RAJAH & TANN ASIA

NewsBytes: Singapore

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RAJAH & TANN ASIA
LAWYERS WHO KNOW ASIA

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Rajah & Tann Asia's Year in Review 2021

We are pleased to present Rajah & Tann Asia's Year in Review 2021.

In keeping with trending topics, we have introduced new sections on **Legal x Digital**, **Sustainability**, and **Diversity & Inclusion** in this edition to highlight our network's involvement in these issues.

Click here to read the Year in Review.

Rajah & Tann Asia Maintains Top Ranking in *Chambers Global 2022*

The offices of Rajah & Tann Asia and their lawyers continue to be highly ranked in the 2022 edition of the *Chambers Global* rankings by Chambers and Partners.

Lauded by clients to have "a strong market reputation for work on cross-border transactions", our lawyers are commended for their "expertise and experience to deliver cutting-edge legal solutions to help develop winning strategies to navigate through the most complex legal issues".

Click here to read our Press Release and view our full rankings.

LegisBytes

Dispute Resolution

Amendments to the Penal Code and Other Legislation Take Effect on 1 March 2022

On 28 February 2022, the Ministry of Home Affairs ("**MHA**") announced that amendments to the Penal Code and criminal provisions in other legislation would come into effect on 1 March 2022. They comprise the majority of amendments introduced through the Criminal Law (Miscellaneous Amendments) Act 2021, which was passed by Parliament on 13 September 2021.

These amendments will:

(a) increase the penalties for the following three sexual offences:

- Outrage of Modesty;
- Engaging in Sexual Activity in the Presence of a Minor; and
- Showing a Sexual Image to a Minor.

(b) expand and clarify the scope of the following offences and defences:

- Provision of False Information to a Public Servant;

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- Procuring Sexual Activity by Deception or False Representation;
- Sexual Penetration of a Corpse; and
- Offences relating to Voyeurism, Child Abuse Material, and Abusive Material of Minors.

(c) modernise the language of certain terms (such as "wantonly", "malignantly" and "maliciously") with terms which are more easily understood, and already defined in the Penal Code (such as "rashly" or "intentionally").

Section 3 of the Criminal Law (Miscellaneous Amendments) Act 2021 amends section 74 of the Penal Code to expand the jurisdiction of a Magistrate's Court and a District Court relating to racially or religiously aggravated offences as specified in section 74(2) of the Penal Code, as amended by section 17 of the Maintenance of Religious Harmony (Amendment) Act 2019. Section 3 of the Criminal Law (Miscellaneous Amendments) Act 2021 will come into force at a later date together with the commencement of the Maintenance of Religious Harmony (Amendment) Act 2019.

Click on the following link for more information:

- MHA Press Release titled "Commencement of Amendments to the Penal Code and Other Legislation" (available on the MHA website at www.mha.gov.sg)

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Employment & Benefits

Government Help to Support Industry Transformation in the Construction and Process Sectors

The Construction and Process sectors are key drivers of Singapore's economy. The Government has been working closely with the industry to drive business and workforce transformation. These sectors have been impacted by the COVID-19 pandemic, as their heavy reliance on foreign workers resulted in significant manpower challenges due to the restrictions on cross-border travel.

The Ministry of Manpower ("**MOM**"), Building and Construction Authority, Economic Development Board and Enterprise Singapore have conducted a study on the reduction in the Dependency Ratio Ceiling ("**DRC**") and removal of the Man-Year Entitlement ("**MYE**") framework. Thus, the various authorities will make the following policy changes for the Construction and Process sectors to support this transformation and incentivise firms to hire higher-skilled foreign workers:

(a) Reduce the DRC from 1:7; i.e. 1 local employee to 7 Work Permit holder ("**WPH**") or S Pass holders to 1:5, i.e. 1 local employee to 5 WPHs or S Pass holders;
(b) Phase out the MYE framework; and
(c) Revise the levy structure for WPHs.

These changes will take effect from 1 January 2024. In addition, firms that exceed the DRC of 1:5 on 1 January 2024 will be allowed to retain their incumbent WPHs and S Pass holders until the relevant work passes expire.

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However, these firms will not be able to renew or apply for new WPHs or S Pass holders until they bring their firms' workforce within the DRC of 1:5.

Firms can continue to apply for and use their MYE quotas up to 31 December 2023. Project contracts that have already been awarded or had tendered calling date on or before 18 February 2022 will be allowed to use their MYE quotas up to 31 December 2024 or their project completion date, whichever is earlier.

Support to Help Firms Transform and Hire Locals

Firms in the Construction and Process sectors are encouraged to tap on various Government initiatives to transform their businesses and hire locals. The aims and details of such initiatives include:

(a) Supporting business transformation

- **Enterprise Development Grant** - provides customised support to help firms upgrade their business capabilities, innovate or venture overseas
- **Productivity Solutions Grant** - provides co-funding (capped at S$30,000) to support costs of adopting pre-approved digital solutions for local Small and Medium Enterprises
- **Productivity Innovation Project** - provides up to 70% co-funding for the costs of adopting technologies such as Design for Manufacturing & Assembly and Integrated Digital Delivery in the Construction sector

(b) Helping firms build up the local talent pipeline

- **Career Conversion Programmes** - offer up to 90% funding support for salary and training costs for firms to hire mid-career jobseekers and equip them with the necessary skills to take on jobs
- **Jobs Growth Incentive** - provides salary support for firms looking to hire new local mature workers who have not been employed for at least six months, persons with disabilities, and ex-offenders
- **iBuildSG Scholarship and Sponsorship Programme** - offers scholarships/sponsorships jointly with firms in the Construction sector to high-calibre students intending to pursue Built Environment courses at Institutes of Higher Learning

Click on the following link for more information:

- MOM Press Release titled "Supporting Industry Transformation In The Construction and Process Sectors" (available on the MOM website at www.mom.gov.sg)

Removal of Entry Approval Requirements for Eligible Long-Term Pass Holders

On 17 February 2022, the Ministry of Manpower ("**MOM**") announced that entry approval will no longer be required for eligible Long-Term Pass Holders ("**LTPHs**"), defined as "all fully vaccinated LTPHs except work permit holders". This took effect from 21 February 2022 at 2359 hours.

