RAJAH & TANN ASIA

NewsBytes: Singapore

2022 OCTOBER

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News

Rajah & Tann Asia Wins Five asialaw Awards Including Firm of the Year in Singapore and Indonesia

Rajah & Tann Asia ("**R&T**") clinched the Singapore Firm of the Year, Indonesia Firm of the Year and three Impact Deal and Case awards at an asialaw virtual ceremony held on 28 September that recognises leading law firms in the region.

Rajah & Tann Singapore won the country award for the third consecutive year while Assegaf Hamzah & Partners, a member firm of the R&T network, won Indonesia Firm of the Year for the fourth year running as well as one Impact Deal and Case award for their work on Indonesian e-commerce start-up Bukalapak's IPO. It was the biggest IPO on the Indonesia Stock Exchange and the first time a homegrown start-up unicorn was listed.

The other Impact Deal and Case awards were for R&T's work acting for Cuscaden Peak in its acquisition of Singapore Press Holdings, marking the first takeover for an SGX-ST listed company by way of competing schemes of arrangement; and for the law firm's role in advising Hin Leong Trading and its judicial managers following the company's collapse in 2020, which was one of the world's largest involving an oil trader. Fraud and accounting irregularities were discovered after the Asian oil trading giant was placed under judicial management and subsequent liquidation.

The asialaw awards capped a list of other accolades during the year. Among others, at the FT Innovative Lawyers Awards Asia Pacific 2022 held in May, R&T was ranked as the region's 11th most innovative law firm, up 10 spots from the year before. R&T was also named SE Asia Law Firm of the Year and ESG & Sustainability Law Firm of the Year at the Asian Legal Business SE Asia Law Awards 2022. R&T also bagged Singapore Firm of the Year, Indonesia Firm of the Year, and Asia-Pacific Insolvency Firm of the Year awards at the Benchmark Litigation Asia-Pacific Awards 2022.

Click here to read our Press Release.

LegisBytes

Capital Markets

SGX RegCo Proposes to Mandate Tenure Limit on IDs & Disclosure of Directors' and CEOs' Remuneration Details

From 27 October 2022 to 17 November 2022, the Singapore Exchange Regulation ("**SGX RegCo**") is conducting a public consultation on the following changes to institute better corporate governance practices relating to board renewal and disclosure of remuneration of directors and chief executive officers ("**CEOs**"):

(a) Introducing a mandatory nine-year tenure limit on independent directors ("**IDs**") for issuers listed on the Singapore Exchange Securities Trading Limited ("**SGX-ST**"); and

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(b) Mandating disclosure of remuneration details of each individual director and the CEO of issuers listed on the SGX-ST.

These proposals, which were recommended by the Corporate Governance Advisory Committee ("**CGAC**"), would be prescribed in the SGX-ST Mainboard Rules and Catalist Rules. CGAC was set up by the Monetary Authority of Singapore ("**MAS**") in 2019 to identify risks to the quality of corporate governance in Singapore, and takes a leading role in advocating good corporate governance practices. CGAC's recommendations were made in response to the findings of a review published by KPMG in Singapore ("**KPMG Review**") of listed companies' disclosure on their compliance with the Code of Corporate Governance ("**Code**"). The findings of the KPMG Review suggest a concerning trend that long-serving IDs may become entrenched in listed companies in Singapore and that companies' disclosure on remuneration details of their directors and CEOs has been lacking.

Mandatory Nine-Year Tenure Limit on IDs

Currently, Listing Rule 210(5)(d)(iii) of the SGX-ST Mainboard Rules and Listing Rule 406(3)(d)(iii) of the SGX-ST Catalist Rules provide that a director of a listed issuer is not independent if he/she has been a director of a listed issuer for an aggregate period of more than nine years (whether before or after listing) unless his/her continued appointment as an ID has been approved in separate resolutions by: (i) all shareholders of the issuer; and (ii) shareholders of the issuer excluding its directors and CEO and associates of the directors and CEO ("**Two-tier Vote**").

In line with CGAC's recommendation, SGX RegCo proposes to amend the SGX-ST Mainboard Rules and SGX-ST Catalist Rules to:

(a) provide that a director who has been a director of an issuer for an aggregate period of more than nine years (whether before or after listing) will not be considered independent. The nine-year tenure limit is aligned with the tenure limit imposed by MAS on IDs of Singapore-incorporated banks, insurers and managers of real estate investment trusts ("**REIT Managers**"); and
(b) remove the Two-tier Vote mechanism for long-serving IDs.

Mandatory Disclosure of Remuneration Details of Directors and CEO

SGX RegCo is of the view that the remuneration details of directors and the CEOs should be transparent as they have a fiduciary duty and the question of competition is less of a concern. Therefore, it is proposed that the SGX-ST Mainboard Rules and SGX-ST Catalist Rules be amended to require:

(a) Companies listed on SGX-ST to disclose the exact amount and breakdown of remuneration of each director and the CEO in the annual report on a named basis.
(b) Real estate investment trusts ("**REITs**") and business trusts ("**BT**") listed on SGX-ST to disclose the exact amount and breakdown of remuneration of each director and the CEO of the REIT Managers and BT trustee-managers in the annual report on a named basis.

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

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Consumer Protection

SFA Consults on Proposed Regulation of Insect and Insect Products for Human Consumption and Animal Feed

Singapore currently does not permit the import and sale of insects as food for human consumption. Presently, only animal feed can contain insects, which is subject to restrictions under the Feeding Stuffs Act.

After examining the regulatory position for insects and insect products, the Singapore Food Agency ("**SFA**") proposes allowing the import, local farming and processing of insects and insect products for human consumption and animal feed, subject to specific conditions and requirements.

SFA is conducting a consultation exercise to obtain feedback on the following key proposed conditions and requirements:

(a) Import conditions for insect and insect products for human consumption and animal feed imported into Singapore;

(b) Additional pre-licensing requirements for local insect farming for human consumption and animal feed; and

(c) Additional pre-licensing requirements for processing of insects for human consumption.

The consultation closes on 4 December 2022.

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

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Corporate Commercial

Singapore Entities to Observe Nominee Shareholders & Enhanced Registrable Controllers Requirements by 5 December 2022

On 4 October 2022, the Companies Act 1967 and the Limited Liability Partnerships Act 2005 were amended to introduce the following two new requirements:

(a) **Mandatory requirement to keep Register of Nominee Shareholders ("RONS")**. Singapore companies and foreign companies registered in Singapore ("**foreign companies**") are now required to maintain a non-public RONS containing the prescribed particulars of the nominee shareholders and their nominators. Some Singapore companies and foreign companies are exempted from keeping the RONS. They include Singapore companies which are listed on the Singapore Exchange Securities Trading Limited (SGX-ST), Singapore financial institutions, Singapore companies and foreign companies which are listed on a securities exchange outside Singapore and which are subject to regulatory disclosure requirements and requirements relating to adequate transparency in respect of their beneficial owners imposed through stock exchange rules, law or other enforceable means, or a foreign company that is

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a wholly-owned subsidiary of a foreign company that is a Singapore financial institution.

(b) **Enhanced measures where there is no registrable controller or the entity is unable to identify the registrable controller**. Singapore companies, foreign companies or Singapore limited liability partnerships ("**LLPs**"), which have no registrable controller or are unable to identify the registrable controller, are required to identify individuals with executive control as their registrable controllers.

Singapore companies, foreign companies or LLPs (as the case may be) must comply with the above requirements by 5 December 2022. These changes which are set out in the Corporate Registers (Miscellaneous Amendments) Act 2022 aim to align Singapore corporate governance requirements closer with international standards set by the Financial Action Task Force (FATF) so as to make it harder for illicit actors to engage in money laundering, terrorism financing and other actions that abuse the system.

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

Financial Institutions

MAS Consults on Enhanced Regulatory Measures for Digital Payment Token Services and Regulatory Approach for Stablecoins

In Singapore, cryptocurrencies are generally regulated as digital payment tokens ("**DPT**") under the Payment Services Act 2019 ("**PS Act**"). Currently, DPT service providers are regulated under the PS Act primarily for anti-money laundering and countering the financing of terrorism (AML/CFT) risks, and technology and cyber risks. Although DPT service providers are not regulated for consumer protection risks under the PS Act, the Monetary Authority of Singapore ("**MAS**") has consistently issued strong warnings to retail investors that speculative trading of DPTs (including cryptocurrencies) is not suitable for them. DPT service providers are required to provide a risk warning to their customers about trading in DPTs, and are subject to restrictions concerning the promotion of DPT services at public places.

