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NewsBytes: Singapore

2023 AUGUST

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News

Rajah & Tann Pioneers Automated Anti-Money Laundering Platform for Property Developers to Comply with New AML Rules

Rajah & Tann has launched an anti-money laundering ("**AML**") legal-tech solution for Singapore property developers grappling with the latest AML rules. The platform enables speedy due diligence of property buyers in real time and on an ongoing basis.

Under the new AML guidelines, developers are required to identify, assess and understand the money laundering and terrorism financing risks relating to their business and implement policies, procedures and control approved by the senior management to minimise the exposure to such risks. They are required to document the risk analysis and provide such risk analysis and policies to the Controller of Housing when asked.

They will also have to conduct customer due diligence checks on purchasers and, amongst others, file a Suspicious Transaction Report with the relevant authorities if and when they find a purchaser or potential purchaser to be on a watchlist or have suspicious links, without tipping off such a purchaser or potential purchaser. The customer due diligence checks are also applicable to ongoing projects launched before 28 June 2023 when the new AML rules kicked in.

Gazalle Mok, Partner at Rajah & Tann's Corporate Real Estate Practice, said: "This is potentially a three-to-five-year period of exposure, and it's not a numbers game: a single hit would be extremely detrimental to a developer. Without technology, it becomes very intensive and complex to monitor every purchaser for the entire period."

The platform, a combined effort of Rajah & Tann lawyers and their tech colleagues at Rajah & Tann Technologies (RTTech), addresses this requirement by including screening, ongoing monitoring, and reporting capabilities, automating much of what would otherwise be a very tedious, cumbersome set of checks.

Click here to read our Press Release.

Rajah & Tann Appoints Leading Aviation Lawyer Paul Ng to Advance Aviation Expertise

Rajah & Tann Singapore ("**R&T**") announced on 1 August 2023 that leading aviation lawyer Paul Ng has joined as Partner to helm the firm's Aviation Practice.

Paul brings with him 30 years of practice experience and has advised on some of the largest and most complex aviation transactions in the region involving asset-backed financing and bond issuances, tax leasing, multi-billion-dollar aircraft acquisitions and initial public offerings ("**IPOs**"). He regularly acts for major lenders, leasing companies, borrowers, lessees, airlines and arrangers.

Among the landmark deals Paul was involved in are: PT Lion Mentari's US$24 billion order for over 230 Airbus aircraft, the then largest ever commercial aircraft order; VietJet's US$9 billion purchase of 92 Airbus aircraft and US$800 million order for CFM engines; and the first insurance-backed financing for aircraft operated by Korean Airlines of two 787 Boeing Dreamliners, which won Airfinance Journal's "Overall Deal of the Year".

Paul acted on Vietjet's IPO, Vietnam's first internationally marketed and then largest IPO on the Vietnam stock exchange. Paul was also counsel to AirAsia's complex multi-tiered Islamic financing of a French tax leasing vehicle for the acquisition of up to A320 Airbus aircraft. This was the first such financing to be successfully completed in Asia and won Airfinance Journal's "Innovative Deal of the Year".

Led by Paul, R&T's Aviation Practice will be supported by a multi-disciplinary team of lawyers who have done work in the aviation sector including advising on corporate and regulatory matters that range from contract administration of an international airport to addressing multifarious ground operations concerns. The firm has also been involved in intellectual property and patent issues that arise in aviation matters. Its dispute resolution experience includes several arbitrations and court hearings, and advising victims involved in an aviation accident in China.

The Aviation Practice comprises Francis Xavier, SC, Angela Lim, Winston Kwek and Terence Quek, as well as other lawyers across the Rajah & Tann Asia network. Together with Paul, the team will continue to support aviation clients in the region, by delivering world-class advice and top-notch legal counsel.

Click here to read our Press Release.

LegisBytes

Capital Markets

SGX RegCo Issues Guidance Note and Regulator's Column to Enhance Disclosures Around Key Financial Indicators by SGX-ST Issuers

On 31 August 2023, the Singapore Exchange Regulation ("**SGX RegCo**") issued the "Guidance Note on Financial Statements Disclosure" ("**Guidance Note**") and "Regulator's Column: What SGX RegCo expects of disclosures around key financial indicators" ("**Regulator's Column**") with the aim of enhancing the quality of disclosures in respect of financials by issuers listed on the Singapore Exchange Securities Trading Limited ("**SGX-ST issuers**").

Guidance Note on Financial Statements Disclosure

The Guidance Note serves as an informational guide to investors and Boards of Directors, and highlights the factors that they should consider in reviewing and analysing financial statements and annual reports. It discusses examples of mitigation actions and governance practices that have been applied by some SGX-ST issuers to address three key financial indicators, namely: (i) liquidity ratios; (ii) non-current trade and other receivables; and (iii) significant advance or prepayments. Some key measures are set out below.

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(a) Liquidity Ratios

- Maintaining an effective system of internal controls (including financial, operational, compliance and information technology controls) to monitor and assess ongoing liquidity requirements. There should be a mandatory periodic assessment of liquidity risk and sensitivity analysis.
- Putting in place processes to monitor financial covenants on a regular basis.

(b) Non-current Trade and Other Receivables

- Establishing an effective collections system with clear contracts, end-to-end invoicing to billing processes, payment reminder triggers and a periodic data-driven credit review of counterparties.
- Monitoring the status of receivables using receivable turnover ratio, incentivising prompt repayment, taking security or obtaining corporate guarantees from debtors for major contracts.

(c) Significant Advances or Prepayments

- Undertaking of a proactive role by the Board of Directors and Audit Committee of SGX-ST issuers to assess the veracity and reasonableness of significant prepayments and advances.
- Implementing adequate and sufficient internal controls for prepayments and advances, which include but are not limited to: (i) proper authorisation for cash disbursements; and (ii) proper due diligence conducted on transactions and counterparties prior to such disbursement of funds.
- Performing periodic reviews of the ageing outstanding amounts and varying the credit limits of counterparties where necessary.

Regulator's Column: What SGX RegCo Expects of Disclosures Around Key Financial Indicators

The Regulator's Column also focuses on the three key financial indicators addressed in the Guidance Note. SGX RegCo highlighted that currently, most SGX-ST issuers produce "standard disclosures" in respect of the three financial indicators. The Regulator's Column provides that when any of the three financial indicators of an issuer are at concerning thresholds, the issuer should consider adopting "substantive disclosures" on a proactive basis. This will ensure more timely disclosure of key information and minimise regulatory queries. The Regulator's Column highlights examples of what SGX RegCo considers as "standard disclosures" and "substantive disclosures", and sheds light on the situations in which an SGX-ST issuer is expected to make "substantive disclosures". SGX-ST issuers should also refer to the Regulator's Column for information to be covered in a specific scenario should "substantive disclosures" be required to be made.

Click on the following links for more information (available on the SGX website at www.sgx.com):

- Guidance Note on Financial Statements Disclosure
- Regulator's Column: What SGX RegCo expects of disclosures around key financial indicators

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Launch of Structured Certificates on SGX – First in Asia

On 30 August 2023, Structured Certificates were listed and available for trading on the Singapore Exchange Securities Trading Limited ("**SGX-ST**"). Structured Certificates are structured products issued by third party financial institutions (typically investment banks) to meet the specific needs of investors such as yield enhancements and growth payoffs. SGX is the first exchange in Asia to offer trading of Structure Certificates, which are more commonly traded in Europe.