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To enter Singapore, all eligible pass holders must:

(a) produce their Long-Term pass/in-principle approval letter and proof of vaccination status/exemption; and
(b) adhere to the prevailing immigration entry requirements and border health measures in Singapore, including testing and Stay-Home Notice (SHN) requirements.

The changes are summarised in the below table, with a distinction drawn between those who enter on Vaccinated Travel Lanes ("**VTLs**") and those who do not or may not.

LTPHs	VTL	Non-VTL
• Long Term Visit Pass • Immigration Exemption Order • Student's Pass • Employment Pass • EntrePass • Personalised Employment Pass • Tech Pass • Training Employment Pass • Work Holiday Pass • Dependant's Pass • S Pass holders	• Show Long-Term pass or in-principle approval letter and proof of vaccination status to transport operators/checkpoint staff • No need to apply for or present entry approval or Vaccinated Travel Pass ("**VTP**")	
• Non-Malaysian male work permit holders in the Construction, Marine Shipyard and Process (CMP) sectors • Dormitory-bound work permit holders	Not allowed to apply for entry through VTL	No change; continue to apply for and present entry approval
• All other work permit holders (including migrant domestic workers and confinement nannies)	No change; continue to apply for and present VTP	No change; continue to apply for and present entry approval

All travellers must still submit a health and travel declaration via the SG Arrival Card (SGAC) e-Service prior to their arrival, covering their health status and recent travel history among other details.

Click on the following link for more information:

- MOM Press Release titled "Removal of Entry Approval Requirements for Certain Eligible Long-Term Pass Holders (LTPH)" (available on the MOM website at www.mom.gov.sg)

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Financial Institutions

Bill Introduced to Regulate Certain Digital Token Service Providers, Harmonise and Enhance MAS Regulatory Power over FIs

The Financial Services and Markets Bill ("**FSM Bill**") was tabled in Parliament for First Reading on 14 February 2022 to implement a financial sector-wide regulatory approach for financial services and markets. The FSM Bill will consolidate the provisions and powers that relate to the Monetary Authority of Singapore's ("**MAS**") regulatory oversight of different financial institution classes in a single Act. The FSM Bill has yet to be passed by the Parliament.

The FSM Bill contains provisions on the following key areas:

(a) Regulation of certain digital token ("DT") service providers created in Singapore for anti-money laundering and countering of financing of terrorism purposes

Current legislation in Singapore regulates an entity that carries on a business of conducting certain virtual asset ("**VA**") activities in Singapore, regardless of whether the entity is created in Singapore. The FSM Bill will extend the regulatory framework to a person in Singapore who carries on a business of providing VA activities outside of Singapore.

Subject to certain exclusions, a corporation (including a limited liability partnership) that is incorporated or formed in Singapore which carries on a business of providing DT services outside Singapore will be licensed as a DT service provider under the FSM Bill. The licensing regime will extend to an individual or a partnership, who from a place of business in Singapore, carries on a business of providing DT service outside Singapore (including a situation where the overseas DT service is provided by someone other than the individual or partnership in Singapore).

Among other things, an applicant for a DT service provider licence must appoint at least one executive director who (i) is a resident in Singapore, (ii) have a permanent place of business in Singapore, and (iii) satisfy financial requirements as may be prescribed by MAS.

Due to the anonymity and speed of transactions relating to DT services, MAS regards these transactions as carrying inherently higher money laundering and terrorism financing risks ("**ML/TF risks**"). Therefore, DT service providers are primarily regulated under the FSM Bill for ML/TF risks, in addition to technology and cyber risks.

(b) Harmonised power to impose requirements on technology risk management ("TRM")

At present, MAS relies on powers in the respective Acts under which financial institutions ("**FIs**") are regulated to specify its TRM requirements for regulated activities pursuant to the Notices on Technology Risk Management and Notices on Cyber Hygiene (collectively, "**Tech-Risk Notices**") issued by MAS in respect of the

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respective regulated activity. The FSM Bill will empower MAS to make regulations or issue directions on TRM and the safe and sound use of technology to deliver financial services and protect data that apply to any FI or class of FIs. This enables MAS to impose TRM requirements on any FI or any class of FIs in relation to any FI's system, even though the system does not support a regulated activity. The existing Tech-Risk Notices will be re-issued under the FSM Bill.

(c) Harmonised and expanded power to issue prohibition orders ("POs")

POs are issued by MAS to prohibit a person from conducting certain activities or from holding key roles in FIs for a period of time in cases of serious misconduct. MAS' existing powers to issue POs are provided for in the Securities and Futures Act 2001, the Financial Services Act 2001 and the Insurance Act 1966. Currently, MAS is not empowered to issue POs to persons regulated under other Acts administered by MAS, and its existing powers do not comprehensively address risks as they only prohibit the subject from carrying out a limited scope of regulated activities.

To address these gaps, the FSM Bill will, among other things, widen MAS' power to issue POs against any person and widen the scope of prohibition under a PO. MAS will be empowered to, among other things, prohibit a person who is subject to a PO from undertaking certain functions that are critical to the integrity and functioning of FIs. Such functions include handling of funds and assets, risk-taking, risk management and control and critical system administration.

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

Guidance on Assessing Responsible AI Use in Banking and Insurance Sectors (Veritas Phase 2)

Globally, regulators have come up with frameworks to promote the responsible use of Artificial Intelligence and Data Analytics ("**AIDA**") by financial institutions ("**FIs**"). Singapore endorses a principles-based and technology-neutral approach.

Among other guidance, the Monetary Authority of Singapore ("**MAS**") issued a set of principles in 2018 centred around the key concepts of Fairness, Ethics, Accountability and Transparency ("**FEAT Principles**") to guide FIs on the responsible use of AIDA. MAS and the financial industry collaborated on the Veritas project to provide guidance to FIs to evaluate their AIDA-driven solutions against the FEAT principles.

The Veritas Consortium (comprising MAS and certain members of the industry) concluded Phase One of the Veritas project in January 2021, where it developed the fairness principles assessment methodology and applied it to credit risk scoring and customer marketing for the banking sector.

