the Code may face a fine of up to S$1 million, with further fines for continuing offences. SMSs should thus be aware of the measures that must be implemented under the Code and ensure that they comply with their obligations.

The Code only applies to designated SMSs. Currently, the SMSs designated by IMDA are Facebook, HardwareZone, Instagram, TikTok, Twitter, and YouTube.

The key requirements under the Code include the following:

(a) **User safety**. SMSs must put in place measures to minimise users' exposure to harmful content, empower users to manage their safety, and mitigate the impact on users that may arise from the propagation of harmful content, particularly for children. This includes the following measures:
- Guidelines, standards and content moderation.
- Empowering users and improving safety.
- Proactive detection and removal.
- Additional measures for children.

(b) **User reporting and resolution**. Individuals must be able to report concerning content or unwanted interactions to the SMS in relation to the identified categories of harmful or inappropriate content.

(c) **Accountability**. SMSs must submit to IMDA annual reports on the measures the SMS has put in place to combat harmful and inappropriate content, for publishing on IMDA's website. The report must reflect end-users' experience on the SMS.

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

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Trade

MTI Seeks Feedback on the ASEAN Trade in Goods Agreement (ATIGA)

The ASEAN Trade in Goods Agreement ("**ATIGA**") is the key regional trade agreement that facilitates economic integration within the ASEAN region, which Singapore is a party to. The ATIGA entered into force on 17 May 2010 for ASEAN Member States ("**AMS**"). It gives a framework to achieve the free flow of goods within ASEAN by eliminating tariffs on most goods traded between AMS, and by reducing non-tariff barriers.

To keep the ATIGA relevant and more responsive to, and stay ahead of, the changes, ASEAN launched negotiations between AMS in March 2022 to upgrade the ATIGA. Substantive negotiations between AMS are targeted to be completed by the end of 2024. From 17 July 2023 to 16 August 2023, the Ministry of Trade and Industry (MTI) conducted a public consultation seeking feedback on how the ATIGA could be improved and other beneficial provisions that could be incorporated into the ATIGA.

The ATIGA contains various elements to facilitate the free flow of goods within the ASEAN region. Several significant features of ATIGA include tariff liberalisation, removal of non-tariff barriers, rules of origin, trade facilitation, customs, standards and conformance, sanitary and phytosanitary measures.

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Additionally, the ATIGA includes a comprehensive coverage of commitments related to trade in goods and mechanisms for its implementation as well as institutional arrangements.

Besides a comprehensive review of all the existing provisions within the ATIGA, the proposed upgrade will also address issues such as supply chain resilience, digitalisation and sustainability. The upgrade also aims to streamline and make the ATIGA more user-friendly so that more businesses, including Micro, Small and Medium Enterprises (MSMEs), can utilise and benefit from it.

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

CaseBytes

English High Court Finds Director of Holding Company Had Been *De Facto* Director of Subsidiary Company

Singapore laws recognise that an individual who is not formally appointed as a director of a company owes fiduciary duties to the company if he/she is considered a *de facto* director. This happens when that person undertakes the functions in relation to a company which can only be properly discharged by a director of the company. It is ultimately a question of fact whether a person is a *de facto* director of a company.

In the recent English High Court decision of *Aston Risk Management v Jones and others* [2023] EWHC 603 (Ch) ("***Aston***"), a director of a holding company was found to be a *de facto* director of its subsidiary and have the legal duties and liabilities of a director. In this instance, the *de facto* director held himself out as a director and was heavily involved in the day-to-day running of the subsidiary.

The Singapore courts have yet to have the opportunity to consider the circumstances where a director of a holding company may be a *de facto* director of its subsidiary. As the definition of "director" in the Singapore Companies Act 1967 is similar to the UK Companies Act 2006 in this regard, *Aston* provides useful guidance on this topic.

Aston involved a dispute centred around breach of director and trustee duties following the administration of Audiological Support Services Ltd ("**Subsidiary**"). The formally appointed directors of the Subsidiary were Clinton Jones and Professor Lutman.

In 2014, the Subsidiary and its owners brought in two new investors. A new holding company, Audiological Support Group Ltd ("**Holding Company**"), was created and it acquired all the shares in the Subsidiary. The directors of the Holding Company were Clinton Jones and Lee Jones ("**Mr Jones**").