Despite all these measures, cryptocurrency speculation activities among retail investors were on an upward trend until the recent crypto markets shake-up, which saw the collapse of TerraUSD (a stablecoin) and the value of popular cryptocurrencies like Bitcoin and Ether plunging steeply.

<u>MAS Consultation Paper on Proposed Regulatory Measures for Digital Payment Token Service</u>

To reduce the risk of consumer harm in cryptocurrency trading, MAS issued the "Consultation Paper on Proposed Regulatory Measures for Digital Payment Token Services" to seek comments on proposed regulatory measures for licensees and exempt payment service providers that carry on a business of providing DPT services under the PS Act in the following areas:

(a) Consumer access measures which a DPT service provider must apply to a retail customer in Singapore;
(b) Business conduct measures;

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(c) Enhanced measures to manage technology and cyber risks;
(d) Potential measures to address integrity risks (e.g. unfair trading practices of market manipulation, misleading conduct and insider trading in the DPT markets); and
(e) Implementation details and a transitional period for the proposed regulatory measures.

MAS Consultation Paper on Proposed Regulatory Approach for Stablecoin-related Activities

Despite the negative news associated with some stablecoins lately, MAS is of the view that, unlike cryptocurrencies, stablecoins can be a credible digital medium of exchange to facilitate transactions in a digital asset ecosystem. MAS intends to develop an innovative and responsible digital asset ecosystem in Singapore by leveraging on the innovative combination of tokenisation and distributed ledgers. Against this backdrop, MAS issued the "Consultation Paper on Proposed Regulatory Approach for Stablecoin-Related Activities" to seek comments on its policy thinking regarding the overall regulatory approach on stablecoin-related issuance and intermediation activities, and highlight the key requirements that will be imposed on such activities.

MAS proposes to introduce a new regulated activity of "Stablecoin Issuance Service" under the PS Act to regulate Single-Currency Pegged Stablecoins ("**SCS**") issued in Singapore. As a start, MAS proposes to only allow the issuance of SCS that are pegged to the Singapore dollar or Group of Ten (G10) currencies (namely, Australian Dollar, British Pound Sterling, Canadian Dollar, Euro, Japanese Yen, New Zealand Dollar, Norwegian Krone, Swedish Krona, Swiss Franc and the United States Dollar).

Comments on these two MAS consultation papers must be submitted to MAS by 21 December 2022.

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

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MAS Consults on Revised Restrictions on E-money Payment Accounts

On 18 October 2022, the Monetary Authority of Singapore ("**MAS**") published a consultation paper to seek feedback on proposed changes to the Payment Services Act 2019 ("**PS Act**") to:

(a) Revise the limits on stock cap and flow cap ("**Caps**") imposed on personal payment accounts containing e-money ("**e-wallets**") issued by a Major Payment Institution ("**MPI**") to a user; and

(b) Introduce a new exemption for a MPI with regard to its arrangements which contemplate "white-label" e-wallet account issuance from the requirement to aggregate all the e-money in the e-wallets issued to the same user for purposes of applying the Caps to the user.

The consultation is targeted at all licensees and regulated entities under the PS Act, financial institutions and other interested parties (including members of the public and payment service users). Feedback must be submitted to MAS by 25 November 2022.

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Proposed Revised Caps on Personal E-Wallets

Presently, an MPI is required under the PS Act to ensure that:

(a) The amount of funds that can be held at any given time in an e-wallet of a user does not exceed S$5,000 ("**stock cap**"); and
(b) The total outflow over a rolling 12-month period in an e-wallet of a user does not exceed S$30,000 ("**flow cap**").

For better customer convenience and to support innovation in the e-payments landscape, MAS proposes to:

(a) Raise the stock cap from S$5,000 to S$20,000; and
(b) Raise the flow cap from S$30,000 to S$100,000.

Proposed New Exemption from Aggregate Caps Requirement for MPIs

Under the PS Act at present, an MPI that issues two or more e-wallets to any user is required to aggregate all the e-money in the e-wallets issued to that user and apply the Caps to the user ("**Aggregate Caps Requirement**"). MAS proposes to exempt an MPI that enters into the following arrangement from the Aggregate Caps Requirement where the MPI:

(a) Enters into an arrangement with e-money issuance service providers ("**e-money issuers**") where the MPI will issue e-wallets on behalf of the e-money issuers, and the e-wallets will store e-money issued by the e-money issuers to their payment service users; and
(b) Provides the e-wallet issuance service to *two or more e-money issuers*,

(referred to as the "**white-label account issuance arrangement**"). This means that for the purposes of applying the Caps, the MPI will *not* be required to aggregate the e-money in e-wallets issued to the same payment service user under the white-label account issuance arrangement. For further details, please refer to the consultation paper which also provides an illustration of how this works.

For more information, click here for our Legal Update.

New Code of Conduct for Buy Now, Pay Later Providers in Singapore Takes Effect on 1 November 2022

In recent years, the consumer credit landscape has seen a rise in "Buy Now Pay Later" ("**BNPL**") transactions. BNPL generally refers to a service/arrangement where a service provider partners with a merchant to allow customers to pay for purchases of goods/services on a deferred payment term, without compound interest, either by way of a single lump sum or fixed term instalments.

In response to concerns that BNPL may potentially cause excessive debt accumulation, an industry-led effort by the Singapore FinTech Association (SFA) and various industry players (under the guidance of the Monetary Authority of Singapore ("**MAS**")) developed the BNPL Code of Conduct ("**CoC**") which was published on 20 October 2022, and took effect on 1 November 2022.

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The primary aim of the CoC is to ensure that BNPL providers meet certain industry standards and best practices in order to protect consumers by limiting debt accumulation, as well as the interests of various stakeholders, and benefitting the wider financial ecosystem.

Key Aspects of the CoC

The CoC covers several main areas such as:

(a) Various creditworthiness safeguards that are primarily intended to minimise the risk of consumers overextending themselves;

(b) Standards and guidelines on what a BNPL provider is required to do to ensure fair dealing, transparent fees and clear disclosures;

(c) Financial hardship assistance where BNPL providers are committed to consider extending assistance to their customers who are facing financial hardship;

(d) Late payment collection practices and standards;

(e) Standards and requirements when BNPL providers share information with external parties; and

(f) Document retention requirements for purposes of complying with the CoC.

Audit and Accreditation

BNPL providers will be required to undergo an industry-led audit scheme and accreditation process in order to be awarded with a trustmark that they may then display to customers to evidence compliance with the CoC.

The accreditation process and awarding of the trustmark to accredited BNPL providers is expected to be completed in late 2023 during the next phase of the rollout of the CoC, which will also include the setting up of the credit information sharing bureau.

For further details on the above development and our comments on the CoC, please refer here for our Legal Update.

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Singapore's Strategy to Counter the Financing of Terrorism

On 7 October 2022, Singapore shared the "National Strategy for Countering the Financing of Terrorism" ("**National CFT Strategy**") which provides an overarching blueprint to guide Singapore's continuing efforts to effectively prevent, detect, investigate, and enforce against terrorism financing ("**TF**"), and adds to Singapore's existing overarching policy statements on our anti-money laundering ("**AML**") and CFT regime.

The National CFT Strategy took into account findings from an assessment of TF risks conducted in 2020, set out in the document on "Terrorism Financing National Risk Assessment 2020" ("**TF NRA**"). Broadly speaking, the main TF threats faced by Singapore are posed by regional and international terrorist groups, in particular, the propensity for individuals in Singapore to be radicalised and influenced to carry out TF activities. Certain

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sectors are inherently more vulnerable to TF threats and risks, notably banks and payment service providers (including digital payment service providers) carrying out cross-border money transfers, among others. For detailed analysis of and classification of the risk profile and ratings of each sector, please refer to the TF NRA.

The National CFT Strategy focuses on five key areas:

(a) **Ensuring coordinated and comprehensive risk identification.** Singapore adopts a whole-of-Government approach where there is close coordination by various agencies. Among other things, agencies must leverage their existing cooperation committees and network, and work together to regularly review the ever-changing TF environment, taking into account current and emerging typologies, as well as international standards and requirements.