The launch of Structured Certificates on SGX-ST provides a new range of products for investors of Specified Investment Products (SIP) to trade Asian underlying assets on SGX-ST, beyond the existing suite of products like stocks, exchange traded funds (ETFs) and leverage products. Structured Certificates on SGX-ST are not capital protected, and investors bear the risk of the issuer defaulting.

The first issue of Structured Certificates is a yield enhancement product linked to Alibaba Group Holding with an autocall feature. An autocall feature offers the possibility of automatic early expiry if the closing price or level of the underlying asset is higher than or equal to the autocall barrier on any of the observation dates. This means investors will receive an early payback of their investment, in addition to any distributions that may be received until the early expiry.

Click on the following links for more information on Structured Certificates (available on the SGX website at www.sgx.com):

- SGX Press Release dated 15 August 2023 titled "SGX Securities to list Structured Certificates, a first in Asia"
- Structured Certificates on SGX (including FAQs, infographics, product brochures)

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Dispute Resolution

New Mechanisms, Shortened Timelines: SIAC Consults on Draft Seventh Edition of SIAC Rules

Since its establishment in 1991, the Singapore International Arbitration Centre ("**SIAC**") has emerged as a leading global arbitration institution. Ranked second among the world's top five arbitral institutions, SIAC was also determined to be the most preferred arbitral institution in the Asia-Pacific in the 2021 Queen Mary University of London and White & Case International Arbitration Survey: Adapting Arbitration to a Changing World.

Part of SIAC's competitive edge is the SIAC Rules ("**2016 Rules**"), currently in their sixth edition, which provide a framework to ensure that SIAC arbitrations are administered in an efficient, cost-effective and flexible manner. Per the last revision, the 2016 Rules incorporated new procedures for multi-contract disputes and providing for the joinder of additional parties, among others.

To enhance the user experience and raise the bar on efficiency, expedition and cost-effectiveness, SIAC recently launched a public consultation on the draft 7th Edition of the SIAC Rules ("**Draft Rules**"). The consultation will run from 22 August 2023 to 21 November 2023. Key amendments proposed include:

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(a) the introduction of new mechanisms for preliminary determination, coordinated proceedings, and the use of a new online case management system;

(b) the mandatory disclosure of third-party funding relationships and arrangements;

(c) amendments to the rules on the constitution of the tribunal, including a new list procedure that the President of the SIAC Court may employ when appointing an arbitrator;

(d) changes to the Emergency Arbitration procedure to improve its efficiency, such as shortened timelines;

(e) changes to the Expedited Procedure, including the monetary limit on the amount in dispute; and

(f) other general amendments, including information security measures and providing for virtual or hybrid hearings.

For an overview of the above key changes, click here to read our Legal Update.

Visit *Arbitration Asia* for insights from our thought leaders across Asia concerning arbitration and other alternative dispute resolution mechanisms, ranging from legal and case law developments to market updates and many more.

Upcoming Amendment to the Family Justice Rules 2014 – Draft New Rules

On 10 August 2023, the Family Justice Courts ("**FJC**") announced that it has been undertaking a comprehensive review and redesign of the Family Justice Rules ("**FJR**"). The FJR will be amended and will comprise three volumes (collectively, "**new Rules**"):

(a) Family Justice (General) Rules ("**General Rules**");

(b) Family Justice (Probate and Other Matters) Rules 2023; and

(c) Family Justice (Protection from Harassment) Rules 2023 ("**PH Rules**").

Key changes include:

(a) **Expansion of the simplified track for divorce and judicial separation proceedings under Part 2, Rule 8 of the General Rules**. The simplified track will also be available so long as parties have reached an agreement on the grounds for divorce or judicial separation, even if they have not reached an agreement on the ancillary matters.

(b) **Protection from harassment proceedings in the Family Court**. The new PH Rules cover, among other things, the commencement of civil proceedings for orders under Part 3 of the Protection from Harassment Act 2014 ("**POHA**") and excludes claims under section 11 of POHA ("**PH proceedings**") in the Family Court, and the transfer of PH proceedings from the Family Court to the Protection of Harassment Court.

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Other changes include:

(a) simplification and streamlining of the new Rules;

(b) nomenclature changes;

(c) commencement of Action by way of Originating Application and doing away with pleadings for Matrimonial Applications;

(d) requirement to file a Binding Summary setting out a summary of the parties' respective positions (replacing the fact and position sheet with the joint summary in ancillary matters proceedings under Part 2, Rule 18 of the General Rules); and

(e) alignment of the process for most applications, for example harmonising the number of affidavits to be filed under Part 5, Rules 12 and 15 of the General Rules.

For details and other changes, please refer to the draft versions of the new Rules. The new Rules are expected to come into force no earlier than December 2023, along with the necessary changes to the eLitigation system. For interim reference, the FJC has made available a draft version of the following new Rules on the SG Courts website at www.judiciary.gov.sg:

- Family Justice (General) Rules
- Family Justice (Probate and Other Matters) Rules 2023
- Family Justice (Protection from Harassment) Rules 2023

Employment

MOM Consults on Definitions of Platform Operators and Platform Workers, Sub-Contracting Scenarios and Platform Operators' Safety & Health Duties

On 14 August 2023, the Ministry of Manpower ("**MOM**") launched a public consultation from 14 August 2023 to 4 September 2023 inviting feedback on the proposed definitions of Platform Operators and Platform Workers, the treatment of a subcontracting scenario, and Platform Operators' safety and health duties to Platform Workers ("**Consultation Paper**").

The public consultation follows the Government's acceptance of all 12 recommendations made by the Advisory Committee on Platform Workers ("**Advisory Committee**") in its report titled "Strengthening Protections for Platform Workers" ("**Report**"). For more information, please see our article titled "Government Accepts 12 Recommendations to Strengthen Protections for Platform Workers" in our November 2022 NewsBytes here (page 17).

Following the public consultation, the Government intends to introduce new legislation to implement the Advisory Committee's recommendations for Platform Workers. This is intended to commence in the second half of 2024.

In its Report, the Advisory Committee emphasised that clarity on the definition of "Platform Operator", "Platform Worker" and "subcontracting Platform Operator" will assist with the implementation of the proposed recommendations. Further, the definitions must be sufficiently flexible so they remain relevant in light of the evolving platform ecosystem. Platform Operators

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who meet the definition will be required to provide the protections listed in the Advisory Committee's Report and take reasonably practicable measures to ensure the safety and health of the Platform Workers that they contract with.

Feedback was sought on the following:

(a) **Definition of "Platform Operator"**. The proposed definition of a Platform Operator is any undertaking that:

- as a critical part of its business model: (i) collects data from service providers and service consumers; and (ii) uses the data to automate the matching of a service provider to a service consumer;
- receives payment from the service consumer and/or the service provider, for the service provided; and
- exerts control over how the service is performed by, among others, requiring the service provider to comply with rules relating to his conduct with the service consumer or limiting the service provider's ability to negotiate his service fee with the service consumer.

The proposed definition is based on the Advisory Committee's recommendations and international developments in defining Platform Operators.

(b) **Definition of a "Platform Worker"**. The proposed definition of a Platform Worker is a contract for service worker who contracts with a Platform Operator and experiences control from the Platform Operator regarding how the Platform Worker performs the platform service. It is proposed that the category of Platform Worker be designated as a new worker category that is distinct from employees and self-employed persons.

(c) **Subcontracting scenarios**. It is proposed that the forthcoming legislation covers Platform Workers in a subcontracting scenario. The preliminary proposal is that a worker who has a direct contract with the subcontractor, but who may not have a direct contract with the Platform Operator, is covered by the protections. In addition to the public consultation, MOM is also consulting the industry on this issue.