The claimant submitted that even though Mr Jones had not been formally appointed as a director of the Subsidiary, he had become a *de facto* director due to his actions of, among others:

(a) adopting a role analogous to that of a Chief Executive of the Subsidiary;
(b) holding himself out as the Chief Technical Officer of the Subsidiary;
(c) assuming the right to approve and veto payments from the Subsidiary's bank accounts;

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Click here for our Partners in Corporate Commercial Practice and here for our Partners in Capital Markets Practice

(d) acting on behalf of the Subsidiary in negotiations with major clients and in human resource matters; and
(e) at a micro level, taking a central role in the day-to-day management and operation of the Subsidiary.

The Court found that Mr Jones was a *de facto* director of the Subsidiary and owed fiduciary and other duties to the Subsidiary. Mr Jones' role in directing the Subsidiary's affairs was consistent with him being not only part of the Subsidiary's corporate governance structure, but a key and principal element of the Subsidiary's corporate governance. He had assumed the status of functions of a company director performing functions that could only properly be discharged by a director of the Subsidiary.

For more information, click here to read our Legal Update where, taking reference from the principles expounded in *Aston*, we highlight the pitfalls that a director of a holding company should avoid so as not to be regarded as a *de facto* director of a subsidiary.

Deals

A$1.88 Billion Acquisition of Shares in Blackmores Ltd

Partners Danny Lim and Cheryl Tay from the Capital Markets/Mergers & Acquisitions Practice are acting as Singapore counsel for Kirin Holdings Co. in its A$1.88 billion acquisition of shares in Blackmores Ltd. by way of a scheme of arrangement. Blackmores Ltd., which is listed on the Australian Securities Exchange Limited, is Australia's leading natural health company.

S$525 Million Acquisition of the PARKROYAL on Kitchener Road

Partners Loh Chun Kiat, Norman Ho and Benjamin ST Tay from the Mergers & Acquisitions Practice and Corporate Real Estate Practice advised on the S$525 million acquisition of the PARKROYAL on Kitchener Road by Worldwide Hotels Group by way of share sale. This deal marks the largest ever single hotel asset transaction in Singapore, as well as the second largest in Asia Pacific in 2023.

Disposal of Shares in Versalink Holdings Limited

Partners Danny Lim and Cynthia Wu from the Capital Markets/Mergers & Acquisitions Practice advised a group of shareholders in their disposal of shares in Versalink Holdings Limited, a leading Malaysia-based office furniture manufacturer and designer which exports its products to North America, Australia, Middle East and throughout Asia. The company is listed on the Catalist Board of the Singapore Exchange Securities Trading Limited.

Mandatory Conditional Cash Offer of Shares of ICP Limited

Partners Danny Lim and Cheryl Tay from the Capital Markets/Mergers & Acquisitions Practice are advising the offeror in the mandatory conditional cash offer of the shares of ICP Limited, which holds the Asia brand rights to the Travelodge hotel brand. The company also owns and charters two steel petroleum product tankers and is listed on the Catalist Board of the Singapore Exchange Securities Trading Limited.

Acquisition of Shares in HG Metal Manufacturing Limited by Dhu Holding Pte. Ltd.

Partners Danny Lim and Cynthia Wu from the Capital Markets/Mergers & Acquisitions Practice advised Dhu Holding Pte. Ltd. in its acquisition of shares in HG Metal Manufacturing Limited, which is listed on the Mainboard of the Singapore Exchange Securities Trading Limited and is one of the largest steel distributors and processors in Southeast Asia.

Authored Publications

Rajah & Tann Member Firms Contribute the Singapore and Thailand Chapters of *Contract Laws of Asia – Limitations of Liability*

Released by the Asian Business Law Institute ("**ABLI**"), with support from its parent organisation Singapore Academy of Law, the *Contract Laws of Asia – Limitations of Liability* is the fourth full-fledged publication under ABLI's Contracts Project which aims to produce a set of standard-form contract terms where risks are relatively evenly allocated and which can be valid in a majority of Asian jurisdictions. The first turn of the Model Clauses is published here.

This fully-cited, 99-page publication considers 12 jurisdictions and governing laws that are high priorities for parties contracting across borders in the Asia Pacific, and focuses on:

- Operation of exclusion and limitation of liability clauses in contracts in select common law jurisdictions, such as their requirements, restrictions (at common law and by statute, where applicable) and interpretation, whether non-contractual wrongs can be excluded and limited, etc.; and
- Operation of exclusion and limitation of liability clauses in contracts in select civil law and hybrid jurisdictions, such as whether different standards apply to specific types of contracts or under specialized laws.