Phase Two built upon the methodology in Phase One and developed the assessment methodology for all the FEAT Principles for adoption by banks in credit risk scoring and customer marketing, as well as the insurance industry in predictive underwriting and fraud detection. At the conclusion of

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Phase Two, the Veritas Consortium published five whitepapers setting out assessment methodologies for the FEAT Principles and case studies (collectively, "**Veritas Phase 2 Documents**").

The Veritas Phase 2 Documents provide FIs with guidance and cover, among other things, how to bring a FEAT assessment to scale, how to define materiality and risk tiers, adopting a risk-based governance approach to applying FEAT Principles to use cases, and how to integrate FEAT Principles with existing risk management practices.

FIs are recommended to review the Veritas Phase 2 Documents in detail and implement the relevant methodologies in a manner that takes into account the specifics of their AIDA systems, use cases and risk profiles. An open-source toolkit is also made available to facilitate the adoption by FIs of the Fairness Principles Assessment Methodology.

The next phase will see the Veritas Consortium develop other use cases. The Veritas Consortium will also conduct test runs with certain FI members to integrate the relevant methodologies with the existing governance frameworks of these members.

In drafting internal compliance policies for AIDA, FIs must note that the main regulatory principles and framework regarding the use of AIDA must be applied in addition to and consistent with any policies that FIs have currently implemented for compliance with legislative obligations under the Singapore Personal Data Protection Act 2012 and confidentiality and other customer-related obligations under the Singapore Banking Act 1970 and the Singapore Insurance Act 1966.

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

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MAS Issues Guidance on Non-Face-to-Face Customer Due Diligence Measures

On 8 February 2022, the Monetary Authority of Singapore ("**MAS**") issued Circular No. AMLD 01/2022 ("**Circular**") on "Non-Face-to-Face ("**NFF**") Customer Due Diligence ("**CDD**") Measures". The Circular sets out good industry practices and guidance for financial institutions ("**FIs**") on minimising impersonation and fraud risks, as well as adopting new technologies responsibly to mitigate money laundering, terrorism financing and proliferation financing ("**ML/TF/PF**") risks.

Key highlights from the Circular include:

(a) **Supplemental checks to identify and verify the identity ("ID&V") of natural persons**. FIs are encouraged to perform additional checks to ID&V natural persons during onboarding where necessary. This is particularly so for accounts with higher ML/TF risks. This includes incorporating proper controls to ID&V persons,

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authenticating documents sighted over video-conferencing, and conducting additional checks through different channels.

(b) **CDD of legal persons and electronic signatures**. CDD documents that cannot be verified against a registry or do not possess requisite authenticity markers should not be verified solely through video-conferencing. FIs must take additional measures to verify their authenticity. With regard to electronic signing, FIs should evaluate the security measures to safeguard the authenticity of electronic documents and their admissibility in court. FIs should refer to the relevant MAS Notices on the prevention of ML and countering the financing of terrorism ("**CFT**") that pertain to the use and retention of electronic copies of documents.

(c) **Review new technology solutions in NFF settings**. The Circular details examples and guidance on how FIs can guard against risks of impersonation and fraudulent or tampered documents in a NFF setting. Among other things, before implementing new technology solutions, FIs must assess their effectiveness internally (and not simply rely on external quality assurance), and have the FI's assessment approved by the FI's Board of directors ("**Board**") and senior management. FIs should also continuously monitor these technologies to ensure they remain effective in mitigating the risks they are designed to prevent.

(d) **Strengthen internal controls**. FIs must institute measures to monitor the use of technology solutions and have prompt corrective measures in the event these solutions fail. FIs must implement additional security safeguards, such as requiring the customer to make an initial deposit into the account with the FI from funds held by the customer in a bank account in Singapore. FIs must also have clear accountability lines to ensure the effectiveness of NFF CDD processes and technology solutions. For instance, the Board and senior management must maintain effective oversight of the management of ML/TF risks and AML/CFT controls, particularly in the areas of remote customer onboarding.

The full text of the Circular may be viewed here.

Proposed Framework for Equitable Sharing of Losses from Scams

On 4 February 2022, the Monetary Authority of Singapore ("**MAS**") announced that it is working with the industry to come up with a framework for equitable sharing of losses from scams as well as longer-term measures to manage and prevent scams.

The framework, which has been in the works since July 2021, intends to set out how losses which result from scams will be shared among financial institutions ("**FIs**") and customers, as well as the responsibilities of other key parties in the ecosystem.

It is expected that both FIs and customers bear the responsibility to be mindful of and guard against scams. For instance, FIs must protect customers against scams through securing customer accounts and implementing strict measures to detect and manage suspicious

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transactions, while customers must take necessary digital safety precautions.

How losses will be apportioned will depend on whether and how such party has/has not fulfilled its responsibilities. A balance must be struck between FIs treating customers fairly and ensuring that compensation paid out to customers does not become a disincentive for customers to be lax with digital safety.

MAS plans to issue a public consultation in the coming months to seek feedback on the proposed framework.

Click on the following link for more information:

- MAS Media Release titled "A Framework for Equitable Sharing of Losses Arising from Scams" (available on the MAS website at www.mas.gov.sg)

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Gaming

Two Bills Introduced in Parliament to Overhaul Singapore's Gambling Regulatory Regime

On 14 February 2022, the Gambling Control Bill ("**GC Bill**") and the Gambling Regulatory Authority of Singapore Bill ("**GRA Bill**") were read for the first time in Parliament. Their introduction marks the next stage of the reform of Singapore's gambling regime, which began in 2021 with the Ministry of Home Affairs' ("**MHA**") recommendation for a holistic update to Singapore's gambling laws. This was followed by further recommendations pursuant to a public consultation on MHA's proposed amendments to gambling laws in Singapore ("**Public Consultation**"), which we covered in our July 2021 Legal Update titled "Public Consultation on Proposed Amendments to Laws Governing Gambling Activities".

With the introduction of the GC Bill and the GRA Bill, Singapore has taken another step closer towards fully modernising its gambling regulation. If passed, the Bills will result in a significant overhaul and consolidation of the current regulatory regime. Key changes include the following:

(a) **Gambling Regulatory Authority of Singapore Bill**

- The GRA Bill will establish a Gambling Regulatory Authority of Singapore ("**GRA**") to regulate the entire gambling landscape in Singapore.