(d) **Safety and health duties.** MOM intends to clarify Platform Operators' duties, under the Workplace Safety and Health Act (WSHA), to ensure the safety and health of the Platform Workers with whom they contract.

Click on the following links for more information:

- Public Consultation on the Definitions of Platform Operator and Platform Worker, Treatment of a Subcontracting Scenario, and Platform Operators' Duties Towards Platform Workers' Safety and Health (available on the REACH website at www.reach.gov.sg)
- MOM Press Release titled "Public Consultation on the Definitions of Platform Operator and Platform Worker, Treatment of a Subcontracting Scenario, and Platform Operators' Duties Towards Platform Workers' Safety and Health" (available on the MOM website at www.mom.gov.sg)

- Report by Advisory Committee on Platform Workers titled "Strengthening Protections for Platform Workers" (available on the MOM website at www.mom.gov.sg)

Recommendations for Workplace Fairness Legislation by Tripartite Committee on Workplace Fairness Accepted by Government and to be Implemented in 2024

On 4 August 2023, the Ministry of Manpower announced that the Government has accepted the final set of recommendations by the Tripartite Committee on Workplace Fairness ("**Committee**") for the Workplace Fairness Legislation ("**WFL**").

By way of background, on 13 February 2023, the Committee released its interim report which set out its key recommendations to sustain fair employment standards and enhance workplace fairness. It proposed the enactment of legislation to encapsulate its recommendations. A month-long public consultation was conducted to seek the views of various stakeholders including employers, employees and the Human Resources (HR) on the Committee's recommendations. We previously issued a Legal Update which outlines the recommendations made in the interim report (available here). Overall, there was broad support for the recommendations. The Committee had taken into account the feedback received and updated its recommendations in its Final Report: Building Fairer & More Harmonious Workplaces.

Benefits of Enacting Legislation on Workplace Fairness

Enacting legislation on workplace fairness will set out clear parameters on what constitutes discrimination in the workplace. The WFL will benefit employers, employees and the society in general in the following ways:

(a) Employers who follow the recommendations to implement a fair workplace will have a more productive and engaged workforce. This in turn will help attract and retain talent in their workforce.

(b) With protection against discrimination, employees will be assured that they can report anti-discriminatory practices without fear of reprisal. In addition, employees and jobseekers will have fair access to job opportunities.

(c) Social cohesion is made stronger when unfair treatment at workplaces is addressed. This is especially vital in a multi-racial, multi-religious society like Singapore with a diverse workforce.

Committee's Final Recommendations

The Committee's final recommendations for the WFL are divided into four key areas. It is reported that the implementation of these recommendations will take place in 2024.

A. Increase in protection against workplace discrimination	
1.	Define discrimination as making an adverse employment decision because of any protected characteristic

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2.	Prohibit workplace discrimination in respect of the following characteristics: (i) age; (ii) nationality; (iii) sex, marital status, pregnancy status, caregiving responsibilities; (iv) race, religion, language; (v) disability and mental health conditions ("**protected characteristics**")
3.	Retain and enhance the Tripartite Guidelines on Fair Employment Practices ("**TGFEP**") to work in unison with the legislation
4.	Cover all stages of employment (i.e. pre-employment, in-employment and end-employment) ("**employment decisions**")
5.	Prohibit job advertisements from using words or phrases that indicate a preference based on any of the protected characteristics
6.	Legislate the job advertisement requirement under the existing Fair Consideration Framework (FCF) for the submission of Employment Pass and S Pass applications
7.	Prohibit employers from retaliating against those who report workplace discrimination or harassment
8.	Enhance the TGFEP to clarify that corporate service buyers and intermediaries should not discriminate by selecting candidates based on characteristics that are not related to the job
B. Provisions to support business/organisational requirements and national objective	
9.	Allow employers to consider a protected characteristic in employment decisions where there is a genuine and reasonable job requirement
10.	Allow initial exemption of small firms (i.e. with fewer than 25 employees) from the legislation, with a view to reviewing this exemption in five years
11.	Allow religious organisations to make employment decisions based on religion and appropriate religious requirements
12.	Support employers in hiring persons with disabilities and seniors (i.e. those who are 55 years and above)
13.	Issue Tripartite Advisory on providing reasonable accommodations to persons with disabilities
C. Processes for resolving grievances while safeguarding workplace harmony	
14.	Require employers to have proper grievance handling processes. Where possible, employers should also protect the identity of persons who report workplace discrimination and harassment.
15.	Ensure that the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP) continues to serve as the first port of call outside of the firm for workers who experience discrimination
16.	Require compulsory mediation for workplace discrimination claims at the Tripartite Alliance for Dispute Management ("**TADM**") first. Adjudication at the Employment Claims Tribunals ("**ECT**") is a last resort.
17.	Ensure that unions continue to play a constructive role in workplace fairness dispute resolution and allow them to support their members in the claims process

D. Ensuring fair outcomes through remedies for victims of workplace discrimination and appropriate penalties for breaches	
18.	Ensure that at TADM mediations, the focus should be on educating employers on correct practices and restoring employment relationships where applicable, and not primarily monetary compensation
19.	Allow monetary compensation of up to S$5,000 for pre-employment claims, and up to S$20,000 for non-union members and S$30,000 for union-assisted claims for in-employment and end-employment claims
20.	Empower the ECT to strike out frivolous or vexatious claims, and/or award costs of up to $5,000 against such claimants
21.	Allow the State to concurrently conduct investigations on claims that involve suspected serious breaches of the WFL, with a view to taking enforcement action
22.	Provide a range of penalties that can be imposed against firms and/or culpable persons, depending on the severity of the conduct

The Committee's recommendations provide a clearer understanding of the focus and requirements of the forthcoming WFL. The implementation of the recommendations in the Final Report through the WFL will be a significant milestone in enhancing the workplace fairness framework of multi-racial, multi-religious Singapore. Needless to say, achieving a fairer workplace is a joint effort among employers, employees and the Government, and they must continue to work together to uphold fair and progressive employment practices in Singapore.

For any queries on the WFL including the measures that may be put in place preparatory to the enactment of the same, please contact our Employment Law partners.

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

- MOM Press Release titled "Government Accepts Tripartite Committee's Final Recommendations for WFL"
- Tripartite Committee on Workplace Fairness Final Report: Building Fairer

Financial Institutions

MAS Circular Sets out Additional Guidance to FIs on Measures to Detect and Manage Sanctions-related Risks

On 31 August 2023, the Monetary Authority of Singapore ("**MAS**") issued the "Circular on ensuring effective detection of sanctions-related risks" ("**Circular**"). The Circular applies to financial institutions in Singapore, including banks, trust businesses, capital markets service providers, financial advisers, payment service providers, insurance companies and brokers (collectively referred to as "**FIs**").

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The Circular sets out additional guidance on measures that should be implemented by FIs to better detect and manage sanctions-related risks. These include the following.

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(a) **Establishing governance process for FIs' Board and Senior Management ("BSM") to exercise oversight of sanctions-related risks relating to FIs' business**

The Circular provides that a sound governance process for the BSM of an FI to exercise oversight of sanctions-related risks should include:

- BSM setting a clear risk appetite in relation to the FI's sanctions-related risks. Indirect exposure to sanctioned persons, activities or jurisdictions should be addressed.
- BSM setting clear roles and responsibilities within the FI with regard to detecting, monitoring and managing sanctions-related risks.
- Establishing risk metrics to help BSM monitor and manage the FI's exposure to significant sanctions-related risks on an ongoing basis.
- Defining an escalation process for the first and second line functions to expediently surface material sanctions-related risk events to the BSM. Material sanctions-related risk events refer to, among other things, the imposition of new sanctions on a jurisdiction that the FI operates in.

