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LegisBytes

Employment & Benefits

Introduction of New Work Pass, Enhancements to Employment Pass Framework

On 29 August 2022, four enhancements to Singapore's work pass framework were jointly announced by the Ministry of Manpower ("MOM"), the Ministry of Trade and Industry (MTI) and the Ministry of Communications and Information (MCI). The enhancements aim to better attract top talent and experienced tech professionals in areas of skills shortages.

Improvements to Employment Pass ("EP") application process

Processing time: As of 29 August 2022, the processing time for all EP applications has been improved from around three weeks to 10 business days. If the application is not processed in that timeframe, an update will be given to employers.

Fair Consideration Framework ("FCF") Framework: As of 1 September 2022, the FCF job advertising duration has been restored to 14 days instead of 28 days.

New Overseas Networks & Expertise Pass ("ONE Pass") for top 5% of EP holders

From 1 January 2023, individuals who (i) earn a fixed monthly salary of at least S\$30,000 within the last one year, or (ii) show that they will earn a fixed monthly salary of at least S\$30,000 under their future employer based in Singapore, may apply for a ONE Pass. Individuals with outstanding achievements in the arts and culture, sports, science and technology, and research and academia may apply even if they may not meet the salary criterion.

For candidates who are not existing work pass holders (i.e. overseas candidates), they must additionally demonstrate that they have been working for an established company overseas for at least one year, or will be working for an established company in Singapore. An established company must have a market capitalisation of at least US\$500 million or an annual revenue of at least US\$200 million.

Other features of the ONE Pass include:

- (a) **Benefits.** Holders may concurrently start, operate and work for multiple companies in Singapore at any one time, and will not need to reapply for a new pass if they change jobs. The spouses of ONE Pass holders will be able to work on a Letter of Consent.
- (b) **Exemptions.** ONE Pass holders will not be subject to the FCF job advertising requirement and the upcoming Complementarity Assessment Framework ("COMPASS"). For details on COMPASS, please see our March 2022 Legal Update titled "[Key Changes to Policies for Foreign Workforce, Lower-Wage Workers](#)".

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- (c) **Renewals.** To be able to renew their ONE Pass, ONE Pass holders must meet either of the following requirements: (i) earn a fixed monthly salary of at least S\$30,000 on average over the past five years in Singapore; or (ii) have started and is operating a Singapore-based company that employs at least five local employees, each earning at least S\$5,000 (pegged to the Employment Pass minimum qualifying salary).

New benchmark pegged to top 10% of EP holders

With effect from 1 September 2023, MOM will introduce a new benchmark pegged to the top 10% of EP holders to provide greater clarity and transparency on MOM's work pass framework for talent. For those who meet the benchmark, the following benefits apply:

- (a) **Exemption from the FCF job advertising requirement and the upcoming COMPASS framework.** To align with the 10% benchmark, the salary threshold for exemption will be raised from S\$20,000 to S\$22,500.
- (b) **Eligibility for the Personalised Employment Pass (PEP).** The salary threshold for eligibility will also be raised from S\$12,000 or S\$18,000 to S\$22,500.

The salary threshold will be reviewed annually against the benchmark, taking into account prevailing economic conditions.

Experienced tech professionals with skills in shortage given longer five-year EP

With effect from 1 September 2023, MOM will introduce a five-year EP option for candidates who meet the following criteria:

- (a) Experienced professionals filling specific tech occupations on the COMPASS Shortage Occupation List;
- (b) Earn a fixed monthly salary of at least S\$10,500 (for candidates aged 36 and above, the salary required increases with age up to a maximum of S\$13,500 at age 45 and beyond); and
- (c) Pass COMPASS and score at least 10 points on the Diversity criterion.

Compared to the typical EP duration of two to three years, a longer pass duration will give greater certainty to experienced tech professionals as well as businesses in their workforce planning, and allow Singapore to anchor tech capabilities while we develop our local pipeline.

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

- [MOM Press Release titled "Strengthening Singapore's Position as a Global Hub for Talent"](#)
- [Annex – Factsheet on Work Pass Framework Enhancements](#)
- [ONE Pass – "Overseas Networks & Expertise Pass"](#)

Government Accepts Tripartite Cluster for Retail Industry's Recommendations on New Progressive Wage Model to Support Retail Workers

The Ministry of Manpower ("**MOM**") announced that the Government has accepted the recommendations of the Tripartite Cluster for Retail Industry ("**TCR**") on the introduction of the Progressive Wage Model ("**PWM**") for the retail sector ("**Recommendations**"). The TCR comprises the National Trades Union Congress ("**NTUC**"), the Singapore National Employers Federation (SNEF), workers' unions and associations from the retail industry, MOM, Enterprise Singapore (ESG), SkillsFuture Singapore (SSG) and Workforce Singapore (WSG).