(b) **Having in place strong legal and sanctions frameworks.** This enables Singapore to achieve its overarching CFT policy objective to ensure that terrorism is not financed from or through Singapore, and allows for quick and effective action by law enforcement agencies (LEAs) against terrorists, terrorist organisations and their supporters. Our main TF legislation includes the Terrorism (Suppression of Financing) Act 2002 and the Internal Security Act 1960. Singapore also adopts a targeted financial sanctions framework which takes into account relevant international standards and conventions, and will continue to ensure that our financial sanctions framework continue to be aligned with international standards and conventions.

(c) **Ensuring a robust regulatory regime and risk targeted supervisory framework.** Under the risk-based supervisory approach, higher risk TF entities are subject to more scrutiny. Respective sector supervisors also take various actions to mitigate TF risks arising from the sectors' activities. These include effective and comprehensive sectoral AML/CFT requirements that are aligned with FATF standards and international best practices; enhanced surveillance and supervisory activities that target at-risk areas; industry engagement; and outreach efforts. Sector supervisors will continue to review and strengthen their supervisory activities, and leverage technology to augment their supervisory activities.

(d) **Taking decisive law enforcement actions.** Singapore adopts a zero-tolerance stance against TF activities. Collaborative efforts among agencies, as well as between the public and private sectors, must be enhanced so that all instances of TF are swiftly detected and investigated. Singapore must also ensure that investigative efforts are successfully prosecuted.

(e) **Enhancing international partnerships and cooperation.** Singapore will continue its efforts in international cooperation for criminal matters in two main areas, namely: (i) providing assistance to other jurisdictions in criminal matters and facilitating the exchange of information to tackle TF risks and activities; and (ii) implementing and contributing to the development of international standards on combating ML/TF/Proliferation Financing set by the Financial Action Task Force (FATF) and relevant United Nations Security Council Resolutions (NSCRs).

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Click on the following links for more information (available on the Monetary Authority of Singapore ("**MAS**") website at www.mas.gov.sg):

- National Strategy for Countering the Financing of Terrorism (CFT)
- Terrorism Financing National Risk Assessment 2020
- MAS Media Release titled "Singapore announces Five-Pronged Strategy to Counter the Financing of Terrorism"

Insurance & Reinsurance

MAS Seeks Comments on Proposed Framework for Domestic Systemically Important Insurers in Singapore

On 25 October 2022, the Monetary Authority of Singapore ("**MAS**") issued a consultation paper containing its proposals for a Domestic Systemically Important Insurers ("**D-SIIs**") framework with the primary aim of assessing the systemic importance of insurers and identifying a D-SII, and applying relevant policy measures to a D-SII to address the specific negative externalities that a D-SII can potentially pose as a result of its distress or failure. The consultation ends on 30 November 2022.

The proposed D-SII framework complements MAS' current risk-based supervisory framework of financial institutions ("**FIs**") that is based on the impact and risk model. Currently, specific to the banking sector, MAS has a framework to assess and supervise domestic systemically important banks ("**D-SIBs**") in Singapore ("**D-SIB framework**"). Building on the current risk-based supervisory framework for FIs, MAS proposes to update this framework for identifying insurers that are of high impact and designate them as D-SIIs. Key proposals under the D-SII framework are outlined below.

(a) **Scope of Assessment.** MAS proposes to include all insurers licensed under the Insurance Act 1966 under the D-SII framework.

(b) **Indicator-based Approach to Assess D-SIIs.** MAS proposes to assess the systemic importance of insurers using an indicator-based approach. The proposed indicators will be based on four factors: Size, Interconnectedness, Substitutability and Complexity.

(c) **Two-Stage Assessment Process.** MAS proposes a two-stage assessment process that is similar to the two-stage process under the D-SIB framework:

- *Stage One: Preliminary Selection*: Broadly speaking, MAS will select insurers that exceed the threshold of any impact indicator in the Size, Interconnectedness and Substitutability categories.
- *Stage Two: Detailed Consideration*: MAS will then conduct a more detailed review of the insurers selected in the first stage. At this stage, MAS will exercise supervisory judgment taking into account other supervisory information, and make an overall assessment taking into account all four factors of systemic importance. The results of the overall assessment will be subject to the approval of the senior management of MAS.

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(d) **Annual Review of D-SIIs.** MAS proposes to:

- Conduct its assessment of insurers' systemic importance on an annual basis.
- Have a two-year observation period where MAS will take into account two years of data before designating an insurer as a D-SII or removing an insurer's D-SII status (except for insurers which have been identified under the existing supervisory framework as high impact that meet the relevant criteria under the D-SII framework and is consequently designated as a D-SII under the D-SII framework).
- Have the discretion during the two-year observation period to adjust an insurer's D-SII status and its policy measures in cases where a change in an insurer's systemic importance is likely to be permanent.

(e) **Policy Measures for D-SIIs.** A D-SII will be subject to more intense supervision by MAS, and MAS proposes to apply appropriate policy measures relevant to the D-SII, namely: higher capital requirements; recovery and resolution planning; robust management information system; and enhanced corporate governance requirements. In formulating the proposed policy measures, MAS has taken into account the revisions to enterprise risk management, investment and public disclosure requirements for insurers (including D-SII) that will take effect on 1 January 2023. In addition to the general requirements that apply to all insurers, D-SIIs will be subject to proposed policy measures specific to them.

(f) **Implementation Timeline.** MAS proposes to implement the D-SII framework on 1 January 2024, and will publish the initial list of D-SIIs (based on end-2021 and end-2022 data) by Q1 2024.

(g) **Periodic Review of D-SII Framework.** MAS proposes to review the proposed D-SII framework every three years and announce the outcome of its review upon completion where there are changes to the framework.

For more information, click here for our Legal Update.

Intellectual Property

Enhanced IP Border Enforcement Measures to Come into Effect

The Ministry of Law has announced that enhanced border enforcement measures relating to certain intellectual property rights will come into force on 21 November 2022. These measures apply to goods that infringe intellectual property rights ("**IPR**") relating to geographical indications and registered designs, allowing Singapore Customs to:

(a) **Seize suspected infringing goods.** Upon request by the IPR holder, Customs may seize goods suspected of infringing the IPR that are to be imported or exported. The seized goods will be released to the importer/exporter if:

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- The requestor has not instituted an infringement action within the prescribed period;
- An infringement action has been instituted, but the Court has not granted an order preventing the release of the goods after 22 days from the date the action was instituted; or
- The requestor consents to such release.

(b) **Obtain and provide information.** If authorised Customs officers have reasonable cause to believe that a person has any relevant information or document, they may require that person to provide such information or document. The Director-General of Customs may provide information to the requestor necessary for instituting an infringement action, including the name and contact details of any person connected with the import/export of the seized goods.

The new measures represent the third and final phase of the Intellectual Property (Border Enforcement) Act 2018, which was enacted to implement a phased approach to fulfilling Singapore's border enforcement obligations under the European Union-Singapore Free Trade Agreement.

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

Medical Law

MOH Proposes Enhancements to Healthcare Services Framework

The Ministry of Health ("**MOH**") has launched a Public Consultation on proposed amendments to the Healthcare Services Act ("**HCSA**"). The amendments introduce measures aimed at strengthening safeguards for patient safety and welfare, and are targeted for implementation in June 2023. The Public Consultation ran from 12 October 2022 to 11 November 2022.

The proposed enhancements are part of the progressive implementation of HCSA, which was enacted in 2020 to replace the Private Hospitals and Medical Clinics Act ("**PHMCA**"). HCSA is being implemented in three phases, starting in January 2022, and MOH has indicated that the implementation will be completed in end-2023 when PHMCA will be repealed.

The key amendments relate to the following areas:

(a) Advertising of healthcare services;
(b) Use of specialty names;
(c) Different modes of service delivery;
(d) Safeguarding the provision of healthcare services;
(e) Employee background screening; and
(f) Modification of licence conditions.

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

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Mergers & Acquisitions

SIC's Regime for Unlisted Public Companies to Obtain a Waiver from Singapore Code on Take-Overs and Mergers

On 7 October 2022, the Securities Industry Council ("**SIC**") issued the "Practice Statement on the Waiver of the Application of the Singapore Code on Take-overs and Mergers ("**Code**") to Unlisted Public Companies" ("**Practice Statement**"). The Code applies to, among others, an unlisted public company incorporated in Singapore with more than 50 shareholders and net tangible assets of S$5 million or more ("**Unlisted Public Company**"). Unlisted Public Companies may apply to SIC for a waiver from the application of the Code in accordance with the requirements set out in the Practice Statement ("**Code Waiver**").