(b) **Strengthening FIs' capabilities to detect sanctions-related risks**

The Circular discusses some best practices that have been adopted by some FIs to enhance their capabilities to detect sanctions-related risks and recommend them for adoption by other FIs. They include:

- Using data analytics (DA) to detect sanctions-related risks, in addition to traditional name and transaction screening controls. This includes the use of network link analysis to identify additional customers with relational or transactional links to sanctioned persons, and potential sanctions evasion activities.
- Instituting retrospective reviews of wire transfer transactions to proactively identify existing customers who previously transacted with sanctioned persons for closer review ("**lookback mechanism**"). A FI should take a risk-based approach in implementing a lookback mechanism, considering the materiality and impact of different sanctions on its business operations, as well as reputational, legal and operational risks. The Circular sets out the baseline parameters that an FI should establish for the lookback mechanism to ensure that it is effective.

MAS reminds FIs to review their anti-money laundering and countering the financing of terrorism ("**AML/CFT**") frameworks and controls for any gaps with reference to the additional guidance in the Circular. FIs are expected to take steps to enhance their AML/CFT controls to address such gaps, if identified.

Click on the following link for more information:

- MAS Circular on ensuring effective detection of sanctions-related risks (available on the MAS website at www.mas.gov.sg)

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MAS to Require Financial Advisers to Implement Enhanced Transaction Safeguards for Selected Retail Clients

On 24 August 2023, the Monetary Authority of Singapore ("**MAS**") issued its Response to feedback received on the "Consultation Paper on Enhancing Pre- and Post-Transaction Safeguards for Retail Clients" ("**Consultation Paper**"). The consultation exercise was conducted from 22 June 2021 to 3 August 2021. The proposals in the Consultation Paper aim to raise industry standards and promote greater consumer trust in the financial advisory ("**FA**") industry in Singapore. These consist of proposed enhanced regulatory safeguards to be imposed on FA firms to protect the interests of retail clients, particularly selected clients ("**SCs**"), who meet any two of the following criteria:

(a) are 62 years of age or older;

(b) are not proficient in spoken or written English; and/or

(c) have below GCE "O" or "N" level certifications (or the equivalent).

Background Information

In 2016, MAS introduced the Balanced Scorecard Framework ("**BSC Framework**") to safeguard the interests of retail clients of FA firms. The requirements and guidance on the BSC Framework are set out in various MAS Notices and Guidelines, such as:

(a) Notice FAA-N20 Requirements for the Remuneration Framework for Representatives and Supervisors ("Balanced Scorecard Framework") and Independent Sales Audit Unit; and

(b) Guidelines on the Remuneration Framework for Representatives, and Supervisors ("Balanced Scorecard Framework"), Reference Checks and Pre-Transaction Checks [FAA-G14] ("**BSC Guidelines**").

The proposals in the Consultation Paper address the areas of deficiencies from MAS' review of the effectiveness of the BSC Framework and MAS' findings about undesirable advisory and sales practices of FA representatives which were published in 2021. For more information about the proposals in the Consultation Paper, please click here for our Legal Update in July 2021.

Key Enhanced Pre- and Post-transaction Safeguards

MAS stated in its Response that it will proceed to implement the key proposals in the Consultation Paper which are highlighted below. The new requirements will be set out in MAS Notice FAA-N16 Recommendation on Investment Products ("**FAA-N16**"). MAS will consult on the proposed revisions to FAA-N16 in due course. MAS proposes a nine-month transitional period from the time the revised FAA-N16 is published, for the revisions to take effect.

(a) **Strengthening the requirements to determine and document a client's SC status**. Currently, the requirements to determine whether a client is an SC and to conduct a pre-transaction check for the client's SC status are set out in the BSC Guidelines. MAS will move the requirements from the BSC Guidelines to FAA-N16, a MAS Notice. A breach of MAS Notice would be an offence. In addition, FA representatives will be

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required to: (i) document their assessment of a client's SC status; and (ii) declare that they have performed such an assessment. The FA representatives should also notify the client of his/her SC status at the end of the fact-find process, and the additional safeguards accorded to SCs (for example, the requirement for a trusted individual ("**TI**") to be present during the sales and advisory process).

(b) **Requiring a TI to be present for all investment recommendations made to SCs**. MAS will require a TI to be present for the entire sales and advisory process, unless an SC does not identify a TI or is unwilling to be accompanied by a TI. In such situations, FA firms may proceed to make investment recommendations to the SC only if they obtain the SC's written acknowledgement that he/she: (i) does not wish to have a TI present, and (ii) confirms that he/she is fully able to make decisions on his/her own without a TI. If the SC does not have a TI present during the sales and advisory process, FA firms are required to include a specific question in their pre-transaction call-back to confirm that the SC was offered an opportunity to bring along a TI, but had confirmed that he/she did not want to have a TI present and is fully able to make a decision without a TI.

(c) **Criteria for qualification as a TI**. To qualify as a TI, a person must: (i) be at least aged 21; (ii) possess at least GCE "O" or "N" level certifications or equivalent academic qualifications; (iii) be proficient in spoken and written English; and (iv) be a person whom the SC trusts to be privy to the SC's personal information and be able to assist the SC in understanding the SC's financial decision. To establish criterion (iv), FA firms may obtain written acknowledgment from the SC that the SC agrees to the identified TI becoming aware of the SC's personal information during the course of the sales and advisory process. A TI should not be someone who presents potential conflicts of interests.

(d) **Enhancing requirements relating to call-backs**. At present, FA firms are expected to perform a pre-transaction call-back to a client who: (i) is an SC; or (ii) purchases an investment product from a Selected Representative ("**SR**"). An SR refers to a FA representative who has been assigned a BSC grade B or worse for two consecutive calendar quarters immediately preceding the measurement quarter. The call-backs should be conducted by the FA representative's supervisor or an independent party within the free-look period. To ensure that client call-backs are effective, MAS will stipulate the minimum set of content which the client call-backs must cover in FAA-N16, including: (i) the basis of the recommendation; (ii) the main features and key risks and limitations of the product being recommended; (iii) existence of a free-look period (if any); (iv) whether the representative had been professional and ethical in his or her dealings with the client; and (v) whether a sale was made to an SC without a TI. MAS intends to provide further guidance on the conduct of call-backs and will clarify that the call-backs can be done in audio, video or face-to-face format.

(e) **Audio recording of call-backs for SCs and clients of SRs**. There will also be a new requirement for FA firms to audio record (and keep such recording for no less than five years) all call-backs performed on SCs and clients of SRs. FA firms will be required to provide a copy of the audio recordings to the clients upon request. Where audio recording is not possible (such as if the client does not consent to recording of the call-back or the call-back was done in a face-to-face meeting), FA firms will be required to at least put in place the following controls: (i) SCs will be

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asked to have the TI present at the call-back/meeting and their choice on the matter to be documented; (ii) the FA representative's supervisor is to document key points discussed in a summary document (including those prescribed in FAA-N16); (iii) signed acknowledgements by the client and the FA representative's supervisor; and (iv) controls to monitor that FA representatives and their supervisors do not circumvent the requirement for recording of call-backs.

(f) **Digital advisers (subject to certain conditions) will be exempt from the above requirements**. Digital advisers (subject to certain conditions) will be exempt from the requirements to: (i) determine whether a client is an SC; and (ii) conduct pre-transaction checks on documentary reviews and client call-backs. Digital advisers that operate without any FA representatives providing recommendations or advice directly to clients will be exempt from the requirement for presence of a TI. However, digital advisers are still required to ensure the suitability of their product recommendations.