Released on 15 August 2022, the Recommendations (i) set a three-year schedule of sustained PWM wage increases from 2022 to 2024; (ii) outline a clear progression pathway for retail workers; and (iii) provide training requirements for retail job roles. The Recommendations were based on the feedback received by the TCR at the consultations it conducted with industry players and stakeholders.

In its Press Release dated 16 August 2022 (link provided below), MOM said that the Recommendations will benefit about 46,000 resident full-time and part-time workers (i.e. Singapore Citizens and Permanent Residents) in the retail industry. This includes diverse sub-sectors such as supermarkets and convenience stores, department stores, fashion and sporting goods, jewellery and timepieces, consumer electronics, furniture and household, and other non-specialised/internet sales.

Key Recommendations

Three-year schedule of sustained wage increases

The Recommendations include the implementation of a set of PWM Baseline Gross Wages, which took effect on 1 September 2022. This will be adjusted upwards from 1 September 2023 and 1 September 2024 to ensure that retail workers continue to see sustained wage increases. The wage increase structure will be reviewed in 2024.

MOM will support the implementation of the retail PWM by enforcing employers' eligibility requirements for Work Passes. This includes requiring employers to comply with stipulated retail PWM requirements and any other applicable PWM requirements at the time of the application for new Work Passes (e.g. Work Permit, S Pass, Employment Pass) or renewal of existing ones.

Clear progression pathway

The Recommendations set out a career progression ladder to provide retail workers with a clear progression pathway to higher wages, improved skills, and enhanced job responsibilities. This will encourage more jobseekers to join the retail industry.

Training requirements for retail job roles

The Recommendations also provide the minimum training requirements to ensure that retail workers have the necessary skills and competencies to perform the relevant retail job roles. Depending on the functions and

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responsibilities required for specific job roles within an organisation, employers may choose the appropriate training modules that would suit their respective needs. This will ensure that the workers remain relevant and competitive in the marketplace.

Click on the following links for more information:

- [MOM Press Release titled "About 46,000 Retail Workers to benefit from new Retail Progressive Wage Model Recommendations" and Annex \(Retail PWM Infographic\)](#) (available on the MOM website at www.mom.gov.sg)
- [Recommendations of the Tripartite Cluster for Retail Industry on Introducing Progressive Wage Model for the Retail Sector](#) (available on the NTUC website at www.ntuc.org.sg)

Company Directors' Duties on Workplace Safety and Health

The Workplace Safety and Health ("WSH") Council of the Tripartite Alliance for WSH intends to issue a new code of practice focusing on the role of Company Directors. From 12 August 2022 to 8 September, the WSH Council conducted a public consultation on the proposed Code of Practice on Chief Executives' and Board of Directors' WSH Duties ("**Code of Practice**").

The proposed Code of Practice aims to provide greater clarity and strengthen ownership of the WSH duties of Chief Executives and Board of Directors (collectively, "**Company Directors**"). The Code of Practice sets out the principles that Company Directors should observe in improving WSH performance and management, as well as the practical measures that should be taken to give effect to these principles.

The principles are as follows:

- Ensure WSH is prioritised and have clarity of roles and responsibilities of Company Directors in leading WSH.
- Walk the talk in embodying and communicating good WSH standards.
- Ensure that WSH management systems are effective and reviewed regularly.
- Empower workers to prioritise WSH.

Who does it apply to?

The Code of Practice is relevant for all Company Directors, regardless of industry and organisation size.

What is its legal effect?

While the Code of Practice does not impose directly enforceable obligations, failure to comply could result in serious consequences. For example, the Workplace Safety and Health Act 2006 imposes statutory duties on persons at workplaces. Where an organisation breaches these provisions, the Company Directors are also deemed to be guilty of the offence unless they have exercised due diligence. In this regard, compliance with the Code of Practice could be used as a mitigating factor to avoid such liability.

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How should it be implemented?

The Code of Practice's principles can be fulfilled by effectively implementing the specific measures suggested, as well as other measures in line with these principles. Company Directors should calibrate the measures based on the relevance to their organisations, including industry type and nature of exposure to risks and hazards.

For more information, click [here](#) to read our Legal Update.

Financial Institutions

Singapore and Indonesia Collaborate on Cross-border QR Code Payments Connectivity & Other Financial Integration Efforts

As part of the efforts to establish regional payments integration in the ASEAN region by 2025, the Bank Indonesia ("BI") and the Monetary Authority of Singapore ("MAS") announced on 29 August 2022 that they are collaborating on a cross-border Quick Response ("QR") payment linkage between Indonesia and Singapore which is slated to be launched in the later half of 2023.

Payment connectivity between the two countries will boost cross-border trade, e-commerce, and financial activities, especially for micro, small and medium enterprises (MSMEs). With the QRIS-NETS QR code payments connectivity, users will be able to scan the QRIS (Quick Response Code Indonesian Standard) or NETS QR codes (operated by Network for Electronic Transfers (Singapore) Pte Ltd ("NETS")) displayed by merchants to make instant and secure retail payments.