The Practice Statement sets out the conditions for a Code Waiver ("**Waiver Conditions**"), which include, among other things:

(a) the number of shareholders in the Unlisted Public Company (after excluding certain specified individuals/entities) is 50 or fewer;
(b) the Unlisted Public Company must provide a written notification to all its shareholders ("**Shareholders Notification**") regarding its intention to apply for a Code Waiver and the implications arising as a result thereof;
(c) the Shareholders Notification must also include other prescribed information, and must be issued at least 21 calendar days before the date of the Unlisted Public Company's application to SIC for the Code Waiver; and
(d) the number of objections received must not exceed a stipulated threshold.

In its application for the Code Waiver, the Unlisted Public Company must provide the prescribed information and include a signed confirmation by the Unlisted Public Company's board of directors that the Waiver Conditions have been or will be (as the case may be) complied with. Please refer to the Practice Statement for the full list and details of the Waiver Conditions and the steps to apply for Code Waiver.

The Code Waiver will take effect when the Unlisted Public Company is published on the Code Waiver List on the SIC's website, which is expected to take place 21 calendar days after the date of application to SIC or such other date as otherwise notified to the Unlisted Public Company by SIC.

If the Unlisted Public Company fails to comply with the Waiver Conditions at any point in time, the Code Waiver will cease to be in effect. The Unlisted Public Company must promptly notify SIC and all relevant parties of the cessation of the Code Waiver.

For more information, please click here for the Legal Update.

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Sustainability

EMA Invites Companies to Participate in Regulatory Sandbox to Optimise Energy Consumption

Under the Singapore Green Plan 2030, one of the key strategies for transiting to lower carbon emissions is by optimising energy demand. On 26 October 2022, the Energy Market Authority ("**EMA**") announced that it was inviting commercial and industrial companies to take part in a regulatory sandbox to optimise their energy consumption under a "Demand Side Management" ("**DSM**") initiative.

The DSM regulatory sandbox will be in place from 1 January 2023 to 31 December 2024.

Programmes Open for Participation under the DSM Regulatory Sandbox

There are two programmes under the DSM regulatory sandbox: the Demand Response ("**DR**") programme and the Interruptible Load ("**IL**") programme. Broadly:

(a) The **DR programme** allows participants who reduce their electricity demand when wholesale electricity prices are high to receive incentive payments in return. Incentive payments are given to companies based on the total system savings arising from reduction in wholesale electricity prices when the companies reduce their energy demand.

(b) Under the **IL programme**, participants are paid to be on standby to reduce their committed electrical load when activated to do so during conditions of tight power generation supply. This improves the reliability of the power system by balancing electricity demand and supply.

For details of the DR programme and IL programme, please refer to the factsheet here (available on the EMA website)

Enhancements to the DR programme and IL programme

The two programmes are already open for participation, and the DSM regulatory sandbox will enhance these programmes to encourage more participation. EMA made several changes to the respective programmes under the DSM regulatory sandbox. Among other things, EMA streamlined and reduced penalty thresholds, and provided more certainty in activation times. Details of the changes to the DR programme and IL programme that will apply under the DSM regulatory sandbox are set out at the Annex to the factsheet, available here.

Companies who wish to take part in the DSM regulatory sandbox may register their interest here.

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

- Demand Side Management
- Demand Response (DR) Programme
- Interruptible Load Programme

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- EMA Media Release titled "Regulatory Sandbox to Promote Energy Demand Management"

Singapore's National Hydrogen Strategy to Achieve Net Zero by 2050

On 25 October 2022, Singapore announced its commitment to achieve: (i) "net zero emissions by 2050" as part of its Long-Term Low-Emissions Development Strategy; and (ii) "reduce emissions to around 60 million tonnes of carbon dioxide equivalent ($MtCO_2e$) in 2030 after peaking emissions earlier" as part of the revised 2030 Nationally Determined Contribution.

To help Singapore meet its enhanced climate goals, Singapore also shared its National Hydrogen Strategy that aims to leverage the potential of hydrogen so as to guide and accelerate Singapore's journey towards meeting our climate goals, while preserving and enhancing our energy security.

The National Hydrogen Strategy comprises five key aspects which the Government will focus its efforts on:

(a) **Experimenting with key hydrogen technologies and carrier pathways** focussing on those that are commercially viable with numerous applications. This will help Singapore better understand how they can be used on a large scale when they are ready for commercial deployment. As a start, Singapore will launch an Expression of Interest for a small-scale commercial project on using hydrogen to generate power.

(b) **Engaging in research and development work to overcome technology bottlenecks**, particularly to import, handle and utilise low-carbon hydrogen and its derivatives safely and at scale. Singapore has a Low Carbon Energy Research (LCER) Programme. Phase 2 of the programme will focus on hydrogen, and $129 million will be channelled towards eligible projects.

(c) **Facilitating the formation and scaling up of supply chains** in order to support global trade in low-carbon hydrogen through close collaboration with the industry and international partners. Singapore must ensure a reliable and diversified supply of hydrogen because we are a net importer of low-carbon hydrogen. Singapore will also direct efforts to develop guidelines and standards for the transportation, storage and supply of low-carbon ammonia and hydrogen.

(d) **Developing long-term plans for land and infrastructure** for purposes of import, storage and transformation of hydrogen into power. This is an important preparatory step to support the mass deployment of hydrogen. It is likely that new storage and distribution infrastructure will be required as hydrogen has different properties from natural gas, and execution must be properly planned in land-scarce Singapore.

(e) **Supporting manpower training** to build a workforce that is able to support the broader hydrogen economy. We can expect new

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activities and jobs along the entire value supply chain, including financing, trading, certifying, transporting, storage and deployment.

Please refer to our Legal Update here, where we also discuss the potential significance of the National Hydrogen Strategy to businesses. In our Legal Update, we also briefly outline other key recent developments (namely, changes to the carbon regime and Singapore's efforts to facilitate green finance) to help you better navigate the broader sustainability legal/regulatory landscape.

New Guidelines, Industry Training Benchmark to Strengthen Private Banking Industry Capabilities in Sustainable Finance

On 14 October 2022, the Association of Banks Singapore ("**ABS**") announced two key developments to build up the private banking industry's capabilities in sustainable finance.

ABS Sustainable Private Banking and Wealth Management Guidelines

The ABS Sustainable Private Banking and Wealth Management Guidelines ("**Guidelines**") provide a baseline standard to guide private banks in integrating sustainable private banking and wealth management practices into their business models. ABS member banks are free to apply higher standards that are in line with their sustainability strategies. The Guidelines cover private banking activities that include wealth planning, investments and financing, among others, and apply whether the private banking activities are done by a standalone business entity/brand or part of a full-service banking group.

One of the primary aims of the Guidelines is to create a common language among private bankers and their clients when it comes to sustainable investment, and it does so by setting out a framework of main sustainable investment approaches:

(a) **Exclusion:** Excluding and avoiding sectors, activities and/or companies from the investment universe, based on certain criteria.

(b) **Integration:** Systematically and explicitly including environmental, social and governance ("**ESG**") factors in investment analysis and decision making to optimise ESG risk management with return expectations.

(c) **Thematic:** Investing to contribute to environmental or social factors with fundamental investment objectives considered.

(d) **Impact:** Investing with the intention to generate positive, measurable social and environmental impact together with a financial return.

The Guidelines also recommend that banks make disclosures and reporting on a regular basis. The Appendix to the Guidelines provide further details of the sustainable investment approaches and recommended disclosure practices.

In addition, the Guidelines set out principles of sustainable private banking and wealth management, covering key areas such as purpose, policies, processes, people, product and portfolio disclosure.

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Depending on the stage the private bank is at in its sustainable journey, private banks may implement the Guidelines that take into account their size and nature of activities, and in a progressive manner.

Common Sustainable Finance Training Benchmark for Private Banking Professionals

To improve the skills of private banking professionals in the area of sustainability, a common industry training benchmark was developed by the Private Banking Industry Group ("**PBIG**") Sustainability Taskforce (in consultation with the Institute of Banking and Finance Singapore ("**IBF**") and the Monetary Authority of Singapore ("**MAS**")). This benchmark takes reference from the IBF-MAS Sustainable Finance Technical Skills and Competencies ("**SF TSCs**") which are part of the Skills Framework for Financial Services.