(b) **Gambling Control Bill**

- The GC Bill will consolidate and replace other gambling-related Acts, namely the Betting Act ("**BA**"), Common Gaming Houses Act ("**CGHA**"), Private Lotteries Act ("**PLA**") and Remote Gambling Act ("**RGA**").
- Substantively, the GC Bill will:
  - Update gambling laws and regulatory approaches to keep pace with the evolving gambling landscape;
  - Legalise physical social gambling;

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- Criminalise underage and proxy gambling; and
- Introduce new licensing regimes.

Both Bills have since been passed on 11 March 2022.

For more information on the key changes introduced by the two Bills, click here to read our Legal Update.

Intellectual Property

New Simplified Track for Intellectual Property Litigation

The Ministry of Law ("**MinLaw**") has announced in a press release of 23 February 2022 that it will be implementing a new Supreme Court of Judicature (Intellectual Property) Rules 2022 ("**new Rules**"). The new Rules introduce (among other things) a new simplified optional track for Intellectual Property ("**IP**") litigation, referred to as the "Simplified Process for Certain Intellectual Property Claims" ("**Simplified Process**").

The new Rules are expected to come into force on 1 April 2022. To give stakeholders sufficient time to be familiar with, and prepare for, the new Rules, MinLaw has made available a draft version of the new Rules ("**draft Rules**") for interim reference (available here). However, the draft is subject to changes as it is currently undergoing the vetting process. The finalised new Rules will be published before they come into force on 1 April 2022.

The draft Rules set out the following criteria for an originating claim to be suitable for the Simplified Process:

(a) The dispute must involve an intellectual property right;
(b) Either (i) the monetary relief claimed by each party does not or is not likely to exceed S$500,000; or (ii) all parties agree to the application of the Simplified Process; and
(c) The case is otherwise suitable for the Simplified Process, having regard to the prescribed factors (including whether a party can only afford the Simplified Process, the complexity of the issues, and whether the trial is likely to exceed two days).

Instead of having multiple pre-trial conferences, which is common in a regular action, under the Simplified Process there will be (if possible) a single case management conference ("**CMC**") where all directions for the case to proceed expeditiously are given. A key characteristic unique to the Simplified Process is that the Court will identify and narrow the main issues of contention between the parties at the CMC. The draft Rules also provide for the costs of proceedings to be fixed and capped.

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

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Sustainability

Further Extension of MAS SGD Facility for ESG Loans

On 18 February 2022, the Monetary Authority of Singapore ("**MAS**") announced that it will further extend the MAS SGD Facility for ESG Loans ("**Facility**"), complementing the six-month extension of Enterprise

Singapore's Temporary Bridging Loan Programme ("**TBLP**") from 1 April 2022 to 30 September 2022, as follows:

(a) Eligible financial institutions (EFIs) may continue to receive SGD funding under the Facility for a two year tenor.
(b) From the May 2022 application window, a revised interest rate of 0.5% per annum will apply.

Established in April 2020, the Facility provides low-cost funding for eligible banks and finance companies to grant loans under the TBLP and the Enterprise Financing Scheme – SME Working Capital Loan (EFS-WCL). For details of the Facility, please refer here.

Click on the following link for more information:

- MAS Media Released titled "MAS further extends facility to support lending by banks and finance companies to SMEs" (available on the gov.sg Portal at www.gov.sg)

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Tax

Withholding Tax Exemption for Non-Resident Arbitrators and Mediators Extended Till 31 March 2023

By way of background, the Government introduced a withholding tax exemption in 2002 on the income derived by non-resident arbitrators for arbitration work carried out in Singapore and, in 2015, on the income derived by non-resident mediators for mediation work carried out in Singapore. This was part of the Government's various efforts to strengthen Singapore's position as an international dispute resolution hub and grow the sector in Singapore. The tax exemption was due to lapse after 31 March 2022.

As part of the Government's regular review of tax incentives, this tax exemption for non-resident arbitrators and mediators will be extended for one more year, till 31 March 2023.

From 1 April 2023 to 31 December 2027, gross income derived by non-resident arbitrators and mediators for arbitration and mediation work carried out in Singapore will be subject to a concessionary withholding tax rate of 10%, subject to conditions. The usual withholding tax rate for non-resident professionals is 15% on the gross income derived.

As Singapore has a comprehensive network of Avoidance of Double Taxation Agreements ("**DTAs**") with other jurisdictions, for the withholding tax paid in Singapore, most non-resident arbitrators and mediators who carry out arbitration/mediation work in Singapore will generally not be affected by double taxation. Non-resident arbitrators and mediators may check with their respective tax authorities if the relevant DTA provides double taxation relief on the income derived in Singapore or if they qualify for foreign tax credits.

Click on the following link for more information:

- Ministry of Law ("**MinLaw**") News Release titled "Updates to Withholding Tax Exemption for Non-Resident Arbitrators and Mediators" (available on the MinLaw website at www.mlaw.gov.sg)

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Tax Implications of Interbank Offered Rate Reform

Due to the global Interbank Offered Rate ("**IBOR**") reform, Singapore Overnight Rate Average ("**SORA**") will become the key benchmark risk-free interest rate ("**RFR**"), replacing Singapore Swap Offer Rate ("**SOR**") and Singapore Interbank Offered Rate ("**SIBOR**"). SOR is expected to be discontinued after 30 June 2023, while SIBOR will be discontinued after 31 December 2024.

On 18 February 2022, the Inland Revenue Authority of Singapore ("**IRAS**") released information regarding the implications this will have for tax treatment.

(a) **Where IASB Practical Relief is Adopted**

Where the International Accounting Standards Board ("**IASB**") practical relief for the IBOR reform is adopted, the income tax treatment will follow the accounting treatment. This is to minimise the tax adjustments needed due to the IBOR reform.

The existing tax treatments of the affected financial instruments (such as floating rate bonds, loans and interest rate swaps ("**IRS**")) under IRAS e-Tax Guide: Income Tax Treatment Arising from Adoption of FRS 109 – Financial Instruments will apply. It covers the tax treatment for:

- Financial assets/liabilities on a revenue account;
- Financial assets/liabilities on a capital account;
- When IRS is used for trading purposes; and
- When IRS is used for hedging purposes.