This endeavour will be jointly supervised by BI and MAS, and supported by various industry representatives. These representatives include the Indonesian Payment System Association (ASPI), RAJA (Rintis, Artajasa, Jalin, and Alto), and NETS.

In addition, to promote the use of local currencies in bilateral transactions, BI and MAS also entered into a Memorandum of Understanding (MOU) to this effect. This is part of the efforts toward financial integration within the ASEAN region aimed at enabling more extensive use of local currencies in intra-ASEAN trade and investment settlement, as well as to reduce businesses' exposure to exchange rate risks and the costs of conducting bilateral transactions.

Click on the following link for more information:

- [MAS Media Release titled "Indonesia and Singapore to Pursue Cross-border QR Code Payments Connectivity and Explore Promoting the Use of Local Currencies for Bilateral Transactions"](#) (available on the MAS website at www.mas.gov.sg)

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MAS Publishes Information Paper on Supervisory Expectations & Observations on Managing Operational Risks from Third Party Arrangements

Financial institutions ("**FIs**") are expected to have adequate governance, risk management and sound internal controls regarding their third party outsourcing and non-outsourcing arrangements (collectively, "**third party arrangements**").

Among other things, FIs should assess the risks from third party services and put in place controls that take into account the nature and extent of the risks. In this regard, the Monetary Authority of Singapore ("**MAS**") has issued and/or revised various guidelines, such as MAS' Guidelines on Outsourcing, MAS' revised Technology Risk Management Guidelines and MAS' Business Continuity Management Guidelines.

Over 2020 and 2021, MAS conducted thematic inspections on selected banks regarding their operational risk management ("**ORM**") standards and practice, focusing on third party risk management, namely:

- (a) ORM governance and control framework – how the selected banks manage their oversight of operational risk, the organisation structure and roles of the ORM function, as well as control frameworks and policies.
- (b) Third party risk management – how selected banks govern and manage oversight of both outsourcing and non-outsourcing arrangements ("**NOAs**"), their due diligence process during onboarding of service providers, as well as ongoing risk management and monitoring of third party arrangements.

MAS published its observations and supervisory expectations, areas for improvement and good practices in an information paper on "Operational Risk Management – Management of Outsourcing and Third Party Arrangements - Observations and Supervisory Expectations from Thematic Inspections" on 5 August 2022.

A few key observations made by MAS in the information paper include:

- (a) Though the selected banks are generally familiar with outsourcing risks and have generally established frameworks and processes to oversee operational risks, there is room for improvement in several areas, for instance, in terms of raising risk management standards and implementation.
- (b) Banks have put in place a range of operational risk monitoring tools; however, MAS observed that there are numerous aspects where improvement is required for the tools to be effective.
- (c) Third party risk management involves governance and management oversight of both outsourcing arrangements and NOAs. It is observed that banks generally have more established frameworks and processes to manage the former arrangements. For instance, some banks did not implement robust frameworks to manage NOAs, or were at an early stage of coming up with controls to manage the associated risks and largely managed them in a decentralised manner through the respective business units.

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- (d) In terms of using technology to facilitate the management of outsourcing risks, banks are at different stages of employing technology to make the management process more efficient. Manual processes do not allow effective tracking and monitoring of outsourcing activities.

Banks should review and benchmark their practices against the good practices expected by MAS in the information paper and where necessary, address gaps in a risk-appropriate manner.

Non-bank FIs should also adopt the recommended practices where relevant and appropriate to the materiality of the risks posed by their third party arrangements.

For more details, please refer to the full text of the information paper [here](#) (available on the MAS website at www.mas.gov.sg).

Sustainability

Singapore Launches Infrastructure Asia Project Portal to Support Region's Infrastructure Needs

A key to achieving Sustainable Development Goals (SDGs), particularly to combat climate change, lies in developing sustainable infrastructure at scale. This requires large amounts of capital and investments from both public and private sectors. It is estimated that US\$2 trillion is required to build sustainable infrastructure in Southeast Asia by 2030.

This was highlighted in the Keynote Address by Ms Indraneel Rajah, Minister in The Prime Minister's Office, Second Minister for Finance and National Development, at The Asia Infrastructure Forum 2022 on 2 August 2022.

Earlier this month, the Monetary Authority of Singapore (MAS) announced the issuance of Singapore's inaugural sovereign green bonds, the proceeds of which will be used to finance green, major and long-term infrastructure in Singapore. By 2030, the Singapore government and public sector will issue up to S\$35 billion of green bonds to finance sustainable infrastructure projects under the Singapore Green Plan.

Apart from government and public sector efforts, private capital flow is also critical. In addition, specialised skillsets and expertise from various sectors are also required as infrastructure projects are complex and involve multiple aspects, such as design, development and financing.

In view thereof, the Infrastructure Asia Project Portal ("**Portal**") was launched to facilitate the collaboration of various stakeholders (such as between the public and private sectors) to support the transformation and development of infrastructure projects in the region.