Out of the 12 SF TSCs, the PBIG Sustainability Taskforce recommends prioritising four SF TSCs that are "critical and core" for private banking relationship management job roles: (i) sustainable investment management; (ii) carbon markets and decarbonisation strategies management; (iii) non-financial industry sustainability developments; and (iv) climate change management. Of the four prioritised TSCs, sustainable investment management is the most important. Details of the four prioritised TSCs are set out in the Annex to the ABS media release on this development (linked below). The four TSCs have also been endorsed to be included in the skills map for Private Banking and Wealth Management for Relationship Managers.

Private banks are strongly encouraged to get their relationship managers to obtain these TSCs as part of their continuing professional development requirements and IBF certification, as well as cover the four prioritised TSCs in their training frameworks. Private banks represented on the PBIG Executive Committee are committed to complete the training and upskilling of their banks' client-facing employees in the four prioritised TSCs within the next three years or earlier.

Click on the following link for more information:

- Media Release titled "Singapore Private Banking Industry takes the lead in developing industry guidelines on sustainable private banking and wealth management practices, and setting training benchmark to upskill private banking professionals in sustainable finance" (available on the ABS website at www.abs.org.sg)

Singapore Grows Sustainable Finance Ecosystem with New ESG Impact Hub and Sustainable Finance Advisory Panel

On 5 October 2022, the Monetary Authority of Singapore ("**MAS**") announced two new sustainability-related developments that will further develop Singapore's sustainable finance ecosystem.

ESG Impact Hub

A ESG Impact Hub ("**Hub**") was launched to promote the co-location and collaboration among Environment, Social, Governance ("**ESG**") players and

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stakeholders, and will develop Singapore's ESG ecosystem on three key fronts:

(a) **Facilitating the growth of ESG FinTechs and fintech solutions** to meet the ESG needs of corporates and financial institutions, such as the need to accurately measure, report and verify climate and sustainability data, in particular.

(b) **Anchoring ESG enablers** by having knowledge partners, financial institutions and investors organise key ESG initiatives out of the Hub. These include ESG FinTech accelerator programmes and other training and thought leadership events. Some examples include the Point Carbon Zero Programme (a collaboration between MAS and Google Cloud to accelerate and scale climate FinTech solutions) and KPMG's ESG Business Foundry (a six-month accelerator programme to scale ESG FinTechs).

(c) **Supporting ESG stakeholders** by using the programmes and solutions by the Hub Community to facilitate sectoral transition efforts, especially for the eight focus sectors identified by the Green Finance Industry Taskforce (GFIT).

The Hub is located at The Great Room at Afro-Asia (63 Robinson Road). As at the launch, 15 ESG FinTechs and organisations are already set up at the Hub. The Hub will supplement MAS' future plans, for instance, MAS' intentions to launch a digital Greenprint Marketplace next year to accelerate the development of the online ESG community in the region.

Sustainable Finance Advisory Panel

To support and guide MAS' endeavours in developing a credible and vibrant sustainable finance ecosystem, the Sustainable Finance Advisory Panel ("**SFAP**") was established. It is made up of a diverse group of senior sustainability experts from financial institutions, academia, and other stakeholders globally.

The inaugural meeting with the MAS management held on 5 October 2022 discussed the challenges around transition finance and how financial institutions, corporates, regulators and governments can play a part to attain an orderly and inclusive transition in the region.

Relevant key issues for financial institutions include:

(a) Making sure that the transition to net zero is inclusive, for instance, considering the impact of climate financing decisions on jobs and livelihoods;
(b) Ensuring that transition plans are credible and transparent by setting interim targets and referencing sectoral pathways by financial institutions;
(c) Promoting data sharing and developing FinTech solutions for ESG data by identifying incentive structures; and
(d) Scaling up blended finance for projects that may not be as commercially attractive or have a high-risk profile.

SFAP will hold its next meeting in 2023.

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- MAS Media Release on "MAS launches ESG Impact Hub to spur growth of ESG ecosystem"
- MAS Media Release on "MAS establishes Sustainable Finance Advisory Panel"

Carbon Pricing (Amendment) Bill Passed

On 8 November 2022, the Carbon Pricing (Amendment) Bill ("**Bill**") that sets out amendments to the Carbon Pricing Act ("**CPA**") was passed in Parliament. The CPA provides for, among other things, requirements relating to registration, reporting and payment of tax in relation to greenhouse gas emissions. The Bill was first introduced in Parliament for First Reading on 3 October 2022, which you may read more about in our Legal Update here. For a background on the amendments, you may also wish to refer to the earlier consultation on the Bill conducted by the Ministry of Sustainability and the Environment ("**MSE**"). We covered the main aspects of the consultation in our Legal Update here. MSE also shared its Response to feedback received on the consultation, available here.

The Bill seeks to amend the CPA in the following key aspects:

(a) **Revise the carbon tax rate and carbon price.** Under the CPA, a taxable facility is required to pay carbon tax. The current carbon tax rate is $5 per tonne of carbon dioxide equivalent (tCO2e). The Bill provides for the progressive increase in the carbon tax rate. The CPA also sets out the concept and value of a carbon credit, and governs how a carbon credit may be dealt with. Currently, each carbon credit has a value of $5. The Bill renames "carbon credits" as "fixed-price carbon credits" and provides for the progressive increase in the carbon price.

(b) **Provide for the grant of allowances for eligible taxable facilities to reduce carbon tax.** In the public consultation of the Bill, a transition framework was proposed to provide time for emissions-intensive trade-exposed companies to adjust to a low-carbon economy. The Bill sets out provisions for the grant of allowances to eligible taxable facilities to reduce the amount of carbon tax payable for an emissions year.

(c) **Provide for the surrender of eligible international carbon credits in place of fixed-price carbon credits for the purposes of paying carbon tax.** There are also provisions to establish the International Carbon Credits Registry and international carbon credit registry accounts, as well as for various related matters. It was also mentioned, during the recent parliamentary speech by Minister Grace Fu on the second reading of the Bill, that MSE intends to publish a whitelist of acceptable credits highlighting eligible host countries, carbon crediting programmes and methodologies.

(d) **Revise registration and emissions reporting obligations (in particular, where there has been a transfer of operational control over a business facility), and the basis for liability for carbon tax.** The Bill also contains provisions to allow the deregistration of a business facility as a reportable facility or a taxable facility if the registered person of the business facility, despite having operational control over the business facility, has ceased to operate the business

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facility and has no intention of resuming its business activity within the next 36 months after such cessation.

How We Can Help

The Bill sets out important and significant developments in relation to the treatment of carbon tax and carbon credits. We strongly encourage businesses to follow the developments and assess the practical impact and opportunities they afford to your operations. If you have any queries regarding the above development, please feel free to contact our team.

Tax

GST (Amendment) Bill 2022 Passed in Parliament to Implement Budget 2022 Measures

On 7 November 2022, the Goods and Services Tax (Amendment) Bill ("**GST Bill**") was passed in Parliament to implement measures introduced in Budget 2022, among others. The GST Bill incorporates the five amendments that were the subject of a June 2022 public consultation on the draft GST Bill. These amendments are categorised as follows:

(a) **Measures announced in the 2022 Budget Statement** (for more details on Budget 2022, please see our Legal Update titled "Forward, Together: Singapore Budget 2022")

- The two hikes in the goods and services tax ("**GST**") scheduled to take place on 1 January 2023 and 1 January 2024; and
- The GST treatment of travel arranging services. Examples of such services include the arranging and facilitation of international transport, accommodation and travel insurance.

(b) **Amendments arising from a periodic review of Singapore's GST regime** to improve GST administration and the clarity of existing legislation

- Updating and clarifying GST transitional rules, which are to be applied during a change in GST rate or treatment;
- Refining rules for taxing imported low-value goods ("**LVG**") and imported services by way of the Overseas Vendor Registration ("**OVR**") and Reverse Charge ("**RC**") regimes; and
- Improved measures to counter Missing Trader Fraud ("**MTF**").

The GST Bill also includes a sixth amendment to enable the Comptroller of GST to extend GST filing deadlines for efficient administration of the GST regime.

On 10 October 2022, the Ministry of Finance ("**MOF**") published a summary of responses to the public consultation. The feedback accepted by MOF is as follows:

(a) **Clarifying how the Transitional Rules in the GST Act are to operate**. Amendments will be made to ensure that revisions made to

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the Transitional Rules do not inadvertently bring supplies which would not be subject to GST under the normal rules into the scope of GST.