If an IBOR is amended through rescinding the existing contract and creating a new contract, this may be considered as a refinancing of the loan. Where the principal amount of the loan under the new contract is:

- Same as or lower than the balance of the existing loan – the characterisation of the loan under the new contract (i.e. whether it is a revenue or capital loan) will follow that of the prior loan.

- Higher than the balance of the existing loan, and the difference is used for other purposes unrelated to the existing loan – the deductibility of the interest expense payable on the loan in excess of the existing loan would be determined by the purpose of the additional loan amount.

(b) **Borrowing Costs Other than Interest Expenses**

The tax treatment of borrowing costs other than interest expenses incurred in respect of the IBOR reform will follow the existing tax treatment provided in IRAS e-Tax Guide: Tax Deduction for Borrowing Costs other than Interest Expenses.

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(c) **Insurance Contracts and Leases**

Based on the amendments to SFRS(I) 4: Insurance Contracts arising from the IBOR reform

Insurers who have elected to defer the implementation of Singapore Financial Reporting Standard (International) ("**SFRS(I)**") 9 and are still applying 'frozen' SFRS(I) 1-39 should account for amendments to financial instruments necessary to implement the IBOR reform by applying the amendments for IBOR reform made to SFRS(I) 9.

Based on the amendments to SFRS(I) 16: Leases

The existing tax treatment under the IRAS e-Tax guide: Tax Treatment Arising from the Adoption of FRS 116 or SFRS(I) 16 will apply to the extent where (i) the modification to the lease agreement is necessary as a direct consequence of the IBOR reform, and (ii) the new basis for determining lease payments is "economically equivalent" to the previous basis.

(d) **Stamp Duty Treatment**

The current stamp duty treatment is applicable, and the stamp duty liability would depend on the instruments executed.

- If the amendment of the rate is made through loan facility documentation, and without any change to the underlying mortgage/security agreement – no stamp duty will be payable.
- If a dutiable instrument (e.g. mortgage) is executed and there is a change in the loan amount – stamp duty will be payable.

Click on the following link for more information and examples of tax treatment:

- Interbank Offered Rate Reform & the Tax Implications (available on the IRAS website at www.iras.gov.sg)

Forward, Together: Singapore Budget 2022

In light of Singapore's economy rebounding from the reverberations from the COVID-19 pandemic, Budget 2022 was unveiled by Singapore's Minister for Finance Mr Lawrence Wong on 18 February 2022. With the theme "Charting Our New Way Forward Together", Mr Wong laid out a wide range of measures to tackle Singapore's immediate challenges, including:

(a) S$500 million Jobs and Business Support Package to provide targeted help for workers and businesses in segments of the economy that are facing slower recovery;
(b) S$560 million Household Support Package that helps Singaporean families to manage cost of living pressures by providing support for daily essentials;
(c) S$600 million set aside to strengthen local enterprises under the Productivity Solutions Grant; and
(d) S$200 million to improve digital capabilities in businesses and workforces, such as investing in future technologies like 6G.

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There were also tax measures and changes announced which were categorised as follows:

(a) Maintaining the competitiveness and resilience of the tax system;
(b) Building a fairer and more resilient tax system;
(c) Enhancing service delivery; and
(d) Increasing the carbon tax.

With regard to the carbon tax increase, Singapore has set the goal of achieving net zero carbon emissions by or around 2050. Accordingly, the carbon tax that was introduced in 2019 will be increased from S$5 per tonne of emissions to:

(a) S$25 per tonne in 2024 and 2025;
(b) S$45 per tonne in 2026 and 2027; with a view to reaching
(c) S$50 to S$80 per tonne by 2030.

Any subsequent increases will be announced ahead of time to provide certainty for businesses.

To support businesses as they adjust to carbon tax increases and to manage the near-term impact on their competitiveness, the Singapore Government will put in place a transition framework in 2024. Under this framework, firms will be provided with allowances for a share of their emissions. The allowances will be determined based on efficiency standards and decarbonisation targets. This will help to mitigate the impact on business costs while still encouraging decarbonisation.

From 2024, businesses will be allowed to use high-quality, international carbon credits to offset up to 5% of their taxable emissions in lieu of paying carbon tax.

For more information on the carbon tax increase and other tax measures, changes, enhancements, extensions, and refinements announced in Budget 2022, click here to read our Legal Update.

Technology, Media & Telecommunications

SingCERT Advisory to Singapore Organisations to Bolster Cybersecurity Stance Amidst Russia-Ukraine Conflict

On 27 February 2022, the Singapore Computer Emergency Response Team ("**SingCERT**") published an advisory to Singapore organisations to enhance their cybersecurity position in the face of increased cyber threats during the ongoing Russia-Ukraine conflict.

Though there are currently no reported threats to Singapore organisations, Singapore organisations are advised to be alert to and strengthen their cybersecurity stance to guard against possible cyberattacks, such as web defacement, distributed denial of service (DDoS), and ransomware attacks.

The advisory sets out action items/steps that Singapore organisations can take to improve their cybersecurity defences, including:

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(a) Making sure that their systems and network infrastructure are secure. For instance, organisations should require multi-factor authentication for all remote/privileged/administrative access to their network and updating systems, applications and software, and having the latest security patches.

(b) Keeping a close watch on their network connections and promptly reviewing system logs to detect potential intrusions. This includes enabling logging of system events and user access logging to facilitate investigations of suspicious events, and monitoring inbound and outbound network traffic for unusual communications or data transmissions.

(c) Being prepared for potential ransomware attacks. Organisations may refer to the full advisory, available here, for details on how to protect their systems from such attacks.

(d) Having in place incident response and business continuity plans. This includes regularly backing up data and making sure the backups are isolated from network connections.

In the event a Singapore organisation is affected by a cyber-attack or has evidence of any suspicious compromise of its networks, the organisation should make a report to SingCERT through the Incident Reporting Form at https://go.gov.sg/singcert-incident-reporting-form.