(g) **Independent sales audit ("ISA") unit to review product recommendations to SCs**. MAS will require the ISA unit of the FA firms to review product recommendations made to SCs on a post-transaction basis. MAS will conduct a separate consultation exercise on the proposed sampling requirements for SC transactions.

MAS will not proceed with the requirement which had been proposed in the Consultation Paper for call-backs (and audio recordings) to be conducted for retail or other clients (beyond SCs and clients of SRs).

Click on the following link for more information:

- MAS Response to Feedback Received on "Consultation Paper on Enhancing Pre- and Post-Transaction Safeguards for Retail Clients" (available on the MAS website at www.mas.gov.sg)

MAS Announces New Regulatory Framework for Stablecoins

On 15 August 2023, the Monetary Authority of Singapore ("**MAS**") announced the finalised regulatory framework for stablecoins regulated in Singapore in its "Response to Public Consultation on Proposed Regulatory Approach for Stablecoin-related Activities" ("**Response**").

In October 2022, MAS issued the Consultation Paper on Proposed Regulatory Approach for Stablecoin-related Activities ("**Consultation**") to seek comments on the overall regulatory approach on stablecoin-related issuance and intermediation activities. In the Consultation, MAS proposed to introduce a new regulated activity of "Stablecoin Issuance Service" under the Payment Services Act to regulate Single-Currency Pegged Stablecoins ("**SCS**") pegged to the Singapore dollar or Group of Ten (G10) currencies that are issued in Singapore . You may read more about the Consultation in our earlier Legal Update, available here.

Stablecoins are digital tokens designed to maintain a constant value against one or more specified fiat currencies. MAS had previously identified that an innovative and responsible digital asset ecosystem needs credible and reliable mediums of exchange to facilitate transactions. MAS noted the potential for

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stablecoins to function as such mediums of exchange where they are well-regulated and give a high degree of assurance of value stability, and the new regulatory framework seeks to support the development of such stablecoins.

Legislative changes will need to be put in place to implement the regulatory framework for stablecoins, and MAS stated in its Consultation that it would separately publish the requirements, legislative amendments and transitional arrangements for consultation. That said, in its media release, MAS "encourages SCS issuers who would like their stablecoins recognised as "MAS-regulated stablecoins" to make early preparations for compliance".

Please refer to our Legal Update here where you can find an outline of the key aspects of the regulatory approach to stablecoins under the new framework, spotlighting (where relevant) salient updates from the Response.

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CaseBytes

Rajah & Tann Singapore Leads the Very First Successful Cryptocurrency Restructuring in Singapore

Section 210 of the Companies Act 1967 ("**Companies Act**") provides a flexible tool for companies seeking to restructure their debts in Singapore by way of a scheme of arrangement, which is a Court-approved agreement between a company and its stakeholders in relation to the former's debt obligations. The provision has seen much use by companies in distress over the years to varying degrees of success, but the case of *Defi Payments Pte Ltd* (HC/OA 378/2023) is the first of its kind between a cryptocurrency company and its users.

In April 2023, the applicant company, Defi Payments Pte Ltd ("**Company**"), obtained leave of the Singapore Court to convene a meeting of creditors for the purposes of presenting a scheme of arrangement for voting by its creditors ("**Scheme**"). The vote for the Scheme received strong creditor approval of more than 90% by number and in value (present and voting) from each of the two classes of creditors and across the board, far exceeding the statutory threshold set out in section 210(3AB) of the Companies Act. Following the vote, the Court granted the sanction of a cryptocurrency scheme of arrangement on 10 August 2023, and the Scheme has since taken effect.

The applicant company was represented by Rajah & Tann Singapore LLP's Sheila Ng, Deputy Head of the Restructuring & Insolvency Practice, together with Associates Benedict Tedjopranoto and Naomi Lim. Partners Hoon Chi Tern and Cynthia Wu, and Associate Melvin Chua from the Capital Markets/Mergers & Acquisitions Practice also advised the applicant company in the restructuring process.

The restructuring of a cryptocurrency company presents many different and unique challenges from the restructuring of a company hailing from a conventional industry. Some of the more pertinent challenges are explored below.

(a) **Creditor management**. There are numerous challenges in managing the creditor base of a cryptocurrency company, which is vastly different than

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that of a company in a conventional industry. In the present case, the Company and its financial advisors employed various strategies to ensure constant and effective communication and disclosure of information, as well as managing the expectations of various creditors.

(b) **Formation of an informal committee of creditors**. A method suggested by the Singapore Court in the present matter was the formation of an informal committee of creditors to serve as a sounding board to the Company and its advisors. This matter demonstrates the importance of setting expectations clearly and of having diverse representation within the committee of creditors.

(c) **Conduct of the scheme meeting and overall scheme process**. When this scheme process was enacted in legislation, it was in the context of a traditional physical scheme meeting, which would not be feasible in a cryptocurrency scheme. Here, the Company explored different methods of varying the scheme process to tailor an efficient and practical scheme process which would not fetter the rights that the creditors already had if a scheme followed the prescribed regulations.

(d) **Obtaining the Court's sanction**. Given the sheer number of creditors, which would likely include a large number of passive or less-interested creditors, the total number of creditors who voted might only make up a small percentage of the total number of creditors, even if this minority held the bulk of the debt, as in the present case. Here, the Court held that on balance, the statutory requirements were met and the Scheme was generally commercially reasonable and, on the basis of strong creditor approval, gave its sanction of the Scheme.

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

Singapore Decision on Enforceable Property Rights of Crypto Assets – High Court Grants Constructive Trust over Improperly Transferred Stablecoin

Digital assets are increasingly common in financial transactions, with ever more businesses and regulatory authorities recognising their value and legitimacy. Due to the novel nature of crypto assets and their place at the centre of a growing number of legal disputes, the courts have been faced with the task of defining their identity as property and the legal rights associated with such assets.

In *ByBit Fintech Ltd v Ho Kai Xin and others* [2023] SGHC 199, the Singapore High Court determined whether the crypto assets in question were property capable of being held on trust and, if so, what type of property they were.

The crypto assets in this case were United States Dollar Tether ("**USDT**"). The Plaintiff alleged that the Defendant had improperly transferred the USDT in question and sought a declaration of a constructive trust over the USDT so as to trace the assets.

The Court granted the trust, holding that the USDT was property capable of being held on trust. In considering the type of property represented by the USDT, the Court held that it was a chose in action recognisable by common law as being enforceable in court. The Court thus granted the constructive trust over the USDT.

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The Court's decision is significant as it is the first time that this issue has been decided in the Singapore courts. While earlier Singapore cases have recognised that there is at least a serious question to be tried that crypto assets are property capable of being held on trust, they had not determined whether such assets are things in action or a novel type of intangible property. Parties holding or dealing with crypto assets may thus hold greater certainty on the nature of their assets and their enforceability in law.

The decision also shines a light on the remedies available to claimants seeking the return or repayment of crypto assets. In finding a trust over the USDT, the Court granted the orders sought by the Plaintiff, including orders for the return of the traceable sums and tracing orders over the sums which had been converted.

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

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Apportionment of Liability for Maritime Collisions

In *Owner of the vessel "NAVIGATOR ARIES" v Owner of the vessel "LEO PERDANA"* [2023] SGCA 20, the Singapore Court of Appeal had the task of determining the apportionment of liability in a collision between two vessels. The decision involved an assessment of an intricate set of facts and how the collision aligned with international navigation rules.