(b) **Refining the rules for taxing LVG and imported services by way of the RC and OVR regimes.** Where a supply of LVG is made by an overseas vendor to a customer in Singapore, the proposed section 17(7) states that any relevant related services, "provided by any person", must be included in the value of the supply of LVG. This will be amended to read "supplied by any person".

Click on the following links for more information:

- GST Bill (available on the Singapore Statutes Online website at sso.agc.gov.sg)
- Second Reading Speech by Deputy Prime Minister, and Minister for Finance on The Goods and Services Tax (Amendment) Bill, at The Parliament, 7 November 2022 (available on the MOF website at www.mof.gov.sg)
- Summary of Responses to the Public Consultation on the draft GST (Amendment) Bill 2022 (available on the MOF website at www.mof.gov.sg)
- Rajah & Tann Singapore June 2022 Legal Update titled "MOF Consults on Five Proposed Amendments to GST Act"

Passing of Income Tax (Amendment) Bill 2022 on 3 October 2022

On 3 October 2022, the Income Tax (Amendment) Bill 2022 ("**Bill**") was passed in Parliament. The Bill was the subject of a public consultation in June 2022 (covered in our Legal Update titled "Public Consultation on 23 Proposed Amendments to Income Tax Act"), and provides for 23 amendments to the current Income Tax Act ("**ITA**").

These comprise (i) eight amendments to reflect tax measures announced in the 2022 Budget Statement; and (ii) 15 amendments arising from the periodic review of Singapore's tax system. Key amendments are set out below.

Tax Measures in Budget 2022

(a) **Enhancing the top marginal personal income tax ("PIT") from Year of Assessment (YA) 2024**

- *Tax-resident individual taxpayers*: increased from 22% to 24%.
- *Non-tax-resident individual taxpayers*: the rate for certain income will also be aligned to the revised top marginal PIT rate for tax-resident individuals.

(b) **Facilitating the disclosure of company-related information for official duties**

- *Where taxpayers have provided consent* for the Inland Revenue Authority of Singapore ("**IRAS**") to disclose their information to a public officer, or an authorised person

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outside the public sector who is engaged by the Government or a statutory board: The proposed amendment in the Bill will enable such disclosure by IRAS for the performance of official duties.

- *Where taxpayers have not explicitly provided consent:* IRAS will be enabled to disclose a prescribed list of identifiable **company-related** (i.e. excluding data of individuals) information to other public sector agencies, for the performance of official duties.

Periodic Review of Singapore's Tax System

(a) **Amending the definition of "local employee"** under section 37O of the ITA to recognise central hiring and secondment arrangements under the Mergers and Acquisitions (M&A) Scheme. Currently, only individuals that are directly hired by the acquiring company are taken into account for assessing whether the three local employee condition is met.

(b) **Amendments related to the Board of Review ("BOR")**: These include streamlining BOR provisions, clarifying the powers of the Minister, BOR and Chairperson respectively and moving provisions on BOR procedures to subsidiary legislation. Further, BOR Chairpersons will be empowered to exercise discretion to convene a one-member coram approach for BOR hearings where appropriate.

On 2 September 2022, the Ministry of Finance ("**MOF**") published a summary of responses to the public consultation. In relation to BOR hearings, MOF accepted feedback to retain a minimum notice period of at least 14 days before the appeal is fixed for hearing. It also provided further elaboration on the official duties and circumstances under which IRAS can disclose company-related information in the prescribed list to public sector agencies.

Please click on the following links for more information (available on the MOF website at www.mof.gov.sg):

- Income Tax (Amendment) Bill 2022 (available on the Singapore Statutes Online website at sso.agc.gov.sg)
- Second Reading Speech by Senior Minister of State for Finance, Mr Chee Hong Tat on The Income Tax (Amendment) Bill 2022
- MOF Press Release titled "Summary of Responses to Public Consultation on the Draft Income Tax (Amendment) Bill 2022"
- Rajah & Tann Singapore February 2022 Legal Update titled "Forward, Together: Singapore Budget 2022"

Technology, Media & Telecommunications

IMDA Set to Implement New Measures to Safeguard SMS

On 14 October 2022, the Infocomm Media Development Authority ("**IMDA**") announced that it is set to implement the following two new measures following a public consultation.

(a) First, registration with the Singapore SMS Sender ID Registry ("**SSIR**") will be mandatory for all organisations that use SMS Sender IDs.

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(b) Second, telecom operators will implement short message service ("**SMS**") anti-scam filtering solutions to automatically filter potential scam messages.

Full SMS Sender ID Registration

The current SSIR is a voluntary regime, but moving forward, registration will be made mandatory. This means that only *bona fide* Sender IDs belonging to organisations will be allowed, and all other Sender IDs will be blocked. The full registration requirement will take effect on 31 January 2023.

IMDA has recognised that some organisations may need more time to prepare and register, and as a transition measure, all non-registered SMS Sender IDs after 31 January 2023 will be channelled to a Sender ID with the header "***Likely-SCAM***", which is akin to a "spam filter and spam bin" and will be in place for around six months.

Anti-Scam SMS Filtering Solutions

IMDA has indicated that machine-reading technology has made it possible for anti-scam filtering solutions to identify and filter potential scam messages by detecting malicious links within SMS. Key mobile operators will implement anti-scam filtering solutions in their networks from end-October 2022.

Click on the following link for more information:

- IMDA Media Release titled "Full SMS Sender ID Registration to be Required by January 2023" (available on the IMDA website at www.imda.gov.sg)

Enhanced Penalties under the Personal Data Protection Act in Effect from 1 October 2022

On 30 September 2022, the Personal Data Protection (Amendment) Act 2020 - Personal Data Protection (Amendment) Act 2020 (Commencement) Notification 2022 ("**Notification**") was published in the Government Gazette. The Notification provides that the enhanced penalties under the Personal Data Protection (Amendment) Act 2020 ("**Amendment Act**") have come into effect on 1 October 2022.

The amendments under the Amendment Act are set to take place in phases, with the first phase of amendments having come into effect in February 2021.

The new amendments relating to enhanced penalties provide for the increase of the maximum financial penalty for breaches of the Personal Data Protection Act Data Protection obligations, which was previously capped at S$1 million. The maximum financial penalty has been increased to either (i) for organisations with annual turnover in Singapore of more than S$10 million - 10% of such turnover, or (ii) in any other case - S$1 million.

Previously, for a breach of the prohibition against the use of dictionary attacks and address-harvesting software, the maximum penalty was S$200,000 for individuals and S$1 million in any other case. The maximum

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penalty for a person whose annual turnover in Singapore exceeds S$20 million has been increased to 5% of such turnover.

The annual turnover in Singapore of an organisation or a person (as the case may be) is the amount ascertained from the most recent audited accounts of the organisation or person available at the time the financial penalty is imposed on that organisation or person.

For more information, click here to read our Legal Update on the first phase of amendments under the Amendment Act.

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CaseBytes

How to Protect Your NFTs – Singapore Court Grants Landmark Injunction Over NFT

The age of the crypto economy has brought about a marked shift in what the market ascribes value to. One of the more prominent examples of this is the non-fungible token ("**NFT**"). Once a niche investment, NFTs are now an increasingly ubiquitous digital asset. But as with all changes in technology, questions arise as to whether the existing laws are capable of accommodating its unique features – in particular, whether the law affords effective protection over ownership of NFTs.

In *Janesh s/o Rajkumar v Unknown Person* [2022] SGHC 264, the Singapore High Court issued a landmark decision granting an injunction over a Bored Ape NFT. In reaching its decision, the Court considered a slew of key issues – Do NFTs give rise to proprietary rights? Can an injunction be granted against a person known only by their pseudonym, and how should summons be served on such persons? When does the Court have jurisdiction over the matter?

The Court recognised that NFTs are capable of giving rise to proprietary rights which can be protected by an injunction. The Court chose to grant the requested injunction, finding that the NFT was sufficiently unique such that damages would not be adequate compensation for its loss. In this regard, the Court observed that the unique feature of the NFT was not the digital artwork itself, which could be copied and shared online. Rather, what was unique and irreplaceable was the string of code that represented the Bored Ape NFT on the blockchain.

The Court allowed the application despite the fact that the Claimant only knew the Defendant by his online handle, "chefpierre.eth". The Court further demonstrated the adaptability of its processes by allowing the summons to be served via the Defendant's Twitter, Discord, and cryptocurrency wallet address.