The Portal aims to overcome the challenges that hinder effective collaboration in order to capitalise on sustainable project opportunities, namely poor visibility of potential project opportunities, lack of knowledge of the available best-fit solutions, as well as an inability to pool together complementary experts.

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The Portal will function as an online marketplace to, among other things:

- (a) Provide stakeholders and interested parties with information on potential and available infrastructure project opportunities in the region;
- (b) Build awareness among regional counterparts of technological and financial solutions to develop sustainable infrastructure projects. For instance, the Portal will provide networking opportunities with more than 600 of Infrastructure Asia's Singapore and Singapore-based partners; and
- (c) Bring about better collaboration among the various players in the public and private sectors by connecting them on the platform and facilitating the creation of partnerships to develop sustainable infrastructure projects.

Click on the following link for more information:

- [Keynote Address by Ms Indranee Rajah, Minister in The Prime Minister's Office, Second Minister for Finance and National Development, at The Asia Infrastructure Forum 2022 on 2 August 2022](#) (available on the Ministry of Finance website at www.mof.gov.sg)

Technology, Media & Telecommunications

IMDA and MPA Announce Extension of Public 5G Standalone Coverage to Sea for Maritime Operations

The Infocomm Media Development Authority of Singapore ("IMDA") and the Maritime and Port Authority of Singapore ("MPA") have announced on 30 August 2022 that Singapore intends to achieve full 5G standalone coverage over its anchorages, fairways, terminals, and boarding grounds by mid-2025. This will enable the establishment of Singapore's 5G@SEA, the world's first public and largest 5G Maritime testbed to trial, innovate and commercialise Maritime 5G use-cases.

The efforts towards Maritime 5G coverage are co-funded by IMDA and MPA. One of the goals of this project is to reduce turnaround time and improve efficiency for ships coming in and out of Singapore, such as enabling Singapore to handle circa 65mil twenty-foot equivalent units (TEUs) upon the completion of the Tuas Port, which is expected to occur in the 2040s. This advancement of communications capabilities is also in line with Singapore's ambitions to be the first country to build a first class digital port and to enable a new wave of end-to-end digital maritime services.

The 5G@SEA Maritime testbed is a collaboration between IMDA's 5G Innovation and Ecosystem Development Programme and MPA's Innovation Lab, under which mobile network operator M1 Limited will provide 5G standalone network coverage.

This exciting effort aims to accelerate MarineTech research and development, and to facilitate testing of new applications. IMDA and MPA have indicated that the initial use-cases will focus on Remote Assisted Pilotage Advisory for automation, productivity, and human safety.

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IMDA and MPA have also provided an indication of other potential future maritime use-cases, such as Maritime Autonomous Surface Ships to enable companies to develop and test new systems of ship-to-ship and ship-to-shore communications, autonomous manoeuvres and remote control of ships. Other use-cases could include shore-to-ship delivery and telemedicine via HD video streaming. Each of these enhancements will be ground-breaking from the perspective of maritime users of our port as a world-leading transshipment hub and the top vessel bunkering destination globally.

Click on the following link for more information:

- [IMDA Media Release titled "Singapore, the First Country to Extend Public 5G Standalone Coverage to Sea for Maritime Operations"](#) (available on the IMDA website at www.imda.gov.sg)

IMDA Proposes Enhanced Measures to Protect Against SMS Scams

The Infocomm Media Development Authority ("IMDA") has been working to address the threat of short message service ("SMS") and phone scams, building multiple layers over the years to safeguard such communication channels. From 15 August 2022 to 9 September 2022, IMDA conducted a consultation on its new proposed measures to further safeguard SMS messages. The proposed measures are as follows:

- (a) **Full SMS sender ID registration.** IMDA has established the Singapore SMS Sender ID Registry ("SSIR"), which is a central body for the registration of Sender IDs to be used in Singapore. SMS messages that attempt to spoof the registered Sender IDs will be blocked upfront.

While the SSIR is currently a voluntary system, IMDA is proposing to make SSIR participation and registration mandatory for all organisations that choose to use Sender IDs to send SMS to Singapore mobile users. Only registered Sender IDs may be used to send SMS, and all non-registered Sender IDs will be blocked. Further, all aggregators that wish to handle SMS with Sender IDs sent to Singapore mobile users must obtain minimally a Services-Based Operator (Class) licence from IMDA.

IMDA is proposing to provide a transition period starting in October 2022 before the full SSIR regime commences in December 2022.

- (b) **Implementation of anti-scam filter solution.** Another common tactic used by scammers is to deceive victims into clicking malicious links sent via SMS to obtain their sensitive data. IMDA is proposing that Mobile Network Operators ("MNOs") implement (in phases) an anti-scam filter solution to identify and filter potential scam SMS messages. In Phase 1, an automated process will cross-check links in SMS messages against a database of known malicious links. In Phase 2, an automated machine learning process will seek to identify suspicious patterns within the SMS message.