Click on the following link for more information:

- SingCERT advisory titled "Strengthening Your Cybersecurity Posture Amidst Developments in the Russia-Ukraine Conflict" (available on the SingCERT website at www.csa.gov.sg/singcert)

NRF Announces National Quantum-Safe Network to Protect Singapore's Cybersecurity

The National Research Foundation ("**NRF**") has issued a press release on 17 February 2022 announcing that Singapore's Quantum Engineering Programme will start conducting nationwide trials of quantum-safe communication technologies geared towards robust network security for critical infrastructure and companies handling sensitive data. The project is supported by NRF and will kick off with 15 private and government collaborators on board.

Network security is particularly vital in today's digital society. The public-key encryption that protects some of the billions of bits of data exchanged each day could be vulnerable to attacks by quantum computers, which have the potential to be millions of times more powerful than classical computers at some tasks. Quantum-safe communication technologies are thus important in countering the threat of quantum computing, utilising specialised hardware and new cryptographic algorithms.

The new National Quantum-Safe Network will:

(a) Deploy commercial technologies for trials with government agencies and private companies;
(b) Conduct thorough evaluation of security systems; and

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(c) Develop guidelines aimed at supporting companies seeking to adopt such technologies.

Hosted by the National University of Singapore ("**NUS**"), the initiative will receive S$8.5 million over three years.

Click on the following link for more information:

- NRF and NUS Joint Press Release titled "Singapore to build National Quantum-Safe Network that provides robust cybersecurity for critical infrastructure" (available on the gov.sg Portal at www.gov.sg)

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CaseBytes

Singapore Court Issues First Decision on Classification of Creditors in Lock-Up Agreements for Schemes of Arrangement

The success of a scheme of arrangement in restructuring depends largely on the consent of the requisite statutory majority of the scheme creditors. To incentivise the creditors to commit to the proposal at an early stage, scheme companies may seek to enter into a lock-up agreement with the creditor, in which the creditor provides an undertaking to vote in favour of the scheme in exchange for certain benefits, such as consent fees.

While lock-up agreements are advantageous tools in the hands of a scheme company, the principles underlying such agreements have not been considered in detail by the Singapore Court. In *Re Brightoil Petroleum (S'pore) Pte Ltd* [2022] SGHC 35, the Singapore High Court, for the first time, issued the grounds of its decision on whether creditors who enter into lock-up agreements should be placed in a separate class from the other creditors for the purpose of voting on a scheme of arrangement.

The Court held that a lock-up agreement will generally not fracture a class when voting on a scheme of arrangement, subject to certain requirements. The Court then set out the relevant principles to be considered in determining whether creditors who enter into lock-up agreements should be classed separately:

(a) **Size of benefit**. Is the benefit conferred so sizeable that it would have a significant influence on the decision of a reasonable creditor when voting for the proposed scheme?

(b) **Equal rights**. Was the lock-up agreement made available to all scheme creditors within the relevant class such that they all had an equal right to enter into the agreement? Were the agreements made with each creditor on substantially the same terms?

(c) **Good faith**. Was the use of the lock-up agreement bona fide (e.g., no misleading of creditors)?

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

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Be Careful What You Wish For - Hastily Rendered Arbitration Award Set Aside by the Singapore High Court in *Sai Wan Shipping Ltd v Landmark Line Co Ltd* [2022] SGHC 8

When does the issuance and the enforcement of the terms of a peremptory order in international arbitration cross the line such as to amount to a denial of justice? That was the principal issue in *Sai Wan Shipping Ltd v Landmark Line Co Ltd* [2022] SGHC 8 where the Singapore High Court found the Arbitrator to have acted in breach of the principles of natural justice and equality of treatment of the parties in setting aside an arbitral award.

The Court highlighted the elements of Articles 23 and 25 of the UNCITRAL Model Law on International Arbitration:

(a) The respondent has a period of time to communicate his statement of defence as agreed by the parties or determined by the tribunal;

(b) If he fails to do so, unless otherwise agreed by the parties, the arbitrator must consider whether the party in default has shown sufficient cause for the failure; then

(c) The arbitrator shall continue with the proceedings without treating such failure as an admission of the claimant's allegations.

In this case, the Arbitrator had refused to admit the Respondent's defence as it was served late (albeit on the day of the deadline). The Court allowed the application of the Respondent in the arbitration to set aside the award of the Arbitrator. The Court found that there was a breach of natural justice which was closely connected to the making of the award and caused prejudice to the Respondent, and that the Arbitrator had failed to treat the parties in an even-handed fashion.

(a) In fixing the period for serving the defence, the Arbitrator failed to invite the Respondent to state its position on the time needed.

(b) The Arbitrator had leapt to a peremptory order of his own accord, and failed to invite the Respondent to make submissions on the appropriateness of making a peremptory order. The Arbitrator also failed to consider if there was sufficient cause shown for the failure to serve the defence submissions by the deadline.

(c) The sanction imposed by the Arbitrator exceeded his powers under Article 25 of the Model Law.

(d) The Arbitrator failed to give the Respondent an opportunity to be heard on its reasons for non-compliance.

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

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An Employee's Breach of Fiduciary Duties and the Liability of Third Parties for Dishonest Assistance

When a company uncovers schemes perpetrated by one of its employees, a key question will be what recourse is available against the employee, and whether the company may also seek recourse against the employee's collaborators. This was the situation faced by the Singapore High Court in *Sumifru Singapore Pte Ltd v Felix Santos Ishizuka* [2022] SGHC 14.

The 1st Defendant in this case held the designation of "shipping director" in the Plaintiff company, although he was not on its board of directors. The Plaintiff brought a claim against the 1st Defendant for breach of his fiduciary duties in orchestrating various schemes against the Plaintiff. The Plaintiff also sought to impose liability on the 2nd and 3rd Defendants, being companies owned and controlled by the 1st Defendant, for their role in facilitating the schemes.

The Court found that the 1st Defendant, in his role as shipping director and given his scope of functions, owed fiduciary duties to the Plaintiff, and had breached these duties by perpetrating the schemes against the interests of the Plaintiff. The Court further found the 2nd and 3rd Defendants to be jointly and severally liable on the grounds of dishonest assistance. The 1st, 2nd and 3rd Defendants were ordered to pay the Plaintiff some US$9 million, interest thereon and costs.