This decision follows the holding of the Singapore High Court in *CLM v CLN and ors* [2022] SGHC 46, in which the Singapore Court granted the first reported freezing injunction against "persons unknown" in Singapore for S$9.6 million worth of cryptocurrency assets. The Plaintiff in that case was successfully represented by our Fraud, Asset Recovery and Investigations team, led by Danny Ong and Jansen Chow. For more information, please see our earlier Legal Update on the decision here.

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The Court's decision here demonstrates its recognition of the value of an NFT as an asset. Similar to physical assets or financial assets, an NFT carries a series of rights that are capable of being protected by interim orders. Parties seeking the Court's aid in protecting such rights, or in tracing such assets, should be reassured by the approach taken by the Court.

The decision also shows the robust approach taken by the Court in procedural matters when NFTs or other digital assets are involved. In such cases, it is common for the counterparty to be known only by their handle or username, and to be contactable only via online means. The Court recognised these challenges and acknowledged that they should not stand in the way of bringing a valid claim.

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

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Can a Shareholder or Contributory Oppose a Creditor's Winding Up Application?

In the course of corporate insolvency, in order to progress from initiating a winding up application to the actual winding up of the company, the applicant must overcome any opposition filed against the winding up. The question then arises as to who is entitled to oppose a winding up application.

In *Atlas Equifin Pte Ltd v Electronic Cash and Payment Solutions (S) Pte Ltd* [2022] SGHC 258, the Singapore High Court had the opportunity to consider the relatively unexplored issue of whether a shareholder/contributory has standing to oppose a creditor's winding up application. After assessing the legislation and the existing authorities, the Court held that a shareholder/contributory does in fact have such standing.

The case involved a shareholder and contributory of a company who sought to oppose a creditor's application to wind up the company. The Court found in favour of the shareholder/contributory, finding that she had legal standing to oppose the application, and that she had successfully challenged the winding up application. The Court also provided guidance on the factors it would consider in determining whether to grant a shareholder/contributory leave to oppose a winding up application, including the following:

(a) Whether the shareholder/contributory owns a significant portion of the company's shareholding such that they have a substantial interest in opposing the winding up application;

(b) Whether the shareholder/contributory can demonstrate that the company is solvent;

(c) Whether the shareholder/contributory is acting *bona fide* (e.g., no delaying of winding up proceedings unnecessarily); and

(d) The weighing of the interest of the shareholder/contributory against the wishes of an unpaid creditor.

For more information, click here to read our Legal Update

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Of Evidence and Experts – High Court Dismisses Claim for Medical Negligence

In claims against healthcare professionals or institutions for medical negligence or other grounds of medical malpractice, the points of contention are often heavily dependent on questions of fact and issues of expert opinion. Factual evidence and expert opinion thus play a central role, as was aptly demonstrated in the Singapore High Court case of *Chia Soo Kiang v Tan Tock Seng Hospital Pte Ltd* [2022] SGHC 259.

The plaintiff in this case had brought a claim against Tan Tock Seng Hospital ("**TTSH**") and several doctors for the death of his mother, Mdm Tan, alleging that TTSH's doctors and staff had been negligent in – *inter alia* – mis-diagnosing her and failing to resuscitate her promptly, and in not admitting her to the Intensive Care Unit ("**ICU**") or High Dependency Unit ("**HDU**"). The plaintiff also alleged that they had failed to obtain Mdm Tan's consent before stopping certain medications.

The case rested largely on the evidence of parties' factual and expert witnesses, with the Court having to navigate the opposing opinions of the expert witnesses. The Court ultimately determined that the evidence of the defendants' expert witnesses was more reliable, and thus dismissed the claims for negligence and failure to obtain consent.

This decision demonstrates how the Court will look at competing expert opinions in order to determine which opinion (or part thereof) to rely on. It also shows the pitfalls of an expert opinion that is not sufficiently supported by adequate factual evidence.

It is also noteworthy that the Court devoted some ink to provide its views on the allegation made by the plaintiff that Mdm Tan ought to have been admitted to the ICU/HDU. The Court noted that it is not the case that every patient with the underlying conditions that Mdm Tan had ought to be placed in an ICU or HDU. The Court further observed that public hospitals are required to maintain a balance between a patient's needs and the proper allocation of beds. It is not a good reason to admit a patient to ICU/HDU just in case they suffer a collapse.

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

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Court Rejects Application to Declare the Dissolution of a Company Void

In *The Management Corporation Strata Title Plan No. 4339 v Coral Edge Development Pte. Ltd (Dissolved)* [2022] SGHC 250, an applicant sought a declaration that the dissolution of the respondent company was void so as to commence legal proceedings against the respondent. The Singapore High Court dismissed the application, providing guidance on when such dissolution will be deemed void.

The respondent was placed under a members' voluntary liquidation and was dissolved after the former liquidators distributed its surplus assets to its members. The applicant then sought a declaration that the dissolution of the respondent be declared void, as it wished to bring a claim against the respondent.

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The Court set out the requirements for an application for the dissolution of a company to be declared void under section 343(1) of the Companies Act (which has since been repealed, but is essentially retained in section 208(1) of the Insolvency, Restructuring and Dissolution Act):

(a) The application must be made within two years of dissolution;
(b) The applicant must be either the liquidator of the company or an interested person; and
(c) The case must be a proper one for the court to exercise its discretion to void the dissolution.

The Court highlighted that in deciding whether to void the dissolution of a company, it would exercise its discretion carefully and judicially, and that a winding up ought to be reversed if it was necessary to do so to ensure fairness and justice. Not every claim of unfairness, without more, should trigger reversal, though the standard should not be so high as to hinder *bona fide* claimants.

In this regard, the Court agreed with the former liquidators of the respondent that a relevant consideration was whether making the order would simply be an exercise in futility. On the facts of the present case, even if the dissolution of the respondent were to be voided, it would have no assets available to meet the applicant's intended claim. There was no basis in law to unwind the distributions that had been made to the respondent's members. Accordingly, the Court dismissed the application in its entirety.

The former liquidators of the respondent were represented by Sim Kwan Kiat and Wong Ye Yang from the Restructuring & Insolvency Practice.

Deals

Investment in Biofourmis Holdings Pte. Ltd.'s Series D Funding Round

Tracy Ang and Kala Anandarajah, from the Mergers & Acquisitions Practice and Competition & Antitrust and Trade Practice respectively, acted for Intel Capital Corporation in its investment in Biofourmis Holdings Pte. Ltd.'s Series D funding round which raised US$320 million.

Issue of Redeemable Zero-coupon Convertible Bonds to InnoVision Pomelo LP

Danny Lim and Cynthia Wu from the Capital Markets / Mergers & Acquisitions Practice are advising Leader Environmental Technologies Limited in its issue of redeemable zero-coupon convertible bonds to InnoVision Pomelo LP.

Voluntary Unconditional Cash Offer for Shares in MS Holdings Limited

Danny Lim and Cheryl Tay from the Capital Markets / Mergers & Acquisitions Practice are advising Kingswin Investment Pte. Ltd. as offeror in its voluntary unconditional cash offer for shares in MS Holdings Limited, which is listed on the Catalist Board of the Singapore Exchange Securities Trading Limited.

Acquisition of Shares in Halcyon Agri Corporation Limited

Danny Lim and Penelope Loh from the Capital Markets / Mergers & Acquisitions Practice are advising Sinochem International (Overseas) Pte. Ltd. in its acquisition of shares in Halcyon Agri Corporation Limited from China-Africa Agrichemical Investment Corporation Limited.

Authored Publications

Rajah & Tann Singapore Contributes Article for Association of Information Security Professionals (AiSP): Understanding and Operationalising Singapore's Mandatory Data Breach Regime

Professor (Adjunct) Steve Tan, Partner and Deputy Head of the Technology, Media & Telecommunications Practice and Director of Rajah & Tann Technologies and Rajah & Tann Cybersecurity, has contributed an article titled "Understanding and Operationalising Singapore's Mandatory Data Breach Regime" to the October 2022 Newsletter of the Association of Information Security of Professionals (AiSP). The article provides a holistic interpretation of the mandatory data breach notification regime under Singapore's Personal Data Protection Act ("**PDPA**"), tied to organisations' operationalisation of the same. The data breach notification obligation under the PDPA requires organisations to notify Singapore's data protection regulator, the Personal Data Protection Commission (PDPC), and/or affected individuals, upon the occurrence of a data breach, if one of two notification thresholds is met. The article analyses the concept of a data breach under the PDPA, the notification thresholds as well as the statutory timelines involved.