Partners Kala Anandarajah, BBM, Alvin Tan and Joshua Seet from Rajah & Tann Singapore authored the chapter for Singapore, and Partner Ittichai Prasongprasit and Associate Thamolwan Cheewakriengkrai from R&T Asia (Thailand) authored the chapter for Thailand in the publication.

The publication is available here. In addition to this publication and the Model Clauses, the Rajah & Tann team has also contributed to earlier publications on indemnity clauses and liquidated damages and penalty clause under this project.

Rajah & Tann Singapore Contributes to *The Legal 500: Capital Markets Comparative Guide*

Rajah & Tann Singapore shares our views on the legal and regulatory aspects of Capital Markets in Singapore in our contribution to the Singapore Chapter of *The Legal 500: Capital Markets Comparative Guide*.

Exclusively authored by our leading Capital Markets and Banking & Finance Partners Evelyn Wee, Lee Xin Mei, Tan Mui Hui and Hoon Chi Tern, the Chapter provides a practical overview in an easy-to-use Question & Answer format of the Capital Markets laws and regulations applicable in Singapore. The Chapter covers the regulatory framework and landscape of both equity and debt capital market and gives useful guidance on a plethora of key legal issues and regulations such as the types of securities that can be listed on the Singapore Exchange Securities Trading Limited (SGX-ST), the listing requirements and the continuing listing obligations, as well as the common types of transactions that are subject to regulatory scrutiny and/or disclosure. The Chapter also gives valuable insights on the recent trends and developments in the Singapore capital markets, such as key environmental, social, and governance (ESG) and sustainability requirements in Singapore, as well as the expected outlook in fund raising activities in Singapore in 2023.

The full Singapore Chapter can be found here.

Find out more about our Capital Markets Practice and Banking & Finance Practice here and here.

Rajah & Tann Singapore Contributes to Practical Law Global Areas: Practice Note on Real Estate Considerations in Corporate Transactions (Singapore)

Rajah & Tann Singapore recently contributed a Practice Note titled "Real Estate Considerations in Corporate Transactions (Singapore)" to the Global Practice Areas section of Practical Law Global (Thomson Reuters).

Large corporate transactions typically require review and input from different legal specialities, including real estate. The scope of real estate counsel's role in the transaction depends on the materiality of the real estate assets to the corporate transaction, regardless of whether it is an asset purchase, a share purchase or a merger.

Authored by Partners Benjamin Tay and Norman Ho, and Senior Associate Calvin Lim, the Practice Note provides an overview of matters that a buyer's real estate counsel must take note of when handling a corporate transaction that involves owned or leased Singapore real estate. It discusses the following key areas of a corporate transaction:

- Property due diligence and risk assessment;
- Negotiation of real estate provisions in the transaction documents; and
- Real estate closing conditions and deliverables.

The full Practice Note can be read here (registration required to access the note). It is reproduced from Practical Law with the permission of the publishers. For further information, visit www.practicallaw.com.

Find out more about our Corporate Real Estate Practice here.

Events

Harassment, Discrimination and More: Handling Allegations from Employees, Managing Disputes and Taking Preventive Steps

On 31 July 2023, Rajah & Tann organised an event titled "Harassment, Discrimination and More: Handling Allegations from Employees, Managing Disputes and Taking Preventive Steps". Workplace harassment and complaints about discrimination at work have taken front-and-centre-stage in the employment arena. At the seminar, Kala Anandarajah, BBM, Head of the Competition & Antitrust and Trade Practice and Partner from the Employment Practice, and Partner Alvin Tan looked at how and when workplace harassment and discrimination claims are raised and the conduct that fall within each of these two categories. They discussed how workplace harassment and discrimination disputes are managed. They also considered the appropriate action steps to take to manage the process, and shared best practices that can be adopted to create an environment of trust in the resolution of issues relating to workplace harassment and discrimination.

Managing Compliance and Transactional Risks: Spotlight on Sanctions, Anti-money Laundering and Counter-terrorism Financing & Corruption

On 27 July 2023, Rajah & Tann organised its monthly "LearningBytes" lunchtime series, with this month's seminar titled "Managing Compliance and Transactional Risks: Spotlight on Sanctions, Anti-money Laundering and Counter-terrorism Financing & Corruption". Sanctions figure prominently in all aspects of business so long as it is cross-border or involves another currency for payment. The long arm of some sanctions regimes, including the US sanctions, means their sanctions may apply to individuals even if they are not citizens of that country, or to business entities not organised in that country. Kala Anandarajah, BBM, Head of the Competition & Antitrust and Trade Practice and Partner Yusfiyanto Yatiman from the White Collar Crime Practice discussed the implications of the changing sanctions landscape on businesses. They also delved into the legislative and regulatory frameworks relating to sanctions to help businesses understand how to avoid inadvertently supporting, facilitating, or being used as a conduit for money laundering, terrorism financing or corruption.