For more information, click [here](#) to read our Legal Update.

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CaseBytes

Court Determines When It Will Allow Transfer of Shares in Insolvent Company

When a company commences winding-up, the disposition of its property and the transfer of shares in the company is void, unless the Court otherwise orders. Under what conditions will the Court allow such disposition or transfer? This was the question in *Ong Boon Chuan v Tong Guan Food Products Pte Ltd* [2022] SGHC 181.

The Applicant and Respondent were both shareholders of an insolvent company ("**Company**"). The Applicant sought the sale and transfer of the Respondent's shares in the Company under section 130 of the Insolvency, Restructuring and Dissolution Act 2018 ("**section 130**") to fulfil unpaid cost orders against the Respondent.

The Court chose to exercise its discretion under section 130 in favour of the Applicant, granting the order for sale and transfer. In reaching its decision, the Court set out the applicable principles in determining the exercise of its discretion.

- (a) The Court observed that the object of section 130 is to ensure that there is no evasion of liability by contributories, such as where the shares are fully paid up. However, the Court noted that the rationale underlying section 130 may need to be refined in future as the use of partly paid shares is very rare in modern times.
- (b) The Court was of the opinion that a more appropriate rationale for section 130 may be the maintenance of the status quo of a company's position pending resolution of the winding-up petition.
- (c) The Court also held that the relevant factors to be considered in the exercise of its discretion under section 130 ought to be limited to those related to the disposition of property in the context of winding up of the company.

For more information, click [here](#) to read our Legal Update.

Compensation for Workplace Injuries: Statutory Regime, Private Settlements, and the Maritime Industry

The Work Injury Compensation Act ("**WICA**") 2009 ("**WICA 2009**") and its successor, the Work Injury Compensation Act 2019 ("**WICA 2019**"), are statutory regimes providing for the payment of compensation to employees for injury suffered arising out of and in the course of their employment. The WICA 2019 applies to accidents that happen from 1 January 2020.

The WICA 2009 and the WICA 2019 are substantially similar, though the updates in 2019 aim to encourage faster claims processing, fairer compensation and fewer workplace injuries.

Compensation payable under the WICA 2009 or WICA 2019 is intended to provide an "alternative remedy" to common law damages in Singapore. The recent Singapore High Court decision in *M.T.M. Ship Management Pte Ltd v Devaswarupa & 3 Ors* [2022] SGHC 178 clarifies where private settlements between injured employees and their employers stand between

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these two remedies under the WICA 2009 regime. Rajah & Tann Singapore's Ms Tan Tian Hui was appointed as young *amicus curiae* to assist the Court.

Background Facts

The facts of the case are straightforward. The Employee was a seafarer who passed away on board his serving vessel. Pursuant to the terms of the Employee's employment contract, the Employer paid the Employee's next-of-kin an agreed compensation amount of US\$144,000 ("**Settlement Sum**"). This sum represented the amount which the Employer was required under the employment terms to maintain by way of personal accident insurance coverage for seamen, such as the Employee. In consideration for payment of the Settlement Sum, the Employee's next-of-kin executed the usual release and discharge documents in the Employer's favour.

Despite receipt of the Settlement Sum, the Employee's next-of-kin lodged a claim with the Commissioner for compensation under the WICA 2009. The Commissioner for Labour issued a Notice of Assessment and later, a Certificate of Order ordering the Employer to pay the Employee's next-of-kin compensation of approximately US\$139,000 ("**Certificate Sum**").

In this appeal to the Singapore High Court, the Court was asked to consider the novel and important question of whether the Commissioner has the power under the WICA regime to take into account settlement payments when assessing the amount of compensation payable.

Decision of the High Court

The High Court's decision is in the context of compensation paid by an employer to a deceased employee's next-of-kin under the WICA 2009. The Court held that where compensation is paid pursuant to a private settlement, the Commissioner is entitled but not obligated to take such payments into account for the purposes of computing compensation under the WICA 2009 regime.

The Commissioner may take such settlement payments into account if he/she considers it "fair and reasonable" to do so on the facts of the case. The High Court did not lay down any hard and fast rules in delimiting the Commissioner's discretion under the WICA 2009 regime to decide on what would be fair and reasonable in any case. Nevertheless, the Court provided the following guidelines:

- (a) The WICA 2009 regime does not aim to give injured employees (or their beneficiaries) double compensation in relation to the same injury.
- (b) As an example of when an employer may be required to pay compensation under the WICA 2009 regime in addition to privately agreed settlement sums: If the facts of a case indicate that the settlement payment received by an employee was intended *by the employer* to be independent of any compensation received by the employee under the WICA 2009 regime, the Commissioner might decide to exclude such a payment from consideration.