Disputes involving ship collisions are often challenging, both for litigants and for courts. In terms of evidence, they require the consolidation of technical evidence, factual accounts and expert reports. This then has to be applied in the context of the relevant legislation, regulations and international conventions.

However, the Singapore courts have demonstrated that they are fully equipped at both the trial and appellate level to decide on collision cases. They have established a body of case law that covers an array of complex issues, including the allocation of collision liability and – as shown in this case – incidents involving manoeuvring in a narrow channel.

In this decision, two vessels collided in the Surabaya Strait. The Court of Appeal determined that the immediate cause of the collision was port sheer due to the "bow cushion effect" experienced by one of the vessels. Following from this, the Court had to determine the proper apportionment of liability between the two vessels based on a range of factors, including the vessels' breaches of the International Regulations for Preventing Collisions at Sea 1972, their causative impact, the course of events and the vessels' actions prior to the collision. Ultimately, the Court held that liability for the collision should be split 50:50 between both vessels.

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

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The Doctrine of Illegality in the Context of a Trust

In the case of *Lau Sheng Jan, Alistair v Lau Cheok Joo Richard & Anor* [2023] SGHC 196 the Singapore High Court ("**Court**") considered an application by the beneficiary to terminate a Trust Deed ("**Trust**") for a property which was the subject matter of the Trust ("**Property**"). In particular, the Court considered how the doctrine of illegality applies in a trust situation.

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In July 2020, the respondents, the applicant's parents, entered into an option to purchase the Property. The respondents also jointly engaged solicitors to draft and execute the Trust by way of a deed. Pursuant to the Trust, the respondents were to hold the Property, or alternatively the net proceeds of the sale of the Property, on trust as joint trustees for the applicant's sole benefit.

The respondents subsequently separated. The applicant applied for a declaration that the Trust be terminated and for the Property to be transferred from the joint trustee respondents to the applicant. The second respondent had no objections to the Trust being terminated. The first respondent objected.

The parties disagreed as to the purpose of the Trust. The applicant and the second respondent asserted that the Trust was created to gift the applicant, the respondents' elder child and only son, a legacy property while the respondents were still living. In contrast, the first respondent claimed that the Trust Deed was created to avoid the payment of Additional Buyer's Stamp Duty ("**ABSD**") and that it was a sham instrument.

The two broad issues before the Honourable Judicial Commissioner Goh Yihan were:

(a) whether the applicant had made out a *prima facie* case for the termination of the Trust pursuant to the rule in *Saunders v Vautier (1841*) 4 Beav 115 ("***Saunders v Vautier***"*)*; and

(b) if the applicant had made out such a *prima facie* case, whether his entitlement to terminate the Trust was defeated by: (i) the Trust Deed being invalidated on the ground that it was a sham instrument, or (ii) the Trust being unenforceable on the ground that it was created illegally or for an illegal purpose.

The Court's Decision

First, the Court found that the applicant had established a *prima facie* case for the termination of the Trust pursuant to the rule in *Saunders v Vautier*. As the applicant: (i) being 26 years old, was an adult of full age; (ii) had undergone a medical check-up before a registered psychiatrist, who had certified that the applicant did not suffer from any mental disability; and (iii) was absolutely entitled to the Property as he was the sole beneficiary of the Trust.

Next, the Court found that the Trust Deed was not a sham. The court analysed the general concept of sham trusts discussed by Chan Seng Onn J in *Chng Bee Kheng and anor v Cheng Eng Chye [*2013] 2 SLR 715 ("***Chng Bee Kheng***") that adopted an English law formulation. Goh Yihan JC then went on to conclude that a trust deed is a sham where it was never intended by the settlors to create an arrangement for them to divest themselves of beneficial ownership in the manner provided for in the trust, while intending to give that false impression to third parties or to the court.

Following *Chng Bee Kheng*, the crux of a sham trust is a common intention to mislead, with the relevant common intention generally being that of the settlor and the trustee. This is a subjective test. In order to establish a sham, it is crucial to ascertain on the available evidence what the settlor truly intended. In this case, the evidence showed that the Trust was created by the respondents to transfer beneficial interest in the Property to the applicant. The Trust Deed worked precisely as the respondents had intended it to. It was an incidental benefit that the Trust arrangement also allowed the respondents to save on ABSD, but this did not detract from the respondents' intention to gift their elder

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child and only son a legacy property whilst they were both still living. The Court therefore concluded that the Trust Deed was not a sham instrument and should not be invalidated on this basis.

The Court then instructively elucidated how the doctrine of illegality should apply in the context of a trust. In earlier Singapore authorities the courts adopted the formal reliance principle from the English case of *Tinsley v Milligan* [1994] 1 AC 340. The formal reliance principle is a rule that a plaintiff who asserts a claim founded on an illegality will be refused the court's assistance if he must rely on the illegality to maintain his claim. To "rely" on the illegality means that the plaintiff has to plead the facts of the illegality. The Court noted that the formal reliance principle has been departed from in other jurisdictions and has been the subject of strong judicial disapproval. The Court reasoned that the formal reliance principle should not be applied in the present case. Instead, the Court adopted a modified framework from principles taken from the Court of Appeal case of *Ochroid Trading Ltd and another v Chua Siok Lui (trading as VIE Import & Export) and another [2018*] 1 SLR 363 ("***Ochroid Trading***") that had rejected the formal reliance principle in the contractual context.

Whilst the case of *Ochroid Trading* was a contractual matter, the Court reasoned, among others, that it was appropriate to adopt a modified *Ochroid Trading* framework in the trust context to ensure coherence in the illegality defences between the trusts context and the contractual context.

Modified Ochroid Trading framework

The modified *Ochroid Trading* framework to be applied in the trusts context is:

(a) Firstly, the court should consider whether the trust in question is illegal in itself and therefore void and unenforceable. This occurs when a trust is expressly or impliedly prohibited by statute or falls within an established category of situations that renders it void and unenforceable.

(b) Secondly, if the trust is valid, the court then considers whether the trust was created for an illegal purpose or arose as an incidental consequence of an illegal purpose. If yes, then a proportionality analysis could be applied. This is because not all forms of illegality are equally serious. Factors to be considered include: (i) whether allowing the claim would undermine the purpose of the prohibiting rule; (ii) the nature and gravity of the illegality; (iii) the remoteness or centrality of the illegality to the trust; (iv) the object, intent and conduct of the parties; and (v) the consequences of denying the claim.

(c) Thirdly, even if the court finds the trust was created for an illegal purpose and is unenforceable, then the court may consider if the party seeking to enforce the trust can still establish an alternative basis for enforcing a proprietary interest by the operation of trusts law. During this determination the court should apply the principle of stultification to decide if, in allowing the claim, the fundamental policy that prohibited the trust would be undermined.

Applying the above framework, the Court found that the Trust should not be unenforceable for illegality. First, the Court found that the Trust was not illegal in itself as the matter did not fall into any established categories that rendered the Trust illegal in itself. In examining the question of statutory illegality, the Court considered the Stamp Duties Act 1929 (Cap 312, 2006 Rev Ed) and held there was no express prohibition of trusts created to avoid ABSD obligations.

Secondly, the Court found that the Trust was also not created for an illegal purpose, which was to avoid ABSD.

Ultimately, the Court found that the Trust was a *bona fide* instrument that was meant to benefit the applicant and not to avoid ABSD. Accordingly, it allowed the applicant's application for the Trust to be terminated and the Property to be transferred to the applicant.