In reaching its decision, the Court considered the circumstances under which fiduciary duties would be imposed on an employee, even if the employee is not a member of the board of directors. The Court also considered the elements of dishonest assistance, particularly the element of dishonesty and when it can be attributed from an individual to a company.

The Plaintiff was successfully represented by Winston Kwek, Dedi Ahmad, Li Kun Hang and Dharini Ravi from the Shipping & International Trade Practice.

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

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The Court's Power to Set Aside a Garnishee Order and Order the Return of Sums Obtained Pursuant to a Reversed Judgment

In *ST Group Co Ltd and others v Sanum Investments Limited* [2022] SGCA 2, the Singapore Court of Appeal had previously set aside an earlier order granting leave to the Respondent to enforce an arbitral award against the Appellants. Prior to the Court of Appeal's decision, and pursuant to the leave order, the Respondent had obtained a judgment in terms of the arbitral award, three final garnishee orders, and garnished sums from the Appellants. After the Court of Appeal's decision, the Respondent refused to return the garnished sums to the Appellants. The Appellants thus applied to the Court of Appeal to set aside the judgment and final garnishee orders, and for the return of the garnished sums. The Court here considered the existence and exercise of its inherent power to set aside a judgment and garnishee orders, and to order the return of sums paid pursuant to those

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garnishee orders in circumstances where the earlier order giving rise to the judgment and garnishee orders was reversed.

The Court granted the Appellants' application. The Court held that it has the inherent power to set aside the judgment and final garnishee orders, as their substratum in the form of the leave order had been destroyed. It would be unjust not to do so as it would leave entirely invalid court orders formally operative, and this would also bring the legal system into disrepute.

The Court also held that an appellate court has the inherent power to order the return of sums paid under orders or judgments that have been reversed or otherwise nullified as a result of an appeal. The Court stated that no court should countenance a defendant being deprived of moneys because of a court order that is eventually found to be wrong or which should not have been made. Further, as a general rule, justice will require that the money be returned with interest.

The Appellants were successfully represented by Francis Xavier, SC, Edwin Tan, Kristin Ng and Alvin Tay from the Commercial Litigation Practice.

Court Sets Out Limits of the Reflective Loss Principle

The reflective loss principle provides that, where a defendant has committed a wrong against a company, a shareholder of the company cannot bring a personal claim against the defendant for a diminution in the value of his shares, as the shareholder's loss is merely a reflection of the loss suffered by the company. This principle is distinct from, but is practically frequently confused with, the principle against double recovery. In *Miao Weiguo v Tendcare Medical Group Holdings Pte Ltd & Anor* [2021] SGCA 116, the Singapore Court of Appeal had the opportunity to consider the ambit of the reflective loss principle and its interaction with the principle against double recovery.

This case concerned a successful claim against the promoter of a healthcare business for fraudulent trading. The promoter, Mr Gong Ruizhong ("**Mr Gong**"), had raised over US$130 million from various debt and equity investors, on the pretext that these funds would be invested in healthcare assets in China that would be restructured for a public offering. Tendcare Medical Group Holdings Pte Ltd was incorporated as the apex holding company and the purported listing vehicle.

Instead, the funds were dissipated and diverted out of Tendcare through various channels, including, it was claimed, certain companies owned by Mr Miao Weiguo ("**Mr Miao**").

Tendcare was subsequently placed under judicial management and, along with the judicial manager, commenced proceedings against Mr Gong and Mr Miao (and certain of Mr Miao's companies) for fraudulent trading, breach of fiduciary duty and dishonest assistance.

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Following trial, the High Court found Mr Gong liable in the sum of US$65 million for fraudulent trading and US$35 million for breach of fiduciary duties, and found Mr Miao and one of his companies, Qian Hui, liable in the sum of US$6 million for dishonestly assisting Mr Gong in his defalcations.

On appeal by Mr Miao, the Court of Appeal upheld the High Court's finding that Mr Miao was jointly and severally liable for US$4m on the basis of his dishonest assistance in relation to the transfer of this sum, which had been moved from Tendcare to TJHK, Tendcare's subsidiary in Hong Kong, and thereafter to Qian Hui and then to his personal bank account. On the facts, the Court found that Mr Miao's participation in the transaction offended ordinary standards of honesty: he admitted that he knew sham documentation had been created that wrongly described the transfer of this sum as a loan.

The Court of Appeal specifically rejected Mr Miao's contention that Tendcare's loss should be barred because Tendcare was a creditor as well as shareholder of TJHK. The Court of Appeal said such a formulation of the reflective loss principle to prevent a shareholder from claiming any loss whether suffered as a shareholder or in any other capacity was too broad. Properly understood, the reflective loss principle was a rule of company law that applied only to restrict shareholders claiming loss either in terms of the diminution in value of their shareholdings or in terms of reductions in distributions they would have received as shareholders.

This was distinct from the principle against double recovery. Preventing double recovery was a concern that was of general application throughout the law, and not a specific justification for the reflective loss principle. Double recovery could not explain the contours of the reflective loss principle which arises from the distinctive features of company law and in particular the separate legal personality of the company.

The reflective loss principle thus had no application in this case, as Tendcare's claim was not as a shareholder of TJHK for the diminution in the value of its shareholding or in distributions from TJHK. It was a claim by Tendcare for its own loss.

Tendcare and its judicial manager were successfully represented by Lee Eng Beng, SC, Mark Cheng, Chew Xiang, Priscilla Soh and Darren Lim from the Restructuring & Insolvency Practice.

Deals

Initial Public Offering and Listing of Novo Tellus Alpha Acquisition

Raymond Tong and Hoon Chi Tern from the Capital Markets / Mergers & Acquisitions Practice acted for Credit Suisse (Singapore) Limited and DBS Bank Ltd., the joint issue managers, joint global coordinators, joint bookrunners, and joint underwriters in connection with the initial public

offering and listing of Novo Tellus Alpha Acquisition ("**NTAA**"), a special purpose acquisition company ("**SPAC**"), on the Mainboard of the Singapore Exchange Securities Trading Limited. NTAA is Singapore's third listed SPAC, and its units are offered outside of the United States pursuant to Regulation S of the U.S. Securities Act of 1933.