In the light of the foregoing, the High Court found that the effect of payment of the Settlement Sum in this case was to reduce the amount of compensation payable by the Employer to nil. It was considered fair and

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reasonable to give the Employer credit for the Settlement Sum already paid because the Settlement Sum paid in fact exceeded the compensation that the Commissioner had assessed to be payable by the Employer. Further, the available evidence did not suggest that the Settlement Sum was intended to be paid to the Employee's Next-Of-Kin independent of any claim brought under the WICA 2009 regime. The Court found that the intention of the provisions in the Employee's employment contract requiring payment of the Settlement Sum was simply to ensure minimum compensation obtained by an employee (or his beneficiaries) in the event of an injury.

Finally, the High Court also noted that the provisions in the WICA 2009 and its 2019 counterpart are not the same. While the Court observed that the position regarding the effect of private settlement agreements should be similar under the WICA 2019, this point was left open in the judgment as it did not have to be decided.

Concluding Remarks

This decision serves to caution employers and their insurers to exercise circumspection when making private, *ex gratia* payments to injured employees or their families following a workplace injury incident. This contrasts to payments made under the relevant WICA regime either pursuant to a Certificate of Order requiring payment of an assessed amount, or pursuant to a settlement agreement entered between the employer and employee (or his next-of-kin) and which is recorded by the Commissioner as an order.

To err on the side of caution, employers and insurers are advised to ensure that private settlement payments are always made against clearly drafted agreements which should make clear that payments are not being made independent of any claim brought or to be brought under the WICA 2009 or 2019.

Moratoria for Rescue Plans: Foreign Companies, Cryptocurrency Platforms, and Connection with Singapore

How does a foreign company or group of companies establish whether it has a substantial connection to Singapore and thus avail itself of certain protections under Singapore law? This issue emerged in *Zipmex Company Limited* [2022] SGHC 196, where the High Court examined whether it had jurisdiction over foreign companies applying for moratorium protection under section 64 of the Insolvency, Restructuring and Dissolution Act ("**Act**"). This turned on whether the companies had a substantial connection to Singapore.

As background, companies in the Zipmex group ("**Applicants**") operated a cryptocurrency exchange platform on which various cryptocurrencies were traded. Two companies were incorporated in Singapore, namely the group holding company ("**Zipmex Asia**") and a Singapore subsidiary Zipmex Singapore. The three other companies were established in their respective countries to comply with local market regulations.

Section 64 of the Act sets out the moratorium regime which allows a distressed company breathing space to put together a rescue plan. Section 65 of the Act extends the protection of section 64 to subsidiaries, holding companies or ultimate holding companies.

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However, section 246 of the Act additionally provides that a foreign company may only be wound up if it has a substantial connection to Singapore. This may be established by a number of factors, including that Singapore is the centre of main interests ("**COMI**") of the company. The Applicants therefore needed to meet this requirement to obtain the moratoria they sought from the Court.

Here, the Court found that the Applicants had established that Singapore was the COMI. Certain assets from all entities were consolidated in a hot wallet hosted by Zipmex Asia in Singapore. This consolidation lay at the bottom of the group's business model and operations and pointed to a Singapore centre of gravity. The management and direction of the group as a whole likewise pointed to a Singapore focus. The substantial connection requirement was therefore satisfied, allowing the Court to exercise its sections 64 and 65 jurisdiction under the Act.

The Court was also satisfied that the other requirements under sections 64 and 65 of the Act were met by the respective Applicants. In particular, there was sufficient indication that the proposed scheme would work and be acceptable to the general run of creditors. However, the Court was of the view that a five-month moratoria extension (in addition to the one-month automatic moratorium that arises under section 64 of the Act) would not be appropriate.

Consequently, the Court allowed an approximately three-month extension for each of the applications so that the Court could monitor the Applicants' progress and engagement, while noting that further extensions could be granted if matters were in order.

Protection for Tenants During COVID-19: What Constitutes a Lease?

The COVID-19 (Temporary Measures) Act 2020 ("**CTMA**") sought to deal with a range of issues arising from the COVID-19 pandemic. Among them was the protection of commercial tenants, with the CTMA imposing measures such as a moratorium against landlords taking certain actions against tenants for the non-payment of rent (section 19G of the CTMA). In *Chiap Seng Productions Pte Ltd v Newspaper Seng Logistics Pte Ltd* [2022] SGHC 202, the Singapore High Court had to determine whether the plaintiff was entitled to the protection of section 19G of the CTMA from enforcement actions taken by the defendant as its landlord. The Court considered whether the agreement between the parties, which was labelled as a Service Agreement, was in substance a tenancy agreement.

The plaintiff and the defendant had entered into a purported Service Agreement in November 2019, under which the plaintiff would store its assets at the defendant's premises for a monthly fee. The plaintiff began to fall behind on paying such fees, following which the defendant seized and sold all of the assets which were stored within the premises.