The General Division's analysis is groundbreaking and attains a coherence with the Court of Appeal's decision in *Ochroid Trading* on an illegality analysis in the contractual setting. The decision also helpfully outlines a modified framework approach that is nuanced and balanced on the issue of illegality invalidating a trust.

Deals

VinFast Auto Ltd.'s Business Combination with Black Spade Acquisition Co.

Rajah & Tann Singapore, a member firm of Rajah & Tann Asia, advised VinFast Auto Ltd. in respect of its business combination with Black Spade Acquisition Co. (NYSE: BSAQ), a special purpose acquisition company (SPAC) which valued VinFast Auto Ltd. at approximately US$23.0 billion, and the listing of VinFast Auto Ltd. on The Nasdaq Stock Exchange following completion of the business combination. The transaction is the biggest Vietnamese M&A transaction since records began in 1980, and the largest M&A in Asia in 2023 so far. Evelyn Wee (Deputy Head, Corporate and Transactional Group, and Head, Capital Markets Practice) led the transaction, assisted by Hoon Chi Tern (Deputy Head, Capital Markets Practice). Vikna Rajah (Head, Tax Practice) led the tax aspects of the transaction and Desmond Wee (Head, Employment (Corporate) Practice) advised on the employment-related matters.

S$236 Million Divestment of Four Good Class Bungalows Located at Yarwood Avenue and Nassim Road

Norman Ho from the Corporate Real Estate Practice acted for Times Properties Private Limited, a subsidiary of Cuscaden Peak Investments, in the S$236 million divestment of four good class bungalows located at Yarwood Avenue and Nassim Road. The sale of the good class bungalows at Nassim Road has been reported as setting a new record land rate for good class bungalow areas in Singapore.

Investment in Silicon Box Pte. Ltd.'s US$156 Million Series A Funding Round

Terence Quek from the Mergers & Acquisitions Practice acted for Ally Capital Holdings Limited in its investment as lead investor in Silicon Box Pte. Ltd.'s ("**Silicon Box**") US$156 million Series A funding round. Silicon Box is a start-up in the business of developing forefront silicon integration technology and solutions.

AP Technologies' Growth Equity Fundraising Round with AGIC Capital

Tracy Ang from the Mergers & Acquisitions Practice acted for AP Technologies Group Pte. Ltd. ("**AP Technologies**") in its growth equity fundraising round with AGIC Capital, a private equity firm. AP Technologies specialises in the manufacturing of medical tubing, and provides a wide range of support services required for catheter manufacturing.

Authored Publications

TRAIL Bits & Bytes – Rajah & Tann Partners with NUS Law to Showcase Thought Leadership in Law and Technology

The rapid development of technology has demanded equally swift responses in the law, and Rajah & Tann is at the forefront of exploring how technology and the law intersect. In furtherance of this, Rajah & Tann has partnered with The Centre for Technology, Robotics, Artificial Intelligence & the Law (TRAIL) of NUS Law, along with other leading Singapore law firms, to showcase thought leadership in law and technology through a monthly bulletin – Bits & Bytes.

With its inaugural issue in July 2023, Bits & Bytes covers how technology is used in or impacts different areas of law, featuring commentaries on legal topics, technological developments, legal policy, case notes and practice notes. Lawyers from Rajah & Tann have contributed the following articles spanning various areas of law, and will continue to share our exploration of key issues in upcoming editions.

- The Impact of Technology on Sports (Part 1 & Part 2)
  (By Lau Kok Keng)
  This two-part article discusses the evolution and state of technology which is deployed in sports today, the impact of the use of such technology, and some of the legal and ethical issues arising from such use.

  Part 1 examines the state of technology deployed in coaching, training, nutrition, sports equipment and apparel, and in the making of on-field decisions. Part 2 looks at technology that has evolved in the provision of sports media content and entertainment, new opportunities which technology has offered to allow sports fans to enjoy and connect with sports, how technology has enabled challenges posed by pandemics and physical handicaps to be overcome, as well as the legal and ethical issues arising from the use of cutting-edge technology in sports.

- Issues of Jurisdiction in the Borderless World of Crypto Disputes
  (By Jansen Chow, Foo Xian Fong, Rajesh Sreenivasan, Steve Tan, Benjamin Cheong, Lionel Tan & Tanya Tang)
  This article explores legal issues concerning the application of the concept of jurisdiction to crypto disputes, which occur within the borderless digital world. Our lawyers look at some recent decisions in Singapore, the UK and the US relating to crypto disputes and jurisdiction, and seek to identify the trends in this developing area of law.

- The Future of Digital Money in Singapore: MAS Proposes Framework for Purpose Bound Money
  (By Rajesh Sreenivasan, Steve Tan, Benjamin Cheong, Lionel Tan & Tanya Tang)
  The Monetary Authority of Singapore has taken formative steps towards establishing a framework for the organised development of digital money usage by issuing a Purpose Bound Money ("**PBM**") Technical Whitepaper ("**Whitepaper**"). The Whitepaper provides a technical overview to the concept of PBM, which is a programmability model for digital money, proposing PBM as a common protocol for interacting with different forms of medium of exchanges. This article highlights the challenges of digital money, the key points of the Whitepaper and what it might mean for the future of digital money in Singapore.

New articles will be published regularly on the Bits & Bytes website, which you can check out here.

Fair and Equitable Treatment in Investment Treaty Arbitration

Rajah & Tann Singapore has contributed the "Fair and Equitable Treatment" chapter to the eight edition of *The Investment Treaty Arbitration Review* ("***Review***"). The *Review* provides an up-to-date panorama of investment treaty arbitration, covering new awards, decisions, and other developments in the field.

Authored by our leading Partners Kelvin Poon, SC (Deputy Managing Partner and Head, International Arbitration Practice) and Matthew Koh (International Arbitration Practice), Senior Associates David Isidore Tan and Dennis Saw, and Associates Jodi Siah and Timothy James Chong, the "Fair and Equitable Treatment" chapter discusses the fair and equitable treatment ("**FET**") standard, which remains one of the key protections relied on by investors in investment disputes.

The updated chapter reviews recent awards that have discussed and applied the FET standard, including a decision involving Russia's actions that led to the bankruptcy of Yukos Oil Company OJSC. This chapter also examines a case in which the alleged FET protection was contained in the preamble of the relevant BIT (wherein the tribunal found there was no FET obligation).

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

Visit *Arbitration Asia* for insights from our thought leaders across Asia concerning arbitration and other alternative dispute resolution mechanisms, ranging from legal and case law developments to market updates and many more.

"The Rise of Arbitration in the Asia-Pacific Region" – Rajah & Tann Contributes to *The Asia-Pacific Arbitration Review 2024*

Rajah & Tann Singapore has contributed a chapter titled "The rise of arbitration in the Asia-Pacific region" to *The Asia-Pacific Arbitration Review 2024*, published by the Global Arbitration Review (GAR), a leading resource on international arbitration news.
Arbitral hubs and institutions in Asia have reached new heights in terms of growth and popularity, achieving stellar global rankings and an ever-growing number of case filings. The popularity of arbitration as an alternative mode of dispute resolution has been augmented by the generally pro-arbitration stance taken by the countries in the region.

Authored by Rajah & Tann Singapore Partners Kelvin Poon, SC (Deputy Managing Partner and Head, International Arbitration Practice), Avinash Pradhan (Deputy Head, International Arbitration Practice), and Andre Yeap, SC (Senior Partner, International Arbitration Practice), the chapter examines recent developments in Singapore and other parts of Asia. These include the growing profile of arbitral seats and institutions in Asia, and the pro-arbitration stance of jurisdictions across the region.

To read the full chapter, please click here.