With high statutory fines under the PDPA and robust enforcement of this legislation, it is in the interest of organisations subject to the PDPA to understand the requirements of this data breach notification regime.

To read the full article, please click here.

To read more about our Technology, Media & Telecommunications Practice, please click here. For more information on Rajah & Tann Technologies and Rajah & Tann Cybersecurity, please click here.

In Conversation with SCMA: Trends in Maritime Industry, Attractiveness of Arbitration

In the latest edition of "In Conversation with our Corporate Member" published by the Singapore Chamber of Maritime Arbitration ("**SCMA**"), Rajah & Tann Singapore partner Kendall Tan (Head, Shipping & International Trade) talked about recent trends in the maritime and trade industry, as well as the attractiveness of arbitration as a dispute resolution mechanism for the global maritime industry among other matters.

In discussing Rajah & Tann Singapore's recent case highlights, Kendall noted that the dispute resolution landscape in the maritime and trade industry has largely been shaped by major corporate insolvencies,

particularly in the oil trading sector. Challenges have also arisen from the disruptions in operations and supply chains due to the COVID-19 pandemic, together with ongoing and escalating geopolitical tensions that have led to direct conflict, sanctions, and trade-hostile measures.

Regarding the attractiveness of arbitration for the global maritime industry, Kendall highlighted that the courts are currently facing elevated caseloads due to the heightened number of disputes being litigated. Arbitration lends itself to the efficient management of disputes, and provides flexibility for parties to agree to simplified or tailored processes to reach a resolution. Arbitral institutions have also embraced technology to facilitate remote proceedings.

To read the interview in full, please click here.

More information on our regional Shipping & International Trade Practice, Singapore Shipping & International Trade Practice, and Singapore International Arbitration Practice is available on our website.

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

Events

"Hot Topics" in Employment Law for APAC HR/Counsel

On 26 October 2022, Rajah & Tann organised a hybrid event titled "Hot Topics in Employment Law for APAC HR/Counsel: A Focus on Business & Human Rights (BHR), Developments in Diversity Equity and Inclusion (DEI), and Retrenchments".

Employment laws continue to evolve with myriad issues surfacing and taking centre stage. At the hybrid event, the multi-jurisdictional panellists from the US, Malaysia and Singapore discussed issues relating to Business & Human Rights (BHR), Developments in Diversity, Equity and Inclusion ("**DEI**"), and Retrenchment Exercises. Moderated by Kala Anandarajah, BBM, Partner from the Employment & Benefits Practice, the panel included partners Kelvin Kho (Christopher & Lee Ong) and Alvin Tan (Rajah & Tann Singapore), alongside Trent Sutton and Lavanga Wijekoon from Littler Mendelson.

The discussion centred on the changing employment landscape and how, with contractual relationships being so global, businesses must stay aware of the implications that one region has on another. For example, it becomes critical that APAC businesses understand the impact of Western-led movements on human rights requirements, which have trickle-down impact in APAC on their contracts with their clients, suppliers and other third parties. There are also very specific nuances under local laws that companies must watch out for when implementing global DEI policies and carrying out retrenchment exercises.

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Briefing on Contract Dispute Management and Myanmar Court Process

On 21 October 2022, Rajah & Tann Myanmar organised a seminar titled "Briefing on Contract Dispute Management and Myanmar Court Process".

The speakers talked about the interpretation of dispute resolution clauses in contracts as well as key considerations for companies when pursuing litigation in the Myanmar Courts, including:

- who can act as the company representative and when would the company representative be required to physically attend court hearings;
- what supporting documents and evidence should be collected and submitted to the Court to optimise your chances of success in the civil suit; and
- practical considerations regarding execution of a successful judgment against defendants.

The speakers were Lester Chua and U Khin Zaw from Rajah & Tann Myanmar. Lester is also a partner of Rajah & Tann Singapore.

The Public International Law Webinar Series

On 12 October 2022, the Public Webinar Law Webinar series was launched, bringing together leading public international law practitioners, academics and arbitrators to discuss topical issues of global importance.

This hybrid event was co-organised by David Grief International Consultancy, Duxton Hill Chambers (Singapore Group Practice), Fietta LLP, The Sydney Centre for International Law and Rajah & Tann Asia.

Matthew Koh from the International Arbitration Practice was the moderator at the launch event where the keynote speakers delved into the topics of "International Law and the Challenges of the New World Order" and "International Law Responses to War and Armed Conflict". The subsequent five webinars in this series take place in November.

Anti-competitive Practices in E-commerce and Digital Markets

On 12 October 2022, Rajah & Tann organised a seminar titled "Anti-competitive Practices in E-commerce and Digital Markets".

As e-commerce becomes increasingly ubiquitous, competition regulators have been closely scrutinising anti-competitive practices in these markets in recent years. With many high-profile competition enforcement cases taken by overseas competition regulators such as the European Commission, what do e-commerce and digital players operating in Singapore and the rest of Southeast Asia need to be concerned about? The speakers discussed competition issues faced by e-commerce platforms and sellers vis-a-vis competition laws in Singapore and the region, including the following:

- Can sellers maintain similar online and offline prices via resale price maintenance provisions?

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- When are most favoured nation clauses likely to raise competition concerns? How can platforms legitimately use data and information that they collect?
- Can sellers be required to exclusively sell on only one platform?
- What competition concerns arise for mergers in digital markets?

Partner Tanya Tang, Chief Economic and Policy Advisor of the Competition & Antitrust and Trade Practice, and Senior Associate Joshua Seet were the speakers.

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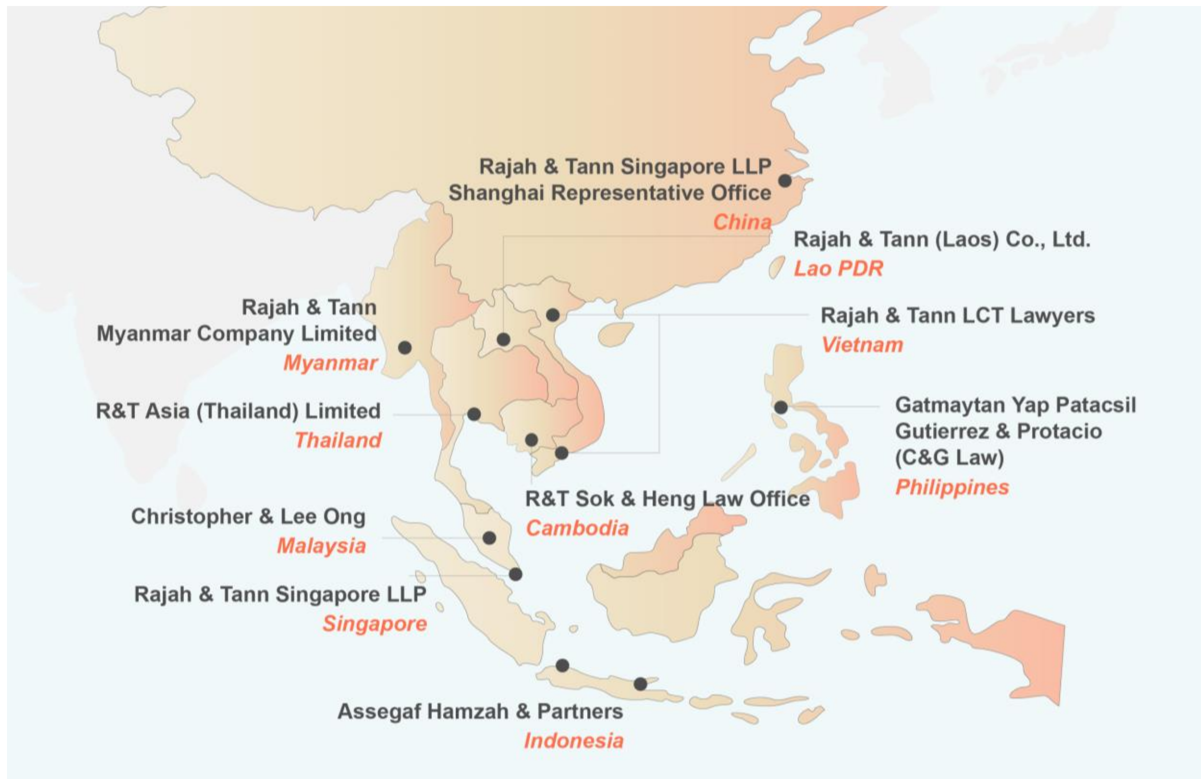
Our Regional Presence



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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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