The Court found that the substance of the Service Agreement was that of a lease. The physical arrangement at the premises showed that the plaintiff had exclusive possession of the designated service area. The Service Agreement was clearly intended to create a landlord-tenant relation, even though the defendant had called it a "Service Agreement" instead of a tenancy agreement to evade its rights and obligations as a landlord and to

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avoid seeking approval from JTC Corporation (JTC) to sublet the area to the plaintiff.

On this basis, the Court found that the defendant was not entitled to dispose of the assets.

- (a) First, the defendant's seizure and disposal of the plaintiff's assets fell within the prescribed period and the prohibited acts in section 19G of the CTMA, and was thus in breach of the statutory moratorium.
- (b) Second, the defendant had no contractual entitlement to dispose of the assets as it had, by its own accord, refused to accept the payment of the arrears from the willing plaintiff.
- (c) Third, the defendant's disposal of the assets without obtaining a writ of distress was in breach of the Distress Act.

Deals

\$305 Million Acquisition of 50% Stake in Ethoz Group Ltd. by Tan Chong Investments Limited

[Evelyn Wee](#), [Tan Mui Hui](#), and [James Chan](#) from the [Capital Markets / Mergers & Acquisitions Practice](#) acted for Ethoz Group Ltd. ("**Ethoz**") and Tan Chong Investments Limited ("**Tan Chong**") in the S\$305 million acquisition by Tan Chong of a remaining 50% stake in Ethoz. This transaction represented one of the largest publicly-announced acquisitions in the automotive and financing solutions industry in Singapore in recent years.

Mapletree Investments Ptd. Ltd.'s Sale of Oakwood Worldwide to The Ascott Limited

[Sandy Foo](#) and [Favian Tan](#) from the [Mergers & Acquisitions Practice](#) acted for Mapletree Investments Pte. Ltd. ("**MIPL**") in its sale of Oakwood Worldwide, a premier global serviced apartment provider, to The Ascott Limited, a wholly-owned lodging business unit of CapitalLand Investment Limited. [Benjamin Cheong](#) from the [Technology, Media & Telecommunications Practice](#) advised MIPL on the intellectual property aspect of the transaction, and [Kala Anandarajah](#), [Alvin Tan](#) and [Linda Qiao](#) from the [Employment & Benefits Practice](#) and [Competition & Antitrust and Trade](#) advised MIPL on the employment aspect of the transaction.

Authored Publications

Rajah & Tann Singapore Contributes to *Singapore Venture Capital & Private Equity Guide 2022: "Navigating Venture Debt"*

Rajah & Tann Singapore recently authored an article titled "Navigating Venture Debt" in the *Singapore Venture Capital & Private Equity Guide 2022* published by the [Singapore Venture & Private Capital Association](#) (SVCA).

Contributed by our Venture Capital and Venture Debt experts [Tracy-Anne Ang](#), [Terence Quek](#), [Brian Ng](#) and [Cheryl Tan](#), the article delves into venture

debt, looking at reasons for companies to seek venture debt, its common features, considerations to take into account, as well as its comparisons to early-stage investment debt/equity instruments such as Y-Combinator's SAFE, 500 Startups' KISS and CARE notes.

The full article can be read [here](#).

Rajah & Tann Singapore Contributes Singapore Chapter of Lexology's Initial Public Offerings Practice Guide

Rajah & Tann Singapore has contributed the Singapore chapter to Lexology's Initial Public Offerings 2023 practice guide, published as part of Lexology's Getting the Deal Through series.

Exclusively authored by our leading Capital Markets partners [Evelyn Wee](#) and [Hoon Chi Tern](#), together with Senior Associate Jasselyn Seet, the chapter provides local insights into initial public offerings (IPOs). Among other topics, it proffers a market overview in relation to size, issuers and exchanges; outlines the rulemaking and enforcement bodies; sets out listing requirements; and looks into recent trends.

The full chapter can be read [here](#).

To find out more about our Capital Markets Practice, please click [here](#).

Events

Competition Law Issues in Employment and Labour

On 31 August 2022, the Competition & Antitrust and Trade Practice organised a webinar titled "Competition Law Issues in Employment and Labour".

The Singapore labour market is tight, with job vacancies in the first quarter of 2022 at a record high. This gives rise to greater sensitivity on the movement of, and endeavours to retain, employees. Where employers traditionally do so through non-competes and non-solicits, they may also seek to do so through non-poach agreements. They are also likely to continue their usual activity of seeking market intelligence on the current terms of compensation to ensure they remain attractive to employees. On the other side, employees and gig-economy workers may look to increase their bargaining power even further by engaging in collective bargaining vis-à-vis their employers. Such actions should carry anti-competitive risks.

The speakers explored the boundaries of permissible conduct under competition law that both employers and employees should understand, including:

- How can employers safely obtain and share intelligence on current market compensation?
- What are the risks of non-poach agreements amongst competing employers?
- Can non-compete provisions be anti-competitive?
- Can collective bargaining by employees and independent contractors be anti-competitive?