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

Visit *Arbitration Asia* for insights from our thought leaders across Asia concerning arbitration and other alternative dispute resolution mechanisms, ranging from legal and case law developments to market updates and many more.

Events

ASEAN Conference 2023

On 31 August 2023, the Singapore Business Federation (SBF) hosted the ASEAN Conference 2023, supported by United Overseas Bank (UOB) RSM Chio Lim and Rajah & Tann Asia. The event, graced by Minister for Trade and Industry, Mr Gan Kim Yong, revolved around the theme "Forging a Digital and Sustainable ASEAN – Towards Prosperity, Resilience and Sustainable Growth". The panellists at the event discussed the latest drivers of key developments shaping the Southeast Asia region. Kala Anandarajah, BBM, Head of the Competition & Antitrust and Trade Practice, moderated the second plenary session titled "Positioning for the Shift in ASEAN's Global Supply Chain", which offered a comprehensive exploration of the evolving trade patterns within ASEAN, the emergence of new trade corridors, and seizing emerging opportunities within the region.

Rajah & Tann Asia is a Founding Partner of this seventh ASEAN Conference.

Data & Digital Economy (DDE) Masterclass – Recent Developments on Digital Assets and Token Custody in the Region

On 30 August 2023, Rajah & Tann Asia organised the DDE Masterclass on "Recent Development on Digital Assets and Token Custody in the Region". Our legal experts from across Rajah & Tann Asia shared their insights on developments in digital assets in Singapore, Indonesia, Malaysia and Thailand.

Samuel Lim (Rajah & Tann Singapore), Indira Yustikania (Assegaf Hamzah & Partners), Emily Cheah (Christopher & Lee Ong), and Supawat Srirungruang (R&T Asia (Thailand)) shed light on the varying landscapes and regulations in the region. Regina Liew and Larry Lim, Head and Deputy Head respectively of the Financial Institutions Group, and Ho Zi Wei from the Restructuring & Insolvency Practice injected their insights on interesting trends of custody for different types of tokens, and latest developments in technology for digital asset custody, among others.

Inspiring a Renaissance in International Mediation

On 25 August 2023, Sage Mediation and Rajah & Tann Asia co-organised a hybrid event titled "Inspiring a Renaissance in International Mediation". Recent global developments have catalysed the evolution of international mediation at a rapid pace. Business leaders are increasingly using alternative dispute resolution (ADR) methods such as mediation to resolve disagreements in a non-litigious manner.

At the hybrid event, the speakers discussed the trends in commercial mediation practice in Asia and shared insights on how lawyers and mediators can stay relevant to clients in the ever-changing dispute resolution landscape in Asia. Ng Kim Beng, Deputy Managing Partner of Rajah & Tann Singapore LLP, was one of the speakers.

LearningBytes Lunchtime Series: Unravelling Debt Restructuring Complexities for Public Listed Companies

On 24 August 2023, Rajah & Tann organised its monthly "LearningBytes" lunchtime series, with this month's seminar titled "Unravelling Debt Restructuring Complexities for Public Listed Companies". In debt restructuring, balancing regulations and stakeholders is crucial. Raelene Pereira from the Restructuring & Insolvency Practice and Hoon Chi Tern, Deputy Head of the Capital Markets Practice, highlighted some key pointers for successful debt restructuring for public listed companies. They dissected real-life case studies from Singapore and beyond, and shared insights on how to expertly navigate the complexities of debt restructuring, ensure regulatory compliance and balance stakeholder interests.

Cooperating on Sustainable Projects – Competition Law Implications with New Environmental Sustainability Guidelines in Singapore

On 4 August 2023, Rajah & Tann Asia organised a seminar titled "Cooperating on Sustainable Projects – Competition Law Implications with New Environmental Sustainability Guidelines in Singapore".

Amidst the existential threat of climate change, Singapore has embarked on a whole-of-nation effort to achieve Singapore's climate pledge under the Paris Agreement. In recognising that businesses also have a role in contributing to these climate change goals, the Competition and Consumer Commission of Singapore (CCCS) has released draft guidelines for public consultation on how businesses can collaborate to pursue environmental sustainability objectives in a manner that complies with competition laws.

At the seminar, Kala Anandarajah, BBM, Partner of Rajah & Tann's Sustainability Practice and Head of the Competition & Antitrust and Trade Practice, together with Joshua Seet from the Competition & Antitrust and Trade Practice discussed the draft guidelines and highlighted what these mean for businesses, especially as they collaborate with competitors to establish green industry standards, phase out unsustainable products and explore joint research and development (R&D), production, or procurement arrangements.

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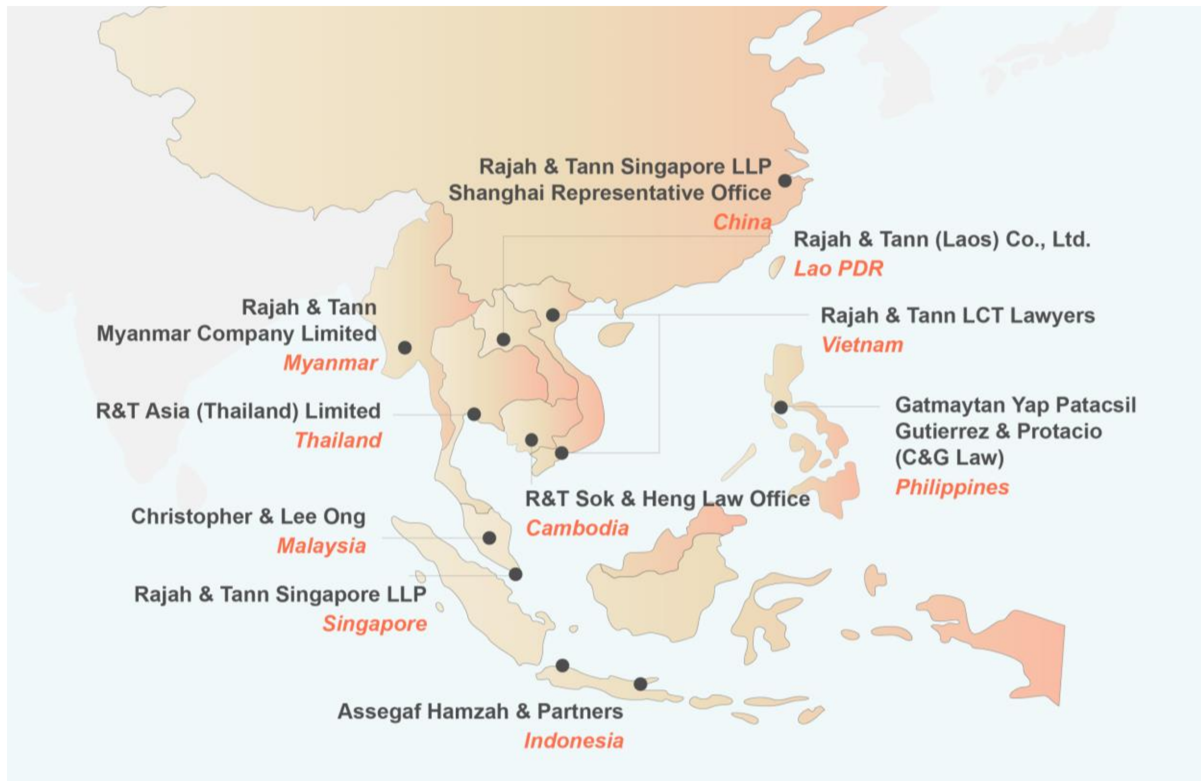
Regional Presence



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