Polychain Capital's Series B Investment in AscendEX

Brian Ng from the Mergers & Acquisitions Practice acted for Polychain Capital, one of the two lead investors, in AscendEX's Series B fundraising, which raised approximately US$50 million.

QAF Group's Disposal of its Primary Production Business

Cheng Yoke Ping and Cynthia Goh from the Capital Markets / Mergers & Acquisitions Practice acted for QAF Limited in relation to the S$110.3 million disposal by the QAF Group of its Primary Production Business in Australia and following completion of the disposal, the declaration of a special dividend of approximately S$11.5 million to the shareholders of QAF.

S$580 Million Transfer of Network Assets from M1 Limited to M1 Network Private Limited ("M1NPL") and the Investment by Keppel DC REIT into M1NPL via the Subscription of Bonds and Preference Shares

Lawrence Tan, Favian Tan, Terence Choo, Benjamin Cheong and Shemane Chan from the Mergers & Acquisitions Practice, Banking & Finance Practice, Technology, Media & Telecommunications Practice and Construction & Projects Practice acted for M1 Limited in relation to the S$580 million transfer of network assets from M1 Limited to M1 Network Private Limited ("**M1NPL**") and the investment by Keppel DC REIT into M1NPL via the subscription of bonds and preference shares.

Mitsuuroko Group Holdings Co., Ltd's Acquisition of General Storage Company Pte. Ltd. and its Subsidiaries

Howard Cheam, Tan Mui Hui and Norman Ho from the Capital Markets / Mergers & Acquisitions Practice and Corporate Real Estate Practice advised Mitsuuroko Group Holdings Co., Ltd. ("**MGH**") in its S$87.2 million acquisition of General Storage Company Pte. Ltd. and its subsidiaries through a wholly-owned subsidiary of MGH, and on various real estate issues arising from the change in ownership of properties.

Joint Venture Between Singapore Exchange, DBS Bank Ltd, Standard Chartered PLC and Temasek Holdings (Private) Limited to Develop a Carbon Exchange and Marketplace, Climate Impact X

Sandy Foo, Favian Tan and Kala Anandarajah from the Capital Markets / Mergers & Acquisitions Practice, Competition & Antitrust and Trade Practice and Sustainability Practice are acting for Singapore Exchange Limited in its joint venture with DBS Bank Ltd, Standard Chartered PLC and Temasek Holdings (Private) Limited to develop Climate Impact X, which is envisioned to be a carbon exchange and marketplace to provide organisations with high-quality carbon credits to address hard-to-abate emissions.

Authored Publications

Rajah & Tann Contributes Article on "Investment opportunities in ASEAN post-RCEP" to *India Business Law Journal*

Rajah & Tann recently contributed an article titled "Investment opportunities in ASEAN post-RCEP" to the *India Business Law Journal*, a leading legal magazine in the region.

The Regional Comprehensive Economic Partnership ("**RCEP**"), the world's largest free-trade agreement, took effect on 1 January 2022. Including close to three billion people and accounting for about 30% of global GDP, the RCEP aims to boost trade, promote investments, and create an integrated single market and production base, similar to the European Union.

Authored by Sriram Chakravarthi, Partner of Rajah & Tann's Corporate Practice and South Asia Desk, the article looks into investment opportunities in ASEAN post-RCEP from both an investment perspective and a trade perspective. In a virtual interview with the publication, Sriram also discusses the significance of the RCEP agreement and why Indian companies should consider investments in ASEAN post-RCEP.

To read the article and watch the interview, please click here.

Find out more about our South Asia Desk here and our Trade Practice here. For more information on the RCEP, please click here to read our January 2022 Legal Update titled "Regional Comprehensive Economic Partnership Agreement Enters into Force".

Rajah & Tann Contributes to Lex Mundi's *Global M&A Trends Report 2022*

We are pleased to share with you the latest edition of the *Global M&A Trends Report 2022* ("**Report**") published by Lex Mundi. The Report draws upon insights gathered from practitioners across 66 jurisdictions, comprising insights and predictions for 2022 regarding mergers and acquisitions ("**M&A**"), key concerns facing M&A practitioners, and a look back and look forward on deal activity by market segment and sector, such as financial services, technology and software, and life sciences healthcare. Terence Quek from the Mergers & Acquisitions Practice contributed to the Report his views on the key private company M&A trends in Singapore.

In summary the report finds that despite the pandemic, 2021 saw a record year for deal activity and most jurisdictions expect further, unprecedented activity in 2022. Across nearly all regions, practitioners agreed that due diligence was of paramount importance to doing deals in 2021. In addition, the regulatory environment also continues to be a top priority for practitioners, with antitrust regulations standing out for respondents in Asia - 46% of respondents agreed that it was at the forefront of minds.

For a deep dive into current M&A trends and 2022 predictions from member firms across Asia and the Pacific, Europe, Latin America and the Caribbean, the Middle East and Africa to North America, please click here for the full text of the Lex Mundi Global M&A Trends Report.

Rajah & Tann Singapore is the Lex Mundi member firm for Singapore. Find out more about our Mergers & Acquisitions Practice Group here.

Events

Competition & Antitrust in Southeast Asia Webinar Series

As a continuation of the Competition & Antitrust in Southeast Asia Webinar Series, Rajah & Tann Asia's Competition & Antitrust and Trade Practice organised the following webinars in February 2022, covering the key legislation in the relevant jurisdictions and the state of enforcement of competition law, touching on both investigations and merger notifications:

- "Competition & Antitrust in Southeast Asia – Active Enforcement: Malaysia, Philippines and Vietnam" (9 February 2022) – The speakers comprised Yon See Ting from Christopher & Lee Ong (Malaysia), Norma Margarita (Norge) B. Patacsil from C&G Law (Philippines), Vu Thi Que from Rajah & Tann LCT Lawyers (Vietnam), and Kala Anandarajah, Head of the Competition & Antitrust and Trade Practice of Rajah & Tann Singapore.

- "Competition & Antitrust in Southeast Asia – Active Enforcement: Indonesia" (24 February 2022) – The speakers were HMBC Rikrik Rizkiyana, Vovo Iswanto and Anastasia Pritahayu from Assegaf Hamzah & Partners (Indonesia).

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