[Kala Anandarajah](#), Head of the [Competition & Antitrust and Trade Practice](#), together with Senior Associate Joshua Seet, were the speakers.

Securing Patient Data – Regulatory Implications and Operational Requirements

On 16 August 2022, Rajah & Tann Cybersecurity organised a webinar titled "Securing Patient Data – Regulatory Implications and Operational Requirements".

Healthcare data continues to be at risk. Data breaches can arise from outside and within an organisation. With no signs of cyber-attacks stopping anytime soon, it is crucial that healthcare providers, professionals, and everyone involved with patient information be vigilant in protecting patient data.

Protecting data in the healthcare industry is no easy feat, but is nevertheless a necessity, especially to avoid breach of the law, financial penalties and loss of trust and reputation. The speakers shared how affected organisations can take a proactive approach in implementing best practices for healthcare security and be best equipped for continued compliance and at lower risk of suffering costly data breaches. They covered the following:

- Singapore Personal Data Protection Act ("**PDPA**") compliance;
- Private Hospitals and Medical Clinics ("**PHMC**") regulations;
- Cybersecurity requirements in Section 12 of PHMC Regulation and Ministry of Health (MOH) Healthcare Cybersecurity Essentials ("**HCSE**");
- Case study; and
- Checklist for compliance with the PDPA, PHMC Regulation and HCSE.

[Steve Tan](#), Deputy Head of the [Technology, Media & Telecommunications Practice](#), Director of [Rajah & Tann Technologies](#) and [Rajah & Tann Cybersecurity](#), and [Professor \(Adjunct\) at NUS Faculty of Law](#) (Privacy & Data Protection), and [Wong Onn Chee](#), Chief Executive Officer of Rajah & Tann Technologies and Technical Director of Rajah & Tann Cybersecurity, were the speakers.

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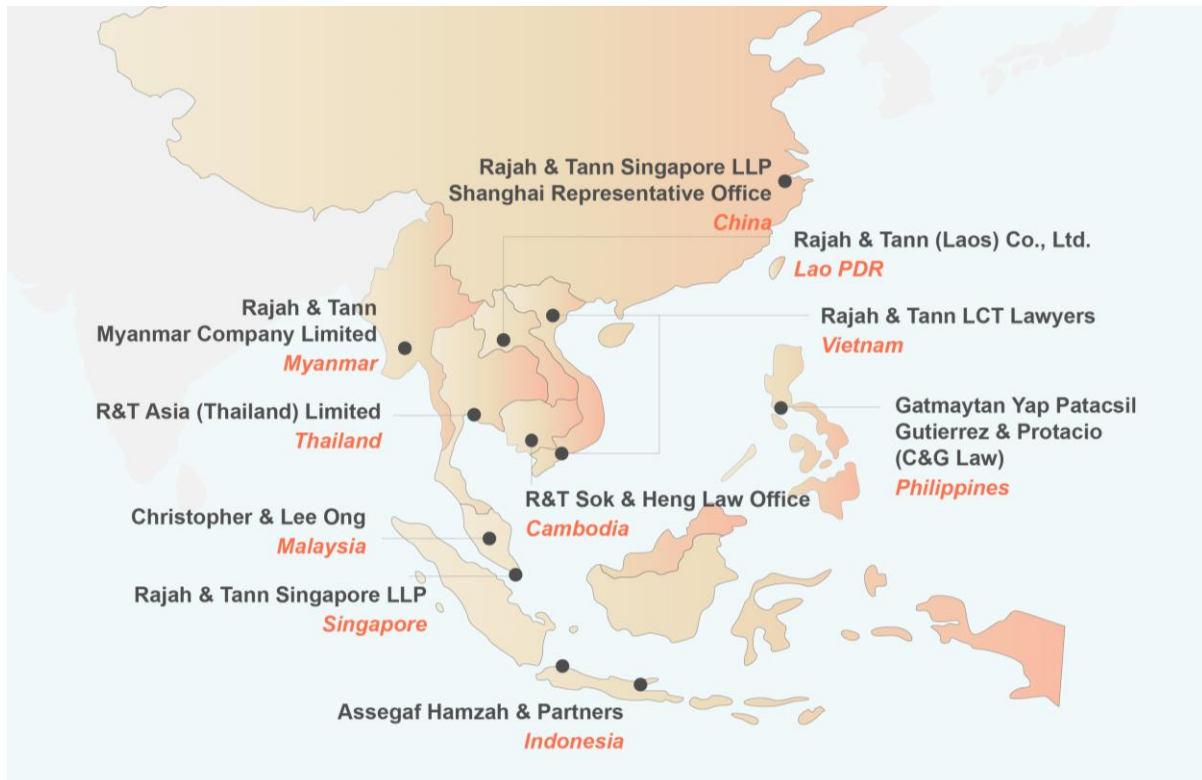
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Our Regional Presence



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

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

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