International Trade & Shipping, Commodity Arbitration & Arbitrability of Corporate Disputes

On 22 July 2023, Rajah & Tann Singapore, Aarna Law and Simha Law, and Nani Palkhivala Arbitration Centre (NPAC) jointly organised an event in Chennai, India titled "International Trade & Shipping, Commodity Arbitration & Arbitrability of Corporate Disputes". V Bala, Deputy Head of the Shipping & International Trade Practice, and Avinash Pradhan, Co-Head of the South Asia Desk and Deputy Head of the International Arbitration Practice, joined other panelists in two panel discussions on: (i) issues surrounding international trade and shipping and commodity arbitration; and (ii) arbitrability of corporate disputes.

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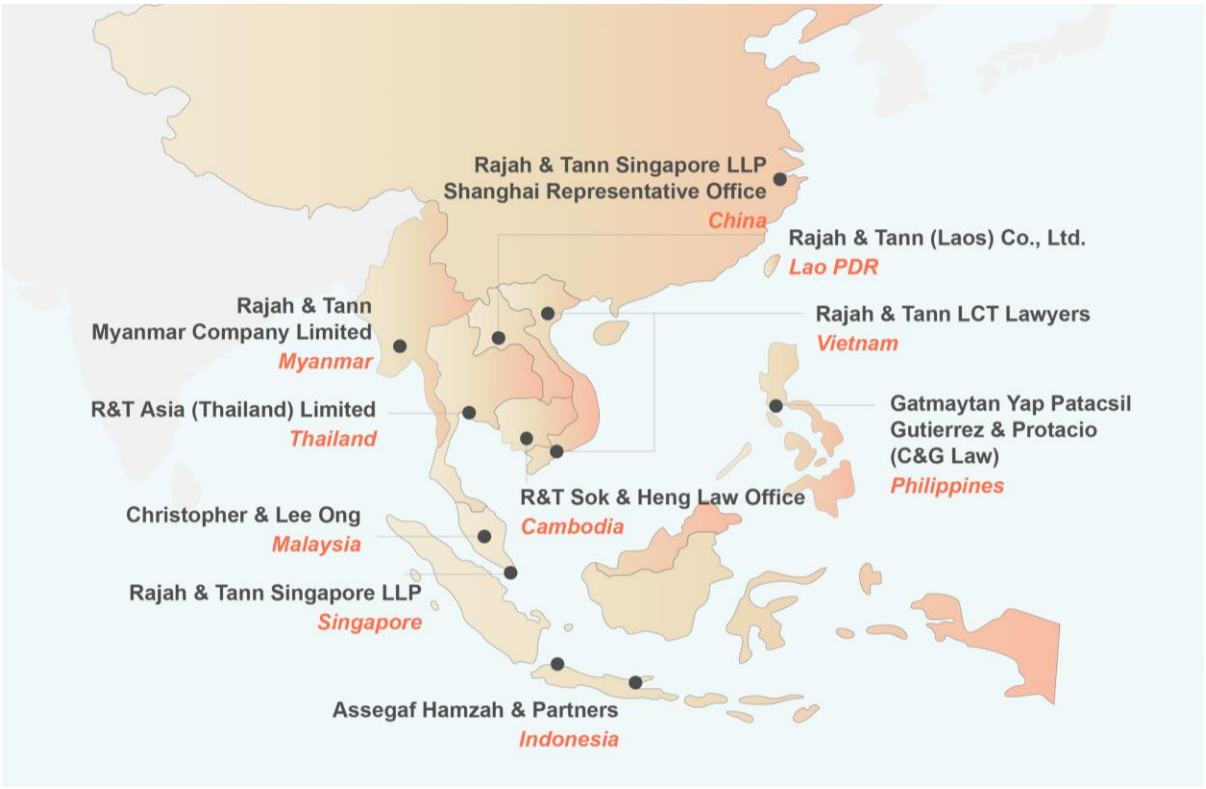

Rajah & Tann Singapore LLP is one of the largest full-service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.